

THE PONTIFICAL  
ACADEMY OF  
SOCIAL SCIENCES

Acta

9

# The Governance of Globalisation

*Edited by*  
EDMOND MALINVAUD  
and LOUIS SABOURIN



VATICAN CITY  
2004

*The Proceedings of the Ninth Plenary Session  
of the Pontifical Academy of Social Sciences*

2-6 MAY 2003

# THE GOVERNANCE OF GLOBALISATION

*Address*

THE PONTIFICAL ACADEMY OF SOCIAL SCIENCES  
CASINA PIO IV, 00120 VATICAN CITY

THE PONTIFICAL ACADEMY OF SOCIAL SCIENCES

Acta 9

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# THE GOVERNANCE OF GLOBALISATION

the  
PROCEEDINGS

of

the Ninth Plenary Session of the  
Pontifical Academy of Social Sciences  
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VATICAN CITY 2004

The opinions expressed with absolute freedom during the presentation of the papers of this meeting, although published by the Academy, represent only the points of view of the participants and not those of the Academy.

Editors of the Proceedings:  
Prof. EDMOND MALINVAUD  
Prof. LOUIS SABOURIN

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THE PONTIFICAL ACADEMY OF SOCIAL SCIENCES  
VATICAN CITY



*Joannes Paulus II*



The Pontifical Academy of Social Sciences, Casina Pio IV





The Participants of the Ninth Plenary Session of 2 May 2003





The Participants of the Ninth Plenary Session of 2 May 2003

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## PRÉFACE

LOUIS SABOURIN

C'est dans un climat de très forte tension internationale, quelques jours après le renversement du régime de Saddam Hussein en Irak, que s'est tenue du 2 au 6 mai 2003, la neuvième assemblée générale de l'Académie. Bien qu'il ait été choisi plus d'une année auparavant, le thème retenu pour cette réunion, *la gouvernance de la mondialisation*, ne pouvait être plus actuel et plus pertinent; on voulait coiffer ainsi les travaux des rencontres des trois années précédentes portant respectivement sur *les dimensions sociales de la mondialisation*, *les aspects éthiques et institutionnels de la mondialisation* ainsi que *les incidences de la mondialisation sur les inégalités* et dont les actes ont déjà été publiés.

Pour aborder un sujet aussi complexe que *la gouvernance de la mondialisation*, nous avons pu compter sur la participation active de la plupart des membres de l'Académie, en particulier de celle de notre nouveau tuteur, le Cardinal Martino, et de trois nouveaux membres, les professeurs Skubiszewski, Fumagalli Carulli et Possenti de même que de plusieurs experts invités, les professeurs Joly, Stiglitz, Bindé, Weiler et Winters que je remercie pour leur collaboration fort appréciée.

Nous avons opté pour une approche différente, cette année, dans le but d'analyser les dimensions principales de la gouvernance de la mondialisation et de favoriser une plus grande coopération entre les académiciens appartenant à la même discipline. Nous voulions ainsi atteindre l'objectif tracé par le Saint-Père, lors de l'audience de l'an dernier, à l'effet d'envisager "des voies pour que la gestion de la terre soit faite en vue des personnes et des peuples et non du seul profit".

Le sujet de cette neuvième assemblée générale a suscité à la fois des réflexions approfondies et des échanges suivis aussi bien dans la cadre des travaux officiels au siège de l'Académie, qu'à d'autres endroits, notamment lors d'une inoubliable journée passée à Castel Gandolfo.

\* \* \*

La quête d'une gouvernance d'un monde plus stable, plus juste, plus démocratique demeure un projet difficile mais indispensable. Les défis sont immenses. Ainsi, à côté des guerres en Afghanistan, en Irak et en Palestine, il existe plus d'une trentaine de conflits dans le monde. D'ailleurs, la détérioration de l'environnement, l'extension ou le maintien de la pauvreté dans maintes régions de la planète, le spectre de deux milliards d'être humains vivant dans des bidonvilles dans quelques décennies constituent, parmi tant d'autres, des problèmes qui requièrent une nouvelle gouvernance mondiale.

Peut-on les résoudre simplement en trouvant des réponses nationales ou en imaginant des coopérations internationales ou les deux à la fois? Peut-on démocratiquement arriver à colmater les brèches des inégalités qui sévissent à l'échelle planétaire? En effet, la recherche de gouvernances novatrices capables d'apporter des solutions exigera la mise en place de nouveaux modes de gestion et de régulation au palier international, même si d'aucuns sont perplexes face aux enjeux des flux économiques déterritorialisés et des rapports de forces que le monde connaîtra à l'avenir.

Ainsi, comment renforcer la capacité des démocraties pour que *la gouvernance de la mondialisation* soit gérée au profit des citoyens? Ne serait-il pas question que les instances internationales prennent le devant sur la régulation de la gouvernance mondiale? Quelle est la place de la démocratie dans un système globalisé? Voilà des questionnements fondamentaux auxquels nous avons tenté de répondre.

Or, si, durant la période de la Guerre froide, l'évolution des relations mondiales fut dictée par la géopolitique et la géostratégie militaire, lesquelles n'ont pas apporté les résultats escomptés en matière de justice sociale, de paix, de sécurité, de démocratie dans plusieurs régions, la situation est très différente aujourd'hui. En effet, le contexte de la mondialisation a introduit d'autres concepts comme la géo-économie, la globalisation des marchés, la régularisation marchande de l'ordre international.

Selon le Forum social mondial, "le concept de société mondiale est nourri de trois logiques principales: la logique d'interdépendance entre les unités composant le système; la logique de globalisation des acteurs, des objets, des fonctions et des enjeux; la logique d'universalisation, basée sur des principes universels et sur la diffusion des modèles communs à l'humanité, comme les droits humains et la démocratie".

Alors, comment concilier toutes ces valeurs universelles dans un monde où les inégalités et les déséquilibres sociaux sont si évidents? Certes, on constate que des progrès majeurs ont été accomplis dans presque tous les pays occidentaux et dans certains pays en voie d'industrialisation rapide.

Mais dans trop d'États, le sous-développement et l'autoritarisme demeurent plus la règle que l'exception. Malgré les efforts de développement entrepris par diverses instances au cours des années 90, force est de constater que de nombreux pays n'ont pas réussi à atteindre une croissance économique soutenue. C'est le contraire qui s'est produit, notamment dans plusieurs pays africains, fortement perturbés par des conflits internes.

\* \* \*

Quatre conclusions peuvent être mises en évidence à la suite des délibérations.

*D'abord*, on a constaté qu'il n'existe pas d'unanimité quant à la nature même de la gouvernance de la mondialisation et à sa rapide mise en œuvre. Pour certains, une telle gouvernance reste une illusion à une époque où la *souveraineté des États* et le *rôle hégémonique d'une super puissance* demeurent toujours au cœur des rapports internationaux. Pour d'autres, une telle gouvernance mondiale passe principalement par la réforme de l'ONU et des grandes institutions économiques mondiales. Pour d'aucuns enfin, une telle gouvernance mondiale résultera de la mise en place d'une *éthique commune* sur laquelle les États doivent s'entendre pour gérer leur interdépendance.

*Deuxièmement*, les délibérations ont clairement démontré qu'une nouvelle gouvernance de la mondialisation exige l'établissement de nouveaux réseaux verticaux et horizontaux qui accorderont une place saillante non seulement aux institutions publiques, mais aussi aux forces de la société civile.

*Troisièmement*, si la gouvernance de la mondialisation passe par la recherche de la paix et la solution des conflits, elle doit tenir compte aussi d'un nombre croissant de domaines tels que la santé, l'éducation, l'environnement, le progrès économique, le commerce et la société de droit. Par conséquent, la quête d'une nouvelle gouvernance de la mondialisation nécessite non seulement des réformes *institutionnelles* mais aussi des actions inter-sectorielles. C'est dans cet esprit même que le programme de cette neuvième assemblée a été élaboré.

Le programme a donc été structuré autour des aspects *politiques, juridiques, sociologiques, économiques, éthiques et philosophiques* de la gouvernance de la mondialisation, en plus de la position de l'Église concernant l'existence d'un Ordre International.

Les communications écrites ont fait l'objet de commentaires et de discussions animés, compte tenu des convictions des uns et des autres au regard de la conjoncture internationale et du conflit en Irak, qui, est-il nécessaire de le souligner, avait fait l'objet d'une condamnation par Jean-Paul II.



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*Enfin*, si cette rencontre clôture les délibérations générales sur la mondialisation, elle ne représente pas pour autant un point final des travaux de l'Académie sur ce thème. En effet, à l'instar de ce qui a été fait sous la direction du professeur Archer, dans le domaine du travail, lequel a mené à une intéressante rencontre avec des représentants du Magistère, il a été convenu de préparer, avec le concours des coordonnateurs et avec la participation du président, à qui j'exprime mes remerciements pour leur collaboration à la préparation et au déroulement de l'assemblée, une synthèse de nos travaux sur la mondialisation pouvant mener à un dialogue analogue.

Je ne saurais terminer ce mot d'introduction sans témoigner ma gratitude envers tous les participants et d'une façon spéciale envers notre chancelier, Mgr. Sánchez Sorondo, et aux membres du secrétariat.

## PROGRAMME

IX Plenary Session: 2-6 May 2003

FRIDAY 2 MAY

*President's Address*

Louis SABOURIN, Coordinator of the Meeting (Pontifical Academician)

FIRST SESSION – *The Governance of Globalisation: Political Perspectives*

H.E. Msgr. Renato R. MARTINO (President of the Pontifical Council for  
Justice and Peace, Vatican City): *Globalisation and the Church*

Louis SABOURIN: *The Challenge of Governing Globalisation*

Papal Audience and photograph with the Holy Father

SECOND SESSION – *The Governance of Globalisation: Legal Perspectives*

Joseph H.H. WEILER (New York Univ. and Europ. Univ. Inst. of Florence):  
*Governance without Government: The Normative Challenge to the Global  
Legal Order*

*Comments:*

Nicholas McNALLY (Pontifical Academician)

Paolo CAROZZA (Notre Dame Law School)

Paul KIRCHHOF (Pontifical Academician): *Subsidiarity and Sovereignty in the  
Age of Globalisation*

*Comments:*

Herbert SCHAMBECK (Pontifical Academician)

Krzysztof SKUBISZEWSKI (Pontifical Academician)

## SATURDAY 3 MAY

THIRD SESSION – *The Governance of Globalisation: Sociological Perspectives*

Margaret ARCHER, coordinator of the session (Pontifical Academician):  
*Governance and Globalisation: A Sociological Approach*

*Comments:*

Pierpaolo DONATI (Pontifical Academician)  
Serguei AVERINTSEV (Pontifical Academician)  
Joachim BONY (Pontifical Academician)

Jérôme BINDE (Deputy Ass. Dir. Gen., UNESCO): *Globalisation, Governance and Knowledge*

*Comments:*

Hans ZACHER (Pontifical Academician)  
Msgr. Michel SCHOOYANS (Pontifical Academician)  
René RÉMOND (Pontifical Academician)

FOURTH SESSION – *The Governance of Globalisation: Ethical and Philosophical Perspectives*

Msgr. Roland MINNERATH, coordinator of the session (Pontifical Academician):  
*A World Authority: The Church's Point of View*

*Comments:*

Vittorio POSSENTI (Pontifical Academician)  
H.E. Msgr. Giampaolo CREPALDI (Secretary of the Pontifical Council for  
Justice and Peace, Vatican City)  
Pier Luigi ZAMPETTI (Pontifical Academician)

Danièle JOLY (Warwick University): *The Governance of Immigration and Integration*

*Comments:*

Paulus ZULU (Pontifical Academician)  
Pierpaolo DONATI (Pontifical Academician)

## SUNDAY 4 MAY

Visit and Lunch at Castel Gandolfo

## MONDAY 5 MAY

*Closed Session for the members of the Academy*

## FORUM ON THE MEANING OF THE PRIORITY OF LABOUR

*Reflections of:*

H.Em. Card. Karl LEHMANN (Archbishop of Mainz)

H.Ex. Msgr. Angelo SCOLA (Patriarch of Venice)

H.Ex. Msgr. Diarmuid MARTIN (Perm. Mission of the Holy See – Geneva)

*Interventions of Academicians*

*Replies of:*

H.Ex. Msgr. Diarmuid MARTIN (Perm. Mission of the Holy See – Geneva)

H.Ex. Msgr. Angelo SCOLA (Patriarch of Venice)

H.Em. Card. Karl LEHMANN (Archbishop of Mainz)

FIFTH SESSION – *The Governance of Globalisation: World Perspectives*

Joseph STIGLITZ (Columbia University): *Globalisation and the World  
Economic Institutions*

*Comments:*

Juan José LLACH (Pontifical Academician)

Partha DASGUPTA (Pontifical Academician)

Hans TIETMEYER (Pontifical Academician)

*Closed Session for the members of the Academy – Business Matters*

## TUESDAY 6 MAY

SIXTH SESSION – *The Governance of Globalisation: Economic Perspectives*

Alan WINTERS (Sussex University, London): *Trade Openness, Trade Barriers and Economic Growth*

*Comments:*

Partha DASGUPTA (Pontifical Academician)

Juan José LLACH (Pontifical Academician)

Edmond MALINVAUD: *Toward a Few Ethical Principles for the Governance of Financial Globalisation*

*Comments:*

Hans TIETMEYER (Pontifical Academician)

José T. RAGA GIL (Pontifical Academician)

Bedřich VYMĚTALÍK (Pontifical Academician)

*Concluding Session*

Reports by coordinators and discussion about future work

Conclusions

Final Word by the President of the Academy

Presentation by President E. Malinvaud and Prof. L. Sabourin to the Ambassadors

## LIST OF PARTICIPANTS

Prof. Margaret S. ARCHER  
THE UNIVERSITY OF WARWICK  
Department of Sociology  
COVENTRY CV4 7AL, Warwickshire (United Kingdom)

Prof. Serguei AVERINTSEV  
WIENER UNIVERSITÄT  
Institut für Slawistik  
Spitalgasse 2-4 Hof 3  
A-1090 WIEN (Austria)

Prof. Joachim BONY  
Secrétaire Général Fondation Felix  
HOUPHOUET BOIGNY  
01 BP 3941  
ABIDJAN 01 (Côte d'Ivoire)

Prof. Rocco BUTTIGLIONE  
SEGRETERIA DEI CRISTIANI DEMOCRATICI UNITI (CDU)  
Piazza del Gesù, 46  
I-00186 ROMA (Italy)

Prof. Partha S. DASGUPTA  
UNIVERSITY OF CAMBRIDGE  
Faculty of Economics and Politics  
Austin Robinson Building – Sidgwick Avenue  
CAMBRIDGE CB3 9DD (United Kingdom)

Prof. Pierpaolo DONATI  
UNIVERSITÀ DI BOLOGNA  
Facoltà di Scienze Politiche – Dipartimento di Sociologia  
Strada Maggiore, 45  
I-40125 BOLOGNA (Italy)

---

Prof. Ombretta FUMAGALLI CARULLI  
UNIVERSITÀ CATTOLICA DEL SACRO CUORE  
Facoltà di Giurisprudenza  
Largo Gemelli, n. 1  
I-20123 MILANO (Italy)  
*Mailing address:*  
Via Angelo Fumagalli, 10  
I-20123 MILANO (Italy)

Prof. Mary Ann GLENDON  
HARVARD UNIVERSITY SCHOOL OF LAW  
Hauser Hall 504  
1525 Massachusetts Avenue  
CAMBRIDGE, MA 02138 (U.S.A.)

Prof. Paul KIRCHHOF  
UNIVERSITÄT HEIDELBERG  
Institut für Finanz – und Steuerrecht  
Friedrich-Ebert-Anlage 6 – 10  
D-69117 HEIDELBERG (Federal Republic of Germany)

Lic. Juan José LLACH  
Urquiza 875  
(B1638BWC) Vicente López  
BUENOS AIRES (Argentina)

Hon. Justice Nicholas J. McNALLY  
468 Dandaro Village, Borrowdale  
HARARE (Zimbabwe)

President Prof. Edmond MALINVAUD  
CENTRE DE RECHERCHE EN ECONOMIE ET STATISTIQUE  
15, boulevard Gabriel Péri  
F-92245 MALAKOFF Cedex (France)

Rev. Msgr. Prof. Roland MINNERATH  
UNIVERSITÉ MARC BLOCH  
Faculté de Théologie Catholique  
9, place de l'Université  
F-67000 STRASBOURG (France)



*Mailing address:*

12, rue Massenet  
F-67000 STRASBOURG (France)

Prof. Vittorio POSSENTI  
UNIVERSITÀ CA' FOSCARI DI VENEZIA  
Dipartimento di Filosofia e Teoria delle Scienze  
Palazzo Nani Mocenigo – Dorsoduro 960  
I-30123 VENEZIA (Italy)

*Mailing address:*

Via Mozart, 3  
I-20052 MONZA, Milano (Italy)

Prof. José T. RAGA GIL  
Secretario General  
CONSEJO DE COORDINACIÓN UNIVERSITARIA  
Ciudad Universitaria, s/n  
28040 MADRID (Spain)

*Mailing address:*

Paseo de la Castellana, 153 – 7º  
28046 MADRID (Spain)

Prof. René RÉMOND  
FONDATION NATIONALE DES SCIENCES POLITIQUES  
27, rue Saint Guillaume  
F-75337 PARIS Cedex 07 (France)

Prof. Louis SABOURIN  
UNIVERSITÉ DU QUÉBEC  
École Nationale d'Administration Publique (GERFI)  
4750, rue Henri-Julien  
MONTRÉAL, Québec H2T 3E5 (Canada)

S.E.R. Msgr. Marcelo SÁNCHEZ SORONDO  
Cancelliere della Pontificia Accademia delle Scienze e  
della Pontificia Accademia delle Scienze Sociali  
Casina Pio IV  
V-00120 CITTÀ DEL VATICANO

Prof. Herbert SCHAMBECK  
UNIVERSITY OF LINZ  
Institute for Public Law and Political Sciences  
Juridicum A/4th floor  
A-4040 LINZ-AUHOF (Austria)

Rev. Msgr. Prof. Michel SCHOOYANS  
Voie du Roman Pays, 31-101  
B-1348 LOUVAIN-LA-NEUEVE (Belgium)

Prof. Krzysztof SKUBISZEWSKI  
IRAN-UNITED STATES CLAIMS TRIBUNAL  
Parkweg 13  
NL-2585 JH DEN HAAG (The Netherlands)

H.E. Ambassador Hanna SUCHOCKA  
AMBASCIATA DELLA POLONIA PRESSO LA SANTA SEDE  
Via dei Delfini, 16, int. 3  
I-00186 ROMA (Italy)

Prof. Hans TIETMEYER  
Präsident der DEUTSCHEN BUNDESBANK i.R.  
Reichenbachweg 15B  
D-61462 KÖNIGSTEIN (Federal Republic of Germany)

Prof. Bedřich VYMĚTALÍK  
ADVOCATE OFFICE  
Lískovecká 2089  
738 01 FRÝDEK-MÍSTEK (Czech Republic)

Prof. Hans F. ZACHER  
MAX-PLANCK-INSTITUT FÜR AUSLANDISCHES  
UND INTERNATIONALES SOZIALRECHT  
Amalienstrasse 33  
D-80799 MUNICH (Federal Republic of Germany)

Prof. Pier Luigi ZAMPETTI  
UNIVERSITÀ DEGLI STUDI DI GENOVA  
Facoltà di Scienze Politiche  
Dipartimento di Scienze Politiche e Sociali (DISPOS)  
Largo Zecca, 8/19  
I-16124 GENOVA (Italy)

*Mailing address:*

Via 4 Novembre, 52  
I-21040 UBOLDO, Varese (Italy)

Prof. Paulus ZULU  
UNIVERSITY OF NATAL  
Maurice Webb Race Relations Unit  
King George V Avenue  
4041 DURBAN, Natal (South Africa)

## FOUNDATION FOR THE PROMOTION OF THE SOCIAL SCIENCES

Dr. Dr. Herbert BATLINER  
Aeulestrasse 74  
FL-9490 VADUZ (Principality of Liechtenstein)

Mr. Cornelius G. FETSCH  
Rahmerstrasse 34  
D-40489 DUSSELDORF (Federal Republic of Germany)

Dr. Martin STRIMITZER  
Präsident des Bundesrates i.R.  
Kirchstrasse 49  
A-6091 GÖTZENS, Tirol (Austria)

## PONTIFICAL COUNCIL FOR JUSTICE AND PEACE

S.E.R. Msgr. Giampaolo CREPALDI, Segretario  
PONTIFICIO CONSIGLIO "IUSTITIA ET PAX"  
Palazzo San Calisto  
V-00120 CITTÀ DEL VATICANO

## OUTSIDE EXPERTS

Prof. Jérôme BINDÉ  
Deputy Assistant Director-General for Social and Human Sciences  
7, Place de Fontenoy  
F-75352 PARIS 07 SP (France)

Prof. Paolo G. CAROZZA  
UNIVERSITY OF NOTRE DAME  
The Law School  
P.O. Box R, NOTRE DAME IN 46556 (U.S.A.)

Prof. Danièle JOLY  
THE UNIVERSITY OF WARWICK  
Centre CRER  
COVENTRY CV4 7AL, Warwickshire (United Kingdom)

S.E.R. Cardinal Karl LEHMANN  
Bischofsplatz 2a  
D-55116 MAINZ (Federal Republic of Germany)

S.E.R. Msgr. Diarmuid MARTIN, Osservatore Permanente  
UFFICIO DELLE NAZIONI UNITE  
ED ISTITUZIONI SPECIALIZZATE A GINEVRA  
16 Chemin du Vengeron, C.P. 28  
CH-1292 CHAMBESY (Switzerland)

S.E.R. Cardinal Renato R. MARTINO, Presidente  
PONTIFICIO CONSIGLIO "IUSTITIA ET PAX"  
Palazzo San Calisto  
V-00120 CITTÀ DEL VATICANO

S.E.R. Cardinal Angelo SCOLA, Patriarca di Venezia  
Curia Patriarcale, S. Marco 320/a  
I-30124 VENEZIA (Italy)

Prof. Joseph STIGLITZ  
COLUMBIA UNIVERSITY  
Graduate School of Business  
3022 Broadway, 814 Uris Hall  
NEW YORK, NY 10027 (U.S.A.)

Prof. Joseph H.H. WEILER  
Jean Monnet Professor of Law, Chair and Faculty Director  
Global Law School Programme  
Director, Center for International Economic Law & Justice  
NYU SCHOOL OF LAW, 40 Washington Square, New York, NY 10012 (U.S.A.)

Prof. Alan L. WINTERS  
UNIVERSITY OF SUSSEX  
School of Social Sciences  
FALMER BRIGHTON BN1 9SN (United Kingdom)

#### OBSERVERS

Rev.ma Sister Enrica ROSANNA  
Via Tremolino, 141  
I-00166 ROMA (Italy)

Dr. Peter BENDER  
Rue de la Besace 22  
B-1000 BRUSSELS (Belgium)

Dr. Tobias TEUSCHER  
EUROPEAN PARLIAMENT  
Office ASP 08 F 269  
B-1047 BRUSSELS (Belgium)

Dr. Catherine VIERLING  
EUROPEAN PARLIAMENT  
Office ASP 08 F 269  
B-1047 BRUSSELS (Belgium)

## ADDRESS OF THE PRESIDENT TO THE HOLY FATHER

Holy Father,

this year we are once again discussing the challenging phenomenon of globalisation. After a workshop in 2000, a plenary session in 2001, and a colloquium in 2002, we will seek this year to complete the first round of our discussions on this subject. Our next step will be to decide how to produce from these deliberations a specific message of the Academy that will be of relevance to the Social Teaching of the Church.

Our specific topic is now 'the governance of globalisation'. The ultimate goal of such governance is the 'universal common good', a reality stressed by Your Holiness in your address to us last year. After a number of consultations, our colleague Professor Louis Sabourin, who has organised all our exchanges on globalisation, reached the conclusion that the best way to deal with the topic of governance in our interdisciplinary Academy was to adopt different perspectives one after the other: those provided, respectively, by philosophy, political science, law, sociology and economics.

This gives a natural structure to the programme followed this year, in which we deal with a number of difficult issues. For instance: what could be the proper nature of a global legal order and a world authority, given the contemporaneous application by sovereign States of differing forms of government? How should the globalisation of knowledge – a factor that varies so much between and within societies – be governed? How can migrants be integrated into the societies they join? What are the right institutions and policies for the governance of international trade and international finance?

Such are, Holy Father, the kind of imposing questions that your Academy will seek to address with boldness, hoping that its contributions, modest as they may be, can nevertheless constitute a valuable input into the reflections of the Church.

Edmond Malinvaud

## ADDRESS OF THE HOLY FATHER TO THE PARTICIPANTS OF THE NINTH PLENARY SESSION

Mr. President,

Distinguished Members of the Pontifical Academy of Social Sciences,

I am pleased to greet you on the occasion of your Ninth Plenary Session and extend my best wishes for your work during these days of discussion focusing on the theme of 'The Governance of Globalisation'. I am confident that the expertise and experience which each of you brings to this meeting will help to shed light on how globalization may best be guided and regulated for the benefit of the entire human family.

Indeed, the processes by which capital, goods, information, technology and knowledge are exchanged and circulate throughout the world today often elude the traditional mechanisms of regulatory control put in place by national governments and international agencies. Special interests and the demands of the market frequently predominate over concern for the common good. This tends to leave the weaker members of society without adequate protection and can subject entire peoples and cultures to a formidable struggle for survival.

Moreover, it is disturbing to witness a globalization that exacerbates the conditions of the needy, that does not sufficiently contribute to resolving situations of hunger, poverty and social inequality, that fails to safeguard the natural environment. These aspects of globalization can give rise to extreme reactions, leading to excessive nationalism, religious fanaticism and even acts of terrorism.

All of this is far-removed from the concept of an ethically responsible globalization capable of treating all peoples as equal partners and not as passive instruments. Accordingly, there can be little doubt of the need for guidelines that will place globalization firmly at the service of authentic human development – the development of every person and of the whole person – in full respect of the rights and dignity of all.

It becomes clear, therefore, that globalization in itself is not the problem. Rather, difficulties arise from the lack of effective mechanisms for giv-



ing it proper direction. Globalization needs to be inserted into the larger context of a political and economic programme that seeks the authentic progress of all mankind. In this way, it will serve the whole human family, no longer bringing benefit merely to a privileged few but advancing the common good of all. Thus, the true success of globalization will be measured by the extent that it enables every person to enjoy the basic goods of food and housing, of education and employment, of peace and social progress, of economic development and justice. This goal cannot be achieved without guidance from the international community and adequate regulation on the part of the worldwide political establishment.

In fact, in my *Message for the 2003 World Day of Peace*, I remarked that now is the time 'to work together for a new constitutional organization of the human family' (N. 6), an organization that would be in a position to meet the new demands of a globalized world. This does not mean creating a 'global super-State', but continuing the processes already underway to increase democratic participation and promote political transparency and accountability.

The Holy See is fully aware of the difficulties of devising concrete mechanisms for the proper regulation of globalization, not least because of the resistance that such regulation would meet in certain quarters. Nonetheless it is essential that progress be made in this direction, with every effort firmly based on the unchanging social virtues of truth, freedom, justice, solidarity, subsidiarity and – above all – charity, which is the mother and perfection of all Christian and human virtues.

Dear Members of the Pontifical Academy of Social Sciences, I thank you in advance for the insights that your meeting will bring to the question under consideration, and I pray that the Holy Spirit will guide and enlighten your deliberations. To all of you I gladly impart my Apostolic Blessing as a pledge of grace and strength in the Risen Saviour.

## REPORT BY THE PRESIDENT

EDMOND MALINVAUD

This report covers the period from 15 April 2002 to 7 May 2003. In October 2002 the Academy had to deplore the death of H. Em. Cardinal Nguyen Van Thuân, President of the Pontifical Council for Justice and Peace. He was replaced by H.R.E. Monsignor Renato Martino, who addressed the Academy at the opening of its ninth plenary session on 2 May 2003 with the speech published in this volume. The Holy Father appointed three new academicians: Professor Krzysztof Skubiszewski on 8 October, Professor Vittorio Possenti on 17 March, and Professor Ombretta Fumagalli Carulli on 8 April.

Born in 1926 in Poland, Professor Skubiszewski studied Law at Poznan University during the particularly difficult period of the years 1945 to 1955. When appointed Assistant in Public International Law, he carried out research on United Nations Law and on the legal status of occupied Germany. When opportunities were offered in the 1960s, he visited for further study and research such academic centers as the universities of Nancy, Harvard, Columbia and Oxford. In 1973 he was transferred to the Law Institute in Warsaw. In the 1980s he took part in the political and social activities of *Solidarność*. From 1989 to 1993 he was Poland's Minister of Foreign Affairs. Later he became President of the Iranian-American Tribunal in The Hague. He received many academic distinctions in Europe.

Italian, born in 1938, Vittorio Possenti is Professor of History and Moral Philosophy at the University of Venice. After scientific studies and research in the field of electronics and microwave transmission, he turned his interest to moral and political philosophy. From 1978 to 1987 he was the Director of the Scientific Secretariat of the Catholic University in Milan before his appointment in Venice. As a philosopher he looked for a realist response to nihilism and for a scientific reconstruction of political philoso-

phy. He also analysed the reasons and implications of the recovery of the public presence of the major religions in modern societies. He is a founding member of the Jacques Maritain International Institute.

Born in 1944, Professor Fumagalli Carulli is a jurist who spent a large part of her research on Canon Law at the Catholic University of Milan. She is widely recognized in Italy where, besides her academic duties, she also held administrative and political positions. From 1981 to 1986 she was member of the Consiglio Superiore della Magistratura. She was elected member of the Italian Parliament in 1987 and held ministerial responsibilities from 1993 to the early 2000s. She also played an important role in the conduct of the Catholic Jubilee of the year 2000. Now since fully returning to her university, she is building on both her earlier academic research, particularly on the history and principles of relations between States and Churches, and on her experience and knowledge of many societal challenges.

During the year under review the Council of the Academy held three meetings on 2 November 2002, 1 and 7 May 2003. It is a pleasure to herald that, after a long preparation described in the 2001 and 2002 reports of the president, the first Forum of the Academy was held on 5 May 2003: three high prelates of the Church made themselves available for a long exchange with academicians. For this invaluable opportunity we are deeply grateful to H. Em. Cardinal Karl Lehmann, H. Em. Angelo Scola and H.R.E. Archbishop Diarmuid Martin. A brief survey will now be given of the activities on each one of our four standing programmes.

### *Work and employment*

The book *Work and Human Fulfillment* was finally published (E. Malinvaud and M. Archer, ed., Pontifical Academy of Social Sciences, 2003, Sapientia Press, Ypsilanti, Michigan). This was the outcome of a rather old project, the origin or implementation of which was explained in nearly all reports of the president, starting with that covering the period between the first and the second plenary sessions. Initially aiming at a contribution of the Academy to the Jubilee year 2000, it was to be the first substantial manifestation of our academic activities to the scientific community at large. Produced and distributed by a commercial publisher so as to reach readers in a wide range of universities, the “Jubilee edition” would present the reflections of the Academy on the theme of work and employment, i.e. on the substance of its first programme to be put in place. As it turned out, three ple-

nary sessions, in 1996, 1997 and 1999 were required for a first round of reflections. Further elaboration of the material for a book in English was also necessary, as well as processing with, and in, the publishing house.

The book has 330 pages, written by thirty-three authors, among whom four Catholic priests and sixteen members of the Academy. Besides a substantial introduction and a conclusion, the text is divided into six parts. In the introduction the two important contributions are by Father Johannes Schasching (Catholic Social Teaching and Labour) and by Professor Margaret Archer (Thematic Introduction). The six parts have the following respective titles: I. Work across the World – The Present Situation and Current Trends; II. The Globalized Economy; III. Contemporary Institutions and their Responses to Unemployment; IV. Capital and Labor; V. Analysis of Policy Options; VI. The Culture of Work. The conclusion, by Professor Edmond Malinvaud, presents his synthesis.

Dealing with the subject of *The Meaning of the Priority of Labour over Capital*, the Forum held during the Ninth Plenary Session with three high prelates of the Church was a second important achievement of the same programme. It is now recorded in a publication in English which, after a major presentation by H. Em. Cardinal Karl Lehmann, takes the form of minutes of the actual exchanges (*Miscellanea 4*).

The text of the booklet is divided into the same four parts as the Forum. First come the three presentations respectively made by Cardinal Lehmann, Cardinal Scola and Archbishop Martin. The second part reproduces the oral contributions of academicians who had announced in advance that they would stand ready to speak on such or such aspect of the subject. The third part is devoted to a second round of contributions made by academicians after the mid-morning break. The floor was first given to the two colleagues who had written notes circulated in advance to all participants in the Forum: Professor Archer, who from 1994 on, accepted the weighty responsibility of organizing the activities of the whole programme on Work and Employment, and myself. Then six other academicians also took part in the exchanges. The fourth part reproduces the conclusions of the Forum as drawn respectively by Archbishop Martin, Cardinal Scola and Cardinal Lehmann.

The Academy has still to reflect in order to draw, for its future activities, the main lessons of this first experience with a forum. A simple lesson, however, already emerges: from the Academy the Church would most value those contributions in which we could show how to best apply the perennial principles of the Catholic social teaching to changing and challenging

realities. The Church is well aware of most of these real trends, but perhaps not as fully as it would be advisable. Moreover, our disciplines should be relevant in order to show which changes in behaviours, institutions and policies would be most effective in order to promote a higher degree of justice and solidarity in the present society.

### *The study of globalisation*

The report on this programme will be shorter than its three predecessors, which appeared in *Acta 6*, *7* and *8*. Indeed, the present volume well exhibits the extent to which the guidelines adopted in Spring 2002 and spelled out on page 35 of *Acta 8* were applied. As Professor Sabourin writes in his preface: “We have opted for a different approach, this year, in order to analyse the main dimensions of the governance of globalisation and to induce a more active cooperation between academicians belonging to the same discipline”. Thus, the programme was divided into five parts, each one prepared by a coordinator: (i) Political perspectives (Sabourin), (ii) Legal perspectives (Glendon), (iii) Sociological perspectives (Archer), (iv) Ethical and philosophical perspectives (Minnerath), (v) World economic perspectives (Llach).

By now the Academy has held four meetings on globalisation: a workshop in 2000, a colloquium during the 2002 plenary session and two full plenary sessions in 2001 and 2003. No further meeting on the same theme is specifically planned. But a synthesis must be prepared and a number of conclusions must be drawn. Endorsing the proposal made by Professor Sabourin, the General Assembly agreed to delegate the organisation of this subsequent activity to a committee that he would chair, made up of the coordinators who prepared the 2003 scientific programme.

### *Intergenerational solidarity*

Already during the first meeting of the Academy in 1994 this theme was selected as one of the three which should receive priority during the first decade of our activities. When the subject was approached for the first time in a seminar during the 2002 plenary session, the Holy Father approved the priority in His Address where we can read in particular: “Solidarity between generations must receive greater attention, with special care for the weaker members of society, children and the elderly ... I invite people who have the responsibility of government and those who make decisions

that affect society to be particularly careful by reflecting on future long-term decisions”.

In the 2002 seminar a wide range of subject was approached: the Social Doctrine of the Church; the ethics of equity between generations; the place of families in political organization; the natural environment; the sociological approach to intergenerational solidarity; close solidarity between the young and the elderly; and the welfare state. The Academy did not yet want to choose the sketch of a programme extending over a number of future years. But it expressed a clear priority in favour of devoting a large part of the 2004 plenary session to the problems of the welfare state. It also delegated preparation of the activities on that theme to a committee chaired by Professor Mary Ann Glendon.

After analysing the challenge, she presented to the Council a programme for the 2004 plenary session. It is inspired by two central ideas. Firstly, human beings are dependent for social status and material subsistence on (i) family, (ii) work, and/or (iii) some kind of community assistance. Secondly, in different parts of the world the mix of these three factors varies. Academicians will discuss ten main papers, four of them prepared by outside speakers: Cardinal Rouco Varela, Professors Fukuyama, Neuhaus and Vallin. This provides a good prospect for making progress on this theme in 2004 and beyond.

#### *Two other programmes*

The 2002 report of the president described the planning and progress of the last part of the programme on *the study of democracy*, which had been launched in 1996 and to which a workshop, two plenary sessions and a roundtable with outside experts had been devoted. The prospect was then to complete the programme with the adoption, in Spring 2003 by the General Assembly, of a summary academic statement, to be followed by a publication. As it turned out, the small group in charge of preparing the draft of the statement faced difficulties in coming quickly to an agreement, so that the whole process, with translations into English, circulation of the draft to academicians and revision on the basis of comments received could not be completed in time. Hence, adoption by the General Assembly had to be postponed to 2004. Coming after the difficulties with the ‘Jubilee edition’, which appeared only in 2003, and after the postponement of the Forum from 2002 to 2003, this experience illustrates again the long delays that may be imposed for serious achievements of the projects of the Academy.

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During the session to which these proceedings are devoted the suggestion was made to examine whether it would not be important for the Academy to study *the vision of the human person in the social sciences*. This would be a more methodological or philosophical topic than those examined by us thus far. It might essentially consist in considering how the various social science disciplines represent the human person, whether as a direct actor or as acting through human organisations. In such an inquiry the Academy might look at the fundamental problems posed by alternative representations or conceptualisations of the human person with respect to Christian anthropology. The suggestion immediately aroused the interest of some academicians, although not necessarily all for the same reason. The interest was expressed at the General Assembly and subsequently. Meeting on 7th May, the Council quite naturally examined the issue. It decided that Professors Archer and Malinvaud would investigate what could be the programme of a session devoted to the theme in question. The two academicians would report their conclusion at the following Council meeting scheduled on 15th November 2003.



## SCIENTIFIC PAPERS

FIRST SESSION

THE GOVERNANCE OF GLOBALISATION:  
POLITICAL PERSPECTIVES



## LA CHIESA E LA GLOBALIZZAZIONE

RENATO RAFFAELE MARTINO

### *Globalizzazione e con-divisione*

La Chiesa guarda con grande attenzione al fenomeno della globalizzazione, perché in questa spinta all'unificazione del mondo e ad una reale condivisione del destino di tutti gli uomini e di tutti i popoli essa riconosce una traccia umana e storica del disegno, che essa stessa persegue per mandato divino: essere segno dell'intima unità del genere umano, della fraternità di tutti gli uomini in Cristo Signore, di una con-divisione universale, di un cammino verso il Bene (cf. *Lumen Gentium*, n. 1).

È risaputo che la globalizzazione non produce necessariamente unità, ma anche divisione. Per questo ho usato l'espressione "con-divisione", che sul piano semantico allude non tanto ad un condividere nel senso di spartire un patrimonio comune già costituito, un dividere in parti uguali qualcosa da distribuire, quanto piuttosto ad un valorizzare le differenze (divisione), ma in un quadro unitario e di collaborazione finalistica (con). Con-dividere vuol dire essere diversi, ma a partire da una unità di fondo e tendendo ad una unità di fondo.

Ebbene, la Chiesa ha una sua propria parola da dire sull'unità del genere umano e quindi sulla globalizzazione come con-divisione. Nella sua genuina esigenza questo processo si incontra con la storia della Chiesa e con il suo messaggio. Annunciando che Cristo è il Messia, il cristianesimo ha valorizzato l'universalismo greco-romano (importante ma certamente limitato e imperfetto) e ha dilatato il con-fine dell'umano fino alla sua estrema soglia. Il messaggio cristiano può dirsi veramente "universale" e la Chiesa Cattolica, che di quel messaggio è la voce e la parola sulla terra, può dirsi veramente amante dell'umanità intera. La sua casa è il mondo intero, la sua famiglia è l'intera famiglia degli

uomini, senza esclusioni o confini. In questa prospettiva, non si può non notare come la globalizzazione possa rappresentare un'occasione propizia perché la universale missione della Chiesa venga meglio percepita e perché maturi una sempre maggiore coscienza dell'universalità del messaggio cristiano. La Chiesa, in altri termini, trova un habitat storico a sé più consono in un mondo interdipendente piuttosto che nella relativa staticità del mondo del passato, spesso chiuso e incomunicabile. La dimensione organica e dinamica della Chiesa, per la quale essa è organismo vivo destinato ad animare di fraternità teologale l'intera famiglia umana, trova nel mondo globale e unificato una condizione storica a sé più conforme.

Come già detto innanzi, la Chiesa ha sviluppato e ulteriormente dilatato l'universalismo greco e latino. Questo è vero, come è vero che essa l'ha anche approfondito. Il motivo di fondo sta nell'annuncio di una "chiamata", di una vocazione dall'Alto. Dio, convocando il suo popolo e annunciando le sue promesse, ha conferito alla persona umana e, per essa, alla comunità intera, una dignità incomparabile assieme alla consapevolezza di questa dignità. Vocazione trascendente, dignità della persona, appartenenza solidale ad una comunità universale nascono assieme e vanno di pari passo. Più la persona è costituita nella sua trascendente dignità, più essa trascende la propria particolare comunità, in cui fino a quel momento era sì valorizzata ma anche rinchiusa, e più si riconosce in una vasta comunità globale, la sola capace di farle adeguatamente respirare i valori di cui è incarnazione. La Chiesa è quindi sempre stata in prima linea sia nel sostenere le identità culturali e nazionali dei popoli, senza mai assolutizzarle, sia nel porle in relazione con una identità ancora più vasta, con l'appartenenza all'intero genere umano. Per questo stesso motivo, ogni volta che lungo la storia la Chiesa ha difeso la libertà religiosa e il riferimento anche pubblico verso la trascendenza, ha sempre prodotto fenomeni di integrazione e di liberazione.

Dall'uomo visto come *Imago Dei* della Genesi fino a Cristo, la Rivelazione mostra come il rapporto con Dio sia personalizzante e creatore di comunità, ossia costitutivo e costruttivo della persona e di una comunità di appartenenza che via via si fa sempre più ampia e universale: "non c'è più giudeo né greco; non c'è più schiavo né libero; non c'è più uomo né donna, poiché voi tutti siete uno in Cristo Gesù" (*Gal* 3, 27). La Costituzione pastorale *Gaudium et Spes*, al numero 32, ha descritto in modo insuperabile tale vocazione dell'uomo alla fratellanza universale.

*Dare un volto alla globalizzazione*

Oggi, però, la globalizzazione non ha un volto e appare largamente come un fenomeno impersonale e spesso sovraperonale, nel senso che il cittadino globale percepisce di essere dentro meccanismi che in qualche modo gli si impongono nella loro oggettiva meccanicità. Le parole “sistema” o “megamacchina”, proprie della Scuola di Francoforte e quindi ormai datate, ritornano tuttavia spesso per indicare una prassi globalizzante che, come un treno in corsa senza un guidatore, procede in virtù di procedure interne autoreferenziali.

L'elemento fondamentale che più di altri contribuisce a lasciare imprecisato il volto della globalizzazione, è la sua origine prevalentemente tecnologica. La tecnologia, come si sa, non ha volto e, per il principio filosofico e del senso comune, mai contestato, secondo cui “nessuno dà ciò che non ha”, è incapace di darselo da sé. La tecnologia è l'ambito del come e non del perché. Essa fornisce procedure e strumenti cui bisogna dare un “fine”, ossia un volto.

Che la spinta originaria alla globalizzazione sia stata soprattutto tecnologica mi sembra una evidenza. Ma è proprio questo “ritardo” del *perché* sul *come*, che rende difficoltosa la maturazione delle identità nella società globalizzata. La tecnologia è sempre “un passo più avanti” e sembra imporre la propria legge di cambiamento, travolgendo quanto era stato precedentemente costruito.<sup>1</sup> La figura del pellegrino, ossia di chi cammina per il mondo avendo davanti a sé uno scopo che dà senso al suo camminare, è oggi sostituita da quella del turista o del vagabondo. Il fatto che la tecnologia corra più in fretta di tutto il resto fa sì che le sedimentazioni dei perché siano sistematicamente travolte dall'urgenza del come e non abbiano quindi il tempo di coagularsi.

Anche le terapie, gli interventi, le molte progettualità spesso danno l'impressione di annaspire, proprio perché la globalizzazione non ha un volto preciso, ma sfuggente, ambiguo e controverso. Non ha un volto, proprio perché ne ha molti. È un fenomeno sfaccettato dalle molte sfumature, che non si riesce a catalogare pienamente. Proprio per questo è un fenomeno che sconfessa tutte le previsioni e che “sembra procedere per conto suo”.

<sup>1</sup> “Ciò che sta accadendo è che i cambiamenti nella tecnologia e nei rapporti di lavoro si muovono troppo velocemente perché la cultura sia in grado di rispondere”: *Discorso del Santo Padre alla Pontificia Accademia delle Scienze Sociali*, 27 aprile 2001.

A partire da questo dato si impone una domanda: la globalizzazione è governabile? Un Rapporto della Banca Mondiale<sup>2</sup> ha messo in evidenza come la globalizzazione abbia comportato per alcuni paesi come Cina, India, Vietnam una maggiore partecipazione all'economia internazionale e tassi di crescita economica di notevole entità. Parallelamente altri Stati – quelli i cui cittadini devono vivere con meno di un dollaro al giorno – hanno conosciuto una ulteriore emarginazione dall'economia internazionale. La globalizzazione doveva produrre, secondo diffuse previsioni, l'implosione dello Stato nazionale e della politica, soverchiati e perfino schiacciati dall'economia e dalla finanza internazionali. In molti casi questo è accaduto, infatti i governi si muovono oggi sul piano macroeconomico con minori libertà che non nel passato (si pensi, a titolo di esempio, ai governi dell'Unione europea che non possono più agire sui cambi). Tuttavia, in tanti altri casi è successo il contrario: i governi di una certa area geografica hanno steso accordi politici con cui hanno saputo imporsi alle esigenze economiche di soggetti sopranazionali. Si era anche detto che la globalizzazione avrebbe ucciso le culture. Anche questo è in parte vero, tuttavia gli Stati stanno destinando crescenti risorse alla salvaguardia delle culture nazionali in quanto con la globalizzazione cresce anche l'avvertimento del pericolo della omogeneizzazione culturale. Infine, un riferimento al problema dell'ambiente. La globalizzazione fa dell'intero pianeta un unico mercato. Ciò significa che i consumi sono destinati ad aumentare e, con essi, lo sfruttamento ambientale. Eppure, essendovi un rapporto diretto tra degrado ambientale e povertà, laddove i paesi, anche grazie alla globalizzazione, emergono dal sottosviluppo, essi sono in grado di destinare maggiori risorse alla tutela ambientale.

Ho fatto alcuni esempi delle ambivalenze del processo di globalizzazione, che contribuiscono a non identificarne puntualmente il volto e spesso ci impediscono di guardarla in modo fisso negli occhi per poterla governare, ma altri se ne potrebbero aggiungere. Per questi motivi, la globalizzazione viene spesso percepita dall'uomo comune come un fenomeno “che capita”, una fortuna e un'occasione insperata per gli ottimisti, una calamità con cui convivere per i pessimisti. L'azzardo e il fatalismo rassegnato non sono però atteggiamenti costruttivi.

<sup>2</sup> Cfr. P. Collier-D. Dollar, *Globalizzazione, crescita economica e povertà. Rapporto della Banca Mondiale*, Il Mulino, Bologna 2003.

*Dare un volto umano alla globalizzazione*

La globalizzazione chiede, infatti, di essere governata. In questa espressione che mi sono volutamente lasciato scappare emerge l'abitudine, assai diffusa, di identificare la globalizzazione con una soggettività globale. Ciò pone nuovi ostacoli a chi voglia definirne il volto. Infatti, il suo volto non emerge né se assolutizziamo di fatto la tecnica, né se cataloghiamo gli aspetti contraddittori e ambigui della globalizzazione, né se la consideriamo espressione di una entità sovraindividuale. Del resto la frase "la globalizzazione chiede di essere governata" indica l'emergenza di un'esigenza etica, e nessuna realtà sovraindividuale, nessuna tendenza meccanica impersonale può esprimere esigenze etiche. Per dare quindi un volto alla globalizzazione e per porre concettualmente le basi di un suo governo dobbiamo attribuire alla globalizzazione il volto dell'uomo e degli uomini. Scriveva Simone Weil che "Il futuro non ci porta nulla, non ci dà nulla; siamo noi che per costruirlo, dobbiamo dargli tutto". Anche la globalizzazione, in quanto tale, non porta nulla di significativo. Tutto il suo senso dipenderà dal suo volto umano.<sup>3</sup>

In occasione di una veloce intervista concessa qualche anno fa al quotidiano francese "La Croix", il Santo Padre sottolineava con forza che ad essere globalizzato, prima di tutto, è l'uomo, è l'umanità: "Prima di tutto ci sono il mondo, le persone, la famiglia umana, la famiglia dei popoli. Questa realtà è preesistente alle tecniche di comunicazione che permettono di dare una dimensione mondiale a una parte, ma solo a una parte, della vita economica e della cultura. Di mondiale c'è innanzitutto il patrimonio comune, c'è, direi, la persona con la sua natura specifica di immagine di Dio e c'è l'umanità intera con la sua sete di libertà e di dignità. Mi sembra che sia a questo livello che si debba parlare innanzitutto di un movimento di mondializzazione, anche se è meno visibile e ancora frequentemente intralciato".

Gli uomini sono originariamente globalizzati, per il fatto che costruiscono una comune umanità. Quanto chiamiamo globalizzazione è solo il processo, reso possibile dalla tecnica e dall'interdipendenza comunicativa ed economica, che ha permesso di vedere meglio questa unica realtà globale della famiglia umana. Si può dire che la globalizzazione è la causa strumentale, la causa ultima e fondamentale è l'unità della famiglia umana.

<sup>3</sup> "La globalizzazione, a priori, non è né buona né cattiva. Sarà ciò che le persone ne faranno": *Discorso* del Santo Padre alla Pontificia Accademia delle Scienze Sociali, 27 aprile 2001.



Infatti, non si dà globalizzazione di cose, ma di uomini. Si globalizzano le relazioni umane, i rapporti tra le persone, i modi di pensare, non i computer o le automobili o gli hamburger. Ad essere globalizzati non sono i bit elettronici, che non ne sanno nulla, ma le persone degli operatori e i popoli che subiscono le conseguenze di operazioni finanziarie via cavo, apparentemente tanto asettiche, in realtà dal grande impatto su economie e società. Anche l'Aids è, ahimè, frutto della globalizzazione e in questi giorni la "polmonite atipica" può diramarsi in tutto il mondo tramite la globalizzazione. Questa non riguarda solo le transazioni finanziarie o le comunicazioni via satellite, riguarda anche il dolore e la gioia, la morte e la vita. Anche la strage dell'11 settembre è globalizzazione, come la guerra e la pace.

Il concentrarsi sugli aspetti tecnici e tecnologici della globalizzazione può essere fuorviante. Può farci dimenticare che ad essere globalizzata è l'umanità e che la globalizzazione riguarda la pelle di uomini e donne in carne ed ossa.

#### *Dare un con-fine alla globalizzazione*

Dare un senso alle cose significa definire, porre un *limes*, stabilire una soglia, un confine. Si definisce delimitando. L'indeterminato non ha confini e quindi non ha senso. Ma attenzione ai giochi di parole, che spesso rivelano rimandi significativi della realtà. Porre dei confini è essenziale per definire qualcosa, ma porre dei con-fini vuol dire porre dei fini comuni. I confini di qualcosa si giustificano in quanto delimitano un'area all'interno della quale si con-dividono dei fini (con-fini). E con-divisione, come dicevo all'inizio, significa proprio valorizzare le differenze (divisione), ma in un quadro unitario e di collaborazione finalistica (con). Con-dividere vuol dire essere diversi, ma a partire da una unità di fondo e tendendo ad una unità di fondo, a dei con-fini.

Qui si giustifica il ruolo proprio della Chiesa di fronte alla globalizzazione, di cui ho già fatto qualche accenno e sui cui ora conviene ritornare, alla luce delle considerazioni fin qui fatte. Affermavo all'inizio che la Chiesa ha una missione universale e che tale missione universale trova nel contesto della globalizzazione un terreno propizio, a patto però che alla globalizzazione si riesca a dare un volto. Orbene, la Chiesa può fare molto per dare un volto umano alla globalizzazione. Essa lavora per unire l'umanità attorno a dei con-fini e ad una con-divisione che abbiano al centro l'uomo, immagine di Dio e dotato di una trascendente dignità.

Più volte il Santo Padre ha sottolineato l'urgenza di "globalizzare la solidarietà".<sup>4</sup> Ma le vie per realizzarla possono essere trovate solo se procede e si rafforza l'idea del volto umano della globalizzazione, in quanto su di esso si possono trovare convergenze progressive verso un "codice etico comune" – ossia verso una con-divisione e dei con-fini – che è anche tra le richieste più frequenti del Papa. Parlando nel 2001 alla Pontificia Accademia delle Scienze Sociali, egli disse tra l'altro: "L'umanità nell'intraprendere il processo di globalizzazione non può più fare a meno di un codice etico comune. Con ciò non si intende un unico sistema socioeconomico dominante o un'unica cultura che imporrebbero i propri valori e criteri all'etica. È nell'uomo in sé, nell'umanità universale scaturita dalla mano di Dio, che bisogna ricercare le norme di vita sociale. Questa ricerca è indispensabile affinché la globalizzazione non sia solo un altro nome della relativizzazione assoluta dei valori e dell'omogeneizzazione degli stili di vita e delle culture".<sup>5</sup>

La Chiesa accompagna l'umanità nella scoperta del volto umano della globalizzazione. Essa la accompagna in modo che, sempre di più, dietro al problema dei brevetti sugli organismi geneticamente modificati si veda il volto dei contadini africani, dietro elenchi di cifre su un monitor si vedano i piccoli risparmiatori delle economie in via di sviluppo, dietro i satelliti e i cavi a fibre ottiche si vedano tanti giovani che nei paesi poveri potrebbero apprendere e formarsi con le nuove tecnologie, dietro i sofisticati diagrammi della *new economy* si vedano le imprese come comunità di persone e dietro la flessibilità del lavoro le famiglie dei lavoratori. Questa è la prospettiva cristiana per la governabilità della globalizzazione.

<sup>4</sup> Giovanni Paolo II, *Discorso* al termine della concelebrazione eucaristica per il Giubileo dei Lavoratori – 1 maggio 2000, in "L'Osservatore Romano" 2-3 maggio 2000, p. 13.

<sup>5</sup> Giovanni Paolo II, *Discorso* alla Pontificia Accademia delle Scienze Sociali, 27 aprile 2001.

LA RECHERCHE D'UNE NOUVELLE GOUVERNANCE  
DE LA MONDIALISATION SOUS LE PRISME  
DU CONFLIT IRAKIEN:  
PAUSE TEMPORAIRE OU RETOUR À BABEL?

LOUIS SABOURIN

*“Je vois ce que tu veux dire, Ménon, quel beau succès de dispute sophistique tu nous apportes là! C'est la théorie selon laquelle on ne peut chercher ni ce qu'on connaît ni ce qu'on ne connaît pas: ce qu'on connaît, parce que le connaissant on n'a pas besoin de le chercher; ce qu'on ne connaît pas parce qu'on ne sait même pas ce qu'on doit chercher” (Socrate).*

*Introduction: le contexte international et le paradigme de la gouvernance mondiale*

À l'instar de Ménon, il pourrait paraître superflu, sinon futile, de s'interroger sur la notion, les finalités et les dimensions d'une *nouvelle gouvernance de la mondialisation* alors que les phares de l'actualité internationale sont tournés vers l'Irak, dans les sillons du 11 septembre 2001, de la guerre en Afghanistan, de la lutte anti-terroriste et du conflit israélo-palestinien.

La présente réflexion, qui fait suite aux débats qui ont eu lieu au sein de l'Académie<sup>1</sup> a pour objectif d'examiner, sous l'angle politique, la recherche

<sup>1</sup> L. Sabourin et al., *The Social Dimensions of Globalisation*, Proceedings of the Workshop on Globalisation, Pontifical Academy of Social Sciences, 2000; E. Malinvaud & L. Sabourin (ed.), *Globalization. Ethical and Institutional Concerns*, Proceedings of the Seventh Plenary Session of the Pontifical Academy of Social Sciences, 2001; L. Sabourin (ed.), *Globalisation and Inequalities*, Proceedings of the Colloquium, Pontifical Academy of Social Sciences, 2002.

d'une nécessaire gouvernance de la mondialisation. La tâche est loin d'être simple. Jean-Paul II n'affirmait-il pas, à la suite du déclenchement de la guerre irakienne qu'il venait de condamner, que "le monde est dans une situation d'incertitude et de danger".<sup>2</sup> Dans de telles circonstances, la quête d'une gouvernance mieux coordonnée de la mondialisation risque non seulement de connaître un temps d'arrêt, mais aussi d'apparaître comme un objectif difficile sinon impossible à atteindre à brève échéance. Bien que l'on puisse prévoir une victoire de la coalition américano-britannique, plusieurs observateurs s'attendent à une période fort troublée au cours de laquelle le désordre international primera sur la stabilité en maints endroits du globe. La route vers Bagdad mènera-t-elle à Babel ou à la mise en place de jalons inédits dans le remodelage du système international contemporain?

Certaines constatations s'imposent déjà. *D'abord*, en plus de mettre en lumière les *limites d'un ordre mondial* qui devrait être axé sur la primauté de la paix et du droit ainsi que sur la quête de la démocratie et du développement, ce conflit hautement médiatisé, qui a rapidement mobilisé les peuples partout sur la planète, divisé les pays occidentaux entre eux de même que les États arabes mais galvanisé le monde musulman, risque, en plus de ralentir la croissance économique mondiale, de marginaliser et de repousser la solution d'autres crises ailleurs sur la planète.

Il démontrera, *en second lieu*, que la réponse de Socrate à Ménon à l'effet "qu'il faut toujours chercher la connaissance" demeure sans contredit la seule voie pour sortir de la situation "d'ingouvernance" mondiale dans laquelle se trouve présentement l'humanité, face à la faiblesse des Nations unies et de la plupart des États, vis-à-vis de la supériorité militaire, économique et technologique américaine,<sup>3</sup> et aux hésitations qui entourent l'établissement sinon d'un nouvel ordre mondial, du moins de *nouveaux équilibres internationaux*.

*Troisièmement*, la communauté internationale vit à coup sûr un *temps fort de remise en cause des normes qui ont jeté les fondements du système westphalien, en 1648, et du système onusien, en 1945*. En souhaitant, à juste titre d'ailleurs, lutter contre un terrorisme international de type nouveau qui défie le système westphalien, le Président américain n'a pas hésité à décréter un *axe du mal* et à recourir à la *guerre préemptive* s'inscrivant ainsi

<sup>2</sup> *Le Monde*, 24 mars 2003.

<sup>3</sup> R. Rémond, *Du mur de Berlin aux tours de New York*, 2002; H. Kissinger, *La nouvelle puissance américaine*, 2003; E. Todd, *Après l'empire*, 2002; D. Wolton, *L'autre mondialisation*, 2003; M. Walzer, *Guerres justes et injustes*, 1999.

à l'encontre de l'ordre onusien. Si les conséquences quant au désastre humanitaire en Irak et à l'après-guerre dans ce pays ainsi qu'au remodelage des forces politiques, économiques et sociales de même qu'aux nouveaux enjeux pétroliers du Moyen-Orient deviendront chaque jour plus apparentes, les effets sur le système westphalien et sur le système onusien seront moins perceptibles, mais probablement aussi profonds. Toutefois, les deux systèmes, à mes yeux, ne seront pas rapidement remplacés, non pas parce que d'aucuns ne le souhaiteraient pas, mais parce qu'il n'existe pas d'alternatives crédibles, fonctionnelles, gérables et acceptables universellement. Ce sont leur *esprit* et leurs *pratiques*,<sup>4</sup> plutôt que leurs *structures*, qui seront progressivement altérés.

*Quatrièmement*, au-delà du conflit irakien, les défis qui attendent la gouvernance de la mondialisation demeureront complexes; ils exigeront des réflexions sérieuses et des actions concertées qui tiendront compte des valeurs éthiques universelles et ne marginaliseront pas les plus faibles et les plus pauvres. Il s'agit là d'un cahier de charges certes souhaitable et même indispensable, mais la réalité internationale où priment toujours le *pouvoir* et les *intérêts nationaux* risque encore une fois d'en repousser la mise en œuvre. Bien plus, il ne serait pas étonnant que les efforts en vue de trouver à court terme des compromis pour mieux cerner et maîtriser la mondialisation soient très influencés par la crise irakienne et par les nouveaux comportements des principales puissances, à commencer par celui de la superpuissance américaine, devenue très contestée mais quasiment incontestable. En matière de mondialisation, se dirige-t-on vers une meilleure gouvernance ou, du moins à brève échéance, assistera-t-on à un retour à Babel où la division et la confusion, le désordre et le déséquilibre seront la règle plutôt que l'exception à l'échelon international?

#### *Le concept de gouvernance mondiale*

En effet, mieux maîtriser et gérer la mondialisation est l'un des plus grands et imminents défis du XXI<sup>e</sup> siècle. Non seulement il confronte l'ensemble du monde, mais il englobe désormais toutes les dimensions de la vie humaine et s'adresse à une multitude d'acteurs, aux positions et aux inté-

<sup>4</sup> M. Verweij and T.E. Fosling (ed.), "Special Issue: Deliberately Democratizing Multilateral Organization", *Governance: An International Journal of Policy, Administration and Institutions*, January 2003.

rêts variés. Sujet polysémique d'une étendue parfois déroutante et complexe, il se caractérise par plusieurs approches et conceptions. Il se traduit également par plusieurs controverses. Il se heurte à des réticences toujours plus prononcées qui revendiquent justice sociale, dignité humaine, cohérence et responsabilité à l'égard du bien commun universel. D'où l'idée de la *gouvernance mondiale* pour mieux gérer la *mondialisation*.

Souvent associé à la notion de *bonne gouvernance*, le concept de gouvernance mondiale, ou de *gouvernance globale*, est étroitement lié à la mondialisation. Il résulte du besoin de mieux gérer les interconnexions entre les domaines de vie internationaux et l'interdépendance entre les paliers d'autorité ainsi que le nombre croissant d'entités corporatives et de mouvements civils.<sup>5</sup>

Utilisé par les représentants d'États, d'organisations et autres acteurs internationaux dès les années 1980, mais surtout depuis les années 1990, ce concept désigne, entre autres choses, "un système de régulation et de pilotage",<sup>6</sup> au pouvoir mitigé, sur les plans tant politique, économique que social. La Commission des Nations unies sur la gouvernance mondiale, le Groupe de Lisbonne, le Programme des Nations unies sur le développement (PNUD), le Club de Rome figurent parmi ses principaux promoteurs.<sup>7</sup>

La gouvernance mondiale désigne, par ailleurs, *une approche en réseau des problèmes globaux et touche non seulement les gouvernements et les institutions internationales, mais également les firmes privées et les organisations non gouvernementales (ONG)*. C'est sans négliger le rôle des entités religieuses et des regroupements qui luttent pour la défense des droits humains, des minorités, des couches sociales défavorisées, de l'environnement et autres.

La gouvernance mondiale fait également référence aux *processus de modernisation et de réforme des institutions internationales*. Elle prône un développement plus efficient et durable, l'intégration des économies moins avancées et la légitimation de règles globales, sorte d'éthique mondiale sensée favoriser la mise en valeur de principes universels. Elle présuppose un nouveau type de collaboration entre les acteurs de la scène politique internationale et ceux de la société civile.

<sup>5</sup> L. Sabourin, "La gouvernance globale: Astuce passagère ou prémices d'un modèle inédit de gestion en vue de mieux maîtriser la mondialisation?", 2000.

<sup>6</sup> F. Bernard (dir.), *Dictionnaire critique de la mondialisation*, 2001, p. 173.

<sup>7</sup> *Ibid*, p. 174.

La gouvernance mondiale se veut, en fait, une approche *pour multiplier les impacts positifs de la mondialisation et pour en limiter les effets négatifs*. Bien que l'interdépendance économique et politique se soit considérablement renforcée depuis les dernières décennies, elle semble avoir négligé la majeure partie des habitants de la planète, ce qui pousse les groupes anti-mondialisation à affirmer que le concept de gouvernance mondiale est une *stratégie* en vue d'inclure davantage les pays du Tiers-Monde dans le giron capitaliste afin de mieux les contrôler.

Malgré des échanges accrus en terme d'information, de technologies, de capitaux et de produits, la mondialisation *n'a pas contribué à réduire de façon suffisante la pauvreté et les inégalités* qui ne cessent de prendre de l'ampleur dans le monde. La mondialisation n'a pas réussi non plus à assurer la *sécurité des peuples* et la paix dans le monde de façon satisfaisante. De nombreuses tensions persistent à l'échelle planétaire, de nouveaux conflits émergent et de sérieuses problématiques, telles que le terrorisme et la détérioration de l'environnement, menacent désormais jusqu'aux pays les plus puissants du globe.

Plusieurs estiment que le monde actuel est engagé dans un tournant décisif de son histoire. L'ordre westphalien est en jeu. Il importe de repenser les principes de l'exercice et de la répartition du pouvoir, tels que mis en place en 1648, et de renouveler les modèles traditionnels de prise de décision fondés sur la primauté de la souveraineté des États.<sup>8</sup> La forme contemporaine de gouvernance mondiale, essentiellement multilatéraliste, ne suffit plus à résoudre les problèmes de dimensions planétaires. Une refonte structurelle des institutions internationales est capitale. Elle devra toutefois aller de pair avec l'intégration de valeurs universelles, sans lesquelles la sécurité de l'humanité risque d'être compromise.

*Comment donc orienter l'ordre mondial? Comment gérer la mondialisation? À qui revient cette responsabilité?* Il n'existe pas de réponses faciles à ces questions. Pourtant, le défi est d'autant plus urgent que le contexte international subit des mutations profondes, notamment avec les événements du 11 septembre 2001, l'intervention militaire en Afghanistan et, maintenant, la guerre en Irak.

Ainsi, pour cerner les enjeux de la gouvernance mondiale de la mondialisation, j'examinerai, *dans un premier temps*, les dimensions multiples

<sup>8</sup> K. Valaskakis, "Tendance à long terme de la gouvernance mondiale: des traités de Westphalie à Seattle", dans OCDE, *La gouvernance au XXI<sup>e</sup> siècle*, 2002, et "Les perspectives géopolitiques après les attentats de septembre", *Futuribles*, novembre 2001.

de la mondialisation. Dans *un deuxième temps*, j'analyserai le pourquoi d'une nouvelle gouvernance mondiale. Enfin, *dans un troisième temps*, je tenterai de donner un aperçu des solutions possibles et envisageables en la matière. La *conclusion* abordera quelques perspectives d'avenir à la lumière de l'évolution de la conjoncture internationale actuelle.

## I. LES DIMENSIONS MULTIPLES DE LA MONDIALISATION

Du terme "globalization", néologisme inventé, en 1983, par l'économiste américain Theodore Levitt, pour désigner un environnement économique international nouveau, les linguistes français ont préféré utiliser le mot *mondialisation*. Or, depuis quelques années, on parle de plus en plus de *globalisation* pour désigner un phénomène aux visées englobantes, quasi totalitaires, qui touchent tous les aspects de la vie humaine.<sup>9</sup>

À ce propos, on évoque une *révolution informationnelle* qui, depuis 1980, a entraîné la *transnationalisation d'un nombre croissant d'entreprises*, le *désistement du politique* et la *transformation de l'économie*. Ainsi, selon Gélinas, *la globalisation est à la fois un système, un processus, une mythologie moderne, voire un alibi*. Aussi, juge-t-il nécessaire de faire une distinction entre mondialisation et globalisation. Il souligne, en parlant de la globalisation:

C'est l'aboutissement d'un long processus d'accumulation technologique et financière qui plonge ses racines loin dans la mondialisation capitaliste et jusque dans la mondialisation mercantiliste. Toutefois, il y a bris de continuité entre l'un et l'autre, en ce sens que c'est la première fois dans l'histoire moderne, et dans l'Histoire tout court, que l'on assiste à une telle concentration de la richesse matérielle aux mains d'un petit groupe d'individus qui prétendent s'arroger, par le biais du marché, le droit de contrôler tous les aspects multiformes de la vie humaine, la totalité des ressources de la planète et, par-là, le destin de l'humanité entière.<sup>10</sup>

Plus spécifiquement, Moreau Defarges<sup>11</sup> indique que le trait fondamental de la mondialisation réside dans *l'explosion des flux*, certes des biens et

<sup>9</sup> "Les racines de la mondialisation: De Rome à New York", *L'Histoire*, dossier spécial, novembre 2002, p. 33.

<sup>10</sup> J.B. Gélinas, *La globalisation du monde: laisser faire ou faire?*, 2000, p. 50.

<sup>11</sup> P. Moreau Defarges, *La mondialisation*, p. 28.



des services, mais également de l'argent, des hommes, des informations, des idées et des représentations mentales. Ainsi, peut-on observer une augmentation substantielle de la production industrielle et manufacturière depuis les cinquante dernières années et des échanges incluant jusqu'aux biens culturels et aux produits touristiques, conçus sur mesure pour cultiver le rêve et entretenir la quête vers l'étranger.<sup>12</sup>

Cette explosion des flux s'explique, entre autres, par *l'abolition des règles et des contrôles douaniers* limitant la concurrence, mais aussi par l'assouplissement du système financier avec les Accords de Bretton Woods, (1944) et ceux de Kingston (1976).<sup>13</sup> À cela s'ajoute le phénomène de la titrisation<sup>14</sup> qui a contribué à la création de marchés mondiaux.

D'un autre côté, *l'ouverture des frontières a facilité les mouvements migratoires* incitant des milliers d'individus à quitter leur lieu d'origine pour s'établir dans un autre pays en quête de meilleurs salaires, d'emplois, de paix, de mieux-vivre et de mieux-être. Entre 70 à 85 millions de personnes travaillent à l'extérieur de leur pays d'origine et 50 autres millions de travailleurs se déplacent chaque année à travers le monde.<sup>15</sup>

Or, le migrant, s'il peut être une source de main-d'œuvre importante, amène avec lui sa misère, son instabilité, ses différences et parfois la subversion, sans oublier les tensions qu'il peut susciter au sein des États d'accueil. L'émergence de mouvements d'extrême droite dans nombre de pays occidentaux, notamment en Europe,<sup>16</sup> en est un bon exemple.

Ainsi, la mondialisation implique aussi la migration des populations, le rapprochement avec l'étranger, la proximité des êtres humains, *le vivre ensemble et l'idée de devoir partager*.<sup>17</sup> Cette réalité est d'autant plus complexe qu'on recense non moins de 5000 groupes ethnoculturels dans le

<sup>12</sup> J.S. Nye & J.D. Donahue (ed.), *Governance in a Globalizing World*, 2000.

<sup>13</sup> Régime de parités fixes entre les monnaies établi avec les Accords de Bretton Woods, en juillet 1944, et à celui des taux de change flottants mis de l'avant à Kingston, en janvier 1976.

<sup>14</sup> Mécanisme de transformation des avoirs financiers en titres, qui a facilité la mobilité de l'argent, des dettes et autres actifs (profits, matières premières, obligations, etc.).

<sup>15</sup> R. Davies "People on the Move: Some Economic Aspects", *Transnational Associations*, 2001, p. 191-192; S. Martin, "Heavy Traffic: International Migration In an Era of Globalization", *Brookings Review*, fall 2001, p. 42-43.

<sup>16</sup> "Pourquoi l'Europe a besoin des immigrés", *Courrier International*, juin 2001.

<sup>17</sup> A. Sarat, "The Micropolitics of Identity/Difference: Recognition and Accommodation in Everyday Life", *Daedalus*, fall 2000, p. 147-168.

monde parlant plus de 6000 langues, dont 3000 sont encore enseignés aux enfants.<sup>18</sup>

Enfin, avec *l'avènement des nouvelles technologies*, les canaux de communication – le téléphone, la télécopie et l'internet notamment – se sont multipliés et diversifiés.<sup>19</sup> La circulation des nouvelles, des images et des idées, notamment par la télévision, s'en est trouvée plus rapide et plus large, ce qui a bouleversé et bouleverse encore les points de repère traditionnels des individus. Elle bouscule jusqu'aux valeurs fondamentales des êtres humains et les incite à se redéfinir. Malheureusement, ces flux d'idées pénètrent l'humanité de façon très inégale, faute de moyens et parfois d'oreilles attentives ou concernées. Elle est le résultat d'une mince couche d'acteurs, hommes d'affaires, savants, intellectuels et politiciens.

\* \* \*

Différentes approches sont par ailleurs utilisées pour aborder la mondialisation. Du point de vue *historique*, la mondialisation remonterait au XV<sup>e</sup> siècle, à l'époque des conquêtes européennes et du mercantilisme.<sup>20</sup> Depuis, elle se serait transformée graduellement au fil du temps et au gré des inventions et des idéologies dictées principalement par les grandes puissances des derniers siècles. Ainsi, l'apparition du capitalisme en Angleterre et la révolution industrielle du XVIII<sup>e</sup> siècle a donné une grande impulsion à la mondialisation, tout comme, à la fin XIX<sup>e</sup> siècle, l'émergence du système de production et de consommation de masse américain, l'expansion des entreprises multinationales, l'irruption du pétrole et de l'électricité, le boom de l'acier et de l'industrie chimique, la recherche d'innovations et la nouvelle organisation du travail.

En outre, l'explosion des communications, l'internationalisation des marchés financiers, le développement exponentiel du commerce mondial et celui des investissements à l'étranger, la multiplication d'institutions et d'organismes internationaux, l'internationalisation de conflits, la globalisation de préoccupations écologiques et les fusions d'entités aux ramifications pla-

<sup>18</sup> D. May-Nury-Lewis & W. Davis (dir.), *Le tour du monde en 150 peuples et plus*, 2002; "À la découverte des 6700 langues de la planète", *Courrier international*, hors série, mars-avril-mai 2003.

<sup>19</sup> F. Rajae, *La mondialisation au banc des accusés: La condition humaine et la civilisation de l'information*, 2001.

<sup>20</sup> "Les racines de la mondialisation de Rome à New York", *L'Histoire*, dossier spécial, novembre 2002.

nétaires dans presque tous les domaines (matières premières, technologies, etc.) sont autant d'éléments qui ont contribué à l'amplification de la mondialisation au cours du XX<sup>e</sup> siècle.<sup>21</sup>

Parallèlement, les traités de Westphalie ont marqué la reconnaissance de la souveraineté des États et permis le développement graduel des rapports internationaux. Les fondateurs du droit international, Suarez et Vitoria, de leur côté, ont mis de l'avant la notion de communauté internationale et ont fait ressortir l'importance de la liberté du commerce et celle de réglementer les relations entre les acteurs.

Sur le *plan économique*, la mondialisation est perçue comme un phénomène qui a transformé la nature de l'activité économique. Elle se caractérise par l'expansion des échanges et la volonté de tout transformer en marchandises, même l'intangible, comme la culture, l'information et l'éducation.

Elle est orchestrée par une série d'acteurs, notamment les milliers de firmes transnationales, et leurs chefs, qui ont établi des affiliations parfois dans plusieurs pays et formé des alliances stratégiques. Pointées du doigt par plusieurs organisations à vocation sociale et humanitaire et accusées de concentrer les richesses et le pouvoir entre les mains d'une poignée d'acteurs, ces dernières exercent un pouvoir considérable sur les législations nationales, visant à écarter tous contrôles. Leurs principales préoccupations se résumeraient, selon les dires de plusieurs acteurs de la société civile, à la conquête de nouveaux marchés et à l'augmentation des profits.

Certains parlent de triomphe de l'économie sur le politique, le social et le culturel. Loin d'être le résultat d'une évolution historique naturelle, l'actuel marché global serait l'aboutissement de politiques et de décisions volontaristes engendrées par des États, des institutions internationales telles le Fonds monétaire international (FMI) et l'Organisation mondiale du commerce (OMC), et autres regroupements régionaux, comme l'Accord de libre-échange nord américain (ALENA).

Dans cet ordre d'idées, le *marché global et libéralisé* fait figure de panacée, sa liberté étant un impératif pour assurer le développement de tous et surtout, la seule façon d'y parvenir.<sup>22</sup> En réalité, toutefois, il laisse plusieurs pays en proie à la pauvreté et est souvent désigné comme la source de nombreuses inégalités économiques.<sup>23</sup>

<sup>21</sup> G. Rist, *Le Développement: Histoire d'une croyance occidentale*, 1996.

<sup>22</sup> A. Minc, *La mondialisation heureuse*, 1997.

<sup>23</sup> A.S. Bhalla (dir.), *Mondialisation, croissance et marginalisation*, 1998; O. Castel, *Le Sud dans la mondialisation: quelles alternatives?*, 2002.

Dans *l'angle du politique*,<sup>24</sup> la mondialisation aurait dépourvu les États d'une certaine partie de leur souveraineté au profit des multinationales et d'instances internationales diminuant du même coup leur marge de manœuvre et leur engagement social au sein de la société civile. Les décideurs de ces firmes et institutions n'étant pas élus, la démocratie s'en trouverait diminuée. En outre, parmi les autres acteurs de la scène politique ayant bénéficié de la décentralisation, on compte diverses instances locales et provinciales, différents groupes, notamment professionnels et syndicaux, de nombreuses ONG et des regroupements civils pour la défense des droits de l'homme, de l'environnement, des femmes et autres, qui influencent, chacun à leur manière et de façon plus ou moins déterminante, l'orientation du monde. Plusieurs de ces dernières entités ont pris les devants du vaste mouvement anti-mondialisation.

En contrepartie, toutefois, la concertation entre les États et la mise en application de nombreux arrangements multilatéraux ont permis la diffusion de valeurs de justice, d'égalité et de droits humains dans plusieurs dictatures. Il semble également que la mondialisation ait encouragé la redéfinition du rôle des États. Maîtres encore sur leur territoire respectif à plusieurs égards, ces derniers restent les principaux acteurs des institutions chargées des différentes régulations régionales et internationales.

La mondialisation a aussi en fait agité sur la notion de raison d'État, juxtaposant aux intérêts territoriaux traditionnels d'autres intérêts d'ordre supraterritorial. Il n'empêche que parmi l'ensemble des États du monde, seuls quelques-uns bénéficient de ressources et de moyens suffisants pour décider du sort des autres, à commencer par les pays du G8 et, plus particulièrement, les États-Unis. Même l'Organisation des Nations unies (ONU), avec ses 191 membres (depuis les dernières adhésions du Timor oriental et de la Suisse, en septembre 2002), est obligée de se soumettre aux pressions des plus forts qui bénéficient d'un droit de veto.

Dans une *perspective sociale*, la mondialisation est souvent désignée comme une cause importante d'inégalités, de pauvreté, de baisse salariale et de perte d'emplois, vu les exigences de concurrence du marché. Elle aurait également eu plusieurs effets négatifs en matière de paix, de partage des savoirs et de cohésion sociale. Certains y trouvent l'explication de rebellions et d'actes terroristes, particulièrement depuis les attentats du 11 septembre 2001. D'où les nombreuses critiques à son sujet et la multiplication

<sup>24</sup> L. Zaki, "Une mondialisation sans grammaire politique, *Le Devoir*, 2 septembre 2002.

de manifestations anti-mondialisation, notamment lors de la tenue des grandes conférences internationales.<sup>25</sup>

D'autres évitent son rejet en bloc et réclament une approche plus humaine de la mondialisation, à commencer par la nécessité de *modifier le rôle des organismes économiques internationaux et des firmes transnationales ainsi que de changer l'attitude des pays industrialisés*.

D'aucuns soutiennent que c'est par la mondialisation que passeront inévitablement les solutions du développement durable, du partage équitable des richesses, de l'accès à l'éducation et aux soins de santé, à la justice, à la protection sociale, à la sécurité et à la protection de l'environnement. Ils expliquent que la mondialisation a contribué au mieux-être de plusieurs pays, à commencer par les dragons de l'Asie,<sup>26</sup> ainsi qu'à l'amélioration d'indicateurs sociaux, comme le taux de mortalité infantile dans un grand nombre de pays.<sup>27</sup>

Un autre angle d'analyse se veut *culturel*. D'un côté, la mondialisation tend à uniformiser les cultures privilégiant des valeurs axées sur le marché, la production, la consommation et les médias de masse. Elle affecte bien souvent les façons de vivre et croyances traditionnelles des peuples, entraînant du même coup la méfiance et son rejet.

Entre le rapprochement de l'autre et le respect de la différence, s'établit bien souvent un fossé, sources de tensions et de conflits, traduit par la volonté de préserver son identité, d'exister avec ses particularités culturelles, religieuses et autres. Ainsi, la mondialisation encourage la diversité, mais parfois l'animosité et les chocs de civilisations.<sup>28</sup>

Enfin, certains affirment que la mondialisation a permis le partage et la promotion de cultures et suscité l'intérêt d'une meilleure compréhension de la différence à travers la multiplication des expériences individuelles. Dans cette perspective, elle aurait intensifié les échanges interculturels.

Ces approches – historique, économique, politique, sociale et culturelle – sont loin d'être exhaustives.<sup>29</sup> De nombreux observateurs politiques préfè-

<sup>25</sup> "10 questions sur la mondialisation", *Courrier international*, spécial 10 ans, 2000.

<sup>26</sup> A.S. Bhalla (dir.), *op. cit.*

<sup>27</sup> Selon les données de la Banque mondiale dans son *Rapport sur le développement dans le monde 2000/2001*, le taux de mortalité infantile est tombé de 107 naissances pour 1000 en 1970 à 59 en 1998.

<sup>28</sup> S.P. Huntington, *The Clash of Civilizations and the Remaking of World Order*, 1996; H. Védérine, "Comment nier le choc Islam-Occident", *Le Monde*, 18 février, 2003.

<sup>29</sup> D. Goulet, "The Evolving Nature of Development in the Light of Globalization", in L. Sabourin & al., *The Social Dimensions of Globalisation*, 2000, p. 26-47.

rent envisager la mondialisation sous les angles *idéologique, institutionnel, normatif et fonctionnel* ou se fonder sur les notions de *pouvoir, de nouvelles formes d'impérialisme* ou de *promotion des intérêts nationaux*.

Enfin, d'autres font une analyse plus théorique de la mondialisation. Ainsi, Scholte l'analyse sous cinq principaux volets, à savoir l'internationalisation, la libéralisation, l'universalisation, la modernisation et la supraterritorialité.<sup>30</sup>

L'*internationalisation* désigne la croissance des échanges entre pays, en termes de produits, de services, de capitaux et d'investissements. Elle souligne l'importance des rapports entre les États et l'interdépendance toujours grandissante qui les caractérise. Il évoque la multiplication des échanges d'idées, de connaissances et d'innovations technologiques ainsi que l'augmentation des mouvements de populations.

La *libéralisation* fait référence au processus de suppression des barrières, restrictions et contrôles de toutes sortes, particulièrement depuis le début des années 60, dans le but d'ouvrir les frontières étatiques au reste du monde et de permettre ainsi le libre marché.

L'*universalisation* tend au rapprochement des modes de vie et de pensée, favorisant l'échange de biens, de services et d'expériences à travers les cultures, mais également la diffusion d'idéologies, de croyances et de valeurs. Ainsi, la mondialisation est parfois liée à de nouvelles façons de se vêtir, de consommer et de se divertir.

La *modernisation*, parfois appelée occidentalisation, s'apparente souvent à la mise en valeur des vues des pays les plus industrialisés et peut se traduire par une sorte d'ambition impérialiste qui dévalorise, voire cherche à détruire, les capacités locales d'autodétermination. Ainsi, pour certains, la mondialisation apparaît comme le triomphe de la modernité, alors que pour d'autres, elle engendre l'inquiétude et l'indignation contre une course débridée vers un matérialisme croissant des modes de vie et contre la transformation des traditions et convictions au nom de la compétitivité.

Selon Scholte, toutefois, ces conceptions de la mondialisation ne suffisent pas à traduire l'ensemble du phénomène. Il soutient que désormais la mondialisation se caractérise par l'étendue des rapports supraterritoriaux, d'où le concept de la *supraterritorialité*. Ce dernier se réfère à la reconfiguration des espaces géographiques, traditionnellement représentés en terme de territoires nationaux, et suppose une nouvelle organisation des rapports sociaux à travers le monde.

<sup>30</sup> J.A. Scholte, *Globalization, A Critical Introduction*, 2000, p. 15-16.

Or, il ne s'agit pas ici de cantonner la gouvernance de la mondialisation dans l'une ou l'autre de ces perspectives. Agir de la sorte n'aboutirait à rien de valable. La gouvernance de la mondialisation est à la fois toutes ces approches et aucune; toutes, parce que chacune exerce une véritable influence; aucune, car ni l'une ni l'autre n'a permis d'élaborer des solutions efficaces, unificatrices, durables dans le temps et capables de résoudre les grandes problématiques auxquelles le monde est confronté. À ce propos, Rajaei propose une approche complexe et intégrée, dite *civilisationnelle*, pour mieux saisir l'ampleur de cette diversité:

L'approche complexe maintient que chacune des approches exclusives, ou paradigmes utilisés pour l'étude de la condition humaine présente une simple facette de la réalité complexe de la nature humaine et de la société. Parallèlement, chacune nous donne un aperçu de la condition humaine à l'ère de la mondialisation.<sup>31</sup>

Chose certaine, *la mondialisation va désormais bien au-delà de l'économique. Elle touche non seulement toute l'humanité, mais également tous les aspects qui la caractérisent, d'où l'idée de la diversité des mondialisations*<sup>32</sup> et des liens qu'elles entretiennent. Ces mondialisations évoquent également la nécessité de cohabiter, de gérer les différences et d'en limiter les craintes et les risques qui y sont associés.

Si la mondialisation est un incontournable, elle n'est pas un phénomène incontrôlable. L'homme a le devoir de repenser ses effets et son organisation, pour le bien de l'humanité entière, les plus pauvres comme les plus riches, car il est d'une évidence que personne n'est désormais à l'abri des souffrances, pas même les plus grandes puissances du monde. Schnapper souligne:

Ce qui a changé avec le 11 septembre, c'est d'abord la conscience plus aiguë que la mondialisation peut être, comme la langue ou la technique, la meilleure et la pire des choses. Elle ne saurait être ni passionnément célébrée ni radicalement condamnée, mais elle doit être interrogée, critiquée, réfléchie. C'est, ensuite, la conscience plus aiguë du rôle et de la nécessité du politique. Aucune société, même industrielle, moderne, postindustrielle, postmoderne ou providentielle, ne peut évacuer le politique en tant que lieu de la transcendance des intérêts particuliers et des choix collectifs légitimes, en

<sup>31</sup> F. Rajaei, *op. cit.*, p. 46.

<sup>32</sup> F. de Bernard, "Problématique des mondialisations", dans F. Barret-Ducrocq (dir.), *Quelle mondialisation?*, 2002, p. 60-69.

tant que source de la volonté de porter ses valeurs et de défendre son existence contre les menaces extérieures.<sup>33</sup>

Or, la politique ne pourra être effective que si elle repose sur une volonté et des valeurs communes que sont notamment le respect de la vie humaine, la liberté et l'égalité. Cet ambitieux défi se conjugue inévitablement avec la promotion de cultures publiques et privées communes indispensables pour entretenir l'idée d'un mieux-vivre ensemble au sein d'un monde globalisé.

## II. LE POURQUOI D'UNE NOUVELLE GOUVERNANCE MONDIALE

La notion de gouvernance mondiale est apparue dans la foulée de changements profonds qui ont modifié la communauté internationale, entre autres, l'effondrement du mur de Berlin, l'implosion de l'ex-URSS, la fin du conflit Est-Ouest et l'intégration de nombreux pays au marché international. S'ajoutent également les récents attentats terroristes, le conflit afghan, la guerre en Irak et la recrudescence des tensions avec la Corée du Nord.

*Or, les organisations internationales actuelles, de façon individuelle, ne semblent pas en mesure d'assurer la direction de ce que plusieurs désignent comme le nouveau désordre international.*<sup>34</sup> Devant l'incapacité d'établir une structure de gouvernement mondial, certains ont d'abord cru qu'il serait possible de réformer le système onusien ou encore des institutions telles que le FMI et la Banque mondiale. Force est de constater, toutefois, que cela n'a pas réussi.<sup>35</sup>

D'autres ont prôné l'établissement d'un système mondial permettant une meilleure intégration et une plus grande coordination entre les entités, telles que les États, les multinationales, les ONG et les regroupements sociaux. Un tel projet se veut, en fait, une volonté d'assurer un développement plus juste, équitable et durable, de promouvoir une sécurité accrue à l'échelle internationale, d'envisager une démocratie plus effective et de per-

<sup>33</sup> D. Schnapper, "Citoyenneté et mondialisation", dans F. Barret-Ducrocq (dir.), *Quelle mondialisation?*, 2002, p. 80.

<sup>34</sup> L. Sabourin, "La mondialisation en quête de gouvernance démocratique: contradictions nationales, contraintes internationales", dans H. Zacher (ed.), *Democracy: Some Acute Questions*, Proceedings of the Fourth Plenary Session of the Pontifical Academy of Social Sciences, 1999, p. 371-399.

<sup>35</sup> World Bank, *Poverty Reduction in the 1990s, An Evaluation of Strategy and Performance*, 2000.



mettre le renforcement des règles de droit dans le monde. Les enjeux à ces chapitres sont majeurs.

L'une des grandes problématiques de la mondialisation tient à la pérennité de la pauvreté et au creusement des inégalités entre différentes régions, entre plusieurs pays, de même qu'entre les classes à l'intérieur de la plupart des États. Si les disparités de moyens, de ressources et de revenus existaient bien avant l'ère de la mondialisation, d'aucuns affirment qu'elles se sont amplifiées, voire systématisées, avec l'avènement du processus et tout au long de son déploiement suivant les impératifs du marché et de la logique marchande.

Alors que la production de biens et de services dans le monde atteint des sommets inégalés et que les actifs financiers ne cessent d'augmenter depuis les années 80, les quatre cinquièmes des habitants de la planète subissent des pénuries de toutes sortes. Cet état de dénuement touche non moins de 127 pays sous-développés.<sup>36</sup> Ces derniers comptent près de 2,8 milliards de personnes qui se nourrissent, se logent et se soignent avec moins de deux dollars par jour et 1,3 milliard qui subsistent avec moins d'un dollar par jour, soit le seuil officiel international de pauvreté.<sup>37</sup>

C'est donc 79% de la population mondiale qui se partage 16,6% du PIB mondial. Les pays de l'OCDE, mis à part les nouveaux venus, soit la Corée du Sud, la Hongrie, le Mexique, la Pologne et la République tchèque, représentent 14,7% des habitants du globe, mais possèdent 79,2% du PIB mondial.<sup>38</sup>

Selon le *Programme des Nations unies pour le développement* (1999), l'écart entre le cinquième des habitants des pays les plus pauvres et le cinquième des pays les plus riches était de 1 pour 30 en 1960, de 1 pour 60 en 1990 et de 1 pour 82 en 1995. D'ailleurs, la pauvreté et les inégalités frappent également les pays plus développés. Ainsi, presque tous les pays de l'OCDE ont vu s'aggraver les inégalités et le niveau de pauvreté à l'intérieur de leurs frontières depuis 1980, particulièrement les États-Unis et le Royaume-Uni.

En 20 ans, le revenu réel des 10% des Américains les plus riches a augmenté de 22%, alors que celui des 10% les plus pauvres a chuté de 21%. En Europe, la Commission estime à plus de 20% la proportion de la population vivant aujourd'hui à la limite du seuil de la pauvreté. De 1985 à 1995, ce taux a cru de 4% en Grande-Bretagne, de 3,9% en Italie et de 3% en Allemagne.<sup>39</sup>

<sup>36</sup> PNUD, *Rapport mondial sur le développement humain*, 1999, p. 36.

<sup>37</sup> *Ibid.*

<sup>38</sup> *L'État du monde*, 2000.

<sup>39</sup> M. Barillon, *ATTAC: Encore un effort pour réguler la mondialisation*, 2001, p. 47.

En plus de creuser les écarts entre les pays et à l'intérieur des pays, la mondialisation est souvent pointée du doigt pour entretenir la dépendance des périphéries plus pauvres aux centres plus riches; dépendance financière, monétaire, commerciale, industrielle, technologique, alimentaire, etc. Dans cet ordre d'idées, les économies du Tiers-monde font figure de réservoirs de matières premières, bassins inépuisables de main-d'œuvre bon marché, zones franches en termes fiscaux et réglementaires et marchés regroupant près de 4,6 milliards de consommateurs.<sup>40</sup>

Certains désignent cette dépendance comme faisant partie du système institué à Bretton Woods en 1944; un système sévèrement critiqué depuis les dernières années. Ainsi, il en va du FMI et de la Banque mondiale, la première de ces institutions étant originellement vouée au maintien de la stabilité monétaire et l'autre, à l'éradication de la pauvreté. Dans son récent ouvrage, *La grande désillusion*, le professeur Stiglitz écrit:

Un demi-siècle après sa fondation, il est clair que le FMI a échoué dans sa mission. Il n'a pas fait ce qu'il était censé faire – fournir des fonds aux pays confrontés à une récession pour leur permettre de revenir à une situation de quasi plein emploi. En dépit des immenses progrès accomplis depuis cinquante ans dans la compréhension des processus économiques, et malgré les efforts du FMI, les crises dans le monde entier, se sont faites plus fréquentes depuis un quart de siècle, et aussi plus graves (si l'on excepte la Grande Dépression).<sup>41</sup>

Selon Stiglitz, les différentes mesures adoptées par le FMI, notamment la libéralisation prématurée des marchés de capitaux, auraient contribué à l'instabilité mondiale allant parfois jusqu'à aggraver la situation de plusieurs pays. L'auteur dénonce également l'approche unique du FMI, applicable pour tous les cas, les négociations souvent unilatérales et le principe de "conditionnalité" qui n'a pas toujours réussi à stimuler la croissance des pays de façon satisfaisante, les erreurs de calendrier et de rythme dans l'application des mesures, l'insensibilité au contexte social des pays concernés et le peu de place qui leur ait accordé pour participer à l'élaboration de stratégies adaptées. Ainsi, selon Stiglitz:

Le problème n'est pas la mondialisation. C'est la façon dont elle est gérée. En particulier par les institutions économiques internationales, le FMI, la Banque mondiale et l'OMC, qui contribuent à fixer les

<sup>40</sup> J. Gélinas, *op. cit.*, p. 228.

<sup>41</sup> J.E. Stiglitz, *La grande désillusion*, 2002, p. 40.

règles du jeu. Elles l'ont fait trop souvent en fonction des intérêts des pays industriels avancés – et d'intérêts privés en leur sein – et non de ceux du monde en développement. Mais la question n'est pas seulement qu'elles ont servi ces intérêts: trop souvent, elles ont eu de la mondialisation une vision étriquée, due à une idée très particulière de l'économie et de la société.<sup>42</sup>

Cette vision unique, orientée vers un petit nombre de privilégiés, est d'ailleurs vivement dénoncée. Depuis Seattle, en 1999, les manifestations anti-mondialisation n'épargnent plus les principaux forums internationaux. En témoignent celles qui ont eu cours à Québec, en avril 2001, contre le projet d'un grand marché inter-américain, à Göteborg, en juin 2001, contre le sommet européen, et à Gênes, en juillet 2001, contre le G8. D'où la décision des maîtres du monde de se réunir à l'abri des contestations ou encore de recourir à différents moyens pour éloigner les dissidents. C'est donc à Doha, au Qatar, que se sont déroulées les négociations ministérielles de l'OMC, en novembre 2001. Quant au dernier G8, il s'est réuni dans une station des Rocheuses canadiennes, à Kanaskakis, où les manifestants ont été tenus au loin.

Pendant ce temps, le mouvement d'opposition continue de rassembler un très grand nombre d'organisations non-gouvernementales et d'associations diverses, suivant un mode d'organisation en réseaux. C'est le cas, par exemple, de l'Association pour la taxation des transactions financières et pour l'aide aux citoyens (ATTAC) et de l'Initiative contre la globalisation économique (INPEG) qui, malgré les critiques, regroupent un grand nombre de militants. Parmi les revendications de ces regroupements, se trouvent l'établissement d'un dialogue politique, une plus grande justice sociale et la réforme des institutions économiques internationales dans une logique davantage axée sur le développement durable. Ce mouvement de contestation s'apparente toutefois à une conjugaison de forces hétéroclites, pas toujours cohérentes, qui agit sans véritablement proposer d'alternatives concrètes.<sup>43</sup>

Ainsi, d'autres ont choisi de débattre de la mondialisation dans le cadre de réunions structurées à visage plus humain. C'est le cas des experts venus des quatre coins du globe pour participer aux rencontres, en 2002 et en 2003 du Forum social de Porto Alegre. Si ces forums sont loin d'avoir obte-

<sup>42</sup> *Ibid.*, p. 279.

<sup>43</sup> "Mondialisation: Après Gênes, la bataille ne fait que commencer", *Courrier International*, numéro spécial, du 2 au 22 août 2001.

nu les résultats pratiques espérés par leurs organisateurs, ils représentent une contre-partie aux réunions des ténors économiques mondiaux qui se réunissent à Davos, à la même période de l'année.

Les groupes anti-mondialisation croient, comme l'affirmait Bourdieu, qu'il n'est pas impossible que la politique d'une petite oligarchie conduise à l'émergence progressive de forces politiques mondiales capables d'imposer peu à peu la création d'instances transnationales munies de pouvoir de contrôle et de subordination.<sup>44</sup> Un nouveau contrat social international est indispensable, selon eux.

Par ailleurs, les attentats terroristes du 11 septembre 2001, conjugués à des événements plus récents tels que ceux de Mombasa, de Moscou, de Tchétchénie et de Bali, sans négliger les guerres conventionnelles au Moyen-Orient et particulièrement celle en Irak, soulèvent une autre problématique majeure. *Dans quelle mesure la mondialisation intensifie-t-elle ou diminue-t-elle la sécurité de la population mondiale?*

D'un côté, on affirme que la mondialisation a contribué à répandre la paix dans plusieurs régions du monde. Les pays d'Amérique du Nord, de l'Union européenne et du Sud-est de l'Asie, par exemple, n'ont connu aucun conflit militaire majeur depuis près d'une cinquantaine d'années. En ce sens, la logique néolibérale, avec ses impératifs d'échanges et les nombreux réseaux de communication qui en découlent, a semé un idéal d'harmonie à travers un certain nombre d'États.<sup>45</sup>

Au même titre, la présence d'institutions internationales et la mise en application de traités multilatéraux ont favorisé un meilleur contrôle des armements. Le traité de non-prolifération des armes nucléaires, établi en 1968, constitue un bon exemple. À la fin de 1999, 129 pays avaient ratifié la Convention des armes chimiques de 1993. L'intensive campagne à travers le monde contre l'utilisation de mines anti-personnel démontrent, par ailleurs, qu'il est possible de mobiliser les populations pour un contrôle plus serré des armes.<sup>46</sup>

Il n'empêche que le contrôle des armes, notamment chimiques et biologiques, pose un dilemme d'envergure. L'armada biologique, notamment, constitue un risque effroyable d'attaques terroristes. Il suffit de se procurer la souche d'un pathogène contagieux – comme le virus de la variole ou

<sup>44</sup> P. Bourdieu, *Contre-feux: pour un mouvement social européen*, 2001.

<sup>45</sup> J.A. Scholte, *op. cit.*, p. 208-209.

<sup>46</sup> *Ibid.*, p. 209.

encore les bactéries responsables de la peste, du botulisme, de la tularémie ou de l'anthrax – et, avec un minimum de connaissances, en faire une culture à même une petite cuisine.<sup>47</sup> Jusqu'à quel point peut-on agir contre le terrorisme, intervenir unilatéralement, outrepasser les principes de droit international, entre autres celui de la souveraineté des États? En ce sens, quels sont les avantages et les limites du *droit d'ingérence*?

C'est ici qu'il faut mentionner les initiatives des Nations unies qui ont entrepris plusieurs opérations pour le maintien de la paix depuis les années 1950 et augmenté de façon substantielle leurs efforts en matière d'assistance humanitaire. S'ajoute également l'action de nombreuses instances de gouvernance régionale, comme l'Union africaine, la Communauté des États de l'Afrique de l'Ouest, l'Organisation des États américains, l'Association des nations de l'Asie du Sud-est, l'Organisation pour la Sécurité et la coopération en Europe ainsi que des ONG qui, par leurs actions, ont tenté de limiter les souffrances de guerre.

Le succès des initiatives en matière de paix est toutefois mitigé. Les reproches à l'égard des opérations de paix onusiennes se sont multipliés depuis les dernières années. Les déboires des Nations unies au Cambodge, en Bosnie, en Somalie et en Haïti<sup>48</sup> ont notamment fait couler beaucoup d'encre, sans compter ceux de la guerre en République démocratique du Congo où on estime à 2,5 millions le nombre de victimes.<sup>49</sup> Conçue pour maintenir la paix et soutenir la coopération internationale, l'ONU n'a pas su réaliser pleinement son mandat. En fait, l'organisation semble de plus en plus marginalisée et dépassée par le désordre planétaire.<sup>50</sup>

L'exemple de l'Afrique est flagrant, constate De Senarclens.<sup>51</sup> En 1986, l'Assemblée générale lançait le *Programme d'action des Nations unies pour la reconstruction et le développement de l'Afrique*. Cinq ans plus tard, le continent avait perdu 50 milliards de dollars en valeur d'exportation. L'année 1991 marqua, pour sa part, le lancement du *Nouvel agenda* pour le développement de l'Afrique; une stratégie encore une fois vouée à l'échec. Ainsi, en 2002, l'Assemblée constatait que les disparités sociales avaient augmenté au cours des dix dernières années. Quant aux indicateurs du

<sup>47</sup> H.H. Mollaret, *L'arme biologique: bactéries, virus et terrorisme*, 2002.

<sup>48</sup> Voir Boutros Boutros-Ghali, *Mes années à la maison de verre*, 1999.

<sup>49</sup> P. De Senarclens, "Comment maîtriser la mondialisation?", in G. Lachapelle (dir.), *Gérer la mondialisation. Les nouvelles stratégies étatiques*, ouvrage à paraître en 2003.

<sup>50</sup> Boutros Boutros-Ghali, *op. cit.*

<sup>51</sup> P. De Senarclens, *op. cit.*

développement humain, ils avaient décliné dans certaines régions.<sup>52</sup> Les pays africains n'avaient tout simplement pas porté une attention suffisante aux orientations proposées, alors que les pays riches n'avaient pas tenu leurs engagements en terme d'aide publique. Le récent projet du NEPAD, établi lors du G8 de 2002, constitue un espoir bien légitime mais qui risque, lui aussi, de faire long feu.

L'ONU conserve tout de même sa raison d'être. Elle continue de faire progresser le paradigme de la dignité humaine, celui des droits de la personne et celui de l'égalité de l'homme et de la femme. Elle accorde une légitimité aux luttes des individus et des ONG qui militent notamment pour le respect des droits humains et de l'environnement. Elle a créé, de plus, des tribunaux spéciaux et, tout récemment, la Cour pénale internationale pour juger de crimes contre l'humanité, les seuls à l'heure actuelle qui soient en mesure de punir les atrocités de leaders qui autrement continueraient de jouir de leur liberté en toute impunité.<sup>53</sup> En fait, résume De Senarclens:

Elles (les Nations unies) jouent un rôle de premier plan dans le développement et la promotion d'une idéologie universaliste, dont les principes idéaux sont inscrits dans un corpus de textes irrécusables – la Charte, la Déclaration universelle des droits de l'homme, les conventions qui s'en inspirent, puis les résolutions sur le développement économique et social.<sup>54</sup>

Qu'à cela ne tienne, la mondialisation semble avoir eu des *effets négatifs en matière de sécurité*. Près de quarante pays connaissent actuellement les ravages de guerres civiles ayant pour cause la quête du pouvoir et du territoire et les divisions ethniques ou religieuses. Des États des Balkans, des Caraïbes, de l'Amérique centrale, de l'Afrique et du Moyen-Orient ont vu leur territoire envahi des forces militaires étrangères au cours des dernières années. L'Afghanistan, l'Angola, l'Indonésie, la Russie, le Sri Lanka, le Soudan et l'ex-Yougoslavie en sont des exemples flagrants. Qui plus est, les récentes décennies ont été marquées par plusieurs conflits internes, comme ceux qui divisent présentement la Colombie, la Côte d'Ivoire, la République démocratique du Congo, pour n'en donner que trois exemples.

Or, la sécurité de l'humanité va au-delà des questions de paix et de guerre. Elle est tout aussi liée à la capacité de subsistance des populations, à la

<sup>52</sup> Notamment en Afrique subsaharienne: voir Banque mondiale, *Rapport sur le développement du monde 2000/2001, Combattre la pauvreté dans le monde*, 2001.

<sup>53</sup> "Les juges de la CPI ont prêté serment", *Le Devoir*, 28 mars, 2003.

<sup>54</sup> P. De Senarclens, *op. cit.* p. 5.

stabilité financière, à l'emploi, aux conditions de travail, à la cohésion sociale, au respect des droits humains et à la protection de *l'environnement*. La vie humaine nécessite certaines conditions en matière de qualité de l'air, de l'eau, de sol et de coexistence avec les autres espèces vivantes que constituent la faune et la flore.

Les peuples du monde subissent de plus en plus les contrecoûts du réchauffement de la planète, de la perforation de la couche d'ozone, de la contamination des océans, de la raréfaction de l'eau douce, de la dégradation des sols, de la déforestation, de la réduction de la biodiversité et d'autres pollutions sous toutes leurs formes. Les populations paraissent également de plus en plus impuissantes face à la mainmise des compagnies transnationales sur le patrimoine génétique, d'où les nombreuses polémiques à l'égard des organismes génétiquement modifiés (OGM).

Depuis les années 1950, le nombre de désastres naturels a augmenté de façon considérable. En 1950, on recensait 20 catastrophes ayant occasionné des pertes et un nombre de morts importants (inondations, tremblements de terre et autres). En 1970, ce nombre s'élevait à 47 pour atteindre, en 1990, non moins de 86 désastres.<sup>55</sup> Or, nombre de scientifiques n'hésitent pas à établir un lien entre ces catastrophes et l'augmentation de la pollution.

Ainsi, la mondialisation a encouragé la *découverte de technologies* qui ont donné à l'être humain certains pouvoirs lui permettant de mieux manipuler les forces de la nature sans toutefois lui donner la sagesse de méditer sur les effets à long terme que pouvaient encourir ses actions. De plus, si la mondialisation favorise aujourd'hui les débats, encourage la concertation et sensibilise la population mondiale en matière d'environnement, elle est loin de fournir l'encadrement nécessaire, voire d'offrir des législations effectives, permettant une meilleure gestion des biens communaux et leur préservation pour la survie de l'humanité.

Certes, les préoccupations environnementales prennent une place grandissante dans les discours politiques et économiques. Il est également possible d'observer un changement d'attitudes et de valeurs au sein de la société civile depuis une quarantaine d'années. En témoigne notamment l'augmentation des traités multilatéraux. On compte désormais près de 240 accords à caractère environnemental. Les deux tiers ont vu le jour suivant la première *Conférence des Nations unies sur l'environnement*, tenue à

<sup>55</sup> J.N. Abramovitz, "Averting Unnatural Disasters", in L. R. Brown, C. Flaving, H. French & al., *State of the World 2001*, p. 124-125.

Stockholm, en 1972.<sup>56</sup> La signature de telles ententes et leur mise en application n'est toutefois pas chose simple. La polémique résultant des *Accords de Kyoto* constitue un bon exemple.

### III. VERS DES SOLUTIONS POSSIBLES?

La première partie a mis en lumière les *dimensions multiples* de la mondialisation. Ces dimensions exigent donc des *réponses multiples* à tous les paliers, national, régional et international. Il n'y a pas une réponse singulière, comme le projet d'un gouvernement mondial, à des problématiques plurielles.

En fait, il faudra recourir à une multitude de solutions non seulement sur les plans structurel (ONU, organismes économiques internationaux) et juridictionnel (comme la Cour pénale internationale et les conventions dans de nombreux domaines), mais aussi sur les plans opérationnel et fonctionnel. Sous l'angle du politique, une autre gouvernance mondiale exigera d'abord l'établissement progressif de *nouveaux équilibres internationaux*, notamment en Europe et en Asie, pour limiter l'hégémonie américaine, ainsi que la constitution "d'arrangements régionaux" ailleurs dans le monde. Comme plusieurs projets feront l'objet de débats lors d'autres sessions, je me limiterai ici à ceux qui *sont le plus souvent mentionnés* dans l'arène politique.<sup>57</sup>

Ainsi, la pauvreté, les inégalités sociales, le terrorisme, les guerres civiles et la détérioration de l'environnement ne sont que quelques exemples des problématiques ayant une dimension planétaire. La santé, la génétique, l'internet et le système financier international, pour ne citer que quelques autres exemples, présentent d'autres défis majeurs.

Outre certaines organisations intergouvernementales aux pouvoirs limités, comme l'OMS, il n'existe encore aucun dispositif mondial pour assurer la prévention de la propagation d'épidémies ou encore la transmission de maladies tel que le VIH. Le potentiel énorme des activités du génie génétique n'est soumis à aucune réglementation internationale, au mieux à des législations nationales hétérogènes qui peuvent facilement être contournées. Aucune loi universelle ne régit par ailleurs le réseau mondial

<sup>56</sup> H. French & L. Mastny, "Controlling International Environmental Crime", in L.R. Brown, C. Flaving, H. French & al., *State of the World 2001*, p. 167.

<sup>57</sup> L. Sabourin, *Fédéralisme et mondialisation: la quête d'équilibres alternatifs, de nouveaux poids et contre-poids*, 1998.



d'internet, sujet à la piraterie et au sabotage. Le système financier n'est pas non plus à l'abri des attaques spéculatives et les deux organismes qui pourraient exercer un certain pouvoir de coercition sur ce dernier, le FMI et la Banque mondiale, sont de plus en plus contestées.

*Comment donc remettre la gestion de la mondialisation sur la voie de solutions réalistes?* Telle était la question formulée récemment par Valaskakis.<sup>58</sup> Sa stratégie se résume en trois points. Selon lui, il importe d'abord de faire ressortir les liaisons stratégiques entre les différentes problématiques sectorielles qui caractérisent le monde actuel, par exemple, lier le terrorisme à l'injustice, l'économie à l'environnement, la gestion du privé à celle de public. Ensuite, il convient d'engager un véritable débat d'idées entre les protagonistes et les antagonistes de la mondialisation, notamment réunir les habitués de Davos et ceux de Porto Alegre pour se livrer à une prospective à moyen terme unifiée. Enfin, il faut s'interroger sur la structure de l'ordre mondial contemporain.

Fondé sur le Traité de Westphalie de 1648, le système international actuel consacre le principe de souveraineté nationale comme pierre angulaire de la régulation mondiale. À ce chapitre, les quelques 200 pays de la planète continuent de bénéficier de la pleine autorité de régulation sur leur territoire, du moins en principe, mais ce, dans un monde où les grands défis transcendent de plus en plus les frontières géographiques. Les mouvements transfrontaliers – de biens, de services, de capitaux et de personnes –, leur caractère asymétrique et l'ensemble des enjeux qui y sont liés ont néanmoins réduit la capacité des gouvernements nationaux à élaborer des politiques et des règles, entre autres avec l'émergence du droit international fondé sur la signature de traités entre États et avec l'émergence du multilatéralisme.

Ainsi, la montée progressive des droits de l'homme<sup>59</sup> a fait ressortir l'importance de valeurs humaines et morales dans la prise de décision nationale. Au même titre, l'avènement de principes, comme celui de la supraterritorialité, a affecté la légitimité des gouvernements nationaux en ce qui a trait plus particulièrement à la résolution de problématiques d'envergure planétaire.

<sup>58</sup> K. Valaskakis, "La planète est-elle encore gouvernable?", *Le Devoir*, 20 janvier 2003.

<sup>59</sup> M.A. Glendon, "The Right to Work and the Limits of Law", in M. Archer (ed.), *The Right to Work: Towards Full Employment*, Proceedings of the Third Plenary Session of the Pontifical Academy of Social Sciences, 1998; M. Schooyans, "Droits de l'homme et démocratie à la lumière de l'enseignement social de l'Église", in H. Zacher, *Democracy: Some Acute Questions*, Proceedings of the Fourth Plenary Session of the Pontifical Academy of Social Sciences, 1999; H. Schambeck, "The Conflict of Values, the Protection of Values: Democratic Structure, Rule of Law, the Verfassungsstaat", *ibid*, 1999.

À cela s'ajoute la multiplication d'autres acteurs de plus en plus influents, notamment des organisations internationales et régionales, des sociétés multinationales, des églises, des associations, des ONG et d'autres réseaux, par exemple mafieux et terroristes, qui gagnent en puissance et en influence.<sup>60</sup> Dans le même temps, les compétences publiques, jadis réservées aux gouvernements nationaux, se sont étendues à une multitude d'entités infranationales, entre autres régionales et locales. Ces dernières jouent un rôle significatif, notamment en terme d'innovations institutionnelles et politiques. Elles peuvent redessiner leurs institutions pour mieux répondre aux enjeux de la mondialisation. Elles peuvent, en outre, contribuer à assurer compétitivité et cohésion sociale en favorisant la construction de réseaux locaux.<sup>61</sup>

Ainsi, parle-t-on désormais d'un monde interdépendant et où la reconnaissance mutuelle des acteurs devient un enjeu majeur. D'où la nécessité de privilégier une action concertée. À cet effet, le pape Jean-Paul II souligne dans son encyclique *Sollicitudo Rei Socialis*:

(...) ou bien le développement devient commun à toutes les parties du monde, ou bien il subit un processus de régression.<sup>62</sup>

Le professeur Denis Goulet a très bien mis en lumière que l'avenir du développement dépend en grande partie de la mise en place d'une nouvelle gouvernance de la mondialisation.<sup>63</sup> De son côté, le professeur Paquet<sup>64</sup> souligne la nécessité d'établir une *gouvernance coopérative* et d'engager, outre les mécanismes d'échanges économiques et de coercition politique, les forces sociétales et leurs réseaux communautaires; ce qui implique un engagement vers le développement d'une citoyenneté active et responsable.

Quant au *multilatéralisme*, principale forme de gouvernance à l'heure actuelle, il présente plusieurs limites. Il existe présentement plus de quatre cents organisations intergouvernementales à l'heure actuelle, c'est-à-dire plus du double du nombre des États. Chacune de ces institutions poursuit des objectifs différents, selon un domaine d'intervention, mais également

<sup>60</sup> M. Linderberg & C. Coralie, *Going Global: Transforming Relief in Development NGOs*, 2001. Les auteurs démontrent comment les ONG doivent organiser leur mission, réexaminer leurs valeurs et redéfinir leur vision face aux nouveaux enjeux de la mondialisation.

<sup>61</sup> J. Potter, *Devolution and Globalisation: Implications for Local Decision Makers*, OCDE, 2001.

<sup>62</sup> Jean-Paul II, *Sollicitudo Rei Socialis*, Lettre encyclique publiée à l'occasion du vingtième anniversaire de l'encyclique *Populorum Progressio*, 1987.

<sup>63</sup> D. Goulet, *op. cit.*, 2000.

<sup>64</sup> G. Paquet, "La nouvelle gouvernance, la subsidiarité et l'état stratégique", dans OCDE, *La gouvernance au XXI<sup>e</sup> siècle: études prospectives*, 2001.

selon les intérêts de ses membres. Si bien que leurs programmes font parfois double emploi, s'imbriquent mal les uns aux autres et travaillent sans tenir compte des effets de leurs activités sur celles d'autres organisations. Ainsi, l'un des problèmes majeurs de l'interdépendance réside dans le manque de cohérence existant entre les acteurs internationaux.<sup>65</sup>

En fait, une bonne gouvernance mondiale plus coopérative et plus complémentaire passe nécessairement par une refonte des mandats des organisations internationales. Stiglitz<sup>66</sup> souligne *l'importance de modifier le mode de gouvernement des institutions économiques internationales, notamment de transformer le système de vote afin d'inclure davantage les pays moins développés dans la prise de décisions et de ne plus limiter la gouvernance de ces organisations aux seuls ministres du Commerce, des Finances et du Trésor des pays*. Une plus grande transparence s'avère également de mise afin d'accorder une attention particulière aux préoccupations sociales, à la pauvreté et à l'environnement. Il en va de même également pour les ONG qui doivent intégrer dans leur gestion des valeurs d'imputabilité et de transparence, mieux documenter les impacts de leurs programmes et montrer davantage comment l'établissement de réseaux peut diminuer la pauvreté et les conflits de façon réaliste.<sup>67</sup>

Si le bien commun réside en grande partie dans le développement de l'économie des pays, il ne pourra se concrétiser qu'en tenant compte d'autres facteurs tels que les droits sociaux et la préservation de l'environnement. Ainsi, dans son encyclique *Centesimus Annus*, Jean-Paul II fait état de l'importance des organismes internationaux de contrôle et d'orientation.

Pour qu'un tel résultat puisse être atteint, il faut que s'accroisse la concertation entre les grands pays et que, dans les organismes internationaux spécialisés, les intérêts de la grande famille humaine soient équitablement représentés. Il faut également qu'en évaluant les conséquences de leurs décisions, ces organismes tiennent toujours dûment compte des peuples et des pays qui ont peu de poids sur le marché international mais qui concentrent en eux les besoins les plus vifs et les plus douloureux, et ont besoin d'un plus grand soutien pour leur développement.<sup>68</sup>

<sup>65</sup> COMECE, *Gouvernance mondiale: notre responsabilité pour que la mondialisation devienne une opportunité pour tous*, 2001.

<sup>66</sup> J.E. Stiglitz, *op. cit.*, p. 288-296.

<sup>67</sup> J.S. Nye & J.D. Donahue, *op. cit.*, p. 277; J. Potter, *op. cit.*, p. 245.

<sup>68</sup> Jean-Paul II, *Centesimus Annus*, Lettre encyclique, 1991, p. 90.

C'est pourquoi la Commission des Episcopats de la Communauté européenne (COMECE) suggérerait la création d'un Groupe de Gouvernance Mondiale (3G), formé de 24 chefs de gouvernement, du Secrétaire général de l'ONU et des directeurs généraux d'organisations telles le FMI, la Banque mondiale, l'OMC, l'OIT et autres, afin d'assurer un minimum de coopération et de cohérence.<sup>69</sup> L'idée d'organisations aux pouvoirs supraétatiques fait d'ailleurs de plus en plus d'adeptes: régimes globaux pour la sécurité humaine et pour le contrôle et la surveillance des conflits, des armes, de l'environnement, du travail et des finances; pour l'amélioration de la justice sociale et la redistribution des richesses; pour l'expansion et le respect des valeurs démocratiques.

En fait, le grand défi pour les instances existantes est *d'établir des réseaux* qui faciliteraient une coordination plus suivie entre les différents secteurs d'activités (économique, commercial, industriel, technologique, culturel) et les différents acteurs qui agissent sur le plan mondial, entre autres les États. Seule cette coordination peut offrir des solutions durables aux problématiques planétaires, notamment les conflits armés, les crises économiques, le terrorisme, la corruption, le sida.

En ce sens, la gouvernance mondiale permettrait un management plus cohérent, efficace et démocratique de la mondialisation. Elle faciliterait le développement de partenariats et de solidarités; une sorte de coalition d'aggrégats qui transcenderait jusqu'aux pouvoirs publics traditionnels pour rejoindre l'ensemble des entités issues de la société civile internationale.

Mais, au-delà de *l'approche institutionnaliste*, fondée sur la connaissance,<sup>70</sup> la bonne gouvernance mondiale doit puiser ses sources à même les fondements moraux de l'humanité. Selon le COMECE, aucun progrès réel n'est possible sans la compréhension et le respect d'un système de valeurs que sont la dignité humaine, la solidarité, la subsidiarité, la cohérence, la transparence et la responsabilité financière.<sup>71</sup> À ce chapitre, l'Église, tout comme l'ensemble des institutions religieuses, peut jouer un rôle très important.

Toutefois, prévient Paquet:

(...) même une philosophie publique sage et un processus efficient d'apprentissage organisationnel sont considérés comme étant, au

<sup>69</sup> COMECE, *op. cit.*, p. 39-40.

<sup>70</sup> Par opposition aux courants réaliste et libéral, respectivement fondés sur la puissance et sur l'intérêt.

<sup>71</sup> COMECE, *op. cit.*, p. 22-29.

mieux, capables de dégager, par la négociation, tout au plus un consensus sur ce qui n'est pas moral, sur ce qui n'est pas acceptable.<sup>72</sup>

Signe que le défi de la gouvernance mondiale dans le respect de valeurs universelles n'est pas chose simple. Ainsi, l'un des enjeux actuels majeurs est de définir de nouvelles stratégies qui seront efficaces pour résoudre le dilemme entre efficacité et légitimité: Selon Nye et Donahue:

If multilateral cooperation is to continue, any networked arrangements will have to solve the classic governance problem of reaching legitimate decisions.<sup>73</sup>

L'être humain ne peut plus toutefois se limiter à observer de loin les conséquences de la mondialisation comme un phénomène imprévisible et intangible. La mondialisation engendre de nouveaux repères et confronte l'humanité avec d'autres valeurs. Les espaces nationaux ne suffisent plus pour caractériser l'existence, les aspirations et les comportements des individus. La vie des humains dépend désormais de facteurs qui exigent une plus grande co-responsabilisation à l'échelle planétaire. L'homme ne peut plus se contenter de subir ou de réagir face à la mondialisation. Il doit se l'approprier, l'intégrer, y participer, voire la maîtriser.

Ainsi, il ne suffit pas de se cantonner aux extrêmes de la gouvernance, avec d'un côté les vertus du libre marché et de l'autre celles d'un radicalisme anti-mondialisation. Il faut penser, organiser et promouvoir la réforme dans une dynamique de concertation et de coopération.

*Conclusion: perspectives et limites de la gouvernance de la mondialisation: pause temporaire ou retour à Babel?*

Loin d'être nouveau, le concept de bon gouvernement remonte à l'époque de Platon, d'Aristote, voire à celle de Confucius et de Lao Tseu, qui évoquaient dans leurs écrits les notions de justice, de sécurité et de bien-être des populations. La nouveauté liée à la bonne gouvernance tient davantage au nécessaire dépassement de l'État, bien plus qu'au dépérissement de l'État. Certes, les États occupent une place prépondérante à l'échelon international, mais ils doivent désormais partager leur rôle avec une multitude d'autres acteurs.

Selon plusieurs, la gouvernance de la mondialisation est une *stratégie* pour faciliter l'intégration des pays en développement et des mouvements

<sup>72</sup> G. Paquet, *op. cit.*, p. 245.

<sup>73</sup> J.S. Nye & J.D. Donahue, *op. cit.*, p. 37.

civils jugés rébarbatifs dans une logique exclusivement néo-libérale, ce qui provoque la dénonciation et le rejet. D'autres affirment néanmoins qu'elle est l'unique modèle de gestion capable de résultats concrets et positifs, quoique que ce à quoi ils font référence est encore flou et vaste.<sup>74</sup>

Chose certaine, la plupart des entités qui agissent au plan mondial reconnaissent la nécessité et l'urgence d'agir de façon concertée pour un développement plus humain et durable. Même le G8, depuis le *Nouveau Consensus de Cologne*, en 1999, prône une approche sensible et inclusive des aspects sociaux.<sup>75</sup> D'où l'apparition et la recrudescence de concepts tels que: *économie populaire, économie solidaire, économie plurielle, économie sociale, gouvernance locale, gouvernance mondiale*.<sup>76</sup> Ces derniers suggèrent la mise en valeur des potentialités régionales, étatiques et communautaires des sociétés et prônent la mobilisation des forces de chacun vers une action productive et créative afin d'appuyer les systèmes d'échanges tant économiques que sociales et les modes de vie des populations.

Les acteurs de la scène internationale se questionnent toutefois sur la viabilité de telles approches, sur leur mise en œuvre et leur contrôle. On soulève, à ce propos, les résultats ambigus des institutions économiques multilatérales et ceux des groupements sociaux dont les buts individuels entrent en conflit les uns par rapport aux autres.<sup>77</sup> Le défi réside, en d'autres mots, dans le ralliement, voire le réseautage, d'un nombre grandissant d'États, d'organismes internationaux, de firmes multinationales, d'ONG, de mouvements civils et d'individus oeuvrant au sein de la communauté internationale.

Ce projet sous-entend la *promotion d'une citoyenneté mondiale* et d'une nouvelle *vision du monde*, plus équitable et plus humaine. Il suppose une forme de *régie planétaire pour veiller au respect de valeurs telles que la dignité humaine, les droits humains, la démocratie, l'État de droit, la subsidiarité, la responsabilité, la solidarité, la transparence et l'éthique*.<sup>78</sup> Il regroupe un

<sup>74</sup> F. Rajae, *op. cit.*

<sup>75</sup> J.J. Kirton, J.P. Daniels et A. Freytag, *Guiding Global Order: G8 Governance in the Twenty-first Century*, 2001.

<sup>76</sup> World Bank, *Sustainable Development in a Dynamic World: Transforming Institution, Growth, and Quality of Life*, 2003; Banque mondiale (2001), *Rapport sur le développement dans le monde 2000/2001*, 2001; United Nations, *World Economic and Social Survey 2000: Trends and Policies in the World Economy*, 2000.

<sup>77</sup> R. O'Brien, A.M. Goetz, J.A. Scholte & M. Williams, *Contesting Global Governance: Multilateral Economic Institutions and Global Social Movement*, 2000.

<sup>78</sup> La position de l'Église sur le sujet, laquelle fera l'objet de communications pendant le présent colloque par Mgr Martino et Mgr Minnerath, a été précisée dans

ensemble de recommandations qui orientent le management des affaires publiques ainsi que des conditions pour la poursuite d'une saine gestion. Enfin, dernier point mais non le moindre, la gouvernance mondiale nécessite l'implication de tous les paliers – local, national, international – ainsi qu'un leadership de premier plan.

C'est là une ambitieuse conception de l'humanité, surtout dans un monde où la pauvreté et les inégalités sociales croissent de façon fulgurante, les conflits se multiplient, le terrorisme s'intensifie, l'environnement se dégrade et des maladies comme le sida se propagent, le tout offrant des perspectives d'avenir plutôt inquiétantes.

Des sorties de crises sont donc indispensables. Et pour cela, il ne faut ni sombrer dans une approche alarmiste ni opter pour son opposé, c'est-à-dire adopter des visions utopiques. L'heure est à la réflexion, à la confrontation d'idées, à la promotion de pensées innovatrices, autrement dit, à la création et à la construction de nouveaux équilibres internationaux. L'homme ne peut pas se borner à dénoncer ou à laisser-faire, laisser-aller la mondialisation. Il doit se l'approprier et apprendre à la maîtriser. Soit il choisit d'organiser le phénomène, soit il se perd dans le dédale de son intangibilité.

Il ne s'agit pas non plus d'associer la gouvernance mondiale à des tendances modernistes ou impérialistes. *La mondialisation n'est pas le produit d'une culture, d'idées politiques et de valeurs uniques pas plus qu'elle est synonyme d'homogénéité ou de conformité. Il s'agit d'un processus beaucoup plus complexe, résultat de circonstances, d'intérêts et de forces multiples.*<sup>79</sup> Au même titre, la mondialisation n'est pas un phénomène uniforme. Elle se caractérise plutôt par la mouvance d'idées et de valeurs qui se confrontent, se poussent, se rétractent, se développent, se diffusent, s'écroulent, se cristallisent et se transforment à nouveau. De plus, les idées et les valeurs qui sous-tendent la mondialisation ne relèvent pas exclusi-

*Constitution pastorale Gaudium et Spes* (1985) et dans *Pacem in Terris* (1963) où Jean XXIII souligne que "le monde a besoin d'une autorité à compétence universelle". Jean-Paul II, de son côté, dans son encyclique *Sollicitudo Rei Socialis* (1987), a souligné que "l'humanité a besoin d'un degré supérieur d'organisation internationale". Voir aussi: M. Agostino, "Une papauté de plus en plus universelle", *Magazine Histoire du christianisme*, no. 1, juin 1999, p. 88-92; Commission Pontificale Justice et Paix, *Chemins de la paix*, 1986, et R. Bernier, *L'autorité politique internationale et la souveraineté des États. Fondements philosophiques de l'ordre politique*, 1951.

<sup>79</sup> F. Rajae, *op. cit.*, 2001.

vement du phénomène en soi. La preuve, elles peuvent être éjectées sans pour autant remettre en question l'idée même de la mondialisation.<sup>80</sup>

Ainsi, pour être réaliste, le projet de gouvernance mondiale doit s'orchestrer dans le respect de l'intégrité culturelle des communautés. En revanche, il ne pourra être effectif que si les communautés s'engagent à la discussion et à la construction active d'une culture mondiale, concertée et partagée.

À côté de la création toujours illusoire d'un véritable gouvernement mondial, toutes les propositions concernant la mise en place d'une meilleure gouvernance de la mondialisation, à savoir la *réforme de l'ONU et des grandes institutions économiques internationales, la mise en place de nouvelles normes pour régir l'environnement, le commerce, les finances et les investissements* ainsi que *l'activité des sociétés multinationales, l'élaboration d'une nouvelle fiscalité mondiale, la construction de nouvelles entités régionales et continentales, la formation de nouveaux réseaux entre la société civile et les secteurs publics et privés, l'affirmation de la primauté du droit international, le fonctionnement efficace de la nouvelle Cour pénale internationale* ainsi que bien d'autres encore, dont on traitera pendant cette assemblée, n'auront de sens que si l'on convient d'abord, comme l'a affirmé Jean-Paul II, dans l'esprit d'*Assise*,<sup>81</sup> qu'il est de plus en plus urgent de proclamer que la paix est la seule voie pour construire une société plus juste et plus solidaire.<sup>82</sup>

Il s'agit là d'un préalable à la suite d'un conflit dont les conséquences affecteront directement non seulement le peuple irakien, mais aussi l'ensemble du Moyen-Orient. Si, à ce stade, une victoire de la coalition américano-britannique apparaît inévitable, l'après-Saddam, surtout la reconstruction et la mise en place d'une nouvelle administration "démocratique" dans l'ensemble du pays, semble problématique.

En matière de quête d'une nouvelle gouvernance mondiale, la guerre en Irak affectera en profondeur le *climat* des relations internationales, notamment dans tous les grands forums mondiaux, et cela pour une période imprévisible. Pour les uns, on assistera à une pause temporaire, alors que pour les autres, ce conflit deviendra une date charnière marquant une phase "d'ingouvernance" mondiale qui symbolisera un retour à Babel. Il faut espérer que les premiers auront finalement raison.<sup>83</sup>

<sup>80</sup> International Jacques Maritain Institute, "The Ethics of Globalisation", *Notes et Documents*, 2002.

<sup>81</sup> Voir Card. R. Etchegaray, *Assise, journée mondiale de prière pour la paix*, 1987.

<sup>82</sup> *Le Monde*, 29 mars, 2003.

<sup>83</sup> Je tiens à remercier Mlle Annie Lirette, mon assistante à la recherche, pour sa collaboration à la rédaction de cette étude.



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**SECOND SESSION**

**THE GOVERNANCE OF GLOBALISATION:  
LEGAL PERSPECTIVES**





# GOVERNANCE WITHOUT GOVERNMENT: THE NORMATIVE CHALLENGE TO THE GLOBAL LEGAL ORDER\*

JOSEPH H.H. WEILER\*\*

## I. INTERNATIONAL LAW AND DEMOCRACY: A CLASSICAL APPROACH

The point of departure is rooted in three trite, even banal affirmations about classical international law and democracy.

### I.1. *The Rule of Law and Democracy*

Despite widespread use, the concepts of both Democracy and the Rule of Law are under-specified terms in the vocabulary of political theory and social science. Different theories give different meanings in different contexts to both. But however defined, it seems to us banal to recognize that in *domestic* settings democracy and the rule of law have become at least since the second half of the 20th Century inextricably linked, indeed interdependent. In our modern practices, the Rule of Law encapsulates, among other things, the claim to, and justification of, obedience to the law. Such obedience can neither be claimed, nor justified, if the laws in question did not emanate from a legal system embedded in some form of democracy. Democracy, on this reading, is one (though not the only one) of the indispensable normative components for the legitimacy of a legal order. In a departure from previous understandings, if obedience, as a matter of fact, is secured without the legitimacy

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\*\* University Professor and Jean Monnet Chair, NYU School of Law.

emanating from the practices of democracy, we are no longer willing to qualify such as the Rule of Law. A dictatorship that followed strictly its internal legal system, would be just that: A dictatorship following legal rules. It would not qualify as a system upholding the Rule of Law. The reverse is also true: It is to rules of law that we turn to define whether the practices of democracy have indeed been followed and, more generally, the Rule of Law, with its constraint on the arbitrary use of power, is considered an indispensable material element of modern democracy.<sup>1</sup> An attempt to vindicate even verifiable expressions of popular will outside legally defined procedures is regarded by us as the rule of the mob, rather than democracy.

### *I.2. The Rule of International Law: A Chronicle of Indifference and Hostility*

This interdependence and symbiosis is not the case when describing the 'Rule of International Law'. In discussing the relationship between International Law and democracy, it is useful to examine two different facets: First, doctrinally, the extent to which democracy forms part of the primary, material rules of international law and/or is part of its various doctrines; and, second, in a more self-referential process-oriented notion, the extent to which democracy is integrated into the process of international *lawmaking* and forms part of International Law's own set of secondary rules of recognition.

Our second trite or banal observation is that traditionally, as regards both facets, for most of the 20th Century, generally speaking International Law has displayed indifference, even hostility, to the concept of democracy.<sup>2</sup> Certainly, its claims to, and justification of, obedience were not rooted in notions of democratic legitimation.<sup>3</sup> We do not propose here fully to

<sup>1</sup> Thus, typically in considering the requirements of "good government", judicial supremacy (as a manifestation of the Rule of Law) is considered an essential element for democracy like free and fair elections and the like. Cf. Thomas Franck, "Democracy, Legitimacy and the Rule of Law", (Unpublished paper, 2000).

<sup>2</sup> We feel a close affinity and acknowledge an intellectual debt to James Crawford, *Democracy in International Law: Inaugural Lecture* (Cambridge University Press, 1994). There has been a resurgence of writing on international law and democracy often with a somewhat less skeptical approach to our own. We have profited from and are indebted to Thomas Franck, "The Emerging Right to Democratic Governance", 86 *Am. J. Int'l Law* 46-91 (1992) and the vast literature it has spawned. For the most recent thinking of these issues see the contributions in G. Fox, B. Roth, *Democratic Governance and International Law*, (Cambridge University Press, 2000).

<sup>3</sup> See, e.g. Watts, *The International Rule of Law*, *GYBIL* 1993, 15-45.

demonstrate this claim but simply to illustrate it as regards both its doctrinal and its self-referential aspects.

As regards the former even a cursory survey of some of the fundamental doctrines of classical international law will illustrate the point.

- *Pacta Sunt Servanda*, the primordial norm of international law, has never depended for its validity on the internal democratic arrangements of its subjects – States.<sup>4</sup> Democracy or lack of it is not among the vitiating or exculpating factors from an international legal obligation.<sup>5</sup>

<sup>4</sup> The general rule of international law does not allow, except in the narrowest of circumstances, for a State to use its own domestic law, including its own domestic constitutional law, as an excuse for non-performance of a treaty. That is part of the ABC of international law and is reflected in the Vienna Convention Article 27. “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46”. See too the more recent Art. 32 of the Draft Articles on the Responsibility of States for International Wrongful Acts, ILC 2001: “The Responsible State May not rely on the provisions of its internal law as justification for failure to comply with the obligations under this Part” (Official Records of the General Assembly, Suppl. no. 10 (A/56/10) ch. IV, E1, Nov. 2001) Doctrine demonstrates an equal constancy in this respect. Compare for example Verdross, *Le fondement du droit international*, *Rec. des cours*, 1927, tome I, vol. 16, 251-321 with Quadri, *Le fondement du caractère obligatoire du droit international public*, in *Rec. des cours*, 1952, Tome I, vol. 80, 579-633. The most authoritative of texts in the ‘Anglo-Saxon’ world, *Oppenheim’s International Law*, is clear: “It is firmly established that a State when charged with a breach of its international obligations cannot in international law validly plead as a defense that it was unable to fulfill them because its internal law ... contained rules in conflict with international law; this applies equally to a State’s assertion of its inability to secure the necessary changes in its law by virtue of some legal or constitutional requirement ...”. *Oppenheim’s International Law*, Vol. I: Peace 84-85. Sir Robert Jennings & Sir Arthur Watts eds., 9th ed. (1992 Harlow, Essex.). What is true for formal constitutional requirements would, a fortiori, apply to softer notions such as the general requirements of democracy.

<sup>5</sup> The ‘hardness’ of the ‘pacta’ has remained intact even in the post ‘89-90 epoch despite the widespread turn to democracy, formal or otherwise, in many countries previously hostile to such notions. Whether the turn to democracy could qualify under the doctrine of *rebus sic stantibus* was discussed recently by the ICJ in the Gabcikovo – Magymaros Project (Hungary-Slovakia) case. “Hungary further argued that it was entitled to invoke a number of events which, cumulatively, would have constituted a fundamental change of circumstances. In this respect it specified profound changes of a political nature, the Project’s diminishing economic viability, the progress of environmental knowledge and the development of new norms and prescriptions of international environmental law (see paragraph 95 above)... The prevailing political situation was certainly relevant for the conclusion of the 1977 Treaty. But the Court will recall that the Treaty provided for a joint investment programme for the production of energy, the control of floods and the improvement of navigation on the Danube. In the Court’s view, the prevalent political conditions were thus not so closely linked to the object and purpose of the Treaty that they

- In defining subjecthood, for most of the past century, it was the efficiency of government, and its effective control over national territory that were critical to acceptance of both new States and new regimes – almost penalizing the more messy emergence of democracy.<sup>6</sup>
- The complex norms of State succession are not about vindicating democracy but about vindicating identity. The new State, which invokes the *Tabula Rasa* components of the laws of State Succession, did not do this on the grounds that they were non-democratically approved by, say, a previous colonial regime. Indeed, the rule of the newly independent State could be, and often was, as undemocratic as the displaced Metropolitan power. Prior obligations were rejected because approval, democratic or otherwise, did not emanate from the right “Self”.<sup>7</sup>
- In the law of State Responsibility, unlike traditional concepts such as attribution, *dolus*, *culpa*, necessity – democracy has classically had no status as such as affecting the responsibility of States vis-à-vis other international actors.<sup>8</sup>
- In the central area of Use of Force, until recently,<sup>9</sup> intervention to vindicate democracy and/or to combat its overthrow was condemned not

constituted an essential basis of the consent of the parties and, in changing, radically altered the extent of the obligations still to be performed, (ICJ, REP, 1997, par. 104). Two points are of interest: First the fact that Hungary itself did not expressly refer to the dictatorial nature of the previous regime as a reason, per se, to escape responsibility. More interestingly, though the Court’s language suggests the possibility in principle that the nature of the “political conditions” could be relevant to the essential basis of consent (the classical condition for the doctrine of *rebus sic stantibus* to apply), it is hard to imagine where that would be the case in relation to most treaties.

<sup>6</sup> For classical treatment see J. Crawford, “Democracy in International Law”, supra n. 2. Practice has in this respect changed, notably in the post ‘89 epoch.

<sup>7</sup> Craven, *The Problem of State Succession and the Identity of States under International Law*, *EJIL* (1998), vol. 9, pp. 142-162 repays careful study.

<sup>8</sup> There is movement in this domain. Article 22 of the Draft Articles of Responsibility of States for International Wrongful Acts, ILC 2001 envisages legal counter measures those taken where “the obligation breached is owed to the international community as a whole (cf. Article 48.2.b). The ICJ has considered respect for Self-Determination as an *erga omnes* norm. (East Timor – Portugal v. Australia, ICJ, Rep. 1995, par. 29). To the extent that, say, toppling a democratic regime constitutes a violation of Self-Determination under modern law, one can see the concept creeping into the general law of State Responsibility.

<sup>9</sup> Haiti is considered the turning point. A careful reading of the relevant decision of the Security Council will however reveal that it was careful not to link the right to intervention directly with a lack of democratic legitimacy but rather with [un] “climat de peur, de persécution et de désorganisation économique, lequel pourrait accroître le nombre des Haïtiens cherchant refuge dans les Etats membres voisins”. The Council also qualified the

only as an interference with the internal affairs of a State, but also as a violation of Self-Determination.<sup>10</sup> Nowhere is the tension between International Law and democracy more noted than in the different understanding of self-determination. In democratic theory, democracy is almost ontological to the notion of Self-Determination: It is the only means for determination of (and by) the collective self. In International Law, democracy was considered an ideology,<sup>11</sup> one among others, the acceptance or rejection of which were part of the determination of the Self. Indeed, if we were to apply to this field the same methods which are applied in making claims about the existence of this or that human right protected under international law (e.g. the right to development; the right to a clean environment) it would be easy enough to demonstrate a right in international law *not* to be a democracy, the right to be an 'undemocracy'.<sup>12</sup>

Haiti circumstances as "uniques et exceptionnelles" and as part of a *humanitarian* crisis because of massive dislocation of persons. See SC.Res. 940. Compare, however, with the 1997 Sierra Leone situation where the Council declared to be "Gravely concerned at the continued violence and loss of life in Sierra Leone following the military coup of 25 May 1997, the deteriorating humanitarian conditions in that country, and the consequences for neighbouring countries...". And added that it "Demands that the military junta take immediate steps to relinquish power in Sierra Leone and make way for the *restoration of the democratically-elected Government and a return to constitutional order* (SC.Res. 1132) (Emphasis added)". But here, too, one may ask whether the essential was the loss of democracy or the deteriorating humanitarian conditions? And had the constitutional order been one of, say, an Islamic Sharia State (which is non-democratic) or a Communist State (which is equally non-democratic) would the Security Council Resolution have been any different? Would it not have equally demanded a return to "constitutional order" (democratic or otherwise) in the face of a deteriorating humanitarian condition? In other words was the operative part a return to constitutional order (whatever its nature?) or a restoration of democracy? Was democracy simply the contingent condition of the constitutional order?

<sup>10</sup> Earlier USA interventions in Granada in 1983 and Panama in 1989 were sought to be justified on many grounds of which restoration of democracy was only one. See UN. Doc. S/PV.2487 and UN. Doc S/PV.2902 The US avoided condemnation because of its veto. In the Nicaragua Case the ICJ was even careful in allowing intervention in case of violation of human rights, ICJ REP, 1986, par. 202-204.

<sup>11</sup> And not simply an ideology, but a Western, First World, ideology in competition with, and not superior to, Second and Third World competing ideologies. Détente was based on this premise and there was a tacit acceptance of the Brezhnev and Reagan Doctrines. Cf. G. Tunkin, *Droit international public*, Pedone, Paris, 1965, pp. 232; Fischer, *Quelques problèmes juridiques découlant de l'affaire tchécoslovaque*, AFDI, 1968, pp. 15-42; and spirited discussion of Schachter, "The legality of pro-democratic invasion", 78, AJIL, 1984, pp. 645-650.

<sup>12</sup> For the difficulty of classical International Law to come to terms with a consonance between democracy and a valid determination of the identity of the collective self, see

- Recent developments in the practice of Recognition of new States and in some form of a right to democracy and even an alleged right to intervene to protect democracy, only underscore the ambivalence of the system and provide a useful transition point from which to reflect on the second, self-referential, relationship between International Law and democracy.<sup>13</sup> There is a double irony in a system which has begun to insist that newcomers to the club pass some democratic entrance exam, however crude, and transitory, but which first, turns out to be like tenure for professors: Once you have proven that you can write, you can stop writing for the rest of your life. And where, second, the club in question contains dozens of vile dictatorships. It is equally ironic that the new so-called right to democracy (whatever its parameters) has emerged in a manner, which is difficult to reconcile with even the crudest understanding of what democracy means.<sup>14</sup> Put differently, if there is under the international legal doctrine of sources a sustainable claim to the emergence of a 'right to democracy', it is doubtful whether the rules which govern these sources, whether international lawmaking itself, represent a credible structure of democratic lawmaking.

What, then, of international lawmaking? It would be tempting to conflate the principle of Consent, so deeply rooted in the normative discourse of international law and its principal legitimating artifact, with democracy: A phrase such as: A customary law cannot emerge without the consent, active or tacit, of [all States bound by it]; [the principal legal families]; [those most affected by the norm] etc. sounds very much like democracy at the international level. But, in fact and in law, in theory and in practice, this is part

Salmon, *Internal Aspects of the Right to self-determination: Towards a Democratic legitimacy principle?* in C. Tomuschat, (ed.), *Modern Law of Self-Determination*, Kluwer, 1993, p. 253-282 and Koskenniemi, *National Self-determination Today: Problems of Legal Theory and Practice*, 43 *International and Comparative law Quarterly* 1994 (241).

<sup>13</sup> See, eg., Declaration on the 'Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union' adopted by the EU on 16 December 1991. See Charpentier, *Les déclarations des douze sur la reconnaissance des nouveaux Etats*, in *RGDIP*, 1992, p. 343-355 where one can also find a text of the declaration. And one should always recall that even in the new epoch, recognition is still political and States which seem to correspond to the new conditions might still be denied recognition. Particularly embarrassing to the EU in this context was the case of Macedonia – cf. Conference on Yugoslavia, Arbitration Commission Opinion no. 3-6, in *ILM* (1992), pp. 1499-1507.

<sup>14</sup> In the literatures which have emerged and claim the right to democracy as part of international law, there is not even an attempt to claim that this right emerged in a manner which may be called democratic.

of a very different vocabulary, namely that of sovereignty and sovereign equality.<sup>15</sup> It is, in some ways, the opposite of democracy, since it is based on the legal premise, even if at times a fiction, that the collectivity has neither the power nor, certainly, the authority to impose its will on individual subjects other than through their specific or systemic consent, express or implied. Put differently, it is based on the premise, an extreme form of which claims that there is no collectivity with normative power; and, in less extreme form, claims that even if there is such a collectivity, there is an inherent power of opting out – through non-signature; reservations, persistent objector etc. This, of course, is the opposite of any functioning notion of democracy which is based on the opposite premise, however justified in political theory, that a majority within a collectivity, a demos, has the authority to bind its individual members, even against their will.

There are of course exceptions to these observations; we will return to these exceptions as part of a narrative of change.

Against this indifference or hostility, the concern for democracy of International Law has typically found expression outside international law – in the domestic foreign relations law of States through the so-called democratic control of foreign policy. From this perspective, even if international lawmaking itself does not follow any recognizable sensibility to democracy, its democratic legitimation could perhaps be sought at the internal level of the subjects which make it.

This, at best, would be a very problematic proposition.

First, as a matter of empirical observation, democratic control of foreign policy does not only remain an exception among States, but is often derided from an international legal perspective: Democratic control of foreign policy is good when it approves and ratifies new treaties (which are typically considered progressive and normatively positive.).<sup>16</sup> It is bad when it consigns such treaties to some graveyard.

<sup>15</sup> Kingsbury, *Sovereignty and Inequality*, AJIL, Vol. 9 (1998), n. 4, pp. 599-626 repays careful study as a fundamental text on these issues.

<sup>16</sup> In the classical tradition of political theory, foreign policy is often excluded as a domain which should be subjected to normal democratic controls, Cf. Alexis de Tocqueville, *De la démocratie en Amérique*, Flammarion, Paris, 1981; J.S. Mill, *Considerations on Representative Government* in *Three Essays*, Oxford University Press, 1981, pp. 211-212. Also great contemporary democrats are cautious. Thus Aron explains: “Les relations entre les Etats ont un caractère singulier, pour ainsi dire paradoxal: d’une part, il s’agit de relations globales, macroscopiques, puisqu’en cas de guerre les Etats sont aux prises les uns avec les autres comme des entités de dimensions considérables, mais, d’une autre part, les décisions d’où résultent les événements sont souvent prises par des personnes. Il y a donc une



Second, even when democratic control exists, it is never accompanied by an enquiry whether the Treaty that is democratically debated and approved in country A, was also democratically debated and approved in country B. The assumption of the democratic discourse in, say, the German Bundestag or the US Congress or the European Parliament is that if consent is given, the Treaty will be binding independently of the democratic quality of consent given in another State. In other words, democratic control of foreign policy at the level of the State, is not only formally but substantively part of the foreign relations law of the consenting State and not part of the validating matrix of international law itself.<sup>17</sup> There is simply no norm, not even an alleged norm, that the 'bindingness' of an international treaty or customary law, or general principle, or "new source" should depend on internal democratic validation by the subjects and objects of such norms. Indeed, the great enthusiasm in the 60s and 70s for "Soft Law" and "New Sources" was result, rather than process, oriented. These were mechanisms which, *inter alia*, enabled international legal authority to be given to a variety of progressive norms which the traditional methods with their greater insistence on express consent were unable to do. But the oft-justified celebration of human rights, ecological norms and other such truly noble causes which the "Soft Law" and "New Sources" occasioned, was accompanied by a willful blindness to, even contempt of, any notion of democratic legitimation of these norms either at the international level or within the States that became subject to these norms. Equally, the typical critiques of "Soft Law" and "New Sources" were either result oriented, based on hostility to the content of the proclaimed norm, or systemic, usually challenging, as a matter of legal doctrine, the *consent* basis of the alleged new norm and hence its legal validity. We have already argued that to root international legal validity or legitimacy in consent has little to do with a democratic sensibility and might, indeed, be the opposite of such a sensibility. In the critique of New Sources there has been, with few exceptions, little concern for democratic legitimation. And, indeed, why should there have been? "New Sources" are not less democratic or more democratic than "Old Sources".

espèce de contradiction interne dans ce monde de relations interétatiques, dans la mesure où il existe souvent en apparence une disproportion entre le rôle qui jouent les individus et les conséquences de leurs actions", R. Aron, *Leçons sur l'histoire*, Ed. de Fallois, Paris, 1989, p. 334.

<sup>17</sup> For a characteristically down to earth, realistic approach to foreign affairs and democratic control see Dahl, *Can International Organizations be Democratic? A Skeptical View*, in I. Shapiro, C. Hacker-Cordon, *Democracy's Edges*, Cambridge University Press, 1999, pp. 23-28.

What makes them worthy of observation is the ironic dissonance between their progressive content and their regressive method of adoption.

### I.3. *International Law Vindicated: Evaluating the Indifference and Hostility*

In describing the relationship of International law to a democracy we have deliberately used an affective, anthropomorphic terminology – indifference, hostility, contempt – in order to provoke a normative reaction of censure or even outrage. Isn't that how one is meant to feel in the face of a legally binding norm adopted with little concern to the very vocabulary of democracy, let alone its habits and practices? Yes it is. And is one not justified in using an anthropomorphic terminology in order to counter the typical reification of law thereby ascribing responsibility to those behind the law – the real human beings, flesh and blood, who ultimately make international law? Yes it is.

And yet the outrage or censure would be out of place and one should not be overly scandalized by the indifference and hostility.<sup>18</sup> For here is our

<sup>18</sup> Indeed, there is a growing critical literature skeptical of the very use of democracy in international discourse – both dogma and praxis. See, e.g., Carothers, "Empirical Perspectives on the Emerging Norm of Democracy in International Law", *ASIL Proc.* 84 (1992). Koskienniemi, "Intolerant Democracies: A Reaction", *Harv. Int'l.J.*, (1996), p. 231. Marks, *The End of History? Reflections on Some International Legal Theses*, *EJIL* vol. 8, (1997), 449-478 which is in part a response to the optimistic "progress" vision seen in the writings of, say, Franck and Slaughter, which Marks qualifies as 'liberal millennialism'. There are two strands to this literature. Part of it belongs to the more general reaction against classical liberal pluralism of the J.S. Mill or Isaiah Berlin variety. J. Gray articulates this strand well: "Liberalism was the political theory of modernity. As we enter the closing phase of the modern age, we confront the spectre of reascent atavistic barbarisms, which threaten to ruin the modern inheritance of civil society. Our task, as post-moderns no longer sustained by the modernist fictions of progress, rights and the universal civilization or by classical conceptions of natural law as embodied in Greco-Roman and Judeo-Christian traditions, is to preserve the practice of liberty that is transmitted to us by inherited institutions of civil society" (J. Gray, *Postliberalism*, *Studies in Political Thought*, Routledge, London and New York, 1993, p. 328). A second strand of the literature is more pragmatic in nature and is rooted in a critique of the use democracy has been put to in international law. In this essay we premise democracy as a positive "good". It is not our intention fully to work out this position – but it is rooted in our belief that democracy with all its imperfections and with the need always to attend to these imperfections, is the best chance of political organization of the social which will honor the dignity of man created in the image of God, and equally the best chance of a political organization of the social to vindicate liberty consistent with that dignity. "Progress" not least in the world of ideas may well be a fiction, but we find nothing fictive in the conceptions of human dignity embodied in the Judeo-Christian tradition with their attendant consequences to political organization.

third banal affirmation: Democracy is premised on the co-existence of demos, polity and government, and the relationships among them.

The *indifference* of International Law to democracy emanates from the absence of those elements in international life: There is International Law but traditionally there has been no 'international demos', no international polity and no international government. You cannot be concerned with tonality or rhythm if there is no music. If traditional international law understands itself as a series of autonomous sovereigns, all equal, contracting legal obligations on a more or less enlightened Adam-Smithian notion of liberalism, so as to maximize the interests of each with minimum friction to the interests of others, democracy is, indeed, no more relevant to international law as it is to the law of contract in domestic law. We may be concerned, both in a domestic or international contractarian universe, with inequalities of bargaining power, but that concern goes to notions of consent, coercion and, perhaps, fairness to which democracy or its absence are neither part of the problem nor part of the remedy. International law is maybe a response to a Hobbesian brute world, but it is not a democratic Lockean response.

The classical *hostility* of International Law to democracy emanates from the fact that the absence of those three elements was (and in many cases still is) normatively desired. The essential language of modern democracy, its grammar, syntax and vocabulary, revolves not only around people, nation and State, but also about a shared self-understanding of authority, legitimacy and the relationship of people to each other and to their government institutions. Thus, even to accept that democracy is merely relevant to international law, would not be an organic extension of an evolving normative sensibility from a domestic setting to the international system. It would seem to imply a contested new self-understanding of that very international system. The breathtaking radicalism of the French Revolution was surely not simply in changing the structure and process of government, but in changing the very way society was to understand itself. A turn to democracy by and in International Law would be every bit as revolutionary.

Given the rootedness of democratic discourse in a Statal setting, if a turn to democracy would imply a corresponding turn to a Statal self-understanding of the international legal system, within the classical premises of international law, it could appear to many, and rightly so, as a very undesirable revolution.

## II. A METHODOLOGICAL EXCURSUS: THE GEOLOGY OF INTERNATIONAL LAW – A DIFFERENTIATED RESPONSE TO A NON-MONOLITHIC LEGAL UNIVERSE

International law and the international legal system are not static and have changed over time. No less importantly, the understanding of legitimacy and democracy has not been static and has changed – both as an empirical social phenomenon and as a normative concept. How does one relate these two moving targets to each other? As noticed from our title, we employ the metaphor of geology. This is not just a cutesy affect but represents a serious methodological commitment. It signals our particular approach for dealing with time, with history.

First, our approach to the past is instrumental. We are interested in the past not per se but primarily in the sense that it can illuminate the present.

Second, and more importantly, whereas the classical historical method tends to periodize, geology stratifies. Typically, a geological snapshot is taken and then the accumulated strata of the past are identified, analyzed, conceptualized. By stratifying geology folds the whole of the past into any given moment in time – that moment in which one examines a geological section. This method turned out to be crucial for our understanding of the international legal system.<sup>19</sup> For the proverbial reasons of time and space we are unable to provide here the full empirical apparatus on which our analysis is based. But we can provide an illustration.

We took, to give but one example, a snapshot of international treaty making and more generally international lawmaking in 1900-10, in the 1950s and 60s and in 1990-2000.

In the first decade of the 20th Century we discovered a predominance of bilateral, contractual treaties and a very limited number of multilateral lawmaking treaties. We also discovered, in that earlier part of the century a very sedate, almost ‘magisterial,’ and backward looking practice of customary law typified by a domestic case such as *The Paquette Habana* which

<sup>19</sup> Inspired by Nietzsche’s genealogy, we are less interested in a chronicle of events nor in a sophisticated historiography as a way of interpreting and explaining the past. Our interest in the past is in a true sense driven by our attempt better to understand the present. Cf. *A Genealogy of Morals*, trans. W. Kaufmann and R.J. Hollingdale, New York, Random House, 1967 and see, too, Foucault, Nietzsche, Genealogy, History in *The Foucault Reader*, P. Rabinow, (ed.) Pantheon Books, New York 1984, pp. 76-100) We do not want to stretch the comparison too far. The genealogical approach is mostly interested in discontinuities, instabilities, incoherence – in the pathological. We privilege exactly the opposite – ours is above all a physiognomy of international law.

leisurely takes in four hundred years of State practice in order to affirm the existence of a binding rule. A case such as *The Lotus* is also typical as an illustration of the typical use of the methodology of custom to privilege the status quo and chill change.

In mid-century we discovered a huge enterprise of actual and in-the-making multilateral lawmaking treaties ranging from the Law of the Sea to Human Rights and even what may be called “constitutional” treaties. Customary law reincarnated itself into the so-called New Sources. The New Sources, though often using (indeed, piggy-backing on) notions of classical custom to justify the emergence of a binding norm, were the opposite of custom in that the sedate, backward looking and magisterial were replaced by an aggressive, cheeky and forward looking sensibility, privileging change and transformation and in which both treaty and “custom” often prized the communal and universal over the particularistic.<sup>20</sup>

Towards the end of the century, in addition to the bilateral, multilateral and constitutional layers of lawmaking, we detected the emergence, or thickening, of a fourth layer, which has perhaps been less discussed. This is a regulatory layer. It is notable in the fields of trade with the explosion of Regional Economic Agreements (whose numbers are in the hundred) as well as the new WTO and associated agreements, and in other similar fields: Environment, Asylum, Finance. In terms of content the regulatory layer addresses issues associated with the risk society in which we live.

The regulatory layer is distinct from its predecessors in a variety of ways: Its subject matters tend to be away from what traditionally was considered high politics and more towards what was traditionally considered low politics (They are typically neither about Security nor even about Human Rights). The obligations created are often positive in nature, not simply negative interdictions. Certain things have to be accomplished – note for example Article 16 of the WTO or the “conditions” imposed by the IMF and World Bank. The regulatory regime is often associated with an

<sup>20</sup> The literature is immense. We particularly profited from Jiménez de Aréchega, Custom, in A. Cassese, J.H.H. Weiler, Change and stability in international law-making, European University Institute, Berlin, New York, De Gruyter, 1988, pp., T. Meron, Human Rights and Humanitarian norms as Customary Law, Clarendon Press, Oxford, 1989; Lillich, The Growing Importance of Customary International Law, 25 GA.J. Int’L &Comp. L., 1, 8 (1995-1996), Reisman, The Cult of Custom in the late 20th Century, 17 Cal. W.Int’L.J. 133 (1987), Roberts, Traditional and Modern Approaches to Customary International Law: A Reconciliation, AJIL, vol. 95, 2001, pp. 757-791. G.H.F. Van Hoof, Rethinking the Sources of International Law, Kluwer, 1984.

international bureaucratic apparatus, with international civil servants, and, critically, with mid-level State officials as interlocutors. Regulatory regimes have a far greater “direct” and “indirect” effect on individuals, markets, and more directly if not always as visibly as human rights, come into conflict with national social values.

We noted, too, in that period a much higher index than before of a new kind of “Practice” – not the old style State practice but “International Practice” of a variety of bodies ranging from well established international organizations to allusive entities such as the Group of Seven – a practice covering even classical fields such as security and human rights which can best be described as international management. Couple the regulatory layer of treaties with the international practice of management and a new form of international legal command may justifiably be conceptualized as governance.

Analogies to domestic law are impermissible, though most of us are habitual sinners in this respect. We can present the geology of international law as replicating to some extent the geology of domestic law – the turn from the 19th Century very contractarian emphasis, to the interventionist State of the Mixed Economy, to the Constitutional State (which is mostly a post World War II phenomenon) to the Administrative State of the 70s, 80s and beyond.

Similar results emerged from our soundings in the area of dispute settlement. We can afford to be even more synoptic here, for this story is even better known than the lawmaking story: Here too we saw an initial strata of horizontal, dyadic, self-help through mechanisms of counter-measures, reprisals and the like. This is still an important feature of enforcement of international legal obligation. Then, through the century we saw a consistent thickening of a triadic stratum – through the mechanisms with which we are all familiar – arbitration, courts and panels and the like. The thickening consisted not only in the emergence of new areas subject to third party dispute settlement but in the removal of optionality, in the addition of sanctions and in a general process of “juridification”. Dispute Settlement, the hallmark of diplomacy, has been replaced, increasingly, by legal process especially in the legislative and regulatory dimensions of international lawmaking.<sup>21</sup> And there is, here too, a third

<sup>21</sup> See, e.g. Slaughter & Helfer, *Toward a Theory of Effective Supranational Adjudication*, 107, *Yale Law Journal*, 1997; Stone Sweet, *Judicialization and the Construction of Governance*, 31 *Comp. Pol. Stud.* (1999); Kupfer Schneider, *Getting Along:*

stratum of dispute settlement which may be called constitutional, and consists in the increasing willingness, within certain areas of domestic courts, to apply and uphold rights and duties emanating from international obligations. The appellation constitutional may be justified because of the “higher law” status conferred on the international legal obligation.<sup>22</sup>

Based on these findings, our initial temptation was to characterize the turn of the last century as a period of transactional legal relations, to look at the mid-century, especially the decades following World War II as one characterized by emergence of Community and the fin-de-siècle as the period of international governance. (We will, in short order, give more thickness to these labels – transaction, community and governance). But on closer look at the data we stumbled on the obvious. Even in the early part of the 20th Century there were, alongside the thick stratum of bilateral, transactional treaty making, already thin strata of the multilateral and even of governance style of international command. Equally, we noted that mid-century, and fin-de-siècle, along side the constitutional and lawmaking treaties there continued a very rich practice of the bilateral and transactional, that for every assertion of the New Sources and Communal values there was an old style *Texaco*, a dignified late century heir to *The Lotus*. Change, thus, would not be adequately described as a shift from, say, bilateralism to multilateralism. What had changed was the stratification. Bilateralism persists and even thrives as an important stratum of international law throughout the century till this day. Thus, geology allows us to speak not so much about transformations but of layering, of change which is part of continuity, of new strata which do not replace earlier ones, but simply layer themselves alongside. Geology recognizes eruptions, but it also allows a focus on the regular and the quotidian. It enables us to concentrate on physiognomy

*The Evolution of Dispute Resolution Regimes in International Trade Organizations*, 20 Mich. J. Int'l L. 697 (1999); Reich, *From Diplomacy to Law: The Juridicization of International Trade Relations*, 17 Nw. J. Int'l L. & Bus. 775 (1996-1997) Weiler, *The Rule of Lawyers and the Ethos of Diplomats, Reflections on the Internal and External Legitimacy of WTO*, <http://www.jeanmonnetprogram.org/papers/2000/001901>. Generally see the special issue of *International Organization Legalisation and World Politics*, *International Organization*, no. 54, vol. 3, 2000.

<sup>22</sup> Cf. Cass, *The Constitutionalization of International Trade Law: Judicial Non-Generation as the Engine of Constitutionalization*, *EJIL*, n. 13, n. 1 (2001), pp. 39-77. Petersmann, *Constitutionalism and International Organizations*, 17 Nw. J. Int'l L. & Bus. 398 (1996-1997).

rather than pathology. As is always the case, the vantage point, the prism through which the subject is examined determines in no small measure the picture which emerges. The geology of international law is, thus, both the window and the bars on the window, which frame and shape our vision.

Against this background we develop our current theses. The ideas behind these theses are conventional enough and we hope, of course, that they will appear persuasive to the reader. They do, however, involve multiple strands and require keeping several balls in the air simultaneously. Here then is a little nutshell.

Firstly, and put bluntly, we believe that classical approaches, such as the one we ourselves developed in the introductory passages of this essay, which examine democracy in relation to “international law” or the “international legal system”, are less than optimal because of the monolithic assumption on which they are typically based. The ways and means of international norm setting and lawmaking, the modes in which international law ‘commands’, are so varied, sometimes even radically so, that any attempt to bring them into the laboratory of democracy as if belonging to a monolithic species called “international law” will result in a reductionist and impoverished understanding of international law, of democracy and of the actual and potential relationship between the two.

We suggest that much can be gained, in this context, by conceptually unpacking international law or the international legal system into different ‘command’ modes which the “geological” survey reveals: International law as Transaction, International law as Community, and International law as Regulation. Each one of these modes presents different normative challenges, entails a different discourse of democracy and legitimacy, and, eventually, will require a different set of remedies.

Second, and put simply, we believe that democracy, too, cannot be treated monolithically. In this case it does not require unpacking but the opposite – repacking as part of a broader discourse of legitimacy. In municipal settings the absence of “democracy” (at least in the narrow sense of the word) in all aspects of domestic governance, is not always a lacuna, nor even a ‘necessary evil’ and does not in all situations per se delegitimize such domestic systems. Legitimacy encompasses other elements too.

What complicates the matter is, as mentioned above, that notions of, and sensibilities towards, the legitimacy of international law have changed too.<sup>23</sup>

<sup>23</sup> See Franck, “Legitimacy in the Legal System”, *AJIL*, vol. 82 (1988); Georgiev, *Politics of Rule of Law: deconstruction and legitimacy in International Law*, *EJIL*, 1993;



Transactionalism was a prominent layer of early 20th Century international law. It was legitimated by reference to that old world and its prevailing norms. Transactionalism persists to early 21st Century international law and is a prominent layer also today. But to the extent that its old world legitimating features still accompany it, we have the makings of the legitimacy crisis in this respect. Communitarianism is most prominent as in mid 20th Century international law and finds its original legitimating features in that epoch. It is still an important layer in the universe of 21st Century international law, but its legitimacy raises new Questions. And finally, Governance, though present in earlier epochs emerges as a thick and critical layer towards the end of 20th Century international law. It requires an altogether new discourse of legitimacy.

### III. TRANSACTION, COMMUNITY, CONSTITUTION AND REGULATION AND THE EMERGING LEGITIMACY CRISIS OF INTERNATIONAL LAW

#### III.1. *Interpreting Transactionalism as Governance*

Historically transactional international law was the predominant command mode. It is still a large and important part of the overall universe of international law. In its purest form it is dyadic and represented best by the bilateral transactional treaty. It is premised on an understanding of a world order composed of equally sovereign States pursuing their respective national interest through an enlightened use of law to guarantee bargains struck. There can be multipartite expressions and even international organizations which are an expression of dyadic transactional international law. The Universal Postal Union to give an ancient but still extant and relevant organization and the GATT in its 1947 incarnation of examples. Although multipartite in form (and suggesting, thus, a more multilateral communitarian self-understanding of the international legal order), they are in substance just more efficient structures enabling their parties to transact bilateral agreements. Many other examples abound.

How then to view the transactional command mode as a phenomenon of Governance? Is it not on its face precisely the opposite: The expression of private, bilateral contracting?

Weiler & Paulus, *The Structure of Change in International Law or Is There a Hierarchy of Norms in International Law?* 8th European Journal of International Law 545 (1997) and literature cited therein.

It often is, and when it is calling it governance would not be illuminating. If every instance of norm creation is to be regarded as part of international governance the term would lose any explanatory and normative significance as compared with international law generally.

But there are instances, past and present, where whilst the form of norm creation is indeed private and bilateral, the resultant phenomenon may usefully be thought of as in the category of international governance. Transactionalism may/might manifests itself as governance in two distinct ways:

The first is indeed in the realm of private, bilateral arrangements like so many bilateral riparian treaties or, say, bilateral treaties for management of bridges which span a border. The governance element in such treaties rests in the fact that they extend beyond an 'executory' type of contract terminated upon completion of the transaction and they extend beyond a 'normative' type of contract which leaves the parties freedom to act but which will place curbs on such freedom and define certain actions of the parties as unpermitted. Instead here we would have a regime of management – creating longer term obligation of care, and in fact putting in place an administrative apparatus for maintenance and management of a common resource. Both parties can be seen as involved, albeit bilaterally, albeit privately, albeit modestly *rationae materiae*, in a governance regime. The practice is not exceptional. It is mainstream. Its importance to us is not so much in the normative challenge it raises but in the understanding it gives us to the phenomenon of governance. Not only, important as this may be, in the historical and conceptual sense of trying to understand all principal forms of international governance, but also in a phenomenological sense. Bilateralism may have been the laboratory, the exercise ground, the test tube whereby States (and other actors) assume in gradual sense the habits of international governance.

In its second mode, bilateral transactionalism should be understood as governance in that it results in a general regime of both legislation and management. The phenomenon is not exceptional. Consider first the following examples: The old US Friendship, Commerce and Navigation Treaties, many still extant, or the modern Free Trade Area Agreements of which the European Union has an enormous practice. Bilateral Investment Treaties are a third example.

In all these cases we have what is in form bilateral, private agreements. In the first two examples (unlike the BITs) there is no internationally approved template. If we look at the modern FTA, we will also note that it

is of very considerable socio-economic significance involving culture and hence identity defining choices. Microscopically these are, indeed, bilateral private contracts among States. But telescopically, taken in aggregate they define a multilateral regime. In all instances the US and the EU use a template. The negotiating room for their “bilateral” partners is extremely narrow – very often limited to the temporal dimensions such as entry into force but not touching the material obligations, the regime of responsibility, dispute settlement and sanctions. They are in many respects the international equivalent of domestic Standard Form contracts. They are characterized by the same inequality of bargaining power familiar from domestic settings and raise, *mutatis mutandis*, similar normative issues.

Interesting variants of this phenomenon are indeed, as mentioned above, those treaties, such as the WTO/GATT which in form are multilateral but certain dimensions of which, like the all-important setting of bound tariffs, are simply an aggregate of bilateral arrangements – extended universally through the principle of Most Favored Nation. The current WTO, resultant from the Uruguay Round, is often criticized as having been unfair or unjust in the balance between developed and developing countries. Often this critique is but the expression of general frustration with globalization and the inequality in the wealth of nations – phenomena which should be associated with international regimes with certain care. (Oftentimes the international regime is not the cause, but should more appropriately be thought of as the response to the problem).

In the case of the WTO/GATT the claim of unfairness and injustice can be linked to the phenomenon under discussion, namely the bundling of bilateral agreements in the context of a multilateral “Single Undertaking”. For therein lies a hard kernel of critical truth. It is the imbalance between the overall normative, organizational and administrative umbrella provided by the Single WTO Undertaking accepted by all Members, developed and developing, which extends to, legitimates with the aura of multilateralism, and enforces a series of often mean spirited, ungenerous packages of bilateral tariff agreements. This imbalance is compounded of course by the huge economic differentials among the parties. The only veritable arms length negotiations are among the giants – EU, USA and a handful of others. For the rest it is mostly a take-it-or-leave-it affair.

This goes beyond the metaphor of the domestic Standard Form Contract. It would be the equivalent of a Standard Form Contract given the legitimacy and force of a legislative act approved by a parliament without, however, that parliament ever reading its actual content.

It is interesting to explore the legitimacy, both internal and external, of the dyadic, transactional international legal obligation. The key interlinking concepts underlying this mode of command were Sovereign Equality, Consent and *Pacta Sunt Servanda*. Sovereign Equality is critical for the transactional world view since in it is encapsulated the rejection of a community which can impose its will on its members. Consent is, in similar vein, not just a technical condition for obligation, but a reference to status and a signifier of the self-understanding of the (non)system. And *Pacta Sunt Servanda* is not just the indispensable and tautological axiom of obligation, but a signifier of the world of honor in which the equally sovereign understood themselves to be in. Indeed, in our view, the transactional mode of international law in its early historical context owed its deepest roots and claim to legitimacy to the pre-state chivalrous world of feudalism. Although transformed to the State, the vocabulary, rhetoric and values of sovereign equality, consent and *Pacta Sunt Servanda* were picked up almost intact.

There were huge pay-offs for this rootedness of international legal obligations in that pre-modern world of chivalry. There was, first, a confluence of internal and external authority of the State, the legitimacy of each feeding on the other. It was also, paradoxically, a way of actually legitimating war against and subjugation of other States. As in chivalry where only other knights – peers – were legitimate targets for force (subject to ritualistic challenges, etc) the elevation of all States to the formal category of Sovereign and Equal is what allowed the playing out of the real life inequality among States.<sup>24</sup>

The principal legitimacy concern of this “slice” of the international legal system concerns on the one hand the continued centrality of dyadic transactional international law which is situated, on the other hand, within a “normative environment” to which the old formal legitimacy has little traction.

We will only hint at some of the normative problems. One major problem is the confluence between external and internal sovereignty exhibited in the very notion of national interest. There may be some continued currency to national interest in matters of, say, war and peace and consequently in their reflection in things like mutual defense pacts and the like. But no one can today credibly argue that bilateral treaties of the

<sup>24</sup> We do not expect that all will agree with this interpretation. We find some support in Quentin Skinner, “The Foundations of Modern Political Thought”, vol. 2, (The Age of Reformation) Cambridge University Press and Quentin Skinner, *Liberty before Liberalism*, (Cambridge University Press, 1998).

'Friendship, Navigation and Commerce' type of which, say, the United States continues to have a plethora, or the bilateral 'free trade areas' which the European Union has with more than half the countries of the world are a non-contested manifestation of the "national interest". They are agreements rooted in a certain worldview, which vindicate certain internal socio-economic interests. This, in turn, presents two delicate issues: One is the measure of democratic scrutiny, which treaties such as these receive, in developed democracies such as the USA or the EU. We contend that often they receive far less democratic scrutiny than domestic legislation with the same socio-economic redistributive impact. This is certainly quite commonly the case in Europe and not at all infrequent in the USA. The second problem is that Economic giants such as the USA and the EU can impose such Treaties on lesser States not only leaving them with little or no margin of negotiation, but with even less concern to *their* (the would be partner's) internal democratic scrutiny.

### III.2. *The Constitutional and Legislative: International Law as Community*<sup>25</sup>

An interpretation of the legislative and constitutional strata of the geological map yields the much noted, and positively commented upon phenomenon of the emergence, in certain areas, of some form of international community. There are both structural and material hallmarks to the emergence of such community. Structurally we detect the emergence of new types of international organization. Some international organization, say, the International Postal Union, is mostly a mechanism to serve more efficiently the contractarian goals of States. At the other extreme, you take the UN or the EU and you find organizations whose objectives articulate goals a part of which is independent of, or distinct to, the specific goals of its Member States. They are conceived, of course, as goals which are in the interest of the Member States, but they very often transcend any specific transactional interest and are of a "meta" type – i.e. the overall interest in having an orderly or just international community.

Materially, the hallmark of Community may be found in the appropriation or definition of common assets. The common assets could be material such as the deep bed of the high sea, or territorial such as certain areas of space. They can be functional such as certain aspects of collective security

<sup>25</sup> See generally the comprehensive study of Simma, *From Bilateralism to Community Interest in International Law*, *Rec. des cours* 1994, tome IV, vol. 250, 217-384.

and they can even be spiritual: Internationally defined Human Rights or ecological norms represent common spiritual assets where States can no more assert their exclusive sovereignty, even within their territory, than they could over areas of space which extend above their air-space.

Explaining these common assets in contractarian regimes is, at best, unconvincing and at worst silly. One has to stipulate a community which is composed of, but whose objectives and values may be distinct from the specific objectives of, any one of its Members.

It is easier to understand the constitutional and legislative as forms of governance. After all, when we speak of governance we do not refer only to the administrative phenomenon. There is, however, limited explanatory added value, if all we do is to say that international norm setting, through treaties or otherwise, should be adorned with the semantic mantle of governance.

The added value is I believe in a different focus notable in understanding how multilateral lawmaking treaties often impinge on functions of domestic governance, or in turn, lead towards the setting up of international regulatory or management regimes in a way familiar from domestic setting – general legislation creating a logic which ends up with an administrative and regulatory Agency or Department of government.

For examples of the impact on government, one of the most fruitful areas is always derogation regimes. I think the phenomenon is generic: The legal regime itself is “legislative” in nature creating certain obligations for the State which may be implemented through the State’s legislative regime. The derogations involve huge entanglements with domestic governance and administration. The impact of international law here is not in a direct regime of governance taking over from the State but in the impact on the governance functions of the State.

The process from Treaty to Agency is described in the next section of this paper.

In the area of Community, too, there are a myriad of legitimacy problems. We will list briefly only four: the fictions of consent, the closure of exit, the unpacking of the State and, finally, the existence of “Community” without Polity.

The growth in the number of States and the complexity of international legal obligations makes the forms of consent as a means of justifying norms increasingly fictitious, requiring the invocation of presumptions, silence, meta consent and the like. Many of those very norms which were the hallmark of community are often the very ones for which mean-

ingful consent is little more than a fiction. This is particularly true for norms, the validity of which depends on some employment of “custom” or “general principles”.<sup>26</sup>

But this is also the case in relation to many multilateral treaties. Increasingly international regimes, such as, say, the Law of the Sea, the WTO, are negotiated on a Take-it-or-leave-it basis. WTO officials are always ready with the ‘what do you want: sovereign governments signed and ratified this’ pleas. But for most States both the Take it is fictitious and the Leave it is even more. The consent given by these “sovereign” States is not much different to the “consent” that each of us gives, when we upgrade the operating system of our computer and blithely click the I Agree button on the Microsoft Terms and Conditions. One cannot afford to be out, and one cannot afford to leave. The legitimation that comes from sovereignty is increasingly untenable. The ability to chose one’s obligations has gone: The Single Undertaking; the No Reservations Treaty are today increasingly the norm, rather than the exception. It is either all, or nothing, and nothing is not an option, so it has to be all. So even those States where there is a meaningful internal democratic control of foreign policy are obliged, democratically, to click the I Agree button of, say, the WTO or the Law of the Sea.

Further, classical consent was based on a conflation of government with State. That conflation is no longer tenable. As noted, the breakdown in terms of subject matter between what is “internal” and what is “international” means that most international normativity is as contested socially as domestic normativity. The result of international law continuing to conflate government with State is troubling: You take the obedience claim of International Law and couple it with the conflation of government and State which International Law posits and you get nothing more than a monstrous empowerment of the executive branch at the expense of other political estates or an empowerment of those internal special interests who have a better capture of the executive branch.

Finally, despite the “progressive” values with which the turn to Community is normally associated – notably human rights and the environment – the absence of true polity is highly problematic.

Few areas of contemporary international law have been presented as challenging the past and have excited as much rhetoric about transformation as human rights. The “turn” to the individual, the “valorizing” of the

<sup>26</sup> Cf. Tomuschat, *Obligations Arising for States Without or Against their Will*, *rec. des cours*, 1993, Tome IV, vol. 241, p. 195-374.

individual, the “piercing of the statal veil” et cetera. That international law has taken an interest in human rights as it has in the environment is of course an important material development. That it has defined them as common assets is an important structural development. Situating human rights alongside the environment is helpful. For, seen through the prism of political theory, international law deals with humans the way it deals with whales and trees. Precious objects which require very special regimes for their protection. The surface language of international legal rights discourse may be neo-Kantian. Its deep structure is utterly pre-modern. It is a rights notion that resembles the Roman Empire which regards individuals as objects on which to bestow or recognize rights, not as agents from whom emanates the power to do such bestowing. It is a vision of the individual as an object or, at best, as a consumer of outcomes, but not as an agent of process. In one respect the international legal system is even worse than the Roman Empire: International law generates norms. But there are not, and cannot be, a polity and citizens by whom these norms are generated. The individual in International law seen, structurally, only as an object of rights but not as the source of authority, is no different from women in the pre-emancipation societies, or indeed slaves in Roman times whose rights were recognized – at the grace of others.

And, of course, what gives a sharper edge to these issues is the frequent situation of all forms of international obligation in a far more effective and binding enforcement mechanism.

### III.3. *The Regulatory: International Law as Governance*

Finally, interpreting primarily the regulatory dimension of international law, points at the end of the century not to the emergence of World Government (a horrible thought in itself) but something no less otiose: Governance without Government.<sup>27</sup>

<sup>27</sup> Cf. J. Rosenau & E.O. Czempiel (eds.) *Governance without Government: Order and Change in World Politics* (Cambridge University Press, Cambridge, 1992) “... [T]he concept of governance without government is especially conducive to the study of world politics inasmuch as centralized authority is conspicuously absent from this domain of human affairs even though it is equally obvious that a modicum of order, of routinized arrangements, is normally present in the conduct of global life. Given an order that lacks a centralized authority with the capacity to enforce decisions on a global scale, it follows that a prime task of inquiry is that of probing the extent to which the functions normally associated with governance are performed in world politics without the institutions of gov-



What are the hallmarks of international governance?

- The increasing importance of the administrative or regulatory strata of Treaties. There is now increasingly international regulation of subject matter which hitherto was not only within the domain of States but within the domain of the administration within the State.
- There are increasingly new forms of obligation:
  - Direct regulatory obligation where international norm replaces the domestic one. What is interesting here is also to note new forms whereby increasing the obligation of international law is positive in nature, rather than a negative interdiction. Also, increasingly it requires not only obtaining certain results but insists on a specific process in working towards that result.
  - Indirect regulatory norms where the international norm does not replace the government regulatory regime but seriously limits it. The most common example is the discipline of non-discrimination in trade regimes.
  - Governance incentives, transforming to the international regime the US Federal invention of Grants-in-Aid. These can be financial – as is often the case with World Bank or IMF conditions or regulatory – as in the case of the Codex Alimentarius which promises material and procedural advantages to those who follow its norms. The State is free to follow, but it stands to lose a lot if it does not. All but the very rich and powerful can ill afford to say No.
- The emergence of International Civil Service and International Management
- International Proceduralization and international insistence on domestic proceduralization

ernment” (p.7). The Governance without Government is associated with the literature, at times overstated, about the “disappearance” or weakening of the classical Nation-State or in the most minimalist version, its loss of total domination of international legal process. We have profited from and acknowledge a debt to, H. Spruyt, *The Sovereign State and its Competitors*, Princeton U.P., 1995; Spruyt, *The Changing Structure of International Law Revisited*, EJIL 1997, p. 399-448; Schachter, *The Decline of the Nation State and Its Implications for International Law*, Columbia Journal of Transnl. L. 7 (1997); Ruiz-Fabri, *Genèse et disparition de l'Etat à l'époque contemporaine*, AFDI 153 (1992).

<sup>28</sup> The “Regulatory” does not fully overlap with International Organizations as such. Nonetheless, some of the burgeoning literature on the legitimacy and democracy of inter-

- An invasion or subtle reversal of internal order of values – especially in the law of justification, burdens of proof and legal presumptions

Here, too, what gives a sharper edge to governance, and to the normative problems that we will shortly explore, is the situation of these obligations and regimes and a much more effective enforcement regime.<sup>28</sup>

There is, thus, governance, but critically there is no government and no governed. It is Governance without government and without the governed – i.e. polity. At the international level, we do not have the branches of government or the institutions of government we are accustomed to from Statal settings. This is trite but crucial. When there is governance it should be legitimated democratically. But democracy presumes demos and presumes the existence of government. Whatever democratic model one may adopt it will always have the elements of accountability, representation and some deliberation. There is always a presumption that all notions of representation, accountability, deliberation can be grafted on to the classical institutions of government. Likewise, whatever justification one gives to the democratic discipline of majority rule, it always presumes that majority and minority are situated within a polity the definition of which is shared by most of its subjects. The International system form of governance without government and without demos means there is no purchase, no handle whereby we can graft democracy as we understand it from Statal settings on to the international arena.

Moreover, the usual fall-back position that this legitimacy may be acquired through democratic control of foreign policy at the State level – loses its persuasive power here even more than in relation to international community values. Meso – and micro – international regulation is hardly the stuff of effective democratic control by State Institutions. The fox we were chasing in the traditional model was the executive branch – our State government. In the universe of transnational regulation, even governments are no longer in control.

Democratic theories also creak badly, be they liberal or neo-liberal, consociational or even Schumpeterian elite models when attempting to

national organizations is most helpful in understanding the democratic and legitimacy challenges to which the regulatory stratum gives rise. See Eric Stein, *International Integration and Democracy: No Love at First Sight*, 95 Am. J. Int'l Law 489 (2001); Esty, *The World Trade Organization's Legitimacy Crisis*, 1 World Trade Review (2002); Howse, "Adjudicative Legitimacy and Treaty Interpretation in International Trade Law: The Early Years of WTO Jurisprudence" in Joseph H.H. Weiler ed., *The EU, the WTO and the NAFTA: Towards a Common Law of International Trade* (2000).

apply them to these forms of governance. Who is Principal, who is Agent? Who are the stakeholders? We may define demos and demoi in different ways. But there is no convincing account of democracy without demos. Demos is an ontological requirement of democracy. There is no demos underlying international governance, but it is not even easy to conceptualize what that demos would be like. Network theory and constructivism are helpful in describing the form of international governance and explain how they work. But if anything they aggravate the normative and legitimacy dilemmas rather than solve them.

The “democracy” issue for International Law is no longer whether there is a right to democracy – which would, for example justify denial of recognition, or even intervention to restore a denial of democracy through a coup. Instead the issue is how in the face of International community which “appropriates” and defines common material and spiritual assets and in the face of international governance increasingly appropriates administrative functions of the State, it can establish mechanisms which, in the vocabulary of normative political theory, would legitimate such government. If an answer is not found to this, the huge gains attained in the systemic evolution of lawmaking and law enforcement may be normatively and even politically nullified.

#### IV. CONCLUSION: THE TRAGEDY OF DEMOCRACY AND THE RULE OF LAW IN THE INTERNATIONAL LEGAL ORDER

We end by returning to our point of departure: The nexus between the Rule of (International) Law and Democracy.

Over much of the 20th Century there has been a considerable widening and deepening in the scope of the international legal order. We tried to capture such widening and deepening by our reference to the transactional, the communitarian and the regulatory dimensions of international command modes buttressed by a similar widening and deepening of compliance mechanisms. We argued that the concept of international governance in important, if discrete, areas of international life is fully justified, albeit governance without government. We further argued that both a change in sensibility towards the legitimation of power generally and the turn to governance of international law create a considerable normative challenge to the international legal order in its classical (transactional) and more modern forms (communitarian and regulatory). And yet, we

also argued that in all these spheres the challenge has been neither fully appreciated nor fully met. What's more, given that the vocabulary of democracy is rooted in notions of demos, nation and State, there is no easy conceptual template from the traditional array of democratic theories one can employ to meet the challenge. A simplistic application of the majoritarian principle in world arenas would be normatively ludicrous. It is not a question of adapting national institutions and processes to international contexts. That could work in only limited circumstances. What is required is both a rethinking of the very building blocks of democracy to see how these may or may not be employed in an international system which is neither State nor Nation and to search for alternative legitimating devices which would make up for the non applicability of some of the classical institutions of democracy where that is not possible.

We speak about the tragedy of the international legal order in an altogether non-sentimental way. On the one hand, as a matter of our own values, we believe that much of the widening and deepening of international law over the last century, especially in the accelerated fashion of the last few decades, has been beneficial to mankind and has made the world a better place in which to live for a large number of persons.<sup>29</sup> We also believe, as indicated in the premises of this essay, that as in domestic situations where the rule of law is a necessary element and a condition for a functioning democracy, the same, *mutatis mutandis*, would be true for the international system. From this perspective we would regard as regressive a call for a wholesale dismantling of the international legal regime.

On the other hand, we believe too that in the international sphere as elsewhere the end can justify the means only so far. That a legitimacy powerfully skewed to results and away from process, based mostly on outputs and only to a limited degree on inputs, is a weak legitimacy and sometimes none at all.

The first sentiment would be a call for States, their internal organs (notably courts) and other actors to embrace international normativity. The second sentiment would be a call to the same agents to treat international normativity with considerable reserve. The traditional opposition to "internationalism" came from nationalism and was conceptualized as a tension between national sovereignty and international law. The

<sup>29</sup> There is, of course, much to qualify this statement. There are many international regimes, notably in the economic area, which overlook, compromise or even damage the interests and claims for justice of many people and groups. Universal justice, however it may be defined, is still far from being achieved.

opposition we are alluding to is, instead, not a concern with sovereignty – at least not with the classical sovereignty of the State. It takes the international legal order as an *acquis* – but it is unwilling to celebrate the benefits of that *acquis* when gained by a disenfranchisement of people and peoples. There is, thus, in our view a deep paradox in the spread of liberal democracies to an increasing number of States and populations around the world. This spread does not automatically go hand-in-hand with a normative call for a respect for international norms and for various degrees of constitutionalization of international regimes at least among and within the group of liberal States. It also means calling into question of those very norms by those very States in the name of that very same value, liberal democracy.

## THE GOVERNANCE OF GLOBALISATION: LEGAL PERSPECTIVES – A VIEW FROM AFRICA

NICHOLAS JOHN McNALLY

### *Introduction*

The general situation in Africa south of the Sahara has continued to deteriorate since I wrote a note on 'Democracy in Africa' for the Academy's Workshop on Democracy in December 1996. See *Miscellanea I – Proceedings of the Workshop on Democracy*, published by the Academy in 1998.

Mats Lundahl of the Stockholm School of Economics, in a paper presented in Capetown in December 2001, provides a useful perspective on Africa as at that date in the following terms:

Excluding South Africa, the total income of sub-Saharan Africa amounts to a little more than that of Denmark – to be split among forty-eight nations (World Bank, 2001, pp. 274-5). The performance of most African economies during the last few decades leaves a lot to be desired. In 1950 GNP per capita for Africa South of the Sahara amounted to 11% of that of the OECD countries. In 1989 the figure had fallen to 5% (World Bank, 1991, p. 14). In terms of growth, Africa has performed a great deal worse than Latin America or Asia. During the 1980's GDP in the African countries declined by, on average, 1.3% per annum (Collier and Gunning, 1994, p 64). Today, average GDP per capita in Africa is lower than in 1970 (World Bank, 2000, p. 8).

In my own country, Zimbabwe, a once flourishing economy has been virtually destroyed over the last three years. Some modern writers on geopolitics, particularly right-wing American Republicans, have toyed with the idea of simply ignoring Africa, allowing it to collapse 'while the rest of the planet averts its gaze' (Philip Bobbitt 'The Shield of Achilles: War, Peace and

the Course of History'. And see also the essay by Robert Cooper 'The Post-Modern State and World Order' in 'Re-Ordering the World: The Long-term implications of September 11th' published by Foreign Policy Centre).

*The Perception of Africa by the Church*

In the face of all this we need to remind ourselves of basic Catholic philosophy. It was a fundamentally inspired policy decision of the early Church that Christ came to save, not merely the Jews, but all men, Jews, Greeks and pagans alike. St. Paul, in his letter to the Ephesians (3:2-3a,5-6) said:

This mystery that has now been revealed through the Spirit to his holy apostles and prophets was unknown to any men in past generations; it means that pagans now share the same inheritance, that they are parts of the same body, and that the same promise has been made to them, in Christ Jesus, through the Gospel.

And St. Peter, in a wonderfully expressive phrase (Acts 10:34) wrote to Cornelius and his household:

The truth, I have now come to realise, is that God does not have favourites, but that anyone, of any nationality, who fears God and does what is right, is acceptable to him.

The Church has consistently stood by Africa. Ever since Pius XII's Encyclical *Fidei Donum* in 1957 the Popes have called attention to the division between the developed and the developing worlds. *Populorum Progressio*, *Mater et Magistra* and *Gaudium et Spes* have underlined the moral obligations of the developed world in relation to such questions as aid, development, the functions of the IMF, the World Bank and other International Agencies. Particular emphasis has been laid on the negative effects of western protectionism, particularly in the areas of agriculture and textiles.

I wonder if it will not be seen, in a hundred years or so, that the trade policies of the West vis-à-vis the developing world have been as evil as we now perceive slavery and apartheid to have been.

Africa, therefore, cannot be written off. It is necessary to address positively and constructively the questions that arise when one considers the problems, and in particular the economic problems of the African continent.

Why is Africa backward? It has been a matter for endless speculation, as to why Africa has lagged behind the rest of the world. Certainly the abundance of land and natural resources may at first have inhibited innovation. But for one who has brought up a family in Zimbabwe in multi-racial

schools, it is clear that there are no significant differences in intellectual abilities or scholastic success between the races. What then are the reasons for Africa's backwardness?

Slavery and colonisation have fashionably been blamed. It can be argued that these are the results rather than the causes of that backwardness. In any event the major impact of slavery was a long time ago and the colonial era lasted for less than a century. The exception is South Africa, where colonisation lasted from 1652 to 1990. Is it coincidence that South Africa is the continent's economic giant? The rest of Africa has had between thirty and fifty years to recover, and, as I have indicated earlier, average GDP per capita in Africa today is less than it was in 1970. With tiny and isolated exceptions like Botswana and Mauritius, development has been negative. There are signs of recovery in Ghana, Uganda, Mozambique and Angola. But in each case it is recovery after disastrous collapse. There is no doubt that the terrible scourge of HIV/AIDS has since the 1980s worsened the situation, but we cannot pretend that without AIDS all would have been well.

I am not sure that it is profitable to speculate on the reasons for Africa's backwardness. Nor do I believe it to be useful for Africa to spend too much time looking for people to blame for our present plight. But I believe it may be instructive to look at the structure of society in the continent today, and at the culture which underpins that structure.

### *The Structure of African Society*

African Society is totally different from modern Western society. Generally speaking there is a small, westernised urban elite, who are in every way capable of living what one may call a westernised existence and of taking part in the maintaining of a modern economy. Perhaps the classic representative of this group is the current Secretary General of the United Nations, Kofi Annan. But alongside them is a huge, illiterate and impoverished peasantry, whose lives are organised along tribal lines. They live in a subsistence economy. They do not comprehend economics. Their leaders are appointed or elected, not by reason of their economic programmes, but in accordance with long-established and often cumbersome traditions. They live often in conditions of poverty not easily understood by Westerners. They live according to simple customary legal systems in which there is no hint of such sophisticated concepts as the separation of powers, the independence of the judiciary, multi-party democracy, or even, in its fullest sense, the rule of law.



This is, of course, a thumb-nail sketch. There are groups who link the two extremes. On the one hand, the urban poor, on the other, the richer peasants, often organised into communities growing a particular crop. But it is sufficient for my purposes to leave it at that.

### *African Culture*

I do not wish in any way to detract from the richness of African culture in such areas as music, religion, art, sculpture, inter-personal relationships and the recognition of the dignity of the individual. I am concerned here with the concept of development, and with the influence of culture on development. I rely on Jacques Barzun's work 'From Dawn to Decadence' for support for the proposition that a particular culture, however rich in other ways, may be inconsistent with, or even hostile to economic development. He gives as an example (p. 106) 16th Century Spain, where the culture of the hidalgo kept Spain poor, and indeed increased its poverty by means of inflation, despite the enormous inflows of wealth, largely in the form of silver coming in from the New World (South America) in the great annual convoys of the Silver Fleet. The cultures that have developed out of the social structures in Africa which I have so briefly described have not been cultures of economic development. The politico/religious structures have tended to be hostile to personal initiative. There has been a discouragement of the idea of personal accountability for one's own actions. Misfortunes are blamed on the anger of the ancestors, rather than on bad planning or lack of foresight. Priorities in life are utterly different from those in the West. This cultural outlook is at the root of the spectacular incompetence which is often the hallmark of African administration, and is more destructive even than corruption.

### *African Political Cultures*

In societies which can fairly be described as feudal or even pre-feudal, because of the economic relationships between people and their leaders, many African politicians have found the way to success has been by harnessing the discontent of the masses of the impoverished. A culture of violence has developed. Unemployed youth, faced with the boredom of village life, can easily be recruited, armed with AK 47s, and persuaded, with remarkably little effort, to carry out with enthusiasm the most unspeakable cruelties.

The fact that the President of South Africa, Thabo Mbeki, speaks of an 'African Renaissance' supports the idea that we are presently in a pre-renaissance culture. And if our social structures are, as I have suggested, in many ways even pre-feudal, it will be apparent that one cannot simply democratise Africa by a process of giving everyone a vote. (The Americans will, I suspect, soon learn this in Iraq, although the cultural impediments to democracy in the Middle East are quite different from those in sub-Saharan Africa.) Education and cultural development must go hand in hand with democratisation and economic development. It will not happen quickly.

### *Africa and Globalisation*

What has all this to do with globalisation? The point that I am trying to make is that, in reality, Africa is not ready to cope with the challenges of globalisation, and will inevitably be left behind. For the foreseeable future Africa will need to be treated with special care. Africa is entitled to demand that there be a constant review of the terms of trade by which the West protects its agricultural and textile industries in particular, to the great detriment of Africa. But apart from that, more needs to be done, and is being done, by the people of Africa themselves.

Africa is taking active steps to restructure itself to cope with globalisation, and I propose to conclude my commentary by drawing attention to two major developments. They are the re-organising of the former Organisation of African Unity into the new African Union (AU) and the establishing of the New Partnership for Africa's Development (NEPAD).

### *The African Union*

At the extraordinary summit of the Organisation of African Unity (OAU) in Sirte, Libya, in September 1999, African heads of state and government decided to form the African Union. This was intended to be more than a simple change of name. The OAU had been ineffective, and built around the principle of national sovereignty and non-interference in the affairs of member states. Now, under the influence of Libya, the idea of a United States of Africa began to catch the imagination of the leaders, though many were unconvinced. There is provision in the Charter of the African Union for the ultimate creation of an African Parliament, an African Court and a common African currency. The AU is seen as a more activist organisation than the OAU, readier if necessary to intervene in the internal affairs of member

states. In July 2002, in Durban, South Africa, the OAU formally ceased to exist and the AU took its place. Although the founding document of the AU was written in 1999, it was an outline agreement without operational and procedural rules for the eighteen AU organs. So far, to quote Ross Herbert of the South African Institute of International Affairs,

The Assembly of Heads of State, the Executive Council and the Permanent Representatives Council have been established. The Peace and Security Council (PSC) and the Pan-African Parliament documents have been drafted, but await signature, ratification and funding before they become operational. The AU Commission, its operational bureaucracy, will operate on an interim basis this year (2002) but contentious negotiations are still ongoing over its structure and which if any of the old OAU staff will be transferred to the AU.

Twelve other AU organs remain to be defined: the Court of Justice, African Central Bank, African Monetary Fund, African Investment Bank, the Economic, Social and Cultural Council (to receive input from NGOs and civil society) and seven specialised sectoral technical committees of the Executive Council. It remains to be seen whether the AU will live up to the expectations of its founders. It may well be that its success or failure will depend upon the success or failure of its major brain child, the New Partnership for Africa's Development (NEPAD).

### *NEPAD*

NEPAD is, so far, little more than a document drafted largely in the corridors of power in Pretoria, South Africa, approved by heads of state in Abuja, Nigeria, in October 2001, and 'sold' to the African Union members as a constructive way of engaging the forces of globalisation and as a road-map to the goal of the African Renaissance. The partnership envisaged is one between Africa and the developed world. The latter will offer aid and investment, debt relief and trade access. The former will undertake to reform itself, primarily through what is known as the 'Peer Review Mechanism'. I quote Ross Herbert again:

NEPAD is most often in the press likened to a 'Marshall Plan' for Africa, but it is substantially more. The Marshall Plan was a straightforward effort to reconstruct what was. NEPAD's mission is largely to construct something that has not yet been, promising to tackle in the process the full range of Africa's problems. Its overriding goal is to end Africa's underdevelopment and poverty. It is part programme, part philosophy and part shopping list...

In presenting NEPAD to the South African Parliament, President Thabo Mbeki said:

It is a call for a new relationship of partnership between Africa and the international community, especially the highly industrialised countries, to overcome the developmental chasm that has widened over centuries of unequal relations. In this regard, we are not asking for favours but for fairness and justice, a better life for Africans and a secure future for all humanity. This programme is premised on African ownership, African control of the projects and programmes, with African leaders accepting openly and unequivocally that they will play their part in ending poverty and bringing about sustainable development. We are agreed that we must strengthen democracy on the continent; we must entrench a human rights culture; we must end existing conflicts and prevent new conflicts. We have to deal with corruption and be accountable to one another for all our actions.

Clearly these measures of ensuring democracy, good governance and the absence of wars and conflicts, are important both for the well-being of the people of Africa and for the creation of positive conditions for investment, economic growth and development.

#### *The African Peer Review Mechanism (APRM)*

The most striking feature of NEPAD is the Peer Review Mechanism. This is the administrative machinery by means of which member states of the African Union will voluntarily submit themselves to periodic review by a panel of Eminent Persons, will facilitate such reviews, and will be guided by agreed parameters for good political governance and good economic and corporate governance. An elaborate structure has been proposed and agreed. How it will be funded, how it will be staffed, and to what extent member states will submit to such reviews remains to be seen. For many people the situation in Zimbabwe is the first and most immediate test for the APRM.

#### *Conclusion*

NEPAD is Africa's answer to globalisation. Cynics may say it will never get off the ground. But its value lies primarily in the fact that it is a road-map. It sets up an ideal, a target, for African leaders to aim at. Even if the

ideal is not achieved, partial success may redefine the way African leaders think about themselves and their objectives. And finally, the document itself is a focus for attention by the developed world and international agencies, concentrating their endeavours on the areas in which Africa seeks development investment and on the quid pro quo of improved governance which they are entitled to demand.

## DEMOS, NOMOS AND GLOBALISATION

PAOLO G. CAROZZA

It is a great privilege to comment on a paper which, like so much of Professor Weiler's work, is brilliant not only in its intellectual scope but also in the underlying humanity of its vision. His basic thesis is indisputable. International law is indeed an exercise in governance that increasingly generates problems of legitimacy, especially because it governs without the ontological premises of democracy – it has no government and no *demos*. In the face of this problem, Weiler urges us to seek 'alternative legitimating devices'. I would like to offer a modest comment on this thesis by making three observations about some of the basic principles that could inspire any such 'alternative legitimating devices' for international law, using a few examples of developments in international law as points of departure.

First, Weiler shows us how the international legal order has increasingly undermined the classical Westphalian foundations of the sovereign state. International law replaces the governance functions of the state, 'unpacks' it and makes sovereign consent a fiction by foreclosing any real possibility of exit or of resistance to assimilation. In many respects, this may not be a bad thing, for the reasons that Weiler describes in the first part of his paper. The international legal system has in many ways served as a means to avoid the revolutionary social changes of democracy and constitutionalism and to use external sovereignty as a shield for maintaining internal oppression. The cooptation and corruption by sovereign states of the otherwise powerful idea of universal human rights is a prime example of this phenomenon.

But certainly something is lost also in bypassing the sovereignty of the state. Among them is the protection of weaker, smaller and poorer states. Weiler points out several examples of how 'governance without government' exacerbates inequalities on the global stage. For those states, sovereignty has represented their peoples' desire for freedom and the possibility of self-gov-

ernance. Even if the fulfillment of those aspirations has often been mythical in practice, still it has been the smaller and poorer states (in Latin America and Africa, in particular) that in the post-World War II era most assiduously clung to 'sovereignty' and have had the most to lose by its erosion.<sup>1</sup>

Thus, one of the normative challenges of alternative legitimating devices is to arrive at rules and structures that protect and assist the integrity of smaller units to seek their own ends in freedom. This is not, in a globalized world, the protection of sovereignty as such, but rather the protection of that which sovereignty had the possibility of serving in a positive way. This is, of course, just another way of saying that alternatives to classical international legal norms must be consistent with the idea of subsidiarity.<sup>2</sup> They must help smaller units govern themselves in a way that respects their freedom yet integrates them into the larger family of nations. There are some signs that this can, in fact, happen. For instance, the recent development of international norms against corruption<sup>3</sup> or international law's recent attention to processes of transitional justice,<sup>4</sup> such as truth and reconciliation commissions, can be understood as means of assisting local societies to govern themselves.

Even if such mechanisms were to flourish, however, protecting local knowledge and freedom will necessitate transnational norm-generation and enforcement in the global order, too. As Weiler points out, this will no longer occur through traditional sources (including from the United Nations, one might add in these days when that institution's credibility has been shaken severely). In fact, a look at recent international law will in fact show us that there *are* sources operating already now that generate norms in ways outside of positivist orthodoxy. For example, private actors are heavily involved in creating law or law-like norms in areas as diverse as banking regulation, labor rights and commercial contracts.<sup>5</sup> Non-governmental organizations now play a critical role in the genera-

<sup>1</sup> See, e.g., Symposium, 'International Law in the Americas: Rethinking National Sovereignty in an Age of Regional Integration', 19 *Houston Journal of International Law* (1997).

<sup>2</sup> See Paolo G. Carozza, 'Subsidiarity as a Structural Principle of International Human Rights Law', 97 *American Journal of International Law* 38-79 (2003).

<sup>3</sup> See, e.g., International Legal Developments in Review, 2001: Anti-Corruption International Legal Developments, 36 *International Lawyer* 589 (2002).

<sup>4</sup> See, e.g., Neil J. Kritz, ed., *Transitional Justice*, Vols. I-III (United States Institute of Peace Press 1995).

<sup>5</sup> See, e.g., Gunther Teubner, ed., *Global Law Without a State* (Aldershot Publishing 1997).

tion of international norms; to cite only one of many examples, the recent international convention on land mines would never have come into existence without the intense involvement of NGOs.<sup>6</sup> A third example of new sources of norms comes from the role of judiciaries in constitutional democracies. Increasingly, judges are engaged in transnational normative dialogue with one another, drawing upon ideas and practices from abroad even where traditional sources of positive international law might not apply; this is especially (though not exclusively) true in the area of human rights.<sup>7</sup> All of these examples point to ways in which the actors and sources of international norms in a globalized order are changing and expanding beyond the boundaries of sovereign states operating through traditional consent-based international law.

Such developments will continue, if for no other reason than to fill the normative gap that Professor Weiler has acutely identified for us. In light of Professor Weiler's analysis, the question cannot be whether such new actors and processes are needed or whether they are to be resisted in favor of returning legal authority to more traditional sovereign sources. Rather, we must begin by recognizing that the new mechanisms for norm generation give rise to a further, common problem: all of them *either* are capable of becoming ways to privilege certain powerful political and economic elites transnationally, thus intensifying the legitimacy problems of global governance, *or* they can become vehicles for recapturing governance and enhancing the possibility of democratic legitimacy to at least a small degree. The difference between these two paths can, I believe, be understood to turn on the question of *solidarity*. That is, do the new processes and actors in international law genuinely aim at promoting the good of the other, or do they instead seek to project and impose self-interested schemes? Are they acting principally in the service of ideology (whether one of profit or of politics), or in the service of the 'human face' (as Archbishop Martino, echoing John Paul II, put it this morning)? There is at least some reason to hope that the latter can be true; the great success of such international NGOs as the Association of Volunteers in

<sup>6</sup> See Kenneth Anderson, 'The Ottawa Convention Banning Landmines, the Role of International Non-Governmental Organizations and the Idea of International Civil Society', *European Journal of International Law*, 11 *European Journal of International Law* 92 (2000).

<sup>7</sup> See Paolo G. Carozza, '"My Friend Is a Stranger": The Death Penalty and the Global Ius Commune of Human Rights', 81 *Texas Law Review*, 1031-1089 (2003).



International Service (AVSI)<sup>8</sup> or the World Youth Alliance<sup>9</sup> suggests that the peoples of the world are thirsting for ways to engage the politics and economics of globalization by placing the good of the human person, in the fullest sense, at the center of their work.

This brings me to my third and last observation. Subsidiarity and solidarity can only be intelligible principles if we can posit, and identify, the existence of some universal *common good* among the peoples of the world. Regarding this point, I believe, Professor Weiler gives us his most significant contribution. In his analysis, we can see very clearly that the birth of such a common polity is fundamentally a question of the existence of a people, a *demos*. To put it another way, the root of the problem of governance that we are discussing here is that there can be no law without a people, no *nomos* without *demos*. One might say that Weiler's work suggests to us the priority of Abraham over Moses, father of a people (indeed of the nations, in the plural) over the lawgiver.

The implications of this simple, yet profound, insight are multiple. Where will the unity of the nations, the *demos*, come from? First, like Abraham, we must first allow ourselves to be generated by an awareness of dependence, of belonging on Another, not just in the sense of the unity of humankind but also in the sense of a transcendent good that is the source of all our common humanity. Second, that in turn suggests that the role of religion is vital. Rather than being pushed to the margins of dialogue about globalization, because it is deemed either irrelevant or divisive, religion must be brought to the center.<sup>10</sup> And third, the problem of governance, understood as the problem of being generated as a people and of belonging, must be understood to be a question of education – the education of the human heart to be open to the mystery of the human person.<sup>11</sup> This is the potential value of the transnational language of human rights, for example: it can be a source (though of course not the only one) of education about the basic dignity of the human person. Like Bartolomé de Las Casas did in the 16th century,<sup>12</sup> we can confront the problem of globalization and

<sup>8</sup> See <http://avsi.org/avsi/en/>.

<sup>9</sup> See <http://worldyouthalliance.org/>

<sup>10</sup> Cf. Michael A. Casey, 'How to Think About Globalization', 126 *First Things* 47-56 (October 2002).

<sup>11</sup> Cf. Luigi Giussani, *The Risk of Education* (Crossroad Publishing 2001).

<sup>12</sup> See Paolo G. Carozza, 'From Conquest to Constitutions: Retrieving a Latin American Tradition of the Idea of Human Rights', 25 *Human Rights Quarterly* 281-313 (2003).

its discontents today by reminding one another of the question that the life of every person poses anew for all of us, perhaps especially the lives of those who may seem most radically Other.<sup>13</sup>

In conclusion, I would like to add a short word here about the place of the United States in this adventure. Obviously, today that role is deeply contested, both in our conversation here and even more in the world outside these walls. Yet, seeing the problem of globalization as one of recognizing the transcendent dimensions of the human person, I think we should acknowledge that the United States can play a distinctively important part. It is a country founded fundamentally on the ideal of the human desire for freedom; it is almost alone in the developed world in the breadth of its openness to religious belief; its ideals and its laws are rooted in the priority of the individual person over the state. That is not to say that the United States is without fault, that its role is exclusive, or that these values are not present in other places and cultures as well. But it does mean that we should not be as dismissive of the ideals that America represents as has been fashionable these days, here and elsewhere. Addressing the formidable challenge of 'governance without government' will depend on it.

<sup>13</sup> Cf. Emmanuel Levinas, *Entre Nous: Thinking-of-the-Other* (Columbia University Press 2000).

# SUBSIDIARITÄT UND SOUVERÄNITÄT IN ZEITEN DER GLOBALISIERUNG

PAUL KIRCHHOF

## I. DAS BEDÜRFNIS DES MENSCHEN: NÄHE UND WEITE ZUGLEICH

Der Mensch ist selbstbestimmt, als Person zur Freiheit begabt, zugleich aber auf die Gemeinschaft als eine Bedingung seiner Existenz und freiheitlichen Entfaltung angewiesen. Das christlich geprägte Verständnis moderner Verfassungsstaaten sieht jeden Menschen als Ebenbild Gottes, spricht ihm deshalb individuelle Würde und dementsprechend ein Recht auf Freiheit zu. Andererseits kann der Mensch sich ohne Gemeinschaft nicht entwickeln, nicht in Freiheit entfalten, nicht einmal aus sich heraus seine Existenzbedingungen sichern. Er wächst in der Mutter heran, braucht mit der Geburt Ernährung und Zuwendung, verdankt den Eltern seine Sprache, erfährt dann in Familie, Schule und Ausbildung die Grundprinzipien von Begegnung, Gemeinschaft und Leistungsverpflichtung, stützt sich in seinem Beruf auf ein System der Arbeitsteilung, in seinem Erwerbsstreben auf Marktwirtschaft und Versorgungssysteme, erwartet bei Krankheit und Not die Hilfe anderer und beansprucht bei Altersgebrechlichkeit elementare Lebenshilfe.

Zudem baut individuelle Freiheit und Persönlichkeitsentfaltung auf eine Gemeinschaftsordnung, die den Hang des Menschen zu Willkür und Übermaß mäßigt, das Recht als Kultur des Maßes sichert, damit inneren und äußeren Frieden schafft, die Menschen als Partner und nicht als Gegner in Pflicht nimmt. Dieses Anliegen einer friedensichernden Ordnung ist der Ursprung moderner Staaten. Die gesellschaftlichen Ordnungen des menschlichen Zusammenlebens werden daran gemessen, ob sie dem einzelnen Menschen den Freiheitsraum belassen und sichern, der ihn in seinen persönlichen Begabungen, individuellen Kräften und gesellschaftsbezogenen Verantwortlichkeiten zur Wirkung bringt. Dieses ist der Ausgangsgedanke

der Enzyklika *Quadragesimo Anno*,<sup>1</sup> der Lehre von den universalen Menschenrechten<sup>2</sup> und Grundlage der demokratischen Rechtsstaaten.<sup>3</sup>

Die Wirklichkeit von Freiheit und Gebundenheit verändert sich je nach der Dichte der Gemeinschaft. Wer allein auf sich selbst angewiesen ist, wird oft in Freiheit verhungern. Wer sich gänzlich der Gemeinschaft ausliefert, wird seine Individualität und Freiheit in wirtschaftlicher Abhängigkeit und dem Zeitgeist verlieren. Deshalb sucht der moderne Verfassungsstaat jedem Menschen einen verlässlichen Rechtsrahmen zur Wahrnehmung seiner Freiheit zu bieten, ihm die ökonomischen Grundlagen individueller Freiheit in einem wirtschaftlichen Existenzminimum zu sichern, die Bedingungen der Freiheit in Religion und Kunst, Information und Meinungsäußerung, Beruf und Erwerbstätigkeit zu fördern und zu verbessern. Diese Verantwortung ist gegenwärtig auf 191 Staaten dieser Welt aufgeteilt. Soweit diese Staaten Demokratien sind, stützen sie sich jeweils auf ein Staatsvolk, eine Gemeinschaft des kulturbedingten Zusammenhalts, gemeinsamer wirtschaftlicher Anliegen und eines Gemeinschaftswillens zum Setzen und Durchsetzen von Recht.

## II. VERLUST AN STAATLICHKEIT DURCH GLOBALISIERUNG?

### II.1. *Lockerung der Lebensbedingungen*

Verantwortlichkeit und Macht der Staaten zur Gestaltung der individuellen Lebensbedingungen werden allerdings gegenwärtig deutlich gelockert und beginnen sich teilweise im Globalen zu verlieren. Wirtschaftsunternehmen wirken auf weltoffenen Märkten und haben die Grenzen einer „National“-Ökonomie, einer „Volks“-Wirtschaft längst über-

<sup>1</sup> Sozialenzyklika *Quadragesimo Anno* von Pius XI., 1931, Nr. 79/80.

<sup>2</sup> Internationaler Pakt über bürgerliche und politische Rechte (IPBürgR) vom 19.12.1966, BGBl. 1973 II, S. 1534; *Louis Henkin* (Hrsg.), *The International Bill of Rights*, 1981; *Gerhard Östreich*, *Geschichte der Menschenrechte und Grundfreiheiten im Umriß*, 2. Aufl., 1978.

<sup>3</sup> *Eberhard Schmidt-Aßmann*, *Der Rechtsstaat*, in: Josef Isensee/Paul Kirchhof (Hrsg.), *Handbuch des Staatsrechts der Bundesrepublik Deutschland*, Bd. I, 2. Aufl., 1995, § 24, insbesondere Rdnr. 25 („Raum, um ‘zu sich’ zu kommen“); *Hans Heinrich Rupp*, *Die Unterscheidung von Staat und Gesellschaft*, in: Josef Isensee/Paul Kirchhof (Hrsg.), *Handbuch des Staatsrechts der Bundesrepublik Deutschland*, Bd. I, 2. Aufl., 1995, § 28; *Josef Isensee*, *Subsidiaritätsprinzip und Verfassungsrecht*, 1968.

schritten; einige weltweit tätige Wirtschaftsunternehmen sind mächtiger als Staaten. Die Staatsgrenzen werden offener für die Reisenden, für den Austausch von Kunst und Wissenschaft, auch für Immigranten und Asylsuchende. Die durch moderne Technik verbreiteten Nachrichten nehmen Staatsgrenzen schlechthin nicht zur Kenntnis. Dadurch wird auch das grundsätzlich jedermann gleich treffende, unausweichliche Recht zu einer gestaltbaren Alternative. Der Unternehmer weicht in ein anderes Land aus, wenn er die Regeln über betriebliche Mitbestimmung als zu großzügig, eine nationale Steuerlast als zu drückend, die Zulassungsbedingungen für ein Lebensmittel als zu anspruchsvoll empfindet. Er macht Betriebsgründungen und Investitionen vom rechtlichen und ökonomischen Entgegenkommen des Staates abhängig. Staatliches Recht teilt nicht mehr Pflichten und Berechtigungen gleichheitsgerecht zu, sondern sieht sich zu einer kooperativen Rechtsetzung veranlasst, deren Wirksamkeit letztlich auch vom Willen des Betroffenen abhängt.

Die Offenheit der modernen Welt stellt die Staaten vor die Aufgabe, die Balance zwischen der Geborgenheit in der konkreten Lebenswelt und der Offenheit für Reichtum und Vielfalt dieser Erde, also zwischen Nähe und Weite wiederherzustellen. Unsere globale Welt gewinnt in der Weltsprache des Englischen ein gemeinsames Verständigungsmittel für Wirtschaft, Politik und Kultur. Zugleich aber werden gegenwärtig mehr als 5.000 Sprachen und damit mehr als jemals in der Sprachgeschichte zuvor gesprochen.<sup>4</sup> Der Mensch scheint das Bedürfnis zu haben, seine Verständigungsmöglichkeiten weltweit in einer Sprache zu globalisieren, seinen vertrauten Kulturbereich aber gleichzeitig in vielen Einzelgesprächen zu individualisieren.

Das Privateigentum entwickelt sich in der Globalisierung vom Verantwortungseigentum zum anonymen Kapitaleigentum. Während die herkömmlichen Eigentümerfreiheiten von einem Unternehmer wahrgenommen werden, der mit seinem guten Namen und seinem Kapital seine Leistung vor Kunden, Arbeitnehmern und Vorlieferanten verantwortet, eilt das anonyme Fondskapital in Sekundenschnelle um den Erdball, platziert sich an der Stelle mit der größten Renditeerwartung, mag sein Geld dort Waffen oder Bücher produzieren.

Schließlich ist die Demokratie in ihrer parlamentarischen Mitte gefährdet, weil ein Großteil der Rechtsentscheidungen von den unmittelbar gewählten staatlichen Parlamenten in inter- und supranationale Organisationen

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<sup>4</sup> Hans Maier, *Die vielen Sprachen und die Eine Welt*, 1990, S. 11 f.

abwandert und dort folgerichtig von Exekutivorganen wahrgenommen wird. Eine Demokratie ohne Entscheidungsmitte im Parlament aber verdient ihren Namen nicht.

## II.2. *Schwächung der rechtlichen Werteordnung*

Deshalb muss die wachsende Offenheit unseres Lebens mit einer stärkeren Verwurzelung der Menschen in ihrem Heimatstaat, ihrer vertrauten Rechtskultur, ihren guten Gewohnheiten einhergehen. Auch hier sucht der Mensch in seinen Elementarbedürfnissen zugleich Weite und Nähe.

Die Sicherung des rechtlichen Maßes in einer globalen Welt fordert eine Festigung und Erneuerung der Werte. Bis zum 11. September 2001 haben wir vielfach die These gehört, allein der Respekt vor der Autorität des Rechts, die Bereitschaft zum Gesetzesgehorsam könne die innere Ordnung und den Weltfrieden sichern. Inzwischen wissen wir, dass ein Angreifer, der um des Angriffs willen zum Suizid bereit ist, mit rechtlichen Verboten und Sanktionen, selbst durch Androhung der Todesstrafe, von seinem Vorhaben nicht abgehalten werden kann. Unsere Friedenschance liegt allein in einer global verallgemeinerungsfähigen Rechtskultur.

Deswegen müssen wir darum kämpfen, dass die universalen Menschenrechte weltweit verwirklicht werden, dass Europa auf „der Suche nach seiner Seele“<sup>5</sup> nicht innehält und allein im Wettstreit über die Marktmacht verkümmert, dass wir unsere Zukunft in verlässlichen Institutionen von Ehe und Familie sichern, dass wir das wirtschaftliche Freiheitsinstrument des Vertrages nicht verlieren und zum Instrument zur Herstellung von Steuergleichheit verfremden lassen.

Vor allem müssen wir die öffentliche Meinung und unsere Parlamente davor bewahren, tatsächliche Entwicklungen zum Wertewandel zu erklären. Wenn die Industriestaaten gegenwärtig Trends erleben, wonach sie weniger Geburten und mehr Todesfälle haben, weniger Eheschließungen und mehr Ehescheidungen, weniger Vollfamilien und mehr Alleinerziehende, so darf dieser Entwicklung nicht dadurch ihre Dramatik genommen werden, dass wir ihr einen Wertewandel unterlegen. Wer das jeweils gegenwärtig Faktische zum gewandelten Wert erklärt, verzichtet auf den Maßstab von Richtig und

<sup>5</sup> So der frühere Präsident der Europäischen Union *Jacques Delors*, vgl. *Jerôme Vignon*, Europa eine Seele geben, in: Ökumenische Vereinigung für Kirche und Gesellschaft (Hrsg.), Herausforderungen für Europa, Versöhnung und Sinn, 1996, S. 43 f.

Falsch, Gut und Böse, damit letztlich auf das Recht. Niemand würde behaupten, dass die täglichen Todesfälle auf unseren Straßen zur Folge hätte, dass das Tötungsverbot nicht mehr gelte. Vielmehr veranlasst uns der Krisenbefund, uns vermehrt anzustrengen, dass die Elementarwerte unserer Kultur im Recht und im allgemeinen Rechtsbewusstsein wirksam bleiben.

Eine Rechtsgemeinschaft, die nicht mehr in der Geschlossenheit eines demokratischen Staates zusammengehalten wird, teilt sich in verschiedene Lebensbereiche auf, in denen spezielle Rechtsmaßstäbe gelten und dementsprechend Erfolg und Misserfolg, Gut und Böse im Binnenbereich dieser Spezialisierung beurteilt werden. Dadurch läuft die Rechtsordnung Gefahr, in einer Teilrationalität etwas gut zu heißen, was in einer Gesamtwertung missbilligt werden müsste. Wer einen wirtschaftlichen Erfolg anerkennt, ohne die Umweltbelastung – die Externalisierung der Kosten – zu sehen. Wer für seinen Gewinn die Infrastruktur einer Rechtsordnung, eines Währungssystems, eines Marktes in Anspruch nimmt, dennoch aber seine Steuerleistung zur Finanzierung dieser Struktur verweigert, darf die Anerkennung der Rechtsgemeinschaft nicht beanspruchen, erlebt aber in seinen Zirkeln von Beruf und Erwerb oft große Anerkennung. Der Unternehmer sieht das Problem seines Personalüberhangs als gelöst an, wenn er Arbeitnehmer in die Arbeitslosigkeit entlässt, mag der Staat dadurch auch den Arbeitslosen finanzieren und dementsprechend die Steuer erhöhen müssen. Der Wettbewerber wertet die Übernahme eines Konkurrenten als Erfolg, mag er damit auch dessen berufliches Lebenswerk zerstören und ins Werk gesetzte Hoffnungen beenden. Der Staat sucht im Recht Frieden und Freiheit zu sichern, läuft aber Gefahr, mitmenschliche Beziehungen zu Anspruchsbeziehungen unter Gläubigern und Schuldnern verkümmern zu lassen, durch Überregulierung freiheitliche Initiativen zu ersticken, durch Spezialisierung die Rechtsordnung immer „komplexer“ und damit unverständlicher zu machen. Dabei mag die Detailregelung jeweils veranlasst und einsichtig sein; der Gesamterfolg eines übermäßig und widersprüchlich regelnden Rechtssystems aber ist bedrohlich.

Eine ähnliche Entwicklung beobachten wir beim Sozialstaat. Das Soziale schützt den Einzelnen in seiner Schwäche, setzt aber voraus, dass die überwältigende Mehrheit der Beteiligten so stark ist, dass sie über den Eigenbedarf hinaus noch Hilfpotential erwirtschaftet. Heute aber wird der Sozialstaatsauftrag nicht nur als Pflicht verstanden, den wenigen Schwachen zu helfen; vielmehr wird er als Rechtstitel genutzt, um eine komfortable Normalität für die Mehrzahl der Menschen einzurichten. Mit dieser Überforderung des Sozialen – insbesondere den Sozialhilfeansprüchen

auch für die Selbsthilfefähigen und der Überforderung der mittelständischen Betriebe in sozialen Standards, die allenfalls die Großbetriebe erfüllen können – liegt ein sozialer Eifer, der letztlich das soziale Staatsziel gefährdet. Ähnliches gilt für eine Wissenschaft, die nur in ihrer Teildisziplin eine Erkenntnis sucht, deren Auswirkungen auf die Allgemeinheit aber zur politischen, also wissenschaftlich nicht zu verantwortenden Frage erklärt. Moderne Dramatiker haben dieses Problem am Beispiel der Atomphysik und der Biomedizin veranschaulicht.

Auch in einer globalen Welt muss also die Geschlossenheit der Rechtswertungen im Grundsätzlichen, die verlässliche Balance zwischen den einzelnen Rechtsbereichen, die Folgerichtigkeit und Widerspruchsfreiheit der Gesamtrechtsordnung gewahrt bleiben. Dies ist ein anspruchsvoller Auftrag insbesondere für das Europarecht und das Völkerrecht. Erste Ansätze, vor allem im Umweltrecht, im Welthandelsrecht und im Steuerrecht, sind vielversprechend, aber noch keineswegs am Ziel.

Diese Teilrationalitäten und vor allem die begrenzte Verantwortlichkeit für einen Eigenbereich sind durchaus Bedingungen der Freiheit, setzen aber übergreifende – hoheitliche – Verantwortlichkeiten voraus, die spezielle Sichtweisen zu einem Gesamturteil zusammenführen, Eigenverantwortlichkeit in eine Gesamtverantwortlichkeit einbetten. Deshalb ist insbesondere ein marktwirtschaftlicher Wettbewerb nur erträglich, wenn er sozial begleitet und unterfangen wird.

### III. ZWEI VERFAHREN DER BEDARFSERKUNDUNG UND BEDARFSBEFRIEDIGUNG: DAS DEMOKRATISCHE UND DAS WIRTSCHAFTSWETTBEWERBLICHE

#### III.1. *Gegenläufige Prinzipien*

Das markanteste Merkmal der Globalisierung liegt in dem Befund, dass der menschliche Bedarf weniger vom Staat nach dem Prinzip der Demokratie und mehr von der Privatwirtschaft nach dem Prinzip des Wettbewerbs erkundet und befriedigt wird. Der Staat erbringt seine Leistungen der Friedenssicherung, der Rechtsgewähr, der Existenzgarantie, der Infrastruktur, der Planung, der Bildungs- und Gesundheitseinrichtungen in der Bindung an die demokratische Legitimation: Jeder hoheitliche Akt muss durch eine ununterbrochen Legitimationskette auf den Willen des Staatsbürgers zurückgeführt werden. Das Parlament wird gewählt, erlässt dann als Repräsentant des Wählers die Gesetze und damit die Maßstäbe für staatliches Handeln, be-



stimmt die Regierung und mittelbar auch das Verwaltungspersonal, empfängt seinen Auftrag aus einer vom Staatsvolk hervorgebrachten Verfassung. Diese Rückkopplung jedes staatlichen Hoheitsakts an den Willen der Wähler – insbesondere das Angewiesensein der politisch Mächtigen auf Wiederwahl – soll gewährleisten, dass staatliches Handeln sich an den Bedürfnissen der Menschen orientiert, diese demokratische Ausrichtung die Bedürfnisse der Wähler zum Maßstab politischen Handelns macht.

Der wirtschaftliche Bedarf der Menschen wird nach einem gänzlich anderen Prinzip, dem Marktwettbewerb der nach Gewinn strebenden Menschen, erkundet und befriedigt. Die Anbieter von Leistungen erhalten das erhoffte Entgelt nur, wenn sie sich mit einem Nachfrager über den Preis verständigen, also Anbieter und Nachfrager in ihrer individuellen Sicht über die Angemessenheit des Leistungsaustausches übereinstimmen. Dieses Verfahren erkundet Bedarf, gleicht Bedürfnisse aus, befriedigt individuelle Nachfrage und fördert die allgemeine Prosperität.<sup>6</sup>

Das demokratische und das wirtschaftswettbewerbliche Verfahren der Bedarfsbefriedigung sind nicht gegeneinander austauschbar. Der demokratische Rechtsstaat folgt den Prinzipien der Unbefangenheit und Unparteilichkeit, der wettbewerbliche Anbieter dem der Gewinnerzielung. Der Rechtsstaat pflegt die Kultur des Maßes, der Anbieter sucht die Gewinnmaximierung. Der demokratische Rechtsstaat leistet an jedermann je nach gesetzlich anerkanntem Bedarf, der Anbieter nur an den Zahlungsbereiten und Zahlungsfähigen. Der demokratische Rechtsstaat sichert seine Unbefangenheit auch in der Art der Finanzierung und deckt seinen Finanzbedarf aus Steuern, ist deshalb nicht vom Leistungsentgelt abhängig, während der Wettbewerber auf das Entgelt des Nachfragers angewiesen ist, daraus seinen Bedarf finanziert und Kapital bildet.

Würde ein Beamter sich die staatliche Leistung – etwa die Erteilung einer Baugenehmigung oder eines Führerscheins – entgelten lassen, würde er sich wegen Bestechlichkeit strafbar machen. Würde andererseits ein privater Wettbewerber Finanzleistungen außerhalb eines vertraglichen Konsenses von seinem Leistungspartner erwarten, wäre dieses Amtsanmaßung. Der Staat befriedigt einen Bedarf um des Bedürftigen Willen, der private Wettbewerber um seines Einkommens Willen.

<sup>6</sup> *Friedrich August von Hayek*, *Recht, Gesetzgebung und Freiheit*, Band 3: *Die Verfassung einer Gesellschaft freier Menschen*, 1981, S. 191, 192.

### III.2. *Strukturwandel durch Prinzipienvermengung*

Bei dieser Unvereinbarkeit beider Prinzipien ereignet sich ein fundamentaler Strukturwandel, wenn in einer globalen Welt die Handlungs- und Entscheidungsmacht sich mehr und mehr von der hoheitlich demokratischen Bedarfsbefriedigung hin zum wirtschaftlich-wettbewerblichen Leistungsaustausch verschiebt. Es droht eine Ökonomisierung des Rechts, eine Dominanz des Fiskalischen auch in der Hoheitsverwaltung. Dabei eröffnen sich gegenwärtig vier Problemfelder:

#### III.2.a. *Beteiligung nur der wirtschaftskräftigen Menschen*

Die Menschenrechte garantieren jedem Menschen, allein weil er existiert, Freiheit und Sicherheit. Der Weltmarkt hingegen beteiligt an dem Marktgeschehen nur die Anbieter von Leistungen und die Nachfrager mit Kaufkraft. Soweit die Menschen nicht über individuelle Kaufkraft verfügen – und das dürfte die Mehrheit der Menschen sein –, sind sie von den Leistungen dieses Marktsystems ausgenommen. Diese Ausgrenzung betrifft vor allem die Vermittlung von Bildung, Information, Sicherheit gegenüber den Lebensrisiken, soweit sie nach den Prinzipien des Wettbewerbs zugeteilt werden. Sie wirkt sich aber auch unmittelbar auf die ökonomischen Entfaltungsmöglichkeiten aus: Wer nicht für eine bestimmte Arbeit qualifiziert ist, dem bleibt der Zugang zum Weltmarkt versperrt. Wer nicht durch Arbeit Kapital bilden konnte, kann sich auch als Nachfrager nicht am Marktgeschehen beteiligen.

#### III.2.b. *Märkte ohne das Mäßigungsinstrument der knappen Güter*

Der Verlust an Rechtsbindung steigert sich, wenn sich Märkte entwickeln, in denen das marktimmanente Mäßigungsinstrument – die Knappheit der Güter – nicht mehr wirksam ist. Wer die Benutzung beliebig reproduzierbare Güter anbietet, etwa Nachrichten, Computerprogramme, Filme, Tonaufnahmen oder anderes geistiges Eigentum verkauft, erzielt einen Preis, ohne in seiner Leistung substantiell ein Wirtschaftsgut hingeben zu müssen. Dieses Marktgeschehen ohne immanente Mäßigung tendiert ins Grenzenlose. Die jüngsten Erfahrungen mit dem „Neuen Markt“ belegen diesen Hang ins Unermessliche. Einziges Nadelöhr für dieses expansive Gewinnstreben ist der Konsument, auf dessen Zahlungsbereitschaft sich die gesamte Macht kommerzieller Werbung ergießt. Manche Form aggressiver oder – etwa in der Fernsehunterbrechung – aufgedrängter Werbung wird der Würde und Selbstbestimmung des Umworbenen kaum noch gerecht.

### III.2.c. *Kommerzialisierung staatlichen Handelns*

Auch im innerstaatlichen Handeln verliert der Rechtsstaat gegenwärtig ein Stück Unbefangenheit durch kommerzielle Handlungsformen. Bei der Vergabe von Lizenzen im Telekommunikationsmarkt sind viele Staaten in den vergangenen Jahren dazu übergegangen, Berechtigungen gegen Höchstgebot zu versteigern. Das Recht zur Ausübung eines Berufs wird also nicht mehr nach Qualifikation und Verlässlichkeit des Bewerbers, sondern je nach Zahlungskraft und Zahlungsbereitschaft zugeteilt. Nicht selten verzichten Regierungen auch auf eine Gesetzesinitiative zu Lasten einer bestimmten Gruppe, etwa der Arzneimittelhersteller, eines umweltbelastend produzierenden Sektors oder eines Produkts ohne moderne Sicherheitsstandards, wenn deren Verband sich zur Zahlung einer bestimmten Summe in den Staatshaushalt oder in ein Vorsorgesystem bereitklärt. Diese teilweise als elegant, marktkonform und modern gerühmten Verhaltensweisen verändern das Gesicht des Rechtsstaates durch fiskalische Akzente.

Auch wenn das Personal für bestimmte öffentliche Ämter in hochdotierten Verträgen gewonnen, die Ausstattung von Universitäten und anderen Bildungseinrichtungen durch Vereinbarung geregelt wird, der Übergang von einem bisherigen staatlichen Finanzierungssystem zu einem neuen in langfristigen Übergangsvereinbarungen schonend gestaltet wird, ist die Gleichheit vor dem Recht gefährdet, weil jede Vereinbarung von der Zustimmung des betroffenen Menschen oder Organs abhängt. Mag auch die im Hintergrund stehende Drohung einseitig gesetzlicher Regelungen die Vertragsbereitschaft fördern, bleibt doch der konkrete Konsens von dem Willen der Vertragspartner abhängig.

### III.2.d. *Einfluss auf überstaatliche Organisationen*

Auch in den Rechtsbeziehungen zwischen den Staaten droht die Macht des Geldes Herrschaft zu gewinnen. Wenn in internationalen Organisationen wie der UNO oder der NATO der Zahler großer Beiträge dominiert, in supranationalen Organisationen wie der Europäischen Union der Nettozahler größeres Gewicht gewinnt als der Nettoempfänger, wird man dieses als selbstverständliches Phänomen menschlicher Gemeinschaften deuten. Dennoch bleibt gerade die fiskalische Unbefangenheit Anspruch und Ideal der demokratischen Rechtsstaaten, die auch ihre Rechtsbeziehungen untereinander prägen sollten.

### III.3. Kurzfristige Bedarfserkundung und langfristige Freiheitsbedingungen

Das demokratische und das erwerbswirtschaftliche Bedarfsbefriedigungsverfahren leiden übereinstimmend an der Kurzfristigkeit ihrer Sichtweisen. Die Demokratie denkt in Parlamentsperioden von vier oder fünf Jahren. Der wettbewerbliche Anbieter misst sein Ergebnis am Jahresgewinn oder allenfalls an der Entwicklung in der Fünfjahresfrist der Vorstandsverträge von Großanbietern. Deswegen drohen bei diesen beiden Verfahren die langfristigen Anliegen der angemessenen Bildung und Ausbildung der Jugend, der Stetigkeit des menschenrechtlichen Status, der Abwehr einer Staatsverschuldung zu Lasten der nächsten Generation, des Schutzes der Schöpfung und der übrigen Lebensbedingungen der Menschen, der Kontinuität eines vertrauten und deshalb Vertrauen findenden Rechts aus dem Blick zu geraten. Deshalb suchen die Staatsverfassungen als Gedächtnis der Demokratie<sup>7</sup> dieser Entwicklung im staatlichen wie im gesellschaftlichen Bereich Stetigkeit und Verlässlichkeit zu geben. Die Verfassungen garantieren die Kontinuität der rechtlichen Rahmenbedingungen, schützen das Vertrauen der Menschen in das stetige Recht, verbieten rückwirkende Gesetze und schließen weitgehend die Verdrängung des Gesetzes durch vertragliche Vereinbarung aus.

Auch die individuelle Freiheitswahrnehmung braucht die langfristige Bindung. Zwar ist Freiheit auch das Recht zur Beliebigkeit bei Wahrnehmung der kleinen Alltagsfreiheiten, die den Freiheitsberechtigten befähigen, heute ein Buch zu lesen und morgen ins Theater zu gehen, heute spazieren zu gehen und morgen mit dem Auto zu fahren, heute ein Glas Wein und morgen ein Glas Bier zu trinken, ohne dass der Freiheitsberechtigte jemanden auch nur Rechenschaft schuldet.

Entscheidend für die individuelle freiheitliche Biographie wie für die Struktur eines freiheitlichen Gemeinwesens sind aber die Entscheidungen zur langfristigen Bindung: Der Freiheitsberechtigte wählt ein Studium, um daraus einen Lebensberuf zu entwickeln; er baut ein Haus, in dem auch seine Kinder und Enkelkinder noch wohnen können; er gründet eine Firma, die ihn selbst überlebt; er gehört einer Kirche an, die ihn ein Leben lang begleitet; er ist Staatsangehöriger und beansprucht deshalb Schutz und

<sup>7</sup> Paul Kirchhof, Das Grundgesetz als Gedächtnis der Demokratie – Die Kontinuität des Grundgesetzes im Prozess der Wiedervereinigung und der europäischen Integration, in: Martin Heckel, Die innere Einheit Deutschlands inmitten der europäischen Einigung, Tübinger rechtswissenschaftliche Abhandlungen, Band 82, 1996, S. 35 ff.

Zugehörigkeit für die Dauer seiner Existenz. Freiheit in Würde ist auf Langfristigkeit angelegt, braucht deshalb einen von den Staatsverfassungen gesicherten unverrückbaren und unveräußerlichen Status, in dem der Grundrechtsträger die Sicherheit des Berechtigten gewinnt.

#### IV. DIE SICHERUNG DES WELTFRIEDEN

Der Staat ist Garant und Gegner des Friedens zugleich. Durch seine Hoheitsmacht gewinnt er die Fähigkeit, die Friedensordnung gegen Angreifer nach innen zu verteidigen, ebenso aber auch die Macht, selbst den Frieden zu bedrohen oder zu stören. Deswegen sucht die Rechtsordnung die Staatsgewalt nach innen verfassungsrechtlich zu binden, nach außen in einem vertraglichen System kollektiver Sicherheit zur Wahrung des Friedens zu verpflichten. Die Charta der Vereinten Nationen sucht durch ein striktes Gewaltverbot, durch möglichst universelle Mitgliedschaft aller 191 Staaten der Welt, durch einen Entscheidungsvorbehalt des Sicherheitsrats über das Vorliegen eines zum Einsatz militärischer Mittel berechtigenden Angriffs und darauf aufbauend für die Ermächtigung zum Einsatz militärischer Mittel ein weltweites System der Friedenssicherung zu garantieren, das idealtypisch alle Staaten als Mitglieder bindet, aber auch gegenüber Nichtmitgliedern eingesetzt werden könnte.<sup>8</sup> Daneben begründen regionale Friedenssicherungssysteme, wie insbesondere der Nordatlantikpakt (NATO), Aufgaben der kollektiven Selbstverteidigung; diese Regionalsysteme sind in das universale kollektive Sicherheitssystem der Vereinten Nationen einzubinden.<sup>9</sup>

Der Anspruch dieser Friedenssicherung will nicht nur kriegerische Auseinandersetzungen unterbinden, sondern als Frieden das Zusammenleben der Menschen ohne militärische Gewalt in einer gefestigten internationalen Rechtsordnung sichern, dabei insbesondere den Schutz der Menschenrechte garantieren. In diesem offenen Friedensbegriff liegt die Chance vertiefter, langfristiger Friedensgarantien, aber auch eine Unschärfe des Friedenstatbestandes, der politische Deutungen ermöglicht. Zugleich eröffnen die Reichweite, die Zerstörungskraft und das Überraschungspotential moderner Waffen Einschätzungsräume bei der Beurteilung der Friedensbedrohung.

<sup>8</sup> *Rüdiger Wolfrum*, Handbuch der Vereinten Nationen, 2. Aufl., 1991, S. 405 ff.

<sup>9</sup> *Wolfrum* a.a.O., S. 676 ff.

Der militärische Konflikt im Irak erinnert an elementare Ausgangsbedingungen, aus denen der moderne Staat hervorgegangen ist. So lange der Herrscher das Recht bestimmt und die Rechtsordnung vor allem seine Autorität stützt, ist er Maßstabgeber und Richter zugleich. Sobald hingegen Gerechtigkeit und der Wille des Herrschenden auseinander fallen können, der Herrscher rechtlich zu gestalten und neues Recht zu finden hat, steht das Recht vor der Aufgabe, in dieser Rechtsentwicklung überkommene Rechtsprinzipien als unverbrüchlich und unveräußerlich zu bewahren. Hier liegt das Kernanliegen des Vertragsgedankens: Wenn alle Herrschaftsgewalt beim Volk liegt, das Volk sodann die Herrschaft auf den Herrscher überträgt, begründet und mäßigt dieser Vertrag die Herrschaft. Das Volk behält sich im Vertrag eigene Rechte vor und bindet die Staatsgewalt in einem System der Gewaltenbalance. Dieser Vertrag verfestigt und verstetigt sich sodann zu einer Verfassung, der unabänderlichen, auch für das Staatsvolk und die Vertragspartner nicht disponiblen Grundordnung eines Staates.

Der so gebundene Staat sichert den inneren Frieden, kann aber in Wahrnehmung der Interessen seiner Bürger auch zum Anlass für äußeren Unfrieden, für den militärischen Konflikt werden. Hier sucht das Recht erneut Zuflucht beim Vertrag. Alle Staaten sollen idealtypisch in einem weltumspannenden Friedensvertrag gebunden werden, der ihnen das Instrument des Krieges endgültig nimmt. Die Charta der Vereinten Nationen will nach ihrer Präambel „künftige Geschlechter vor der Geißel des Krieges bewahren“. Allerdings weiß selbstverständlich auch die UNO, dass einzelne Staaten die Regeln dieser Weltfriedensordnung verletzen und damit den Weltfrieden bedrohen oder brechen können. Deswegen erlaubt die Charta der Vereinten Nationen Maßnahmen zur Wahrung oder Wiederherstellung des Weltfriedens. Dabei sind auch militärische Maßnahmen möglich.

Dieses System kollektiver Sicherheit verbietet dem einzelnen Staat grundsätzlich militärische Gewalt und gibt die Entscheidung über die Ermächtigung zu militärischen Einsätzen in die Hand des Kollektivs, vor allem des Sicherheitsrats der Vereinten Nationen. Das Recht des einzelnen Staates auf Selbstverteidigung gilt nur bei einem bewaffneten Angriff auf sein Staatsgebiet.

Bei Verletzung der Friedensordnung kann der Sicherheitsrat gegen einen Staat militärische Maßnahmen anordnen. Zunächst stellt er fest, ob der Weltfrieden bedroht ist. Dabei benennt er ausdrücklich die den Frieden bedrohenden Staaten. Auf der Grundlage dieser Feststellung kann der Sicherheitsrat sodann bestimmte, ebenfalls ausdrücklich benannte Staaten ermächtigen, militärische Zwangsmaßnahmen zu ergreifen.

Innerhalb der Vereinten Nationen sind alle Staaten gleichberechtigt. Ein einzelner Staat darf deshalb, mag er auch politisch-faktisch eine hegemoniale Position einnehmen, nicht für sich in Anspruch nehmen, als „Weltpolizei“ gegen friedensverletzende Staaten militärisch vorzugehen. Würde ein einzelner Staat das Recht zur humanitären Intervention im Kampf gegen gravierende Menschenrechtsverletzungen beanspruchen oder gegen die Massenvernichtungswaffen einzelner Staaten oder terroristischer Organisationen eine Abrüstung militärisch allein erzwingen wollen, würde er sich letztlich vom Gewaltverbot lossagen. Im Übrigen eröffnen die Unbestimmtheit des Friedensbegriffs und die Reichweite, die Zerstörungskraft und das Überraschungspotential moderner Waffen Einschätzungs- und Bewertungsräume, die eine Beschränkung auch des Selbstverteidigungsrechts in einem kollektiven System der Sicherheit nahe legen.

Wir stehen also wieder am Ausgangspunkt einer Neuzeit. Der Ewige Friede hängt davon ab, dass jeder Staat in seinem Gebiet einen menschenrechts-gestützten Frieden sichert, die Staaten sich sodann untereinander vertragen und diese Bereitschaft zur Friedlichkeit in vertraglichen Bindungen bekräftigen. Die Treue zum Kollektivvertrag ist die Chance des Friedens.

## V. STAATLICHE SOUVERÄNITÄT

### V.1. *Souveränität zur Sicherung eines rechtlich fundierten Friedens*

Je mehr das politische Handeln dem Staat überlassen wird, desto mehr muss der Staat Garant des rechtlichen Rahmens der Freiheit und des in Freiheit gesicherten Friedens und der Gewaltlosigkeit sein. Hier liegt der Ursprung des Souveränitätsgedankens. Der Staat beansprucht in der Souveränität das Machtmonopol nach innen gegenüber dem Staatsvolk und nach außen durch territoriale, auf das Volk bezogene Grenzziehung. Als im 14. und 15. Jahrhundert sich die Macht von Papst und Kirche in ihrem Einfluss auf das politische Geschehen lockerte, die Renaissance die Bedeutung des Individuums und der Staatsräson betonte, nichttheologische Rationalitätssphären sich verselbständigten und schließlich die Reformation die Einheit kirchlichen Denkens beendete, suchten die in Bürgerkriegen und Verfassungskämpfen entzweiten Gesellschaften eine friedentiftende und einheitswahrende Autorität. Bodin fand in dieser Zeit sich auflösender Ordnungen in Familienverband und ständischer Gliederung stabile gesellschaftliche Einheiten, die er in einem durch eine gemeinsame

Kultur und ein Gebiet geprägten Volk rechtlich erfasste, das den Monarchen durch einen Übertragungsakt (Schenkung) mit der absoluten und dauernden Gewalt zur Lenkung der Gesellschaft ausstattete.<sup>10</sup>

Die Souveränität begründet insbesondere das Recht zur Gesetzgebung und zur beliebigen Änderung von Gesetzen, zur Ernennung höchster Amtsträger, zur Begnadigung und zur Befugnis, über Krieg und Frieden zu entscheiden.<sup>11</sup> Diese Lehre von der Souveränität sucht einen Neuanfang, weil Quelle der Souveränität nicht mehr Gott, nicht Kaiser und Papst, sondern ein kulturell und territorial begrenztes Volk ist. Die Souveränität ist in diesen vor allem territorialen und kulturellen Grenzen beschränkt, rechtfertigt andererseits eine zusammengeballte politische Macht der absoluten Letztentscheidung und des Gewaltmonopols, wie sie bisher unvorstellbar erschien.

Hobbes entwickelt eine ähnliche Souveränitätsvorstellung, begründet das staatliche Machtmonopol allerdings mit dem Friedensanliegen, den naturwüchsigen Kampf aller gegen alle in einem Vertrag aller mit allen zugunsten des Staates zu beenden.<sup>12</sup> Der Staat findet in seinem Zweck, Sicherheit zu gewähren, seine Legitimation, aber auch seine Grenzen. In der präventiven wie repressiven Sicherheitsgewähr liegt zugleich das Fundament für den religiös neutralen Staat. Insbesondere im Zeitalter der Religionskriege konnte der Staatszweck der Sicherheit letztlich nur über die religiöse Neutralität des Staates und über eine Staatskirche mit hinreichenden Freiräumen für Andersgläubige gewährt werden.

Dieser Kerngedanke der staatlichen Souveränität ist heute von gleichbleibender Aktualität. Wenn gegenwärtig die Staaten die Souveränität beanspruchen, sich am Krieg im Irak zu beteiligen oder ihm fernzubleiben, kommt darin eine beklagenswerte Schwächung der UNO und deshalb auch eine gesteigerte Verantwortlichkeit der Regierungen zum Ausdruck. Wenn das ehemalige Jugoslawien gezeigt hat, dass der Wegfall eines Staates unmittelbar in Kriegszustände führt, bestätigen sich ebenfalls die klassischen Anliegen der Souveränitätslehre. Die Souveränität des Staates nach Innen hat sich immer wieder bewährt, wenn eine Gesellschaft in religiösen, wirtschaftlichen oder ideologischen Gegensätzen zu zerbrechen drohte. Der einzelne erlebt die Staatensouveränität elementar in dem individuellen Recht zum Auswandern und zum Asyl, das gegenstandslos würde, wenn die Welt

<sup>10</sup> Vgl. *Jean Bodin, Les six livres de la République*, 1583, ND hrsg. Von C. Mayer-Tasch, 1981, Buch 1, Kap. 8, S. 205.

<sup>11</sup> *Bodin* a.a.O., Buch I, Kap. 10, S. 221 ff.

<sup>12</sup> *Thomas Hobbes, Leviathan*, Teil II, 18. Kapitel (Nachdruck Stuttgart 1990).



nicht in Staaten aufgegliedert, sondern einem Weltstaat mit einer alle Winkel der Erde erreichenden Staatsgewalt ausgeliefert wäre.

## V.2. Dreifache Gebundenheit des Souveräns

Allerdings ist die Souveränität, die absolute und dauernde Letztverantwortung des Staates<sup>13</sup> mit Gewaltmonopol, stets als rechtlich gebundene, nach diesem Maßstab rechtmäßig wahrgenommene Staatsgewalt, nicht als Recht zur Beliebigkeit und Willkür verstanden worden. Der Souverän war von Anfang an dreifach gebunden:

### V.2.a. Rechtliche Bindung

Die höchste und dauernde Staatsgewalt begründet keine beliebige Herrschaft, sondern ist eine Gewalt zur Wahrung von Recht und Frieden. Souveränität wehrt zwar den Einfluss anderer Staaten auf den eigenen Staat ab, entbindet aber nicht von der Verpflichtung durch die für alle Staaten geltende Völkerrechtsordnung<sup>14</sup> und – im modernen Verfassungsstaat – durch das nationale Verfassungsrecht. Traditionell hatte der Souverän göttliches Recht und Naturrecht zu beachten, später die herkömmlichen Grundsätze der Monarchie, die *leges imperii*,<sup>15</sup> fand im Staatsfundamentalzweck der Sicherheit Legitimation und Schranke,<sup>16</sup> wurde nach der Lehre vom Gesellschaftsvertrag zum Partner dieses Vertrages und seiner Bindungen,<sup>17</sup> gab schließlich die Souveränität an das Staatsvolk ab, das in dem von ihm legitimierten Staat konkrete Rechtfertigungsgründe und Verantwortlichkeiten schuf.<sup>18</sup> Sie zielt auf gerechte Herrschaft, die sich in der Beachtung des Rechts bewährt – des Gottgegebenen, des natürlich Vorgefundenen, des in Staatszwecken Legitimierten, des durch gesellschaftsvertragliche Bindung auch des Staates Vereinbarten, des in Grenzen der Verfassung der demokra-

<sup>13</sup> Vgl. *Jean Bodin*, *Les six livres de la République*, 1583, ND hrsg. Von C. Mayer-Tasch, 1981, Buch 1, Kap. 8, S. 205.

<sup>14</sup> *Robert von Mohl*, *Staatsrecht, Völkerrecht und Politik*, Bd. I, 1860, S. 529 ff.; *Karl Doehring*, *Völkerrecht*, 1999, § 124.

<sup>15</sup> *Hagen Schulze*, *Staat und Nation in der europäischen Geschichte*, 1995, S. 66 f.

<sup>16</sup> *Udo Di Fabio*, *Das Recht offener Staaten*, 1998, S. 18 f.

<sup>17</sup> *Stephan Hobe*, *Der offene Verfassungsstaat zwischen Souveränität und Interdependenz*, 1998, S. 46.

<sup>18</sup> *Udo Di Fabio* (Fn. 16), S. 18.

tischen Mehrheitsentscheidung Überantworteten.<sup>19</sup> Diese Souveränität ist Ausdruck der Einheit und des Zusammenhalts: Wenn die Gesellschaft durch Religionskriege auseinander zu brechen droht, der Gegensatz zwischen Adel, Ständen und Bauern unüberbrückbar zu werden scheint, die Mächtigkeit von Industriekapital, Arbeitnehmerorganisation oder Militär die Oberhand zu gewinnen sucht, so wahrt der Staat den inneren Zusammenhalt, indem er bestimmte Streitfragen der Religion, der Ständelegitimation oder der Wirtschaftsverfassung offen hält und damit die Friedlichkeit im Staat trotz des Streites sichert.

#### V.2.b. *Begrenztes Gebiet*

Souveräne Staatsgewalt ist territorial begrenzt, also auf Zusammenarbeit mit anderen, gleich souveränen Staaten angelegt und angewiesen. Souveränität ist damit Vertragsfähigkeit und Verständigungsbereitschaft in der Völkergemeinschaft, anerkennt Rechtsbindungen in dieser Gemeinschaft und sucht gegenwärtig die Staaten insbesondere auf universale Menschenrechte<sup>20</sup> und eine dem Staatsvolk vorbehaltene "verfassunggebende Gewalt" zu verpflichten.

Die Offenheit des Souveräns für überstaatliche Einflüsse zeigt sich insbesondere in der jahrhundertelangen Mitgestaltungskompetenz der Katholischen Kirche gegenüber Herrschaftsverbänden und Bürgern, in einer durch das Römische Recht begründeten frühen Wirtschaftsgemeinschaft in Europa, im Zusammenwirken einzelner politischer Territorien wie der Hansestädte, in Familienverbänden europäischen Adels mit Herrschaftswirkung für verschiedene politische Gemeinschaften, in der Entwicklung des modernen Völkerrechts und der universalen Menschenrechte. Soweit die Staaten sich in internationalen Organisationen wie der UNO binden oder sogar in supranationalen Organisationen wie der Europäischen Union Hoheitsgewalt übertragen,

<sup>19</sup> Vgl. Hagen Schulze (Fn. 15), S. 66 ff..

<sup>20</sup> *Otfried Höffe*, Universalistische Ethik und Urteilskraft: Ein aristotelischer Blick auf Kant, in: Ludger Honnefelder (Hrsg.), *Sittliche Lebensform und praktische Vernunft*, 1992, S. 59 (61); *Odo Markquard*, Apologie des Zufälligen, *Philosophische Studien*, 1986, S. 131; *Klaus Stern*, Idee der Menschenrechte und Positivität der Grundrechte, in: Josef Isensee/Paul Kirchhof (Hrsg.), *Handbuch des Staatsrechts der Bundesrepublik Deutschland*, Bd. V, 1. Aufl., 1992, § 108 Rn. 48; *Paul Kirchhof*, Der demokratische Rechtsstaat - Die Staatsform der Zugehörigen, in: Josef Isensee/ders. (Hrsg.), *Handbuch des Staatsrechts der Bundesrepublik Deutschland*, Bd. IX, 1997, § 221 Rn. 61.

ist die Souveränität insbesondere daran erkennbar, dass der souveräne Staat „Herr dieser Verträge“ bleibt,<sup>21</sup> er am Maßstab seiner Verfassung den Einfluss des supranationalen Hoheitsträgers kontrolliert und sich letztlich ein Recht zum Austritt vorbehält.

#### *V.2.c. Aufgabenteilung zwischen Staat und Gesellschaft*

Schließlich baut der souveräne Staat auf Aufgabenteilung, belässt wesentliche Lebensbereiche in der Hand der Gesellschaft der Freiheitsberechtigten. Das moderne Staatsverständnis unterscheidet zwischen freiheitsverpflichtetem Staat und freiheitsberechtigter Gesellschaft, gibt jedenfalls wesentliche gemeinschaftserhebliche Funktionen von Güterversorgung und Arbeitswelt, Kulturgesellschaft und Religion, Familie und Elternverantwortlichkeit, Meinungsvielfalt und Medien in nichtstaatliche Hand, meint also eine Souveränität mit begrenztem Aufgabenfeld. Die Subsidiarität hat im Souveränitätsgedanken eine Wurzel.

### VI. DIE SUBSIDIARITÄT

#### *VI.1. Der Ausgangsgedanke: Leistungsfähigkeit des einzelnen Menschen aus eigener Initiative und eigenen Kräften*

Die Vorstellung eines von einem Staatsvolk abgeleiteten, in einem Staatsgebiet begrenzten, Hoheitsgewalt in rechtlicher Verantwortung wahrnehmenden Staates ist die Grundlage für die modernen demokratischen Rechtsstaaten. Wenn die vorgefundene Kulturgemeinschaft des jeweiligen Staatsvolkes die Würde des einzelnen Menschen in seiner Individualität und Freiheit in den Mittelpunkt ihres Rechtes stellt, wird aus der Souveränität für das demokratische Staatsvolk auch ein Ausgangspunkt für die Garantie allgemeiner, auch den nicht Staatsangehörigen begünstigende Menschenrechte. Ist die Hoheitsgewalt rechtlich gebunden, lassen sich Lebensbereiche und Handlungsberechtigungen zugunsten des Einzelnen und der Gesellschaft gegen staatliche Macht abschirmen. Wird die Staatsgewalt auf ein Staatsgebiet beschränkt, stellt sich die Frage des

<sup>21</sup> Vgl. für das Verhältnis der Bundesrepublik Deutschland zur Europäischen Union: Bundesverfassungsgericht, Amtliche Entscheidungssammlung, Band 89, S. 155 (190).

Zusammenwirkens der Staaten; in der Gegenwart staatenübergreifender Aufgaben wird es erforderlich, Hoheitsgewalt kooperativ wahrzunehmen.

Der Maßstab für diese Aufgaben- und Einflussverteilung nach Innen und Außen ist das Subsidiaritätsprinzip. Dieses Prinzip ist ein Kerngedanke katholischer Soziallehre. Es besagt, dass dasjenige, was der einzelne Mensch aus eigener Initiative und mit seinen eigenen Kräften leisten kann, ihm nicht entzogen und der Gesellschaft als Aufgabe zugewiesen werden darf.<sup>22</sup> Wer das, was die kleineren und untergeordneten Gemeinwesen leisten und zum guten Ende führen können, für die größere und übergeordnete Gemeinschaft in Anspruch nimmt, verstößt gegen die Gerechtigkeit.<sup>23</sup> Nach dieser Stufenordnung der verschiedenen Vergesellschaftungen soll die Staatsgewalt also den kleineren Gemeinwesen die Angelegenheiten überlassen, soweit diese ihnen gewachsen sind.<sup>24</sup>

#### VI.2. *Freiheitsschutz, Organisationseffizienz, bereichsspezifische Sachgerechtigkeit*

Diese Subsidiarität wurzelt in dem Recht jedes Individuums, das der einzelne selbst ausüben darf, soweit er es ausüben kann. Dies hat der Mainzer Bischof Ketteler bereits 1848 als Deputierter der Frankfurter Nationalversammlung betont und für das Elternrecht im Erziehungswesen, für die Rechte der Familie und der Gemeinde entwickelt.<sup>25</sup> Der Begriff „subsidiär“ erinnert an den existenziellen Befund, dass jeder Mensch auf Hilfe, auf subsidium, angewiesen ist, dass der Staat überfordert wäre, wollte er diese der Familie, der Gemeinde, der Kirche, der berufsständischen Vereinigung mögliche Hilfe selbst erfüllen, dass er diese Hilfe vielmehr individualgerecht nur gestalten kann, wenn der Mensch in seinen Bedürfnissen vor allem anderen Menschen und gesellschaftlichen Gruppen begegnet und erst in letzter Linie dem Staat. Dieses ordnungsethische Kernstück der katholischen Soziallehre<sup>26</sup> betrifft insbesondere den

<sup>22</sup> Sozialenzyklika Pius XI. Quadragesimo Anno, 1931, Nr. 79.

<sup>23</sup> Quadragesimo Anno a.a.O.

<sup>24</sup> Quadragesimo Anno, Nr. 80.

<sup>25</sup> Wilhelm Emmanuel von Ketteler, Schriften, Band I, 2. Auflage, 1924, S. 403.

<sup>26</sup> Vgl. dazu Herbert Schambeck, Der rechtsphilosophische und staatsrechtliche Gehalt der päpstlichen Lehräußerungen, in: ders., Kirche, Staat und Demokratie: Ein Grundthema der katholischen Soziallehre, 1992, S. 3 ff.

Aufgabenbereich von Ehe und Familie,<sup>27</sup> das Schul- und Erziehungswesen,<sup>28</sup> berufsständische Körperschaften und andere gesellschaftliche Zwischenkörper,<sup>29</sup> die rechtliche und gesellschaftliche Rahmenordnung einer freien Entfaltung der Wirtschaft<sup>30</sup> sowie die Aufgabenverteilung zwischen den Staaten und auf inter- und supranationale Organisationen.<sup>31</sup>

Das Subsidiaritätsprinzip ist durch den Mainzer Bischof Ketteler<sup>32</sup> und durch den Jesuiten Oswald von Nell-Breuning<sup>33</sup> zunächst als Instrument der Freiheitssicherung konzipiert. Ausgangspunkt ist das Individuum in seiner Freiheit, dem der Staat Grundlagen und Inhalte seiner Freiheiten nicht entziehen darf. Daraus folgt,<sup>34</sup> dass der Staat bei nichtausreichenden individuellen Kräften grundsätzlich Hilfe zur Selbsthilfe zu leisten hat und nicht die Aufgabe staatseigenhändig übernehmen darf, dass grundsätzlich die personennähere Entscheidung des einzelnen und der kleineren Gemeinschaft derjenigen der größeren vorzuziehen ist, dass im übrigen eine immer wieder erneuerte Überprüfung der angemessenen Aufgaben- und Lastenverteilung erforderlich ist. Das Individuum als Ausgangs- und Bezugspunkt gesellschaftlichen Handelns fordert ein vielgliedriges, mehrschichtiges Gemeinwesen. Dessen Stufungen zwischen Staat und Gesellschaft, innerhalb eines gegliederten Gesellschaftsaufbaus, auch innerhalb eines föderalen Staates sowie in der inter- und supranationalen

<sup>27</sup> Ketteler a.a.O.; Schreiben von Papst Pius XII. vom 5. August 1957 an den III. Internationalen Kongress der Weltunion katholischer Lehrer, abgedruckt in: Arthur-Fridolin Utz/Joseph-Fulko Groner (Hrsg.), *Aufbau und Entfaltung des gesellschaftlichen Lebens: Soziale Summe Pius XII.*, Band III, Nr. 5029 (5034).

<sup>28</sup> Pius XII. a.a.O.; Enzyklika *Gravissimum Educationis*, Nr. 3.

<sup>29</sup> Johannes Paul II., Enzyklika *Centesimus Annus*, Nr. 13, 49, damit ist keineswegs der Ständestaat empfohlen; Adolf Julius Merkl, *Der staatsrechtliche Gehalt der Sozialenzykliken und die Möglichkeit ihrer Verwirklichung in der Gegenwart*, in: ders., *Gesammelte Schriften*, herausgegeben von D. Mayer-Maly u.a., Band I/2 1995, S. 645 ff.; ders., Enzyklika *Quadragesimo Anno* und Verfassungsfrage, daselbst, S. 115 (116).

<sup>30</sup> Enzyklika *Centesimus Annus* Nr. 15.

<sup>31</sup> Enzyklika von Papst Johannes XXIII., *Pacem in Terris*, 1963, Nr. 140; *Pastoralkonstitution Gaudium et Spes* des II. Vatikanischen Konzils, 1965, dazu Ansgar Hense, *Der staats- und europarechtliche Gehalt des Subsidiaritätsprinzips in den päpstlichen Enzykliken*, in: Peter Blickle u.a., *Subsidiarität als rechtliches und politisches Ordnungsprinzip in Kirche, Staat und Gesellschaft*, 2002, S. 401 (411 ff.).

<sup>32</sup> Ketteler a.a.O.

<sup>33</sup> Oswald von Nell-Breuning, *Wie sozial ist die Kirche: Leistung und Versagen der katholischen Soziallehre*, 1972, S. 99 ff., 116 ff.

<sup>34</sup> Hense a.a.O., S. 414.

Ordnung weist der unteren Einheit je nach Leistungsfähigkeit Aufgaben, Kompetenzen und Befugnisse zu und qualifiziert einen dem widersprechenden Zugriff der höheren Einheit als Anmaßung. Dieses Zuständigkeitsprinzip verteilt konkrete Aufgaben (Individualfreiheit, Ehe und Familie, Schul – und Erziehungswesen, Wirtschaftspolitik), begründet eine Kompetenzvermutung für die kleinere Einheit und schafft für den Kompetenzzugriff der größeren Einheit eine Begründungs- und Darlegungslast. Es ist ein „Riegelprinzip“<sup>35</sup> gegen Kollektivierungen und eine übermäßige Beanspruchung staatlicher Kompetenz.

Im Übergang von einem freiheitsschützenden Organisations- zu einem gesellschaftsformenden Strukturprinzip garantiert die Subsidiarität auch die Effizienz der Kompetenzverteilung: Sie weist der jeweiligen Einheit die von ihr am besten wahrzunehmenden Aufgaben zu. Sie begegnet sich insoweit mit dem staatsrechtlichen Prinzip der Gewaltenteilung, das die Entscheidungsrichtigkeit stärken und die Entscheidungsverantwortung klarstellen will.<sup>36</sup> Logisch liegt dem Subsidiaritätsprinzip der Gedanke zugrunde, dass bestimmte Lebensbereiche – der Familie, der Schule, der Wissenschaft, der Wirtschaft oder der Friedenssicherung – eigenen Regeln der Sachgerechtigkeit folgen, dass diese Sachgerechtigkeit eigenverantwortlich zur Wirkung zu bringen ist und dass lebensbereichübergreifende Maßstäbe wie die Garantie von Freiheit und Gleichheit bereichsspezifisch zu deuten sind. Insoweit sucht das Subsidiaritätsprinzip den Staat und inter- wie supranationale Organisationen vor Überforderung zu schützen, Zentralisierungstendenzen entgegenzuwirken und die Bereiche eigenverantwortlichen Handelns immer wieder zu erneuern.<sup>37</sup>

<sup>35</sup> *Arthur-Fridolin Utz*, Die geistesgeschichtlichen Grundlagen des Subsidiaritätsprinzips, in: ders. (Hrsg.), *Das Subsidiaritätsprinzip*, 1953, S. 7.

<sup>36</sup> Vgl. zum Rechtsstaatsprinzip *Peter Badura*, Die parlamentarische Demokratie, in: *Isensee/Kirchhof*, *Handbuch des Staatsrechts der Bundesrepublik Deutschland*, Band I, 1. Aufl., 1987, § 23 Rn. 6; *Ernst-Wolfgang Böckenförde*, daselbst, Die Demokratie als Verfassungsprinzip, § 22 Rn. 87 ff.

<sup>37</sup> *Herbert Schambeck*, Das staatliche Ordnungsbild in „Centesimus Annus“, in: ders., a.a.O. S. 127 (136 ff.).

## VII. GEGENWARTSBEDEUTUNG VON SOUVERÄNITÄT UND SUBSIDIARITÄT

Wenn sich gegenwärtig staatliche und internationale Organisationskraft und Organisationsgefüge lockern, die Orientierungsarmut wächst und eine gemeinsame Wertordnung kaum noch Zusammenhalt und Zugehörigkeit sichern kann, die Staaten in Leistungsversprechen und Kompetenzzuwächsen übermäßig zu werden scheinen, gewinnt das Subsidiaritätsprinzip besonderes Gewicht.

### VII.1. *Friedenssicherung durch staatsübergreifende Einheiten*

Das aktuelle Anliegen der Friedenssicherung fordert für den souveränen Staat staatenübergreifende Bindungen. Die Aufgabe der Friedenssicherung zeigt, dass die Einzelstaaten mit dieser Aufgabe überfordert sind. Die Verselbständigung politischer Macht in Staaten und Staatsvölkern hat zur Folge, dass diese autonomen Nationen selbstbestimmt neben- und gegeneinander stehen, somit die Gefahr eines Krieges wächst. Deshalb bewährt sich das Subsidiaritätsprinzip hier in der Kompetenz eines diese Nationen übergreifenden Friedensgaranten. Dem Papst und der katholischen Kirche sind hier die Aufgabe des Friedensmahners zugewiesen, die sie mit ihren Instrumentarien der Lehre, der Gespräche, der Vermittlungsbemühungen wahrnehmen. Daneben hat das Völkerrecht in den Vereinten Nationen ein System kollektiver Sicherheit entwickelt, das den Staaten kriegerische Maßnahmen außerhalb der Verteidigung des eigenen Staatsgebietes verbietet und eine militärische internationale Friedensvorsorge von der ausdrücklichen Ermächtigung der Vereinten Nationen abhängig macht. Die Souveränität des einzelnen Staates ist hier ein Friedensrisiko und muss deshalb durch eine Friedensgarantie auf höherer Ebene, den Vereinten Nationen, ergänzt werden. Dieses System kollektiver Sicherheit ist gegenwärtig ernstlich gefährdet.

### VII.2. *Die Organisation weltweiten Wirtschaftens: das Beispiel Europäische Union*

Das Wirtschaften auf einem weltoffenen Markt, auch die weltumspannenden Instrumente der Medien, des Transports und der Technologie begründen ebenfalls Aufgaben, die das Handlungsinstrumentarium des in seinem Staatsgebiet souveränen Staates übergreifen. Auch die Erfordernisse des Umweltschutzes, der Kriminalitätsbekämpfung, der Wirtschafts- und

Steueraufsicht drängen die Staaten, neue Formen der Zusammenarbeit bei der Wahrnehmung ihrer Hoheitsgewalt zu entwickeln.

Markantestes Beispiel eines solchen Staatenverbundes zur gemeinsamen Wahrnehmung von Hoheitsgewalt ist die Europäische Union, deren Organe im Gebiet eines Mitgliedstaates Hoheitsgewalt unmittelbar ausüben können und die im völkerrechtlichen Verkehr zwar nicht den Status eines souveränen Staates erreicht, aber doch Rechte des zwischenstaatlichen Verkehrs, insbesondere Immunitäten, Vorrechte und Befreiungen, Nichteinmischungsansprüche gewonnen hat.<sup>38</sup>

Diese Aufgabenteilung zwischen dem Mitgliedstaat und dem europäischen Staatenverbund modifiziert die Souveränität des Mitgliedstaates in besonderer rechtlicher Bindung. Die Union hat aber keine Kompetenz-Kompetenz, ist nur als Rechtsgemeinschaft angelegt, besitzt keine eigene Abgabengewalt, übt selbst kaum irgendwelche Zwangsgewalt polizeilicher, vollstreckungsrechtlicher oder militärischer Art aus, verfügt damit insbesondere als Rechtsgemeinschaft nicht über die Souveränitätsreserve eigener politischer Macht. Die Mitgliedstaaten bleiben „Herren der Verträge“.<sup>39</sup> Sie haben die Europäische Union gegründet, um einen Teil ihrer Aufgaben gemeinsam wahrzunehmen und insoweit ihre Souveränität gemeinsam auszuüben.<sup>40</sup> Dementsprechend besagt der Unionsvertrag ausdrücklich, dass die Union „die nationale Identität ihrer Mitgliedstaaten achtet“ (Art. 6 Abs. 3 EU). Die Gemeinschaft ist nur mit begrenzten Kompetenzen und Befugnissen ausgestattet (Art. 5 EG), folgt dem Prinzip der Subsidiarität (Art. 5 Abs. 2 EG), baut auf eine langfristig angelegte Mitgliedschaft der Mitgliedstaaten (Art. 51 EU), ohne diesen aber letztlich das Recht zur Aufhebung ihrer Mitgliedschaft zu nehmen.<sup>41</sup>

Die Mitgliedschaft im europäischen Staatenverbund belässt dem Mitgliedstaat somit seine Souveränität im Sinne der Letztverantwortung auch für die in seinem Gebiet ausgeübte Hoheitsgewalt der Europäischen Gemeinschaft und seine aktuelle Verantwortung gegenüber seinem Staatsvolk. Die Souveränitätsfrage bleibt nicht offen.<sup>42</sup> Die demokratische Verantwortlichkeit gegenüber einem Verantwortlichkeitsadressaten verstärkt die Souveränität, die europäische Integration bindet sie im Dienste von

<sup>38</sup> Thomas Oppermann, *Europarecht*, 2. Aufl., 1999, Rn. 1725.

<sup>39</sup> BVerfGE 89, 155 (190), Oppermann (Fn. 38), Rn. 905.

<sup>40</sup> BVerfGE 89, 155 (189).

<sup>41</sup> BVerfGE 89, 155 (190); vgl. auch Doebling (Fn. 14), Rn. 242.

<sup>42</sup> Nach Carl Schmitt, *Verfassungslehre*, 4. Aufl., 1954, S. 371 (373) gehört es zum Wesen des Bundes, dass diese Frage offen bleibt.



Friedensprinzip, Staatenkooperation und konkreter Menschenrechtspolitik in Form der Unionsbürgerrechte. Der demokratische Staat hält die innere und äußere Souveränität zusammen und verantwortet ihre Wahrnehmung auch in der Europäischen Union vor dem Staatsvolk. Der Staatenverbund ist markanter Ausdruck dafür, dass souveräne Staaten wegen ihres begrenzten Hoheitsbereiches auf Zusammenarbeit angelegt sind, dass diese Zusammenarbeit in intensiver Verbundenheit stattfindet, dass aber Ausgangs- und Zielpunkt dieses Verbundes die Staaten, die demokratischen Handlungsformen des Staatsvolkes bleiben.

Auch die Europäische Union bietet damit ein Beispiel, dass Subsidiarität auch überstaatliche Kompetenzen und Befugnisse begründen kann. Die Globalisierung zwingt dazu, das Subsidiaritätsprinzip auch auf die überstaatliche Ebene anzuwenden und dort Organe und Handlungsverantwortlichkeiten zu begründen.

### VII.3. *Überforderung des Sozialstaates*

Die wirtschaftliche Entwicklung bringt andererseits das Subsidiaritätsprinzip wieder als Maßstab zur Wirkung, um Staatsaufgaben zurückzunehmen. Während des breiten und intensiven Wirtschaftswachstums in den siebziger Jahren des letzten Jahrhunderts haben sich viele Staaten daran gewöhnt, die Leistungen des Sozialstaates immer mehr auszudehnen und dem Staat auch eine weitgreifende Kompetenz zur individuellen Alters- und Krisenvorsorge (Alters-, Krankheits-, Arbeitslosenversicherung) zuzuweisen. Diese staatlichen Leistungsversprechen haben das Verhalten der Versicherten grundlegend verändert: Sie drängen auf eine Frühpensionierung und bemühen sich teilweise auch, die Phase der Berufsqualifikation an staatlich finanzierten Bildungseinrichtungen zu verlängern. Vielfach werden diese staatlichen Sicherungssysteme nicht in einer Versicherung nach dem Prinzip der Kapitaldeckung finanziert, sondern durch ein Umlagesystem, in dem die gegenwärtig arbeitenden Menschen die aus dem Erwerbsleben ausgeschiedenen Menschen finanzieren. Dieses System wird zusammenbrechen, wenn die wirtschaftlich erfolgreichen Industriestaaten immer weniger Kinder hervorbringen, deswegen Produktivität und Wachstum sinken, zudem der Bedarf nach staatlicher Hilfe bei Alter und Krankheit wächst, je weniger Ehen und Familien gegründet werden.<sup>43</sup>

<sup>43</sup> Paul Kirchhof, Die Zukunftsfähigkeit einer freiheitlichen Gesellschaft durch Ehe und Familie. In: Wolfgang Ockenfels (Hrsg.), Familien zwischen Risiken und Chancen, Tagung

Erste Reformvorschläge suchen den einzelnen Menschen auf eine private Individualversicherung zurückzuführen, in der er Kapital bildet und in diesem Kapital eine Zukunftsvorsorge gewinnt, die er in allen Regionen der Welt nutzen kann und die ihn dementsprechend von einem staatlichen Sicherungssystem unabhängig machen. Strukturernuernde Reformempfehlungen hingegen beschränken sich nicht darauf, die Folgen eines Problems zu finanzieren, sondern suchen das Problem selbst zu bekämpfen. Sie verweisen darauf, dass die westlichen Industriestaaten sich auf den Weg begeben haben, eine im Erwerbsstreben sterbende Gesellschaft zu werden, sie deshalb wieder eine im Kind vitale Gesellschaft sein müssen.<sup>44</sup> Die arbeits-, alters- und krankensicherungs-, steuer- und sozialrechtlichen Rahmenbedingungen individuellen Verhaltens sind so zu verändern, dass die jungen Menschen ihren freiheitlichen Willen zur Ehe und zum Kind (zur Familie) wieder betätigen.

Hier erlebt das Subsidiaritätsprinzip in seinem klassischen Ausgangsgedanken eine Renaissance: Der Mensch muss in seiner Freiheit wieder die freiheitsbefähigende Geborgenheit von Ehe und Familie erfahren, damit er in den Krisen des Lebens weitgehend vom Staat unabhängig bleibt, Gesellschaft und Staat in der nächsten Generation und ihrer guten Erziehung eine Zukunft finden, der Generationenvertrag nicht im Verkümmern der nächsten Generation scheitert.

Hinzu tritt ein Gleichberechtigungsanliegen, das die Menschen allein an seinem Erwerbserfolg misst und die Erziehungsleistung gering schätzt, deshalb Wirtschafts- und Erwerbssysteme fordert, in denen das Kind an den Rand gedrängt ist oder gar nicht vorkommt. Teilweise wird die Ehe als Instrument zur Unterwerfung der Frau, die Familie als Grundlage zur Bindung der Frau an „Kinder und Herd“ verstanden. Hier wird das Subsidiaritätsprinzip sich dadurch zu bewähren haben, dass es für Vater und Mutter die Arbeit für die Familie vor die Arbeit für Einkommen – und Kapitalbildung stellt, deshalb die Instrumente der Anerkennung, der Begegnung und der Teilhabe an den Einkommensströmen auch für die Familienarbeit sichert.

der Internationalen Stiftung Humanum, Reihe Humanum Band 1, 2001, S.89-98; *Herwig Birg*, Die demographische Zeitenwende: Der Bevölkerungsrückgang in Deutschland und Europa, 2001, S. 177 f.

<sup>44</sup> *Paul Kirchhof*, Der Schutz von Ehe und Familie, in: Baldur Hermans/Günter Berhaus (Hrsg.), Kreuzungen, Festschrift für Hubert Luthe, 2002, S.447/464.

#### VII.4. *Elterliche und staatliche Erziehung*

Die Ausrichtung des menschlichen Lebens auf das Wirtschaftliche hat auch zur Folge, dass die Eltern die Erziehung ihrer Kinder zunehmend in fremde Hand geben. Dabei bietet sich der Staat mit seinen ganztägig betreuenden Schulen, aber auch mit Kindergärten und Kinderhorten als ein erziehungsbereiter Partner an. Je früher aber staatliche Erziehung dominiert, desto mehr geht die kulturelle Vielfalt der Freiheitsvoraussetzungen verloren, die in jeder Familie eine Quelle individueller Kultur findet. Die Begabungen des Kindes werden am besten von den Eltern entfaltet, die mit den Kindern zusammen leben und sich ihnen ein Leben lang verantwortlich fühlen. Die Vorbildfunktion von Vater und Mutter bleibt schwach, wenn die Kinder ihre Eltern nur am Abend und am Wochenende erleben.

Zudem geht in der staatlichen Erziehung die Sinnstiftung und gedankliche Weite des Religiösen oft gänzlich verloren, weil der moderne, religiös-weltanschaulich neutrale Staat die Kinder nicht in den Raum von Religion und Kirchlichkeit hineinführt. Die Weitung des Denkens im Gottesbezug, das Erleben der religiösen Gemeinschaft in der Kirche, die karitative Zuwendung und Offenheit für den Schwachen erfahren die Kinder durch ihre Eltern, weniger durch staatliche Einrichtungen. Der kulturelle Humus freiheitlicher Demokratien wird deshalb insbesondere durch diese Subsidiarität des Erziehens gepflegt und entfaltet.

#### VII.5. *Staatliche und wirtschaftliche Erfüllung von Aufgaben*

Das Subsidiaritätsprinzip steht vor einer besonderen Aufgabe, wenn die demokratische Erkundung und Befriedigung des politischen Bedarfs dem Staat vorbehalten ist, der wirtschaftliche Bedarf hingegen von der Gesellschaft im freiheitlichen Wettbewerb erkundet und befriedigt wird. Freiheitlichkeit und Effizienz des Subsidiaritätsprinzips bewähren sich hier grundsätzlich, wenn der Einflussbereich des Politischen nach dem Prinzip des „soweit als nötig“ oder „so wenig wie möglich“ definiert wird. Die Anforderungen der Privatisierung von staatlichen Wirtschaftsunternehmen, von Deregulierung als Rückgabe von Bestimmungsmacht an den Freiheitsberechtigten und seine Organisationen, die Entflechtung von Großorganisationen zugunsten von mittelständischen und kleinen Wirtschaftsbetrieben sowie die Solidarität als Hilfe zur Selbsthilfe müssen aber so bemessen werden, dass sie nicht den Armen und Schwachen der Macht von Kapital und Markt ausliefern. Demokratie ist im Kern ebenfalls

ein Freiheitsprinzip, das nicht freiheitliche Selbstbestimmung durch staatliche Einflussnahme auf das Kollektiv kompensieren will, vielmehr der individuell freiheitlichen Selbstbestimmung die rechtliche und ökonomische Grundlage sichert und erst darüber hinaus Freiheit in der Form demokratischer Wahlen und Abstimmungen kollektiv zur Wirkung bringt.

#### VII.6. *Bereitschaft und Fähigkeit zur freiheitlichen Anstrengung*

Das Subsidiaritätsprinzip lebt als Prinzip der Freiheit, der Effizienz und der Verselbständigung von bereichsspezifischen Gesetzmäßigkeiten, von der Erwartung, dass das Angebot von Freiheitsrechten auch tatsächlich angenommen wird. Wenn die Menschen von ihrer Berufs- und Eigentümerfreiheit keinen Gebrauch machen und ihre Existenz durch Staatsleistungen sichern wollten, wenn sie keine Ehen und keine Familien gründeten, wenn sie die Anstrengung um das wissenschaftliche Auffinden der Wahrheit, das künstlerische Ausdrücken des Schönen, die religiöse Frage nach dem Unauffindbaren nicht mehr stellen würden, so wäre der Staat in eine Garantenstellung gedrängt, die ihn als freiheitliche Demokratie in eine Ausweglosigkeit führt. Papst Johannes Paul II. sagt in der Enzyklika *Sollicitudo Rei Socialis*:<sup>45</sup> „Die menschliche Person ist nur dann ganz frei, wenn sie zu sich selbst gekommen ist und in der Fülle ihrer Rechte und Pflichten lebt; dasselbe lässt sich von der Gesellschaft als ganzes sagen“. Subsidiarität baut auf die individuell mitgebrachte Bereitschaft und Fähigkeit zur Freiheitswahrnehmung, auf die rechtliche Definition (Begrenzung) der Freiheit in Freiheitsrechten, auf die innere Bindung eines Gewissens, auf Gemeinsinn und Gemeinverantwortlichkeit.

#### VII.7. *Subsidiarität in der Begegnung der Kulturen*

Hier wird der Ursprung des Subsidiaritätsprinzips in der Anerkennung des Menschen in seiner Würde und Freiheit, in der religiösen Zuwendung zum Mitmenschen als *imago Dei*, in der Verantwortlichkeit aller Macht gegenüber dem betroffenen einzelnen Menschen deutlich sichtbar. Allerdings ist diese Kultur der individuellen Menschenrechte keine Weltkultur, begegnet vielmehr anderen Kulturen, in denen der einzelne in der Sippe oder im Stammesverband aufgeht oder der Mensch sich eher als

<sup>45</sup> Johannes Paul II., Enzyklika *Sollicitudo Rei Socialis*, 1987.

Teil eines Herrschaftsverbandes definiert, dem er in Treue- und Ergebnisspflichten zugehört. Das Subsidiaritätsprinzip müsste demgegenüber seine eigenen Prämissen zur Wirkung bringen, in dem es sich möglichst ausdehnt und gegenläufige Kulturen verdrängt.

Auch hier enthält das Subsidiaritätsprinzip aber inhaltliche Vorgaben: Der Respekt vor dem Menschen und seiner Freiheit verbietet es, den in anderen Kulturen Beheimateten in diese Menschenrechtskultur zu zwingen, erst recht, ihn mit Gewalt und militärischen Mitteln zu unterwerfen. Subsidiarität ist auch eine Aussage zu den staatlichen Handlungsmitteln. Papst Johannes XXIII. stellt 1961 in der Enzyklika *Mater et Magistra* klar, dass staatliches Eingreifen sein Fundament im Subsidiaritätsprinzip vor allem befestigt, wenn es fördert, anregt, regelt, Lücken schließt und Vollständigkeit gewährleistet, wenn es also eine freiheitskonforme Gewährleistungs- und Ergänzungsfunktion übernimmt.

In ähnlicher Weise wird das Subsidiaritätsprinzip als Verfahrensregel für den Umgang der Kulturen untereinander wirksam: Subsidiarität ist ein Universalprinzip für das Verhältnis der Freiheit eines jeden Menschen zu einer diese Freiheit gewährleistenden, aber auch bedrohenden Macht. Das Subsidiaritätsprinzip ist also auf Ausdehnung in andere Kulturen angelegt, bleibt dabei aber auch seinen eigenen Prämissen treu, indem es den freiheitsberechtigten Menschen Perspektiven vermittelt, Ziele empfiehlt, Wirkungen einschätzt, Lebens- und Kulturerfahrungen berichtet.

Hier liegt der zentrale Auftrag der katholischen Kirche in einer globalen Welt. Sie ist die Macht des Wortes und der Verkündigung, wirkt in Bildern und Vorbildern, sucht die individuelle Bildung eines Willens im Gewissen zu binden und nicht zu einem bestimmten Verhalten zu zwingen. Kirchlichkeit pflegt so den Humus, aus dem freiheitliche Verfassungsstaaten erwachsen. Die Subsidiarität macht diesen Zusammenhang von Humus, Wurzeln, Stamm und Ästen eines Baumes – einer strukturierten Gesellschaft und eines Verfassungsstaates – bewusst.

# SUBSIDIARITÄT UND SOUVERÄNITÄT IN ZEITEN DER GLOBALISIERUNG

HERBERT SCHAMBECK

In the process of globalisation the concepts of subsidiarity and sovereignty are of great importance. Whereas sovereignty is in its core a legal concept the principle of subsidiarity – which goes back to the encyclical *Quadragesimo anno* of Pope Pius XI – is primarily a societal and political concept however with growing normative relevance.

The different forms of globalisation bring about many new political and legal problems. But the nation state cannot solve for example new ecological problems or new developments in technical matters by itself, because big international companies and their lobbies are often more influential than the single states. And the pressure of a worldwide economic network changes also the traditional profile of state activities and the legal concepts which have been developed along with it. This also often leads to a loss of legal security.

Therefore it will be necessary to strengthen again the principle of subsidiarity and different forms of self-government. From its original meaning the word *subsidium* means help and support and the principle of subsidiarity therefore constitutes different forms of supplementary support starting out from an individual sphere and going up to different social, local, regional, state territorial and global levels. In this respect we see also specific ethical links to the manifold problems which arose in the process of economical, technical, cultural, social and political globalisation.

The sovereign states have to respect and to protect human rights, democracy and the rule of law and have to cope also with new problems of social security guarantees or protection from terrorist threats. Because of different tendencies towards growing international interdependency the sovereign states have to coordinate their activities in more and more fields because the

problems of a growing world population cannot be solved by the single nation states alone.

International solidarity which however has to respect the principle of subsidiarity will be the only way to guarantee better standards of life and social progress in great freedom.

In different social encyclicals Pope John Paul II has pointed out these requirements very clearly.

Because for a real 'family of nations' we need an economic as well as an ecumenical brotherhood of man and everyone has to contribute to this great aim within the bounds of possibility.

\* \* \*

Betrachtet man das Denken und Wollen der Menschen, dann erkennen wir ein Entstehen und Entwickeln von Begriffen und geradezu parallel hierzu eine Aufeinanderfolge von Strömungen, welche das Schicksal der Menschen mehr oder weniger bewußt sowie deutlich oder nicht begleiten. Zu diesen Strömungen, die für die Menschen unserer Zeit fast schicksalhaft sind, zählt die Globalisierung.<sup>1</sup>

Die Globalisierung ist eine zahlreiche Sach- und Gebietsgrenzen überschreitende Vernetzung. Sie ist ein vielfach begründbares Phänomen unserer Zeit, in dem sich traditionsreiche Tendenzen und neue Begriffsbildung verbinden.

Lange Zeit wurde für dieses Phänomen der Begriff der Internationalisierung gebraucht.<sup>2</sup>

<sup>1</sup> Siehe u.a. *Politik der Globalisierung*, hrsg. von Ulrich Beck, Frankfurt am Main 1998; *Helmut Schmidt*, *Globalisierung, Politische, ökonomische und kulturelle Herausforderungen*, Stuttgart 1999, bes. S. 9 ff. und S. 45 ff.; *Globalisierung und nationale Souveränität*, Festschrift für Wilfried Röhrich, hrsg. von Dieter S. Lutz, Baden-Baden 2000, bes. S. 179 ff.; *Europa im Zeitalter der Globalisierung*, Vorträge des 1. DDr. Herbert Batliner-Symposiums, hrsg. von Carl Baudenbacher und Erhard Busek, Wien 2000; *Globalization Ethical and Institutional Concerns*, Editors Edmond Malinvaud and Louis Sabourin, Vatican City 2001 und *Hans-Olaf Henkel*, *Die Ethik des Erfolgs, Spielregeln für die globalisierte Gesellschaft*, 2. Aufl., München 2002, bes. S. 141 ff. und S. 207 ff.

<sup>2</sup> In diesem Sinne auch *Hans Tietmeyer*, *Economic globalization and its consequences for the concept of the State and its reality and for international relations between states*, lectures in the Aula Magna of the Gregorian University in Rome, 25th February 2000, p. 2.

## I.

Die Globalisierung ist ein in unseren Tagen sich in grenzüberschreitenden Kooperationen auf verschiedenen Gebieten ereignendes Phänomen, das bei unserer Plenartagung heute schon grundlegend von Paul Kirchhof auf zwei Begriffe bezogen wurde, deren Herkunft unterschiedlich ist, nämlich auf den der Subsidiarität,<sup>3</sup> die 1931 von Papst Pius XI. in seiner Enzyklika „Quadragesimo anno“ formuliert wurde, und den der Souveränität,<sup>4</sup> deren Ideengeschichte bekanntlich auf Jean Bodin und sein Werk *Les six livres de la République* (Paris 1576) zurückzuführen ist.

Während die Souveränität ein Rechtsbegriff wurde, ist die Subsidiarität ein gesellschaftspolitischer Begriff von immer stärker werdender rechtsnormativer Bedeutung. Im gegenständlichen Thema werden beide Begriffe in einem Neben- und Miteinander auf das allgemeine Phänomen der Globalisierung bezogen, womit sehr deutlich in den Ausführungen von Paul Kirchhof eine Ordnungsvorstellung vermittelt wurde, welche existentiell mit der Lebensstellung des Menschen selbst begründet wird.

Die Wertigkeit von Subsidiarität und Souveränität wird sich bei der Vielzahl von Ausdrucksformen der Globalisierung mannigfach zu bewähren haben.

Das Prinzip der Subsidiarität läßt sich auf verschiedene Bereiche beziehen, z.B. im Staatsrecht auf den Bundesstaat und im Völkerrecht auf den Staatenbund, während die Souveränität in einer Zeit der mannigfachen internationalen Organisationen und insbesondere der Integration,<sup>5</sup> die mit Übertragung von Hoheitsrechten auf zwischenstaatliche Einrichtungen verbunden ist, einen neuen Gehalt bekommt.

Jede Form der Globalisierung wirft eigene Rechtsprobleme im Staat auf. Ich meine nur beispielsweise die Interdependenzen auf den Gebieten der Technik (wie Nachrichtenwesen, Informationsverarbeitung), des Verkehrs

<sup>3</sup> Dazu Subsidiarität, ein interdisziplinäres Symposium, hrsg. von Alois Riklin und Gerard Batliner, Baden-Baden 1993.

<sup>4</sup> Siehe *Werner von Simson*, Die Subsidiarität im rechtlichen Verständnis der Gegenwart, Berlin 1965 und *Volkssouveränität und Staatssouveränität*, hrsg. von Hanns Kurz, Darmstadt 1970.

<sup>5</sup> *Heinrich Neisser/Bea Verschraegen*, Die Europäische Union, Wien-New York 2001 sowie *Herbert Schambeck*, Europäische Integration und Föderalismus, Österreichische Juristen-Zeitung 1996, S. 521 ff und *derselbe*, Zur Bedeutung der föderalen und regionalen Dimension in der Europäischen Union – ein Beitrag aus österreichischer Sicht, in: *Das Recht in Raum und Zeit*, Festschrift für Martin Lendi, Zürich 1998, S. 445 ff.



sowie des Sozial- und Wirtschaftslebens. Alle diese zahlreich vermehrbaren Kausalitäten für die Globalisierung haben ihre Konsequenzen und auch wechselseitigen Abhängigkeiten und Probleme. Ich nenne nur im Zusammenhang mit der Technisierung und Industrialisierung den Umweltschutz,<sup>6</sup> der in Bundesstaaten zumeist auch eine Querschnittmaterie ist und verweise auf die Probleme, die sich z.B. in den westlichen österreichischen Bundesländern wie Vorarlberg und Tirol, bei den Transportwegen für den Umweltschutz ergeben.

Grenzen treten zurück und Probleme werden deutlich; global wie sie entstehen, bedürfen sie auch global ihrer Erfassung und im Rahmen des Möglichen ihrer Lösung. Treffend betont Kirchhof in diesem Zusammenhang: „Verantwortlichkeit und Macht der Staaten zur Gestaltung der individuellen Lebensbedingungen werden allerdings gegenwärtig deutlich gelockert und beginnen sich im Globalen zu verlieren. Wirtschaftsunternehmen wirken auf weltoffenen Märkten und haben die Grenzen einer ‚National‘ökonomie, einer Volks-Wirtschaft längst überschritten; einige weltweit tätige Wirtschaftsunternehmen sind mächtiger als Staaten“.<sup>7</sup>

Diese Wirtschaftsunternehmen wirken in den Staaten und im zwischenstaatlichen bzw. internationalen Leben durch den Einfluß ihrer Lobbyisten und ihrer eigenen Potenz mannigfacher Art im Finanz- und Wirtschaftsleben. Denken wir z.B. an die Kohle- und Stahlindustrie und ihre Bedeutung für das Verhältnis von Deutschland und Frankreich auch im Zusammenhang mit den Ursachen für den Ersten und Zweiten Weltkrieg sowie an das Öl im Irakkonflikt. Nur all zu oft erweisen sich die Organe des Staates in Gesetzgebung und Vollziehung als bloße Ratifikationsorgane des außerparlamentarisch Vereinbarten. In dieser Weise geht die Globalisierung auf Kosten der Transparenz in der Politik und damit auch auf Kosten der Vorhersehbarkeit sowie Berechenbarkeit des Staatshandelns.

In diesem Zusammenhang gilt es, auch den Hinweis von Paul Kirchhof auf die zwei Verfahren der Bedarfserkundung und Bedarfsberücksichtigung

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<sup>6</sup> *Herbert Schambeck*, Umweltschutz und Rechtsordnung, Österreichische Juristen-Zeitung 1972, S. 617 ff. und *derselbe*, Humanitärer und ökologischer Umweltschutz als Auftrag für die staatliche und internationale Ordnung, in: Technologische Entwicklung im Brennpunkt von Ethik, Fortschrittsglauben und Notwendigkeit, Bern 2002, S. 347 ff., bes. S. 354 f. Siehe dazu auch *Winfried Lang*, Internationaler Umweltschutz, Völkerrecht und Außenpolitik zwischen Ökonomie und Ökologie, Wien 1989.

<sup>7</sup> *Paul Kirchhof*, Subsidiarität und Souveränität in Zeiten der Globalisierung, Manuskript S. 4.

mit demokratischen und wirtschaftswettbewerblichen Verfahren zu unterstreichen. Die Globalisierung hat nämlich insofern einen Einfluß auf den Staat, als immer mehr wirtschaftliches Zweckdenken die Staatswillensbildung beeinflußt und Gewinnmaximierung als Ziel setzt. Dazu läuft auch etwa in vielen Staaten mit einer geradezu grenzüberschreitenden Tendenz das Bemühen um Reprivatisierung; in Österreich vor allem in den letzten Jahren, auch um die sogenannten Maastrichtkriterien<sup>8</sup> zwecks Teilnahme an der Währungsunion erfüllen zu können. Es tritt wirklich ein Strukturwandel durch Prinzipienvermischung ein, „wenn in einer globalen Welt die Handlungs- und Entscheidungsmacht sich mehr und mehr von der demokratischen Bedarfsbefriedigung hin zum wirtschaftlich-wettbewerblichen Leistungsaustausch verschiebt. Es droht“, betont Kirchhof beachtenswert, „eine Ökonomisierung des Rechts, eine Dominanz des Fiskalischen auch in der Hoheitsverwaltung“.<sup>9</sup>

Je mehr aber der Staat in einem grenzüberschreitenden Einfluß wirtschaftlich tätig wird, desto mehr zeigt sich die Problematik, ob er auch in diesem Bereich dem Gebot der Vorhersehbarkeit und Berechenbarkeit des Staatshandelns gerecht werden kann. Schon heute zeigt sich diese Schwierigkeit in der Privatwirtschaftsverwaltung mit ihren Gebieten der Auftragsvergabe, Subventionsverwaltung und dem Eigenunternehmertum des Staates im Hinblick auf die Gebote der Gesetzesstaatlichkeit. Auf diese Weise wird das staatliche Handeln zu Recht als kommerzialisiert bezeichnet.

Da die Globalisierung stark ökonomisch bestimmt ist, nimmt grenzüberschreitend der Einfluß der Wirtschaft im Staat und auf den Staat zu. Dies verlangt ein Mehrfaches: erstens im Rahmen des Möglichen die Tätigkeit des Staates als Träger von Privatrechten an Gesetze zu binden und vor allem die Prüfungsmaßstäbe der Rechnungs- und Gebärungskontrolle, wie neben der Gesetzmäßigkeit besonders auch die Wirtschaftlichkeit, Sparsamkeit und Zweckmäßigkeit<sup>10</sup> auf die Wirtschaftstätigkeit des Staates als Handlungsmaximen anzuwenden. Weiters wäre es begrüßenswert, gegen die Überforderung des Staates und Überanstrengung seines Rechtes staatliche und öffent-

<sup>8</sup> Protokoll über die Konvergenzkriterien nach Art. 109j des EG-Vertrages; dazu *Peter Fischer/Heribert Franz Köck/Margit Maria Karollus*, Europarecht, 4. Aufl., Wien 2002, S. 905 ff.

<sup>9</sup> *Kirchhof*, a.a.O., S. 8.

<sup>10</sup> Siehe Art. 126 b Abs. 5 des Österreichischen Bundes-Verfassungsgesetzes und dazu näher *Johannes Hengstschläger*, Der Rechnungshof, Organisation und Funktion der obersten Finanzkontrolle in Österreich, Berlin 1982, S. 310 ff. sowie *derselbe*, Rechnungshofkontrolle, Kommentar zu den Artikeln 121 – 128 B-VG, Wien 2000, S. 109 ff.

liche Aufgaben zu unterscheiden.<sup>11</sup> Die staatlichen Aufgaben sollte der Staat selbst erfüllen, vor allem in der Hoheitsverwaltung im Dienste des Rechts- und Machtzwecks, öffentliche Aufgaben könnten auch Private im öffentlichen Interesse erfüllen, etwa in der Kultur-, Wirtschafts- und Sozialpolitik.

Dies wären Fälle, das Subsidiaritätsprinzip zu stärken. Ein Beitrag hiezu wäre auch, mehr als bisher neben der Staatsverwaltung die Möglichkeiten der Selbstverwaltung zu nutzen.

Die Selbstverwaltung kann auch in einer Zeit der Globalisierung deshalb von zunehmender Bedeutung sein, weil die Vernetzung der Menschen im Volk Nationalitäten und ethnische Gruppen verdeutlichen und in einer multiethnischen Gesellschaft die Selbstverwaltung auch dem Minderheitenschutz dienen und damit zum Frieden in einer pluralen Gesellschaft beitragen kann.

Die Globalisierung bedarf einer vielfachen Grenzziehung: beginnend mit Staat und Gesellschaft, wobei beide aufeinander bezogen sind.

Gerade in einer Zeit der Globalisierung, also der Vernetzung, tritt die Bedeutung der Gesellschaft hervor, sie soll aber zu einer strukturellen Unterscheidung von Staat und Gesellschaft sowie zu einer sachgerechten gegenseitigen Bezogenheit beider aufeinander führen, ohne daß der Staat vergesellschaftet wird, das heißt, daß weder Parteien und Interessenverbände als Repräsentanten der Gesellschaft sich des Staates alleine bemächtigen und die Autorität des Staates gefährden, noch daß diese Repräsentanten der Gesellschaft ausschließlich in den Dienst des Staates gestellt werden, weil diese Verstaatlichung der Gesellschaft die Freiheit des Einzelmenschen gefährden würde. Auch in diesem Bereich ist Subsidiarität gefragt und erforderlich.

## II.

Der Grundsatz der Subsidiarität selbst ist mannigfach anwendbar, sowohl im öffentlichen wie privaten Leben, in Gesellschaft, Staat und Völkergemeinschaft. Von seinem Wortstamm „subsidium“ ausgehend bedeutet es Beistand und Hilfe. Sie ist der „Grundsatz der ergänzenden Hilfeleistung“.<sup>12</sup> Dieser Grundsatz ist individual- und sozialorientiert; er be-

<sup>11</sup> In diesem Sinne bereits *Hans Peters*, Öffentliche und staatliche Aufgaben, in: Festschrift für Hans Carl Nipperdey zum 70. Geburtstag, München-Berlin 1965, S. 878 ff. und *Herbert Schambeck*, Der Staat und die Demokratie, in: Geschichte und Gesellschaft – Festschrift für Karl R. Stadler, Wien 1974, S. 448 ff.

<sup>12</sup> *Johann Baptist Schuster*, Die Soziallehre nach Leo XIII. und Pius XI. unter besonderer Berücksichtigung der Beziehungen zwischen Einzelmensch und Gemeinschaft, Freiburg im Breisgau 1935, S. 7.

zieht sich in gleicher Weise auf den Einzelmenschen, die Gesellschaft und den Staat; er hat zwei Seiten, eine negative, die eine Aktionssperre darstellt und eine positive zur Hilfeleistung. Das Subsidiaritätsprinzip ist daher ein personalistisches Regulativ zwischen Selbst- und Fremdhilfe.<sup>13</sup>

Die Anwendung des Subsidiaritätsprinzips erleben wir mannigfach: die Sozialversicherung, die Bundesstaatlichkeit und die europäische Integration seien als Beispiele in Erinnerung gerufen. Sie verlangt, wie Kirchhof mit Recht hervorhebt, als „Ausgangsgedanke die Besinnung auf die Leistungsfähigkeit des einzelnen Menschen aus eigener Initiative und eigenen Kräften“.<sup>14</sup>

Das Subsidiaritätsprinzip läßt uns aus dieser Sicht verschiedene Ebenen erkennen, die in einem wechselseitigen, geradezu bedingenden bedingten Zusammenhang zueinander stehen, nämlich eine Individual-, Sozial-, Lokal-, Territorial- und Globalsphäre. Persönliches Können und Wollen, territoriale Gegebenheiten sowie staatliche und internationale Strukturen sind hierfür ursächlich. Anschaulich spricht Kirchhof von einer „Stufenordnung der verschiedenen Vergesellschaftungen“.<sup>15</sup> Diese Stufenordnung setzt aber beginnend beim Einzelmenschen den Willen zur Eigenverantwortung ebenso voraus wie im öffentlichen Leben der Politik auf den verschiedenen Ebenen die Transparenz und auch damit eine bestimmte Offenheit für Entwicklungen besonders deutlich im Bundesstaat, etwa beim Finanzausgleich, den Gemeinden, Ländern und dem Bund zu bemerken, und in der europäischen Integration. Im letzteren Fall der Europäischen Union zeigt sich, daß nämlich das Gesamte der Europäischen Union nur bestehen kann, wenn das Einzelne, in dem Fall der EU-Mitgliedstaat, existiert, denn, wie es das deutsche Bundesverfassungsgericht treffend erklärte, sind die Staaten die „Herren der Verträge“.<sup>16</sup> Man übersehe aber nicht, daß das, was sich auch im Institutionellen und Organisatorischen auf verschiedenen Ebenen ausdrückt, insofern eine Begleitung ganz nach dem Subsidiaritätsprinzip verlangt, nämlich beginnend mit der persönlichen Verantwortung des

<sup>13</sup> Siehe näher *Herbert Schambeck*, Österreichs Föderalismus und das Subsidiaritätsprinzip, in: Festschrift für Ernst Kolb zum 60. Geburtstag, Innsbruck 1971, S. 309 ff., bes. S. 318 ff.

<sup>14</sup> *Kirchhof*, a.a.O., S. 15.

<sup>15</sup> *Kirchhof*, a.a.O., S. 15.

<sup>16</sup> Bundesverfassungsgericht, Amtliche Entscheidungssammlung Band 89, S. 155 (190); siehe dazu auch *Paul Kirchhof*, Europäische Einigung und der Verfassungsstaat der Bundesrepublik Deutschland, in: *Europa als politische Idee und als rechtliche Form*, hrsg. von Josef Isensee, 2. Aufl., Berlin 1994, S. 63 ff.

Einzelnen, das Heimat-, Staats- und Europabewußtsein vereinernd bis zu dem, was schon über das *Bonum commune humanitatis* im 16. und 17. Jahrhundert Francisco de Vitoria und später Francisco Suarez<sup>17</sup> erklärten.

In dieser Betrachtung führen uns Gedanken betreffend die Globalisierung über den Bereich der Politik und des Rechtes auch zu dem der Ethik. Sie stehen in einem wechselseitigen Bezug, sowohl auf der ersten Ebene, nämlich der des Einzelmenschen über der des Staates bis zu der Globalen der Völkergemeinschaft, verschiedene Differenzierungen einschließend, wie die Integration einzelner Staatengemeinschaften in verschiedenen Erdteilen.

Die Entwicklung in den einzelnen Sachgebieten, wie z.B. in der Wirtschaft, dem Umweltschutz, der Technik, aber auch der Kriminalität verlangen geradezu nach der grenzüberschreitenden Zusammenarbeit, bisweilen genügt die Koordination, oft ist auch mehr erforderlich, um bei mannigfachen Problemen zu befrieden, ganz nach dem Satz des Aurelius Augustinus: „*Pax est ordinata concordia*“.<sup>18</sup>

Zu diesem Frieden durch Ordnung bedarf es der Staaten und eines Volkes auf einem Gebiet sowie darüber hinaus in der Völkergemeinschaft. Auch im Zeitalter der Globalisierung sind Staaten erforderlich, um die koordinierte Handlungsfähigkeit im öffentlichen Leben zu ermöglichen; etwa zur Verbrechensbekämpfung oder zum Umweltschutz. Der Staat war früher die oberste, nämlich höchste Ebene, durch die Globalisierung nimmt er aber mehr eine Mittlerfunktion ein und wird, wie es schon Peter Pernthaler ausdrückte, „mediatisiert“.<sup>19</sup>

In einem Zeitalter der Globalisierung haben nämlich die Staaten noch mehr als bisher die Aufgabe Mitte und Vermittler zu sein. Dies setzt aber für ihre Existenz ihre Souveränität voraus.

<sup>17</sup> Dazu näher *Alfred Verdross*, *Abendländische Rechtsphilosophie*, 2. Auflage, Wien 1963, S. 92 ff. und S. 96 ff., *derselbe*, *Der klassische Begriff des „bonum commune“ und seine Entfaltung zum „bonum commune humanitatis“*, *Österreichische Zeitschrift für Öffentliches Recht und Völkerrecht* 1977, S. 143 ff. sowie *Heribert Franz Köck*, *Der Beitrag der Schule von Salamanca zur Entwicklung der Lehre von den Grundrechten*, Berlin 1987 und *Herbert Schambeck*, *La escuela de Salamanca y su significación hoy*, *Anales de la Real Academia de Ciencias Morales y Políticas*, Año XLII, No. 67, Madrid 1990, S. 85 ff.

<sup>18</sup> *Aurelius Augustinus*, *De Civitate Dei*, XIX, 11 – 13, 14.

<sup>19</sup> *Peter Pernthaler*, *Die Globalisierung als Herausforderung an die moderne Staatslehre*, in: *Staat – Verfassung – Verwaltung*, Festschrift anlässlich des 65. Geburtstages von Friedrich Kojan, Wien 1998, S. 79; siehe dazu auch *Peter Saladin*, *Wozu noch Staaten? Zu den Funktionen eines modernen demokratischen Rechtsstaates in einer zunehmend überstaatlichen Welt*, Bern 1995, besonders S. 88 ff.

### III.

Als der Begriff der Souveränität vor Jahrhunderten entstand, ging er besonders deutlich bei Jean Bodin aus der Auseinandersetzung<sup>20</sup> der damaligen Zeit der monarchischen Staatsform zwischen dem Herrscher, den Ständen und dem Papsttum hervor. Die Souveränität wird im Zeitalter der Globalisierung durch die Auseinandersetzung zwischen persönlichen Wünschen der Einzelmenschen, den organisierten Interessen der Gesellschaft sowie den verfassungsrechtlich festgehaltenen Staatszwecken einerseits und den Aufgaben sowie Verpflichtungen der Völkergemeinschaft im Rahmen der Globalisierung andererseits geprägt. Ohne Souveränität kann kein Staat bestehen und an dem Bestand sowie der Entwicklung der Völkergemeinschaft teilnehmen. Die Globalisierung verlangt daher auch die Souveränität des Staates im Sinne seiner autonomen Entscheidungs- und Handlungsfähigkeit. Auch wenn es auf verschiedenen Gebieten der Staatsaufgaben, etwa in der Wirtschafts- und Währungspolitik durch eine Wirtschafts- und Währungsunion eine Verlagerung der Staatsaufgaben gibt, verlangt auch eine Veränderung der Staatsaufgaben die Wahrung der Handlungs- und Verantwortungsfähigkeit des jeweiligen Staates und damit auch seiner Souveränität.<sup>21</sup> Diese Erfordernisse sind bei institutionellen Neuentwicklungen in der Völkergemeinschaft auf allen Ebenen und auch im Völkerrecht selbst zu beachten. Dem Völkerrecht als ein *ius inter gentes* kommt übrigens auch in einer Zeit der Globalisierung große Bedeutung zu, es sollte niemals durch das Recht des Stärkeren ersetzt werden.

Auch im Zeitalter der Globalisierung bedarf es des auf verschiedenen Gebieten mitentscheidungs- und handlungsfähigen Staates, er ist aber im Bereich seiner eigenständigen und eigenverantwortlichen Politik durch die Globalisierung verändert. So erklärte auch Hans Tietmeyer am 25. Februar 2000 in seinem Vortrag an der Gregoriana: „Schon in den letzten Jahren mußte die nationale Wirtschafts- und Sozialpolitik bei ihren Entscheidungen zunehmend auch die tatsächlichen oder potentiellen Rückwirkungen auf die Wettbewerbsfähigkeit der eigenen Volkswirtschaft beachten. Insofern war die nationale Politik schon bisher de facto nicht mehr wirklich souverän.“

<sup>20</sup> Näher u.a. *Max Imboden*, Johannes Bodinus und die Souveränitätslehre, Basel 1963, Neudruck in: *derselbe*, Staat und Recht, Basel und Stuttgart 1971, S. 93 ff.

<sup>21</sup> Siehe in bezug auf die EU näher *Herbert Schambeck*, Über die Idee einer EU-Verfassung, in: Ein Leben in Praxis und Wissenschaft, Festschrift Walter Barfuß, Wien 2002, S. 228 ff.

Mit der eskalierenden ökonomischen Globalisierung und der weiter vordringenden Internationalisierung der Märkte hat diese Entwicklung jedoch eine neue Qualität angenommen. Der Handlungsspielraum der nationalen Politik ist jedenfalls schon in den letzten Dekaden deutlich geringer geworden. Und wenn nicht alles täuscht, wird dieser tatsächliche Erosionsprozeß der nationalen Politik in Zukunft eher noch weiter zunehmen“.<sup>22</sup>

Sicher wird dieser „Erosionsprozeß“, wie ihn Hans Tietmeyer anschaulich nennt, nicht so weit zunehmen dürfen, daß ein Staat die Eigenständigkeit in seiner Politik und seine Souveränität verliert, denn diese sind zu seiner Existenz und Handlungsfähigkeit in der Völkergemeinschaft erforderlich. In dieser Völkergemeinschaft ist übrigens wie in einem Staat selbst, der auch heute u.a. Sozialstaat sein soll, eine Solidargesinnung erforderlich, sie vermag den Staat und mit diesem die Völkergemeinschaft zu einem Sozialverband zu formen.

Das Grenzen überschreitende Denken, Wollen und Handeln im Zeitalter der Globalisierung verlangt das gegenseitige Verstehen und nicht das unkritische Übertragen von Begriffen und Vorstellungen von einem Erdteil und einer Kulturnation auf andere. Auch politische Systeme, wie die der Demokratie, der Rechts- und Sozialstaatlichkeit bedürfen der vorhergehenden sie ermöglichenden Entwicklungen und Voraussetzungen, auch in kultureller Hinsicht innerhalb der einzelnen Staaten, Kontinente und ihrer Gesellschaft. Unbedachte diesbezügliche Zwangsbeglückungen wären daher kontraproduktiv!

In dieser Sicht ist für die Ordnung im Zeitalter der Globalisierung eine möglichst allgemeine Anerkennung der Grundwerte und Grundrechte der Menschen in den einzelnen Staaten so wichtig. Die gerade in den letzten Jahrzehnten, vor allem nach dem Zweiten Weltkrieg immer mehr, geradezu weltumspannende Anerkennung der Menschenrechte ist ein Beweis hiefür. Sie begleitet bewußt oder nicht die Menschen, welche die Anerkennung ihrer Freiheit und Würde auch dann verlangten, wenn ihnen diese als präpositives oder natürliches Recht begrifflich nicht bewußt, aber politisch als Forderung deutlich war. Dies war mit ein Grund für politische Umwälzungen in den letzten Jahren in Staaten verschiedener Erdteile mit autoritären und totalitären Regimen; die sogenannte politische Wende nach dem Kommunismus, die vor 14 Jahren zum Ende der Teilung Europas geführt hatte, sei als Beispiel besonders genannt.<sup>23</sup>

<sup>22</sup> Tietmeyer, a.a.O., S. 13.

<sup>23</sup> Näher Herbert Schambeck, Politik und Verfassungsordnung postkommunistischer Staaten Mittel- und Osteuropas, in: derselbe, Zu Politik und Recht, Wien 1999, S. 121 ff.

Realistisch muß man aber gleichzeitig feststellen, daß es Staatsgrenzen und Kontinente überschreitend nicht nur positive, sondern auch negative Tendenzen der Entwicklung gibt, dazu zählt der Terrorismus in einer bisher nie geahnten Form an politischer Auseinandersetzung. Früher wurden etwa Kriege mit formellen Erklärungen angekündigt und militärische Auseinandersetzungen waren dadurch mehr oder weniger vorhersehbar und berechenbar; beim Terrorismus ist dies nicht der Fall! Man weiß oft nicht einmal, ob ein solcher terroristischer Akt auf oder über der Erde zu erwarten ist oder nicht.

Staaten sind heute zur Erfüllung ihrer Schutzfunktion einmal mehr gefordert und das inner- und zwischenstaatlich. Auch zur Erfüllung dieser seiner Hauptfunktion bedarf der Staat seine Souveränität. Paul Kirchhof hat es erst kürzlich am 16. April 2003 in seinem Artikel mit dem treffenden Titel „Souveränität und Einordnung“ in der „Frankfurter Allgemeinen Zeitung“ betont: „Der Staat wurde zum Friedensgaranten, als er Souveränität, also das Recht der Letztentscheidung und das Gewaltmonopol gewonnen hatte und seit dem als übergeordnete Gewalt innere Konflikte schlichten und befrieden kann“.<sup>24</sup>

Die gleiche Bedeutung hat die Souveränität über den innerstaatlichen Bereich hinaus auch für den zwischenstaatlichen Bereich. Paul Kirchhof erklärte in diesem Zusammenhang die Souveränität „als Eigenverantwortlichkeit auch in der Mitwirkung in internationalen Organisationen“ und verweist diesbezüglich, das Deutsche Grundgesetz als Beispiel nennend, auf „eine nicht abgrenzende, sondern kooperierende Souveränität“.<sup>25</sup>

#### IV.

Die Vernetzung der Staatengemeinschaft in Zeiten der Globalisierung zeigt aber auch, daß sie sowohl normative als auch ethische Voraussetzungen ihr Eigen nennen sollte und, nicht zu übersehen, in wichtigen Teilen schon hat. Das unterstreichen ganz deutlich die Anforderungen, welche die UNO sowie der Europarat und die EU im Hinblick auf die Achtung der Menschenrechte, Grundfreiheiten, Demokratie und Rechtsstaat an ihre Mitglieder stellt.<sup>26</sup>

<sup>24</sup> Paul Kirchhof, Souveränität und Einordnung, Frankfurter Allgemeine Zeitung vom 16. April 2003, S. 9.

<sup>25</sup> Kirchhof, a.a.O.

<sup>26</sup> Präambel zur Charta der Vereinigten Nationen vom 26. Juni 1945, Präambel zur Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten vom 4.



Diese Hinweise lassen die Notwendigkeit erkennen, daß auch in einer Zeit der Globalisierung die Völkergemeinschaft eine Rechtsgemeinschaft sein soll, zu deren Bestand und Entwicklung die Souveränität der Staaten und im Verhältnis des Einzelnen zum Staat und der Staaten zur internationalen Ordnung das Subsidiaritätsprinzip wertvoll ist.

Das Recht ist aber auch im Zeitalter der Globalisierung nicht Selbstzweck. Es besteht im Dienst der Persönlichkeitsentfaltung des Einzelmenschen, des kulturellen Fortschritts, des wirtschaftlichen Wachstums und der sozialen Sicherheit innerhalb der Staaten und der Völkergemeinschaft. Die Globalisierung verdeutlicht ja in einem besonderen Maß die Pluralität innerhalb der internationalen Gemeinschaft, welche aber die Wahrung der Identität der Nationen und Staaten voraussetzt. Dies selbst verlangt u.a. die Achtung der Kultur und der Sprachen jedes Landes,<sup>27</sup> sowie auch ihrer geistigen Entwicklung und jeweiligen sozialen und wirtschaftlichen Möglichkeiten. Es erfordert neben der Selbsterkenntnis innerhalb der einzelnen Staaten und Nationen auch ein gegenseitiges Verstehen der Staaten und Völker in der globalen Welt sowie damit auch die entsprechende Toleranz und eine Verantwortung auf verschiedenen Gebieten, wie bei der Marktwirtschaft die soziale Verantwortung im Hinblick auch auf die Weltbevölkerung. So lebten zu Christi Geburt 200 Millionen Menschen auf Erden, 1900 waren es 1.600 Millionen und im Jahr 2000 schon über 6 Milliarden. Dabei muß heute fast die Hälfte der Weltbevölkerung noch immer mit weniger als 2 Dollar pro Tag auskommen; etwa 1 – 2 Milliarden Menschen, davon 500 Millionen in Teilen Asiens und 300 Millionen in Afrika mit weniger 1 Dollar. Die Menschen in Afrika südlich der Sahara sind heute fast so arm wie vor 20 Jahren!

Die beispielsweise genannten Zahlen zeigen, daß in einer Zeit der Globalisierung eine doppelte Verantwortung besteht, nämlich für die eigene Gesellschaft im eigenen souveränen Staat und in der Völkergemeinschaft für das Leben der anderen Nationen. In dieser Sicht könnten die Subsidiarität und Souveränität in der Zeit der Globalisierung auch im Dienst der Sozialverantwortung zu stehen haben. So hat Papst Johannes Paul II. schon in seiner Botschaft zum Weltfriedenstag 1998 erklärt: „Die

November 1950, geändert durch Prot. Nr. 11 vom 11. Mai 1994, Beitrittskriterien (Kopenhagener Kriterien) des Europäischen Rates von Kopenhagen vom 21. – 22. Juni 1993.

<sup>27</sup> Siehe näher *Herbert Schambeck*, Die Bedeutung der Sprache für Politik und Recht, in: Freiheit Sicherheit Recht, Festschrift Georg Weißmann, Wien 2003, S. 845 ff.

Herausforderung besteht ... darin, eine Globalisierung in Solidarität, eine Globalisierung ohne Ausgrenzung zu sichern. Das ist eine offensichtliche Pflicht der Gerechtigkeit, die beachtliche moralische Implikationen in sich birgt, wenn das wirtschaftliche, soziale, kulturelle und politische Leben der Nationen gestaltet werden soll“.<sup>28</sup> Papst Johannes Paul II. betonte: „Zu diesem Zweck darf man nie die menschliche Person außer acht lassen, die in den Mittelpunkt jedes sozialen Projektes zu stellen ist. Nur so können die Vereinten Nationen zu einer wahren ‚Familie der Nationen‘ werden, wie es ihrem ursprünglichen Auftrag entspricht, ‚den sozialen Fortschritt und bessere Lebensbedingungen in einer größeren Freiheit zu fördern‘“.<sup>29</sup>,<sup>30</sup>

Dieser Fortschritt für die Familie der Nationen verlangt im Zeitalter der Globalisierung über den normativen Bereich hinaus im Rahmen des Möglichen eine doppelte Brüderlichkeit, nämlich eine die ökonomisch und ökumenisch zugleich ist.

Ich meine eine ökonomische Brüderlichkeit in Form der Sozial- und Wirtschaftspartnerschaft von Arbeitgebern und Arbeitnehmern, die für eine soziale Marktwirtschaft eine so wichtige Voraussetzung ist, und eine ökumenische Brüderlichkeit, die vom Glauben in den christlichen Weltreligionen, des Judentums, den anderen großen Weltreligionen und aller Menschen guten Willens her für die Erkenntnis und Verwirklichung der Wertgrundlagen in einer Zeit vieler Pluralismen und der Globalisierung so wichtig ist.

Papst Johannes Paul II. hat diese ökumenische Brüderlichkeit schon in seinen Enzykliken *Sollicitudo rei socialis* (Nr. 47), *Centesimus annus* (Nr. 60) und *Fides et ratio* (Nr. 104) angesprochen. Johannes Schasching SJ spricht in diesem Zusammenhang von der „Notwendigkeit einer Ökumene der werbestiftenden Kräfte“.<sup>31</sup>

<sup>28</sup> Botschaft Seiner Heiligkeit Johannes Paul II. zur Feier des Weltfriedenstages am 1. Jänner 1998, in: *Die Weltfriedensbotschaften Papst Johannes Paul II. 1993 – 2000*, Beiträge zur katholischen Soziallehre, eingeleitet und herausgegeben von Donato Squicciarini, Berlin 2001, S. 167 und dazu in demselben *Paul Kirchhof*, *Aus der Gerechtigkeit des einzelnen erwächst der Friede für alle*, S. 175 ff. sowie *Gemeinsamer Einsatz für eine „Globalisierung der Solidarität“*, Ansprache von *Johannes Paul II.* am 17. Mai, *L'Osservatore Romano*, Wochenausgabe in deutscher Sprache, 10. August 2001, Nr. 32/33, S. 9 und *Globalisierung als Herausforderung für den christlichen Humanismus betrachten*, Ansprache von *Johannes Paul II.* am 8. November, *L'Osservatore Romano*, Wochenausgabe in deutscher Sprache, 30. November 2001, Nr. 48, S. 9.

<sup>29</sup> Satzung der Vereinten Nationen, Präambel.

<sup>30</sup> Papst *Johannes Paul II.*, Botschaft zum Weltfriedenstag 1998, a.a.O., S. 167.

<sup>31</sup> *Johannes Schasching SJ*, in einem Brief vom 11. Februar 1999 an den Verfasser.

Diese ökumenische Brüderlichkeit könnte auf jene Werte hinführen, die beginnend mit der Freiheit und Würde des Menschen, vom Staat nicht erzeugt, sondern von ihm vorgefunden werden und für den Bestand von Staat und Gesellschaft im Dienste des Einzelmenschen auch in einer Zeit der Globalisierung so wichtig sind.

Mit dem Hinweis auf die Verantwortung der Staaten und die Wichtigkeit der einzelnen menschlichen Person in einer Zeit der Globalisierung hat Papst Johannes Paul II. selbst auch die Bedeutung der Subsidiarität, die ja mit dem Menschen beginnt, und die der Souveränität betont, welche die Existenzbedingung der Staaten in der internationalen Ordnung ist. Bei aller Einsicht in diese Aufgaben und Notwendigkeiten in der Zeit der Globalisierung kommt es nämlich darauf an, zu ihrer Akzeptanz im Denken der Personen und den Zielsetzungen der Institutionen beizutragen. Es wäre begrüßenswert, könnte unsere Akademie mit derartigen Tagungen im Rahmen des Möglichen einen Beitrag hiezu leisten.

USE OF FORCE IN INTERNATIONAL RELATIONS  
AFTER 11 SEPTEMBER 2001  
A COMMENT ON PAPERS PRESENTED BY PROFESSORS  
LOUIS SABOURIN AND PAUL KIRCHHOF

KRZYSZTOF SKUBISZEWSKI \*

1. Professor Sabourin raises the issue of 'how to steer the world order' and 'how to manage globalization'. He points out (p. 10) that the challenge is all the more urgent since the international context is undergoing profound mutations, notably in view of the events of 11 September 2001, military intervention in Afghanistan and now the war in Iraq.
2. Professor Kirchhof says that (t)he military conflict in Iraq reminds one of the elementary starting conditions under which the modern State emerged (p. 101). He also draws our attention to what he calls 'a strict prohibition of force' under the Charter of the United Nations (p. 100).
3. The foregoing statements are a point of departure for making some comments on the law and politics of the use of force in the circumstances which those statements refer to. Managing use of force is one of the primary issues of globalisation. My comments are guided by a basic provision of the Charter of the United Nations, indeed one of its principles embodied in Article 2, paragraph 4:

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.
4. The attack by the terrorist organization Al Qaeda against the World Trade Centre in New York City and the Pentagon in Washington, D.C. on 11

\* Professor emeritus of international law, Institute of Legal Sciences, Polish Academy, Warsaw, and President, Iran-United States Claims Tribunal, The Hague.

September 2001 has demonstrated that, first, international terrorism has acquired a new dimension and, second, intergovernmental cooperation to combat it, also in its previous, more traditional forms, has been highly insufficient. Had real efforts been undertaken in the past to eliminate the scourge of terrorism, perhaps the tragedy of 11 September would not have taken place.

5. It was still the League of Nations which, in reaction to the terrorist assassination of King Alexander I of Yugoslavia in Marseilles on 9 October 1934 (another victim being the then French Foreign Minister Louis Barthou who accompanied the King), took up the issue and led to the drafting of the first treaty on the subject, i.e. the Convention against Terrorism dated 16 November 1937; a supplementary Convention provided for the setting up of an International Criminal Court to try terrorists.<sup>1</sup> None entered into force, a fact which significantly attests to the lack of interest on the part of States to deal seriously with the danger of terrorism. Incidentally, such a court became a reality only more than 65 years later when it inaugurated its activities on 11 March 2003 at The Hague by virtue of another treaty, viz. the Rome Statute of the International Criminal Court of 17 July 1998.<sup>2</sup> While that Court's jurisdiction on the crime of aggression remains, for the time being, suspended,<sup>3</sup> it should be noted, in the context of our problem, that the Court is competent to try persons accused of having committed the crime of genocide, crimes against humanity, and/or war crimes. Certainly, some acts of terrorism fit the meaning of a number of acts that fall under the head of these three categories of crime.

6. It is only several decades after the initiative of the League of Nations failed that various international organizations, including the United Nations, resumed work on terrorism. However, executive and judicial activity of individual States did not always follow the warnings emanating from international bodies; nor did States make much use of normative instruments adopted by these bodies to combat terrorism.

7. On 11 September 2001 the United States proclaimed 'the war on terrorism'. The word 'war' is a term of art, especially in classical international law. Though today there is a preference for the expression 'armed conflict', the word 'war' has its implications regarding the use of force by States against each other.

<sup>1</sup> Manley O. Hudson, *International Legislation*, vol. VII, pp. 862 and 878.

<sup>2</sup> *International Legal Materials*, vol. 37, 1998, p. 999.

<sup>3</sup> Its revival depends on the fulfilment of conditions set out in Article 5, para. 2, of the Statute.

8. As a result of 11 September the United States declared that it would use force against terrorism in accordance with its interests, in particular when there is a direct threat to US security.<sup>4</sup> The Washington Administration was clear on the possibility of a preventive strike. It may be added that preventive use of force is not a new problem in the practice of States. Contemporary history abounds in examples of such resort to force. While the Charter of the United Nations has to be interpreted as curbing that practice, there were, nonetheless, numerous instances when States resorted to force in the absence of a prior armed attack and without prior authorization from the Security Council. Today the scale of the problem seems to increase.

9. However, in the first phase of its 'war on terrorism' the United States did not need to resort to any action based on the concept of prevention. In its military action in and against Afghanistan the United States could and did rely on self-defence.<sup>5</sup> Under Article 51 of the Charter of the United Nations States retain their

inherent right of individual or collective self-defence if an armed attack occurs [...], until the Security Council has taken measures necessary to maintain international peace and security.

The French text of Article 51 is even more explicit in preserving the said right: it speaks of a 'natural' right of self-defence (*droit naturel de légitime défense*). States also have the right to collective defence, i.e. to defend the victim or victims of aggression. Collective defence, or defence of others, must be distinguished from collectively exercised self-defence. Such an interpretation of Article 51 has been universally accepted. Hence the lawfulness of defensive alliances under Article 51, like the one set up by the North Atlantic Treaty. On the other hand, the language of the Charter excludes pleas of forcible action in self-preservation and/or self-help if raised independently of self-defence or of a Security Council authorization.

<sup>4</sup> See President George W. Bush's statements after the attack of 11 September. See also The Sunday Times, 16 September 2001, pp. 22-23 and *ibid.*, "America at War" (Special Section), p.1.

<sup>5</sup> See T.M. Franck, 'Terrorism and the Right of Self-Defense', American Journal of International Law, vol. 95, 2001, p. 839. However, when talking to journalists several months after U.S. forces had started their operations in Afghanistan, Secretary of Defence R. Rumsfeld described these operations as a preemptive attack adding that it was not Afghanistan which attacked the United States. This was done by Al Qaeda. To stop it, he continued, it was necessary to attack it on the territory of Afghanistan, see Gazeta Wyborcza (Warsaw), 11 February 2003, p. 11 whose reporter was present at Rumsfeld's press conference.

10. At the moment of the 11 September attack Al Qaeda and its leader, Osama bin Laden, had their headquarters in Afghanistan. The territory of that State was thus used as a base for an armed attack against the United States. The action of the United States and Great Britain in October 2001 against Afghanistan when it was ruled by the Taliban was lawful. The Taliban Government harboured and supported Al Qaeda and refused to liquidate its links with it and to remove it from Afghan territory, though prior to military action it was called upon to do so. That Government also flouted various Security Council resolutions on terrorism. What the Taliban Government did constituted aggression by virtue of any definition of that notion. Using the language of the UN Definition of Aggression one can say that the Taliban Government was guilty of 'substantial involvement' in the 'acts of armed force' committed by Al Qaeda 'against another State (i.e. the United States) of such gravity as to amount' to what is regarded as 'an act of aggression' (cf. Article 3, para. (g) of the said Definition.).<sup>6</sup>

11. Use of armed force against terrorists is, like against pirates, lawful. By calling upon all States to act against terrorists Security Council Resolution 1368 (2001) *eo ipso* authorizes forcible measures against them. In its third preambular paragraph the resolution recognizes the right of self-defence under the Charter. Does this mean that we are faced with an armed attack in the sense of Article 51 of the Charter not only when a State acts against another State, but also when a terrorist organization (which is not a State) acts against a State? This seems to be the position of the Security Council.<sup>7</sup>

<sup>6</sup> UN GA Res. 3314 (XXIX) of 1974. In several non-aggression pacts concluded by the Soviet Union with its neighbours in 1932 (including the Baltic Republics, Finland and Poland) and also in the Balkan Pact of 1934 the definition of aggression comprised support given by a State to armed bands that were created on its territory or had already penetrated into another State, or refusal, when so requested, to take all measures in its territory to deprive such bands of any assistance or protection.

It may be added that the Declaration on Principles of International Law adopted by the UN General Assembly (Resolution 2625 (XXV) of 1970) states, *inter alia*, as follows:

Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State.

Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force.

<sup>7</sup> Cf. Franck, *op. cit.*, p. 840.

12. It has already been said (paragraph 8 above) that the position the US Government and, it appears, also some other States took with regard to 'war on terrorism' went beyond mere self-defence. A year after the attack on the World Trade Center and the Pentagon the United States formulated a new doctrine on the use of force.<sup>8</sup> That doctrine starts from the premise that

[g]iven the goals of rogue states and terrorists, the United States can no longer solely rely on a reactive posture as [it had] in the past, ... anticipatory action is permitted, even if uncertainty remains as to the time and place of the enemy's attack.

A semi-official comment<sup>9</sup> on the American doctrine referred to the distinction, sometimes made in legal writings, between, on the one hand, 'pre-emption against an imminent threat' considered legitimate by a number of jurists and, on the other hand, "preventive action" taken against a developing capability', which international lawyers 'regard[ed] as problematic' (or, to put it clearly, unlawful). Assuming that that distinction has been and is part of law, the US doctrine now abolishes it with regard to three categories of States.

*First*, 'states that abet, support, or harbor international terrorists, or are incapable of controlling terrorists operating from their territory' (semi-official comment). Generally speaking, such conduct amounts to aggression and can be dealt with accordingly (paragraph 10 above).

The so-called 'rogue' States constitute the *second* category. The criteria that make it are 'a history of aggression', 'support for terrorism' and pursuance of weapons of mass destruction 'thereby endangering the international community' (as the semi-official indicates) or using these weapons as "tools of intimidation and military aggression against their neighbors" (the wording of the doctrine itself). Some of these criteria are not clear and the essential problem is that their existence need not be determined, according to the US doctrine, by the United Nations but it suffices that the determination is made by the State or States which consider themselves menaced in their vital national security interests.

<sup>8</sup> The National Strategy of the United States of America, 17 September 2002. For excerpts from this document and its summary, see American Journal of International Law, vol. 97, 2003, p. 203.

<sup>9</sup> By the Director of the Policy Planning Staff of the US Department of State, R.N. Haas, 'Sovereignty: Existing Rights, Evolving Responsibilities', Remarks made at Georgetown University, 14 January 2003, *ibid.*, p. 204 (excerpts).



Finally, in the *third* category are States that (as the semi-official comment has it) commit or fail

to prevent genocide or crimes against humanity on [their] territor[ies]. The international community then has the right – and, indeed, in some cases, the obligation – to act to safeguard the lives of innocents.

13. It may be said that, to some extent, there is room for reforming the law relating to the use of force by States. In the past, humanitarian reasons were invoked by some States to intervene in other States actually in defense of strictly national and egoistic interests. It was a perversion of humanitarian intervention. The result was that by mid-twentieth century the lawfulness of humanitarian intervention became highly problematic unless it received some sort of consent, be it implied or silent, from the United Nations. It is to be noted that thanks to a Canadian initiative an international commission prepared a highly useful report on the subject.<sup>10</sup> In connection with other dangers, in particular those created by the proliferation of nuclear weapons, one may ask whether the nature of some of the present-day conflicts would not permit a partial vindication of the lawfulness of collective forcible action in a state of necessity. Here a situation is envisaged where it could be proved that such action has to take place to avoid a human catastrophe. I am referring to circumstances which, to quote the words in the *Caroline* incident of 1837 (well known to international lawyers), leave ‘no choice of means and no moment for deliberation’.<sup>11</sup> Some work on the issue of action in state of necessity is now in progress in the Institut de Droit International, a world academy assembling some 120 jurists.

14. The war on Iraq has dampened the initial hope that after the end of the cold war in the early nineties the Security Council would recover its constitutional role. An earlier signal in this respect was the military action against Yugoslavia by the forces of the North Atlantic Alliance in 1999 with-

<sup>10</sup> The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty. International Development Research Centre/Centre de recherches pour le développement international, Ottawa 2001. For the position of the Holy See on humanitarian intervention, see O. Fumagalli Carulli, *Il governo universale della Chiesa e diritti della persona*, V&P Università, Milano 2003, p. 285.

<sup>11</sup> British and Foreign State Papers, vol. 30, p. 193; J.B. Moore, *A Digest of International Law*, Washington, D.C. 1906, vol. 2, p. 409.

out an authorization from the Security Council.<sup>12</sup> Today the 'coalition of the willing' takes the place of an established alliance. More generally, what seems to fade away is the hope that at last the moment has come when States will do what Secretary-General Dag Hammarskjöld always wished they did, namely that they would conceive of the United Nations 'primarily as a dynamic instrument of governments'.<sup>13</sup>

<sup>12</sup> Addressing the Hague Peace Conference in that year the Secretary-General recognized to some extent the admissibility of that action (though not its conformity to Article 53, paragraph 1, of the UN Charter).

<sup>13</sup> In the introduction to his annual report for 1960-61, United Nations, Official Record of the General Assembly, 16th Session, Supplement No. 1 A, 1961, p.1.



THIRD SESSION

THE GOVERNANCE OF GLOBALISATION:  
SOCIOLOGICAL PERSPECTIVES



# SOCIAL INTEGRATION, SYSTEM INTEGRATION AND GLOBAL GOVERNANCE

MARGARET S. ARCHER

## *Introduction*

What differentiates globalisation from the world system, which developed after the sixteenth century?<sup>1</sup> Not every element of the new is necessarily novel nor does all that is solid always melt into air – as those keen to proclaim ‘new ages’ and to carve out ‘new eras’ like to suppose. Instead, the distinctive feature of the globalisation process is held to lie in its penetration and penetrative potential. The combined consequence of those economic, political and cultural changes, which constitute globalisation, is that they affect everyone on the planet. Progressive penetration means that we all become denizens of one world; the problem is that we have not become ‘citizens’ of it.

Specifically, the problem raised by globalisation concerns guidance and participation. The absence of guiding agencies has been highlighted by sociologists in terms of the ‘runaway society’<sup>2</sup> or the ‘risk society’. The lack of participatory mechanisms has been captured by the concept of ‘exclusion’. If participation means ‘having a say’ and channels through which to say it, then the human family is worse off in these respects and becoming more so, although the costs are unequally distributed around the globe. To be affected by globalisation, without any ability to exert a counter-effect, is the lot of the vast majority of the world’s population. It means that global

<sup>1</sup> As advanced most notably by Immanuel Wallerstein, *The Modern World System*, 3 vols., Academic Press, New York and San Diego, 1974-89.

<sup>2</sup> A. Giddens, *The Consequences of Modernity*, Polity Press, Cambridge, 1990. Ulrich Beck, *Risk Society: Towards a New Modernity*, London, Sage, [1986] 1992.

penetration is negatively related to participation. Not only is it unaccompanied by new forms of government and governance, it systematically disempowers those previous and hard-won agencies for guidance and participation – representative democracy, the institutions of civil society, trade unionism, and citizenship – which, until now, were associated with ‘development’. That is the truly novel consequence of early globalisation.

To some sociological commentators, all that had seemed solid had melted – into the ether. What globalisation left was a gaping void between free-floating global networks and the atomised individual – the two connected only by Internet. One of the results was an alarm call for the immediate generation of new sociological perspectives. Sociology, as a product of modernity, had followed its contours until the last few years. In particular, this meant that the nation state was equated with society, that different nation states constituted different societies, and that any international organisations (first of all the UN), alliances (NATO and the Warsaw Pact) or supra-national organisations (EEC), the latter having some quasi-federal features, were quite properly studied inter-nationally. ‘The global shift changed all that, and much of the theoretical alignment of sociology today flows from the challenge of globality to modernity’.<sup>3</sup> Too often, sound-bite concepts substituted for sustained analysis, and too frequently, a discursive *mésalliance* was forged with post-modernism – despite the irony of global commentators supplying the proponents of virtual reality with their repudiated meta-narrative. Although the two should not be elided, their joint impact was to inflate the hegemony of discourse, imagery and artistic license over *La Misère du Monde*.<sup>4</sup>

Analysis is indispensable; it cannot be replaced by epistemic ‘takes’ on reality, which accentuate only the most observable changes, to the detriment of underlying causal processes – and privilege the vantage point of academic elites in the Western world. Moreover, *generic* analytical concepts cannot be discarded in the same way as *substantive* concepts, linked to particular social formations at particular times (such as ‘the deferential voter’ or the ‘affluent worker’). Instead, this paper is based upon harnessing one of the most fruitful *generic* frameworks to the analysis of globalisation, its impacts upon prior social configurations and its consequences for posterior ones.

<sup>3</sup> Martin Albrow, ‘The Global Shift and its Consequences for Sociology’, paper presented at the 13th World Congress of Sociology, Brisbane, July, 2002, p. 8.

<sup>4</sup> Pierre Bourdieu et al, Ed. du Seuil, Paris, 1999.

This framework rests upon the distinction between 'system integration', the orderly or disorderly relations between the institutional parts of society, and 'social integration', the orderly or disorderly relations between members of society.<sup>5</sup> The point of sustaining this distinction is twofold. Firstly, these two elements of social reality possess different properties and powers from one another; 'systemic integration' can vary from contradiction to complementarity, whilst 'social integration' can vary from antagonism to solidarity. Secondly, they may vary independently of one another, and it is thus their combination that accounts for different patterns of stability and change in society. Social regularity results *caeteris paribus* when both are high, and societal transformation, when both are low. These are only two out of the four possible combinations, but they are the pair with the most strikingly different outcomes. This framework, which has been applied to pre-modern formations, like patrimonial bureaucracy, and to modern variants, like state socialism, should also be able to reveal what combination of 'social' and 'systemic' integration characterised the developed democracies in late modernity and what new combination of them is induced by globalisation. On the most macroscopic scale, it is maintained that two types of combinations between 'social' and 'system' integration do characterise successive phases of recent world history – although this is to use broad brush strokes that inevitably over-generalise.

Firstly, in the period that can be called Late Modernity, both forms of integration had slowly been rising because of their mutual dependence within the nation state. Such dependence underlay the growing responsiveness of the system to society and vice versa. When this reached the point of their *mutual regulation*, then *its* emergent causal power was simultaneously to foster further increments in social and systemic integration. Such societies were far from being fully good, fully fair or fully consensual. Nevertheless, their stability and regularity was an achievement; supplying plural and legitimate channels for their own re-shaping, a relatively stable context for institutional operations, and a relatively secure environment for individual life-projects. However, this configuration was intolerant of disturbance from outside. Thus, at the climacteric of the nation state in the twentieth century, the World Wars always entailed 'national reconstruction'. External disruption was precisely what

<sup>5</sup> David Lockwood, 'Social integration and system integration', in G.K. Zollschan and W. Hirsch (eds.), *Explorations in Social Change*, Houghton Mifflin, Boston, 1964, pp. 244-57.



globalisation represented, and it entirely undermined the configuration upon which the developed democracies depended for their existence. The emergence of what is termed Nascent Globality, meant that both forms of integration plummeted to such a low level that they were incapable of regulating one another – as key institutions moved beyond national confines, onto the world stage, after the 1980s.

Following the Second World War, these successive phases represented the disjunctive transition from the mutual regulation between system and society in Late Modernity, to their precise opposite, a configuration working for mutual de-regulation, in Nascent Globality. It is the speed of their succession and their juxtapositioning that fuelled the call for a new sociological perspective to grasp this *rerum novarum*. There is no dispute here that a new phenomenon had come about with globalisation. However, I will defend the ability of our *generic* framework, with its ontological depth and distrust of observable surface features, to provide a better analytical purchase upon its causes and consequences than any of the current, popular forms of rhetorical impressionism.

This defence can be evaluated by the leverage it provides on the big question of governance – by its ability to answer the question, ‘What made governance relatively unproblematic in Late Modernity and so very problematic within Nascent Globality?’ Moreover, this framework enables the question about future governance to be posed with some analytical specificity, namely ‘Can the process of mutual de-regulation between the systemic and the social be overcome at world level?’

*Late Modernity – the mutual regulation of the systemic and the social*

The predominance of the nation state made the national sub-system more important than the world system, whilst ever there were more internal institutional linkages and dependencies within the nation than ones outside it. For example, this social configuration was characterised by a national labour market, upon which the national economy was heavily dependent, a national legal system, whose definition of rights and duties constituted membership of the *pays légale*, a national educational system, the validity of whose credentials was largely restricted to the country (and its dependencies), and a national demarcation between the powers of state and church. Such was the magnitude of these differences that they fostered the development of comparative sociology as a comparison of nation states.

The developed democracies, which finally emerged in the mid-twentieth century, after two hundred years of struggle in the West and eighty years of consolidation in Japan, were distinctive societal configurations. These nation states were characterised by a relatively smooth dovetailing of their component institutions and the less smooth, but nevertheless successful, integration of their populations into a citizenship which took the revolutionary edge off enduring class divisions.<sup>6</sup> In short, they had achieved a rising level of system integration *in conjunction* with a growing level of social integration. This common, underlying configuration was attributable to internal processes, particular to each country – as is underlined by the fact that it did not preclude warfare between them. Certainly, the stress placed upon internal processes should not underplay the significance of colonialism or neo-colonialism as sources of wealth, means of off-loading surplus production and a method for controlling migration and immigration to national advantage. Nevertheless, there was never one uniform colonial adventure because patterns of external incursion were specific to each nation state and accommodated to nationally defined aims and objectives.<sup>7</sup>

Since the conjunction between rising systemic integration and growing social integration cannot be attributed to a hidden hand or to automatic functional adaptation, because the process itself was tense, conflict-ridden and haunted by the spectre of revolution, what accounted for it in such different countries? A causal mechanism needs to be identified because the Russian revolution *inter alia* shows that there are important instances where it was lacking.

The mechanism advanced here consists in the successful if stressful emergence of *mutual regulation between the systemic and the social*. Firstly, the necessary but not sufficient conditions for mutual regulation are rooted in the nation state itself. When state boundaries also defined the outer skin of society, then the necessary interplay between the systemic and the social, within the same territorial confines, ineluctably meant that *the state of the one mattered to the state of the other*. This is an ontological statement about inter-dependence, which is itself independent from either the institutional elites or the popular masses knowing it,

<sup>6</sup> T.H. Marshall, see 'Citizenship and Social Class' in his *Sociology at the Crossroads*, Heinemann, London, 1963.

<sup>7</sup> Hence, for example, the huge difference between British and French colonial rule – the one direct and the other indirect; the former structurally anti-assimilationist and the latter assimilating through the export and imposition of its educational and legal systems etc.

articulating it, let alone getting it right. Indeed, the case of Tsarist Russia illustrates the actuality of getting it wrong.

However, the sufficient, though nonetheless contingent, condition for the emergence of *mutual regulation* from *mutual dependence* was fundamentally cultural. It depended upon the vanguards of the system and of society *both* finding 'voice'. Historically, overwhelming emphasis has been placed on the systemic side of this equation, for institutional elites undoubtedly found their 'voice' first. Thus, burgeoning nationhood was presented as 'the great age of ideology'. What this 'age' fundamentally involved was the (attempted) legitimization of the system to society – entailing the crucial recognition that the state of society mattered to systemic stability. (A recognition signally lacking in Russia after the 'enlightened' attempts of Catherine the Great). However, the emergence of *mutual regulation* is not built upon protracted false consciousness. For such regulation to supersede mutual dependence, it was equally important that the 'third estates' should find their own 'voice', in the counter-ideologies of republicanism, political philosophy, socialism or the *volkgeist* – pressing for representation and redistribution within the system. Their common denominator was the simple message that the state of the system was intolerable to society – and the warning that this state of affairs mattered so much that society threatened to overthrow and recast the system.

In fact, such ideological conflict was the precursor of *mutual regulation* itself. This is because as ideology and counter-ideology lock horns, the predominant effect is not to promote extremism (or synthesis) but the progressive argumentative elaboration of both doctrines, and their successors.<sup>8</sup> Because charge was met by counter-charge and riposte by counter-riposte on both sides, the two increasingly defined one another's agendas. What emerged represented victory for neither, but rather much more sophisticated and refined versions of both, as I have illustrated elsewhere for classical political economy versus socialist economics in late nineteenth century England.<sup>9</sup> The unintended consequence was that two corpuses of ideas were elaborated *in opposition to one another* – unintentionally *mutual regulation* had been instituted. In this process, with nei-

<sup>8</sup> See Margaret S. Archer, *Culture and Agency*, Cambridge University Press, 1988, which takes up Imre Lakatos's notion of progressive and degenerating paradigm shifts and applies them, as he suggested was possible for any form of argumentation, to ideological elaboration. pp. 239-42.

<sup>9</sup> *Ibid.*, pp. 248-53.

ther winners nor losers, the result was that both sets of ideas became socially embedded and assured one another's continued salience in society, precisely because of their enduring opposition. This was their *effet pervers mais positif* for one another. In other words, *mutual regulation* depends neither upon a growing consensus between people nor upon compatibility between ideas. It is only a matter of co-presence and ideational engagement between the 'parties' involved. (Significantly, it is precisely the absence of co-presence that explains the efforts directed to *concientización* – in the old usage of the term – within Latin America, as a precondition of effective movements for justice and equality).

The same two elements – co-presence and engagement – also underpinned the emergence of *mutual regulation* between system and society at the institutional level. What is different is that these were explicit attempts at two-way regulation. This was most obvious in political institutions, with elites attempting to use restricted participation in order to be able to regulate the people and the popular classes seeking to extend democratic access and rights in order to regulate the elites. But the same scenario was enacted throughout the array of increasingly interconnected institutions and was largely responsible for their growing interconnectedness. Thus, in the British economy, the entrepreneurs sought to control wage rates, working conditions, working hours, housing, shopping and eventually the religious denomination and definition of appropriate instruction, in order to regulate their workforce. The workers responded with luddism, unionisation, direct and indirect political action, to regulate their bosses, and co-operative retailing as well as independent secularised education to offset the regulative incursions of capitalism. Again in the law, whilst the institutional elites sought to buttress social control through the workhouse, asylum, experimentation with imprisonment, and by linking legal participation tightly to property-holding, radical elements worked to undermine the legal privilege definitive of or associated with privilege itself.

The educational scenario is particularly revealing of how systemic interconnectedness grew out of the struggle over *mutual regulation*. If reform could be introduced from above, as with the Napoleonic *Université Impériale*, the new political elite could immediately make it an institution subserving State requirements, by dispossessing owners of previous networks of their schools, controlling their right to teach, and limiting *lycée* access to socially appropriate pupils. Yet the resistance of the traditional religious educators, combined with the insistence of the new industrialists, and also with resurgent republicanism, meant that in the second half of the

nineteenth century, the state educational monopoly was both cut and regulated by *liberté d'enseignement* (religious freedom to [re-]open schools), by *éducation spéciale* (geared to industry and commerce), and by *gratuité* (opening it to the people). Conversely, if reform was introduced from bottom-upwards, as in England, strong private networks were developed in a competition to serve their respective owners and regulate the rest of the population through spreading their particular definitions of instruction. First and foremost was the Anglican Church's network, secondly that of the alliance between entrepreneurs and religious dissenters (what we would now call the Free Churches), and lastly and least numerous by that of the working class – represented by secular Mechanics Institutes, in resistance to the first two networks. When this market competition in schooling ended in educational stalemate, by the mid-nineteenth century, the next fifty years witnessed the formation of a state educational system (1902) through the incorporation of these diverse institutions for regulation, counter-regulation and resistance to regulation.

Thus, in both countries, a hundred-year conflict had resulted in State Educational Systems<sup>10</sup> that also serviced diverse sectors of society – an unintended consequence in each case. The two educational systems epitomised *mutual regulation* between the State and civil society, which had given them their twentieth century form and content. Equally, both educational systems were now intimately interconnected with a plurality of other social institutions, thus increasing overall systemic integration, and both were approaching universal enrolment, thus simultaneously extending overall social integration.

This is not quite the end of the story in those countries where the analytical key has been held to lie in the *mutual regulation* achieved between high systemic and high social integration. In fact, the story line continues with their collective endorsement and enactment of the 'post-war formula' (social democracy + neo-capitalism + welfare state) – and runs on past it.

Firstly, systemic integration could be extended beyond the boundaries of the nation state, as the working of the European Union shows in various institutional domains. What is significant here is that the *mutual regulation* of system and society expanded correspondingly. For example, even individual nationals availed themselves of this new systemic apparatus for the

<sup>10</sup> For a detailed account of this protracted conflict, see Margaret S. Archer, *Social Origins of Educational Systems*, Sage, London and Beverly Hills, 1979.

regulation of national society. Cases of gender discrimination against female employees, initially dismissed at home, were often sustained at the European Court of Justice, whose rulings finally became established as 'good practice' back home in the national society.

Secondly, there remained considerable scope for increasing social integration within the nation state by incorporating a growing number of sectional interest groups, which were previously marginalised and subjected to discrimination. From the 1960s, the lead given earlier by the lower classes was passed like a baton to other interest groupings that had not engaged in large-scale collective action – developing neither articulate aims nor organising for their pursuit. Gender and ethnic groups became the new collective agents of the western world. Pursuant of their interests, each eventually made the political and institutional breakthroughs that spelt fuller social incorporation. In turn, increased civil rights, changes in social security entitlements, in terms of employment, and especially the variety of anti-discrimination laws, procedures and protocols introduced, also represented new modalities through which new sections of society could play a part in regulating the system.

In the quarter of a century following the Second World War, the developed democracies were characterised by the robust nature of *mutual regulation* prevailing between their institutional orders and social orders – between the parts of society and its members. These societies were far from being fair, egalitarian or fully democratic. Nevertheless, the two-way regulation established between system and society was better than it had been throughout modernity. This conjuncture held the promise of intensifying *mutual regulation*, such that fairer societies might be progressively and peacefully negotiated; ones where guidance and participation were increasingly inter-linked. All of that promise depended upon the nation state remaining co-extensive with society.

However, no final balance sheet can be presented because these remained unfinished stories. They were cut short by the structural and cultural transformations of the 1980s, which spelt nascent globalisation – slicing through national boundaries as the outer skins of societies and demolishing their hard-won, if cosy, internal settlements between the system and the social. The key structural dynamic was the rise of multi-national enterprises and finance markets, whose non-geocentric interests were epitomised in the abandonment of foreign exchange regulations in 1980. The central cultural dynamic was the invention of the World Wide Web in 1989, severing most of the link between intellectual property and its geo-local

ownership. It is common to add the fall of State Socialism to this list, in the sense that the end of the Cold War brought down the barriers between the first and second worlds, opened up new markets, enhanced free communication and fostered population movements. All of that was important and contributory. However, for the present argument, the significance of the ending of State Socialism also lay in showing the non-transferability of the formula for *mutual regulation* between systemic and social integration. Eastern European countries lacked both features and therefore the regulative relationship between them. With nascent globalisation, they could never even try to consolidate (unlikely as its prospects seemed) that which the developed democracies were themselves about to lose.

*Nascent Globality – reducing systemic and social integration*

The socio-cultural effects of globalisation were registered as a *simultaneous decline* in the relatively high levels of systemic and social integration that had slowly and quite recently been achieved in the developed democracies. The simultaneity of their decline served to reinforce the fragmentation of each other. As this occurred, their *mutually regulatory* relationship was a necessary casualty. The process of its demise repays attention, because pin-pointing what was lost enables us to question the prospects of it being regained on a world scale.

Where systemic integration is concerned, the downsizing of the nation state's powers was the prime consequence of economic and financial operations bursting through national boundaries, at the same time and in synergy with the means of communication and cultural distribution. Specifically, 'its regulatory ability is challenged and reduced'.<sup>11</sup> The challenge to the state is obvious; so many economic activities, previously subject to government controls, now escaped governmental jurisdiction, and so many information flows, previously amenable to national restriction, now floated free in the ether. But the reduction in the regulatory ability of the nation state is more complex. When leading elements of the structural and cultural systems re-(or de-)located themselves globally, then other institutions could no longer operate primarily within national confines. To take education as an example; 'transferable skills' then became more important than learning national history, professional training for law or

<sup>11</sup> David Held, *Democracy and the Global Order*, Polity Press, Cambridge, 1995, p. 267.

accountancy surpassed mastery of the local 'black letter' or competence in dealing with the IRS or Inland Revenue, and in academia, Mannheim's free-floating intelligentsia was finally in its element. All of this was readily observable in Britain and, ironically, at precisely the time that government (both parties) attempted to exert unprecedented control over curriculum, teaching and research.

At its simplest, such institutions were confronted by new 'markets' and by pressure from their clients to prepare them for these new outlets, which precluded supine responsiveness to governmental regulation. Instead, institutional leaders had to respond with innovation – as it were making their best guesses about best new practice, where national guidelines no longer constituted the best information. As they did so, each in a real sense went its own way, no longer constrained by old institutional interrelations and interdependencies. In sum, 'once culture, economy, even politics were de-linked from the nation state, there followed more general de-linkage of each from the other, and of all from society'.<sup>12</sup>

The de-linking of system from national society is vital. It has been argued that the ultimate source of *mutual regulation* used to be grounded in the fact that the state of society mattered to the working of the system and vice versa. This was decreasingly the case as can be seen most clearly for the economic elites. Because they are no longer dependent upon one (largely) national population, their concern vanishes about whether or not multi-national practices receive endorsement from within any nation, which in the past had meant accepting conciliatory regulation. Instead, enterprises move parts of their operations to employ 'suitable' personnel throughout the world. Thus, corporate management looses itself from the constraint that the need for legitimation had previously imposed upon it – because now there is no determinate population of employees, indispensable to its activities, who are also its national legitimators. Social consensus therefore becomes irrelevant to the exercise of institutional power. Institutional power has less and less need to seek to transform itself into authority. Instead, what is important is temporary local amenability, which, if wanting, is not met by durable concessions but by the transfer of operations. Although most marked in the multi-national corporations, non-legitimation and unconcern about it is the new institutional rule; our Universities are largely indifferent to where

<sup>12</sup> Martin Albrow, 'The Global Shift and its Consequences', *Ibid.*, p. 8.



their students come from or what they study, so long as they come in growing, fee-paying numbers. Of course, the one institution that cannot be indifferent to legitimacy (and cannot substitute amongst its subjects) is the downsized state itself. Yet, the de-legitimation of the state is also a victim of the loss of *mutual regulation* between system and society.

This is because, *where social integration is concerned*, the state of the national system matters less and less to the national population. As public recognition grows that national institutions, but especially the state, are incapable of regulating the major players and issues, thus having a shrinking role in determining the life-chances of the nation's people, they are progressively deserted. This is indexed by the progressive drop in voter turnout across Europe, especially among the young, the fall in political Party membership, and the rapid shrinkage in Trade Union members. The message is simple; 'If these institutions can no longer perform their regulatory role on behalf of society, then why bother with them?' But it is compounded by the fall in social integration itself.

Sociologists have accentuated two features as responsible for a reduction in social integration, whose impacts fall upon distinct sections of the population, generating different responses to the state of the national system. Respectively, these pick out those *unconcerned* about and those *impotent* in relation to systemic regulation by the social at the national level.

In the first place, the effect of increasing affluence in the developed democracies – one which reached down to benefit a substantial proportion of working class males in steady employment – has long been held to be associated with their 'privatisation'.<sup>13</sup> This phenomenon pre-dated Nascent Globality. The 'affluent worker' takes an instrumental orientation to his work, as merely a source of pay, rather than a relation to production defining his social identity. Affluence enables his family unit to focus upon privatised concerns – upon home ownership, house improvement, holidays and material acquisitions. In some interpretations, it heralded an '*embourgeoisement*' that would actually foster social integration by diminishing class antagonism and neutralising the workplace as the prime site for the expression of class conflict. At the time, that thesis proved contentious, but new forms of 'privatisation' have advanced under Nascent Globality whose accompanying de-politicisation and self-preoccupation augment indifference to the systemic and the social alike.

<sup>13</sup> Goldthorpe et al., *The Affluent Worker; Industrial Attitudes and Behaviour*, Cambridge, 1968.

In an important book, Teune and Mlinar<sup>14</sup> maintained that as sources of innovative ideas became concentrated within the (cultural) system, rather than distributed across different parts of society (as with early industrial inventions and the technological innovations of modernity), this induced a different pattern for their assimilation. Instead of a process of collective social *interaction* (between management and unions, for example) being necessary for the appropriation and application of 'variety', its concentration within a single system, free from local gatekeepers, prompted *transaction* between the systemic source and those units who saw benefits to be derived from it.<sup>15</sup> This abstract analysis became more vivid when concretised in the new quotidian transactions taking place between the 'net' and its users.

The 'privatisation thesis' was recast as (an exaggerated) 'individualisation' and explicitly accentuated the reduction in social integration involved. In Beck's version, because 'individualisation' was induced by the free flow of information and media representation, traditional categories for self-direction, such as class and status or norms and values were superseded by new notions of 'living a life of one's own', personal reinvention, familial experimentation and biographical revision.<sup>16</sup> This preoccupation with the individualised 'life of one's own', negotiated and renegotiated amongst our new 'precarious freedoms', was held to underpin various strands that contributed to the major reduction in social integration. For example, the loss of inter-generational solidarity, demise of the traditional family, the reduced salience of class, indifference to party politics and the absencing of normative consensus.

In the second place, the growing social 'exclusion' of significant tracts of the population pointed to another source of plummeting social integration. In this case, it arises from the *impotence* rather than the *indifference* of this collectivity, who can make common cause neither vertically, with employed workers, nor horizontally with one another. Whether or not this collectivity is correctly identified as the 'underclass', its members are rightly termed the subjects of social exclusion; this highlights their radical displacement from the hierarchies of remuneration, representation and repute, rather than placing them at the bottom of the old continuum of

<sup>14</sup> H. Teune and Z. Mlinar, *The Developmental Logic of Social Systems*, Sage, London and Beverly Hills, 1978.

<sup>15</sup> For discussion of this concept, see Margaret S. Archer, *Culture and Agency*, Cambridge University Press, 1988, pp. 242-5.

<sup>16</sup> See Ulrich Beck, *Individualization*, Sage, London, 2002.

social stratification. Moreover, their very heterogeneity as a collectivity – single mothers, the homeless, asylum seekers, unemployed youth, drug users, the handicapped and the old – is a diversity that divides, precluding social solidarity and collective action alike.

As such, the 'excluded' are passive agents, incapable of combination, which might allow them some regulative role in the system. Instead, they are people to whom things happen, rather than those who can assume some say over their own lives or the systemic structures that exclude them. Moreover, members of this collectivity, the new poor of Nascent Globality, are more reflexively concerned with their differences than their similarities. And these differences generate social antagonism. Generational differences divide the young unemployed from the old-aged, as two of the largest portions of the new poor. The old live in fear of street mugging and barricade themselves indoors, thus intensifying their isolation. Ethnocentrism raises another barrier to cohesion, as racism scapegoats as the cause of 'poor white' grievances. Simultaneously, the inner cities are minutely partitioned by the turf wars of the street-corner drug barons.

The disintegrative consequences, for system and society alike, of the loss of *mutual regulation* between them are not confined to the developed democracies. Were these effects predominantly internal, then concern about them could be restricted to them. Instead, these disintegrative dynamics are exported into the global arena, with the same repercussions for all parts of the world. What is now being witnessed is how the de-regulated system, in assuming world proportions, simultaneously undermines the conditions for its own regulation by world society.

#### *Disintegrative dynamics at world level*

The main argument about the developed democracies was that the decline in *mutual regulation* between system and society entailed reduced integration for both system and society – thus weakening the conditions for any re-establishment of two-way regulation between them. It is now argued that precisely the same scenario has been precipitated at world level. In general, this new configuration of low systemic and low social integration is ripe for radical transformation – often entailing violent disruptions.

In part, the global structural consequences derive from neo-liberalism succeeding where traditional liberalism had failed. In the birthplaces of capitalism, liberal political economy had strenuously repudiated state intervention or any other institutionalised interference with the free play of

market forces. Yet in precisely those countries, society had progressively been able to enforce greater accountability because economic enterprise could not remain indifferent to the populations upon whom it depended. Globalised neo-liberalism was under no such constraint. It shifted from being merely a strong proponent of non-interventionism to itself becoming a strong and active de-regulator.

Specifically, the multi-nationals could seek out cheap labour markets and weak states, unable to impose regulation as the price for external investment. Because enterprises were indifferent to any given population, the global possibilities of substitution meant that any attempted regulation was met by moving on. Both prospectively and retrospectively, the effect was to amplify de-regulation. Countries seeking to attract the multi-nationals knew the terms of the deal; those deserted by them, or increasingly in hock to them, inherited a debt-burden whose servicing weakened their already frail powers of state guidance over societal development. Equally, un-regulated labour markets deprived civil society of the main agency whose participation could temper the state. The unreeling of institutionalised corruption in government and the (almost inevitable) extension of the informal sector in society were the consequences of conjoint reductions in systemic and social integration. This is, of course, a combination that is mutually reinforcing – carrying these societies ever further away from the possibility of *mutual regulation* between them. Prospects for the effective internal governance of these countries declined accordingly. The inane and corrupt populism of Mugabe represents only a particularly extreme case of more general consequences.

In part, the disintegrative effects are as much cultural as structural, although the two tend to amplify one another. However, whilst the impact of the globalised economy and finance markets were registered locally as damage to whatever fragile systemic integration existed, the impact of global information technology was more deleterious for indigenous social integration. This works in several distinct ways.

Firstly, the other face of the consolidation of cheap, de-regulated labour markets throughout the world is the emergence of a 'cosmopolitan elite' drawn from everywhere. The very rich kids from the very poor countries are its mainstay. The minority of extremely wealthy parents in the Third World readily exchanges its local monetary capital for a globally convertible cultural capital embodied in its offspring – where it becomes immune from seizure. Hence the emergence of the 'globobrat' – the multilingual, cybersmart, frequent flyer, who is typically educated in three countries and

often emerges with that emblematic qualification, the MBA. In Britain, our independent boarding schools could not survive without them and they can represent half of a University's post-graduate enrolment. Take 'Raphael', the charmingly urbane son of a Thai judge: schooled privately in England, first degree in law from Bangkok, followed by another from the UK; vacations spent in Japan acquiring the language to extend the family firm's clientele and currently surfing the net for American law schools. He can tell a real from a fake Rolex at a glance, carries multiple international phone cards, and is the campus guru on software. His proudest achievement is teaching his father that highland malt is superior to the most expensive blended whisky. 'Raphael' is a cosmopolitan; he has much less in common with the people of Thailand than is the case for his father, let alone his mother.

Thus, the emergence of this hi-tech 'cosmopolitan elite' depresses indigenous social integration by increasing the cultural gulf within the home country. UNDP statistics show that whilst the OECD countries had 19% of the world population, they accounted for 91% of Internet users;<sup>17</sup> what 'Raphael' stands for is one embodiment of that small but influential 9%. Others overtly damage social integration. The expansion of cyber-crime and the application of information technology to drug-dealing and arms-trading serves to consolidate a globalised criminal elite whose activities augment the 'under-class' in the First World and increase corruption in the Third World.

Finally, the global divide induces social antagonism from areas retaining pre-global sources of social integration, especially religion and ethnic 'tribalism'. The effects of intensified religious fundamentalism are often registered as terrorism that dangerously increases social antagonism at world level. 'There is ... an explosion of fundamentalist movements that take up the Qu'ran, the Bible, or any holy text, to interpret it and use it, as a banner of their despair and a weapon of their rage. Fundamentalisms of different kinds and from different sources will represent the most daring, uncompromising challenge to one-sided domination of informational, global capitalism. Their potential access to weapons of mass extermination casts a giant shadow on the optimistic prospects of the Information Age'.<sup>18</sup> However, the inward effects of religious fundamentalism also amplify internal social antagonism. This is because its accentuation exacerbates indige-

<sup>17</sup> UNDP, *Human Development Report 1999*, Oxford University Press, Oxford, 1999, inside front cover.

<sup>18</sup> Manuel Castells, *End of Millennium*, Blackwell, Oxford, 1998, p. 355.

nous ethnic divisions, which could otherwise have slowly lost their social salience – Bosnia and Afghanistan being the most recent examples.

### *Global Order or Divided World?*

The dynamics of Nascent Globaility have been analysed to account for the precipitous world-wide decline in both systemic and social integration. It follows that overcoming this divisive scenario, which now affects us all, without our being able to effect it, ultimately depends upon the prospects of establishing a completely new relationship of *mutual regulation* between the systemic and the social at world level.

The major systemic barrier consists in the lack of a single agency for global governance. The absence of any framework for accountability means that no shift from growing dependence to growing regulation can take place, which would parallel the histories of the developed democracies. Pessimistic commentators accentuate two negative factors. Firstly, existing inter-national institutions (the UN, NATO, the IMF and WTO) are de-centred and de-linked, working independently of one another in a manner which simultaneously epitomises and intensifies low systemic integration – and most would resist the introduction of any tighter linkage between them. Secondly, the feasibility of increasing global governance is also cast in doubt by the resilient nationalism of the world's sole superpower. Instances include the USA's recent repudiation of international agreements (for example, Kyoto), insistent pursuit of its own Star Wars programme, and its latest willingness to dispense with a UN mandate before declaring war.

Optimism hangs on a single thread, but one that can only become stronger, unless burnt through by world conflagration. This is the fact that, like it or not, globalised *dependence* has already come about, indeed been brought about by the very de-centred nature of world-wide institutional operations. Its name is *global finitude*;<sup>19</sup> resources are finite, ecological ruin has begun and nuclear proliferation can complete it. Nothing prevents the end of the world as (and because) the vultures fight over its dying spoils. However, the hope remains that nascent forms of globalised social integration can overcome systemic mal-integration, transforming *dependency* into *mutual regulation*. Here, the ethical face of global finitude is the secular

<sup>19</sup> This was first elaborated upon by Martin Albrow, *The Global Age*, Polity Press, Oxford, 1996 and carries increasing conviction.

recognition of one people in one world – of ‘humanity’ and our common interests, rights and obligations (contra those sociologists whose gaze is riveted upon the process and practices of ‘individualisation’).

In the new social movements – new because they do not originate in the institutions of national civil society – rests the frail hope of a global networking which could counter-balance resilient nationalism, resurgent fundamentalism, multi-national malpractice and the de-regulative force of international finance markets. Certainly, some of these movements hold up the wrong banner, reading ‘anti-globalisation’, but they can also be seen as an ideological expression of and search for a global society. Thus, those ‘seeking to advance greater equity throughout the world’s regions, peaceful dispute settlement and demilitarization, the protection of human rights and fundamental freedoms, sustainability across generations, the mutual acknowledgement of cultures, the reciprocal recognition of political and religious identities, and political stability across political institutions are all laying down elements essential to a cosmopolitan democratic community’.<sup>20</sup> Two factors distinguish this notion of resurgent social integration from optimistic idealism.

On the one hand, information technology facilitates new forms of social integration just as it enables the unregulated expansion of institutional activities. The co-ordination of protest is no longer confined to the slow building-up of international organisations, as was the case with the Campaign for Nuclear Disarmament and its late development as a European organisation. The swift build-up of the new movements is ironically because they are, at least initially, ‘post-organisational’. On the other hand, it is possible to point to concrete instances of their regulative impact, although their contribution defies quantification. For example, the anti-apartheid movement received some credit for Mandela’s victory (and the Western Universities fell-over one another to shower him with honorary degrees). Equally, Greenpeace claims credit for inducing greater responsiveness to calls for nuclear restraint and the responsible disposal of nuclear waste. Perhaps, more significant – because *mutual regulation* has clearly engaged when it becomes self-reflexive – multi-national enterprises have begun to take much more seriously the issues of sustainable development, environmental protection and contribution to the local communities housing their installations. Correspondingly, the supermar-

<sup>20</sup> David Held, *Democracy and the Global Order*, *Ibid.*, p. 281.

ket chains and local authorities have responded by the voluntary provision of re-cycling facilities.

However, what does seem grossly over-optimistic is the *laissez-faire* approach that appears to hold that the transition from *mutual dependence* to *mutual regulation* can be left to the cultural influence of the new social movements. This appears to rest on two fallacies; that unorganised social protest can properly master de-centred institutions, still operating as forces for de-regulation, and the fallacy of aggregate individualism, namely that changes in public opinion alone spell the control of the social over the system. I believe these to be fallacious in relation to free-floating social movements for four reasons.

Firstly, these movements frequently provide no sustained critique or follow-through, given their reliance upon media attention, (their effect is ephemeral). For example, 'humanitarian crises' are forgotten as soon as their photographic immediacy fades – does world society still show active concern for those Romanian teenagers who made headlines as orphaned babies in the early 1990s? Secondly, the movements' responses tend to be mainly expressive, rather than furnishing in-depth analyses (their effect is superficial). For example, the anti-capitalist demonstrations grew in participants but became increasingly fixated on the 'quick fix' of debt remission for the poorest countries. Thirdly, the inspiration fuelling some movements is highly vulnerable to systemic take-over (their effect is undermined by incorporation). For example, marketing products as 'green', 'organic', or 'vegetarian' has simply become profitable big business – in what way does the bold sticker on my box of muesli, proclaiming 'green' and 'suitable for vegetarians', do anything for either ecology or animal rights? Fourthly, these movements are often impotent when resilient nationalism deliberately mobilises and maximises enduring sources of social antagonism (their effect is limited). For example, resurgent racism was harnessed by the EU at Seville to press through its depressing prime concern – the collective restriction of immigration.

In short, these diverse movements do witness to genuine global concerns that transcend localised or sectional vested interests, but to be effective in exerting consistent regulative pressure on world affairs they need to be re-linked to the processes of decision-making. Yet there is no cosmopolitan democracy in which their members can participate. They are self-conscious members of the new global order, who cannot yet be 'citizens' of it. As such, they are like the *sans culottes* prior to the formation (and experimentation) of the Revolutionary Assemblies. At most, they can be seen as



laying down new building blocks as components of a new civil society. In their most institutionalised forms, agencies like OXFAM, Amnesty and *Médecins sans Frontières*, represent a new humanitarian consciousness engaged in cosmopolitan action. Nevertheless, they are not the basis upon which the social can regulate the world system. This is because other, equally novel, components of the global civil society in formation – the cosmopolitan elites, management of the multi-nationals, finance-market players, protagonists of fundamentalism – do not collectively stand in anything approximating to a state of social integration. And, without that, ‘the social’ can play no concerted regulatory role in relation to ‘the system’.

Therefore, the alternative is attractive, namely to hope that the existing quasi-global organisations can develop an institutional framework which increases systemic integration at world level. Here, the equivalent building blocks are the new institutions, such as the International Criminal Court, the proliferating NGOs, and encouragingly effective bodies like FIFA, institutionalising world football. Nevertheless, like every proposal to extend the governance of the UN, the stumbling block is that these are all inter-national organisations. They are at the mercy of enduring national and regional interests, and whose authority can be repudiated by the strongest remaining power of the nation state – legitimate command over its armed forces.

That, Weber regarded as definitive of the nation state. Since we confront low systemic and low social integration at the global level, perhaps the key to moving from *mutual dependence* to *mutual regulation* between system and society lies precisely there – in controlled national de-militarisation. This would be good in itself and the process would result in necessary global institution-building for world peace-keeping, control of arms dealing, and of the drug trade. Yet, is there not something contrary in identifying the main current stumbling block to regulation of the world system with the engine that could begin the upward spiral towards increased systemic integration? Moreover, from where is the impetus for de-militarisation to come? Paradoxically, a possible answer seems to be ‘from war itself’.

With the war in Iraq, for the first time, huge sections of world society were more concerned to express outrage at this non-mandated act than to take sides in it. The six classic conditions for a just war, which were not met in this case, appear to be acquiring a seventh, that ‘justness’ must be determined by a world forum, rather than unilaterally by a protagonist. With this, heightened social integration makes its diffuse protest against the mal-integration of the international system and lodges its first significant plea for increased systemic regulation. Of equal importance is that the majority

of nation states endorsed it. Even the (shifting) rhetoric of the war started to be heedful; we heard less and less about 'liberating a people' and more about provisions to avoid 'humanitarian crises'. The superpower knew its Achilles' heel; it was aware that even September 11th would not exculpate it from another Mai Lai – and that is a completely new regulative tug, however inchoate it may be.

### *Conclusion*

If there is anything in the broad-brush analysis presented, it has an important implication for the diagnoses and prognoses for globalisation that have been proffered by political science. The foregoing discussion has highlighted the relatively sudden and *conjoint* development of low social and low systemic integration at global level – always a combination with explosive potential, but never one whose outcome can laconically be regarded as necessarily issuing in a higher and beneficial level of 'adaptation'. Indeed, despite the tendency for political concepts to be endlessly recycled and re-presented, the one belief that seems beyond resuscitation is in any form of 'hidden hand' that would automatically foster global adjustment.

Instead, two distinct tendencies can be detected in the avalanche of literature forthcoming from political science. Significantly, these two trends focus respectively upon the problems of low global social integration and of low global systemic integration, examined above. What is significant about this is that neither tendency gives a sustained analysis of the other side of the equation. In consequence, these two predominant strands of thought both necessarily fail to address the question of how the restoration of *mutual regulation* between the social and the systemic might come about.

On the one hand, there are the advocates-cum-apologists of 'global civil society', whose pre-occupation is fundamentally with 'the social'. Basically, their message is that the state of global social integration is really much better than I have painted it, if only we can be imaginative enough to (re) conceptualise its new fluid, dynamic, distanced, syncretic and elaborative forms. Here, John Keane's recent *Global Civil Society?*<sup>21</sup> is emblematic. Basically, it is a rhetorical peon to the character I called 'Raphael', to his mobility, associations, networks and especially to his contribution to global plurality and his 'new found' ethical tolerance of pluralism. Yet,

<sup>21</sup> John Keane, *Global Civil Society?*, Cambridge University Press, 2003.

'Raphael', whose existence is indubitable, symbolises the new globalised elite – what of the rest of the world's population and their state of social integration? Again and again, the cat is let out of the bag – everyone else is *affected* by the global institutional complex, but they are not integrated with it. This is quite overt in Keane's ideal type of global civil society, which, he states, 'properly refers to a *dynamic non-governmental system of interconnected socio-economic institutions that straddle the whole earth, and that have complex effects that are felt in its four corners*'.<sup>22</sup> Being affected without having a reciprocal say in the matter is exactly where we came in.

Yet, if we turn to this author's discussion of 'systemic integration', particularly the development of what he calls 'cosmocracy', as a new type of polity, we find that those very features associated with all 'having a say' are admittedly absent. This is equally the case for public accountability, universal access, effective steering mechanisms, regular forums, recognised channels for the expression of opinion and any basis for citizenship. Keane himself is quite ready to acknowledge these profound shortcomings of 'global systemic integration': 'cosmocracy also chronically lets global civil society down. It does not bring peace and harmony and good government to the world, let alone usher in calm order. Its hotch-potch of rules and institutions produce negative – disabling and destabilising effects'.<sup>23</sup> Precisely; the whole argument hangs upon a perceived increase in 'global social integration' – underpinning the burgeoning 'global civil society' as presented – whilst the other side of the equation is admitted to be disastrous and to hold within it the potential for nuclear disaster. The book is honest in its conclusions; the two forms of integration can and indeed do vary independently of one another. Yet, in the absence of *mutual regulation* 'cosmocracy' does not merely 'let global society down', it has the potential to annihilate it, along with the rest of the world.

On the other hand, does the second strand of political science thinking grasp both sides of the equation any better than the first? This is the approach which *foregrounds* the problems of 'global systemic integration' by its exploration and advocacy of some version of 'cosmopolitan democracy'. Here, David Held's book, *Democracy and the Global Order*<sup>24</sup> can serve as a good representative, especially given its sub-title, *From the Modern*

<sup>22</sup> *Ibid.*, p. 8.

<sup>23</sup> *Ibid.*, p. 112.

<sup>24</sup> David Held, *Democracy and the Global Order*, Polity Press, Oxford, 1995.

*State to Cosmopolitan Governance.* Unlike the first tendency just examined, this approach to 'embedded utopianism' is indeed pre-occupied with defining the institutional conditions under which 'all can have a say'. Held painstakingly redesigns existing political organisations into a new multi-level polity – operating at trans-national, regional, national and local levels and involving political actors such as INGOs, NGOs, and social movements – which would inaugurate a new form of 'high systemic integration'. He is greatly exercised, unlike the first approach, that those social forms having effects upon everyone should correspondingly be open to being affected by all. Consequently, for example, the extensive 'use of referenda, and the establishment of the democratic accountability of international organizations, would involve citizens in issues which profoundly affect them but which – in the context of the current lacunae and fragmentation of international organizations – seem remote. These mechanisms would help contribute, thereby, to the preservation of the ideal of a rightful share in the process of governance...'<sup>25</sup>

What would turn this ideal into a new working form of governance? Fundamentally, the answer given is the implementation of cosmopolitan democratic law, whose Kantian categorical imperative would be to ensure the rights of all to autonomy. Yet, how is this lynch-pin of the new 'Global Order' compatible with the existing low level of 'social integration'? At one point, Held acknowledges this problem: 'the notion that 'rights' advance universal values and are, accordingly, human rights – *intrinsically* applicable to all – is open to doubt. It is clear, for example, that many nations and peoples do not necessarily choose or endorse the rights that are proclaimed often as universal ... The tension between the claims of national identity, religious affiliation, state sovereignty and international law is marked, and it is by no means clear how it will be resolved'.<sup>26</sup> This seems indisputable.

If it is beyond dispute, one would then expect Held to produce a sustained analysis of the problems presented to cosmopolitan democracy by the (contra Keane) manifestly low level of social integration – and a discussion of how it might be overcome. On the contrary, the whole question of 'the social' receives remarkably short shrift throughout the book. Perhaps that should have alerted one to his otherwise amazing conclusion – 'a cosmopolitan democratic community does not require political and cul-

<sup>25</sup> *Ibid.*, p. 273.

<sup>26</sup> *Ibid.*, p. 223.

tural integration in the form of a consensus on a wide range of beliefs, values and norms'.<sup>27</sup> Why not? The answer is because democracy is *about* the public settlement of differences within the (world) community. That is its attraction, the possibility of pursuing various notions of the 'good life' as defined under free and equal conditions of participation. Then, 'the resolution of value conflicts becomes a matter of participating in public deliberation and negotiation'<sup>28</sup> and the whole problem surrounding the absence of global social integration evaporates. The drawback, as Held does recognise, is that his whole argument is premised upon (developing) value-consensus throughout the world on the value of democracy itself. In fact, social integration in this vital respect is the predicate of increased systemic integration – represented by cosmopolitan democratic law and leading to 'global order'. Yet the predicate is lacking; democracy is not valued the world over. The high level of global systemic integration envisaged is simply incompatible with the prevalent low level of social integration.

I do not presume to have any solution to offer to the dangers presented to the world by the existence and endurance of the conjunction between low social integration and low systemic integration. What I would conclude from the above argument is that no solution can be proffered which effectively eliminates *either* the 'systemic' *or* the 'social' from consideration, in relation to the other. If this paper has contributed anything at all, it is the suggestion that the key to global order is more likely to be found by exploring the conditions under which the 'social' and the 'systemic' might once again come to stand in a *mutually regulatory* relationship, at world level. What increases the likelihood of this possibility, without in any way guaranteeing its outcome, is the objective fact and growing subjective recognition of the forces of finitude.

I started by arguing that the development of mutual regulation between the system and the social had taken two hundred years of struggle to accomplish in the western democracies. Throughout this discussion, the only certainty is that we do not have another two hundred years in which to achieve cosmopolitan solidarity in a global system.

<sup>27</sup> *Ibid.*, p. 282.

<sup>28</sup> *Idem.*

SERGUEI AVERINTSEV\*

Thank you. I shall try to be as brief as possible. First of all I see a great merit in the analysis proposed by Prof. Archer, given the absence of any optimistic or pessimistic rhetoric, although the words optimism and pessimism were used – but in a very non-rhetorical way. To be sure, it is not easy to see clearly desirable possibilities in nascent globality and thus to find consolation, but neither should we be pathetically pessimistic. I am no specialist in sociology and so my comments will be very marginal.

When we are talking about the crisis, for example, of the traditional idea of the nation state, nationality and so on, it is not simply a sociological or juridical or economic problem, it is an anthropological problem. The fact is that right now we are experiencing a decisive period for the very survival of *homo sapiens*, because we are living in the first epoch when war becomes both impossible and intolerable, without ceasing to be unavoidable. I presume that some real psychological change (in what is taken to be a stable human nature) concerning war did not begin abruptly in the last decades.

However, the matters that were discussed and that seem to be coming into being of themselves, do not come about of themselves. As for the crisis of traditional ideas about the nation and about the state – about the nation state – I cannot help thinking about the fate of what in previous times could be termed ‘higher culture’. The authority of thinkers and poets and so on and the moral authority of higher culture have passed away; nobody can now say ‘higher culture’ without sounding funny. Well,

\* Editors’ note. As he relaxed after this strong declaration, our colleague was hit by a serious heart attack and stroke. Participants all shared the emotion here expressed by Michel Schooyans on page 195.

the co-existence of higher culture with the nation states at their height was very far from being peaceful, but even the conflicts between the systemic and the social in this area, even the fact that the poets and philosophers became marchers (for example in Russia, for our history is very typical), even this fact shows how earnestly the moral authority of literature and of philosophy, of the culture, of *logos* was taken.

Being myself, God forbid, neither an *étatiste* nor a nationalist, I cannot deny that the idea, not so much the reality but the idea, of states and especially of nation states created conditions for the great prestige of the hierarchically structured higher culture. That prestige together with the idea of the state and the idea of culture, represented alternatives to the prestige of money and of consumption. Such material things have existed at all times and one cannot help thinking that the symbol of the Athenian democracy was the agora, the marketplace. Yet, there were, in any epoch some alternatives: yes, you are very rich but there is a saint, there is a genius, there is a patriot. A systematic, and consequently critical position towards material phenomena was possible, a criticism that did not of necessity lead to something like communism or egalitarianism.

There was a time when, for example, in my land, in Russia, in the Soviet Russia of that epoch, educated people were greatly impressed by the fact that some genius like Fellini or Bergman had created a film that was a masterpiece of art. Nowadays people are impressed by the sum of money used to create this or that Hollywood film and by the technical effects produced. Some sort of natural, or what seemed to be natural, respect for creativity as such is gone. Its passing away is somehow connected with the crisis of social organisms like the nation and so forth. Even the Bolsheviks, who took sadistic joy in destroying churches, even they could not deny that the icons were something intrinsically worthwhile, that the old Russian icons belonged to the national pride of the Russians and so it was not possible, even in the communist epoch, to expel the icons from the museums...

## COMMENTS ON MARGARET ARCHER'S PAPER 'GLOBALISATION AND GOVERNANCE'<sup>1</sup>

PIERPAOLO DONATI

### a) *General remarks*

Archer's brilliant paper is an excellent example of a sound sociological analysis combined with a humanistic concern for the destiny of human beings and the whole world.

Her argument is that globalisation defeats governance at any societal level and, in doing so, it is accompanied by very sad social changes, in so far as globalisation means the increasing of new inequalities, dependencies (colonization), forms of human alienation, and so on. She makes us more conscious about the understanding of possible different outcomes, at least in the long run.

Archer starts by observing that there is much rhetoric about globalisation (particularly the rhetoric of 'individualization' – emphasized by U. Beck, Z. Bauman, A. Giddens and others) and that we must get rid of it through a proper conceptual framework which can have an explanatory power, at both the theoretical and practical levels.

The instrument through which she is able to achieve a new comprehension of what is happening today in our societies, is represented by the sociological framework firstly elaborated by David Lockwood and later on refined by other scholars, including herself: the system/social integration scheme. For her, recent world history can be divided into two phases, Late Modernity and Nascent Globality or Early Globalisation, characterized by

<sup>1</sup> I will divide my comments into two parts: a) general remarks and b) a few questions to Professor Archer.



a different combination of these two sides of the coin (society). In a word, globalisation is the disruption of the stable and mutual regulation between system and social integration which has been achieved in two centuries by modern advanced democracies (and established as a regime at the end of the Second World War). She defines globalisation as a state of society characterized by a low degree of system integration combined with a low degree of social integration: a configuration which seems to resemble a state of widespread socio-cultural anomie.

The distinctive feature of such a state of affairs is its 'penetration and penetrative potential', its pervasiveness, which is negatively correlated to social and political participation, so that globalisation comes to be synonymous with systematic dis-empowerment of people, at any societal level.

Seen in this way, globalisation can and must be considered a powerful challenge to modernity, in all its forms and dimensions. In particular globalisation erodes the historic compromise between the two pillars of modern society, the capitalist economic market and social democracy, a compromise which has taken up the form of the democratic welfare (nation) state. From now on, she seems to say, we have to abandon the idea of a fully-fledged, stable, nation-based *citizenship*, since we all become only denizens of one (improbable) world.

Does that mean that we have to give up any idea of citizenship? Archer claims that we can and must look for a *global citizenship*, which will be achieved through 'global governance'. The road to get to such a target is that of *transforming mutual (negative) dependence* between system institutions and (social relations in) civil society *into mutual (positive) regulation* between the two sides of any society, at the worldwide scale.

Archer looks at the new social movements as potential bearers (agents) of such an accomplishment, provided that they can elaborate a new culture, new social norms (regulations), new instrumental means, in conjunction with world 'political' institutions.

On the whole, Archer's analysis arrives at an ambivalent conclusion. She observes both negative and positive aspects in many social phenomena (upheavals?) going on around the world today. Although she seems to give room to some pessimistic notes here and there, on the whole her argument is that, in principle, we possess the (cultural, political, social) means to overcome the negative effects of globalisation. Globalised people and institutions can lead the world towards a global governance endowed with a correlated global citizenship.

b) *A few questions to Professor Archer*

(i) First, I would like to ask Professor Archer to say something about what could be misinterpreted as an apparent lack or even a contradiction in her analysis. On the one hand she claims that globalisation entails 'a gaping void between free-floating global networks and the atomized individual, the two being connected only by Internet'. This seems to be identical with claiming that society (in the shape of Late Modernity) is meeting a progressive destructure. On the other hand she speaks of new social movements, which imply social connections, primary and secondary bonds, dialogue, exchanges, forms of social relatedness, which in any case cannot be reduced to Internet communication. Where lies the difference? Or, putting it in another way: to what extent the disruption of the old social order means only de-regulation and not re-regulation under some disguised form?

I am sure she can tell us more about the way new social movements try to fill the gap between the falling down of old institutions and the building up of new ones.

Besides all that, doesn't she believe that local contexts (local communities) are reacting to globalisation in very many different ways which are not only 'localist', or 'fundamentalist', but on the contrary able to combine cosmopolitan (universalistic) and localistic (particularistic) dimensions of social organization in daily life-worlds?

Perhaps Professor Archer could highlight the existence of 'local' social networks which are not yet alienated to the most 'systemic' forms of globalisation, and at the same time not yet fallen into some communitarian utopia, but able to express an 'after' or *trans*-modern society (I am thinking of new ways of life in local communities as positive examples of creating a good multicultural society, etc.).

(ii) The second remark is on the concept (and practice) of governance. Professor Archer defines governance in terms of 'guidance and participation' (i.e. having a voice and channels through which one can express it). I wonder whether this concept owes too much to the modern understanding of politics, i.e. follows the old scheme State (=guidance) + civil society (=participation, advocacy, etc.). As a matter of fact, governance basically means *co-ordination* (among actors in different networks, according to different symbolic codes: political, social, economic, cultural). Social coordination is peculiar to civil society. Political governance pertains to the political system. Economic governance is proper to corporations, etc. (here I am referring to scholars such as Renate Mayntz and Günther Teubner, *Global*

*Private Regimes: Neo-spontaneous Law and Dual Constitution of Autonomous Sectors in World Society?*, in K.H. Ladeur (ed.), *Globalisation and Public Governance*, Cambridge University Press, Cambridge, 2000). If so, political institutions which must provide for world governance should be differentiated from other forms of coordination. I think this perspective is implicit in Archer's paper, but it would be interesting to know her opinion more in detail.

(iii) The conceptual framework put forward by Margaret Archer seems very fruitful for further elaborations. Let me make myself clearer.

The scheme drawn in Archer's paper, although in an implicit way, implies the existence of four possible 'states of society' (see fig. 1): A, B, C, D.

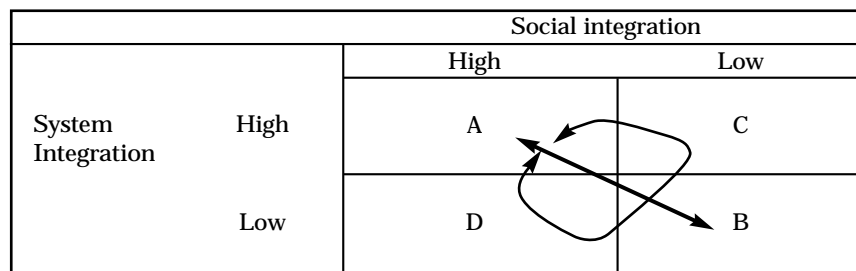


Figure 1. *Legenda*: A= strong (good) mutual regulation; B= no mutual regulation (or mutual de-regulation); C= priority of system regulation over social regulation; D= priority of social regulation over system regulation

Now, Archer's argument is based upon the transition from 'state A' to 'state B'. Of course, for reasons of space and time, she could not elaborate the dynamics in a more complex way. But let us consider that the transition from A to B can be not so rapid and direct as succinctly depicted in the paper. Professor Archer is perfectly aware of that. She knows that other configurations, particularly configurations C and D, do exist in fact. Notwithstanding all that, my question is: if we consider these alternative configurations, and their dynamics, more closely and analytically, what can we see? We could perhaps see what follows:

1) Many societies are organized according to C or D still today (and possibly they will resist against an evolution from A to B);

2) In many cases, the shift from A to B involves the passage through C and/or D (A can be destructured *via* societal transformations in which sys-

tem integration dominates over social integration or, vice versa, social integration dominates over system integration): are these 'states of transition' necessarily unstable?;

3) Many different paths are deemed to be possible in order to go from A to B or to go back from B to A, and so it is possible to have many different relatively lasting societal conditions;

4) Perhaps, in Western countries the present situation is a combination (*concordia discors*) of D and C: a new civil society tries to change the old systemic institutions and the old systemic institutions try to mould an emerging (but not well understood, nor self-conscious) new civil society.

To my mind, all these 'possibilities' demonstrate the usefulness of Archer's conceptual framework and its promises for a further understanding of the issue.

(iv) In the last part of her paper, Archer envisages a 'global order' beyond a 'divided world', not without specifying many conditions required for achieving that purpose.

I cannot but share her views and hopes. What is at stake is the chance to foster a new human conscience (culture) particularly sensitive to what Archer calls 'global finitude' and the need for a secular recognition of one people in one world, of 'humanity' and our common interests, rights and obligations (*contra* what is well known as methodological individualism). In particular I share her point on the need for controlled national de-militarization.

Relying precisely upon her analysis, I would like to underline a point. What can 'global citizenship' mean? To my mind, we cannot conceive of global citizenship simply as an extension (a generalization or universalization) of the nation-state citizenship as modern thinkers (such as I. Kant) did in fact think or suppose.

To me, the scenario is really one of a morphogenetic character (and Professor Archer knows that very well). This means that 'political constitutionalism' (as practiced in modernity) is over, and that we must look for what can be called the '*constitutionalization of the private spheres*', e.g. the construction of a new social order based upon a complex of rules suited to the self-government of the private spheres (linked to the so-called new social movements, but of a different stuff, like the third sector organizations) which constitute the new world civil society. In other words: the civil society arising at the global level needs its own institutions and a regulatory system of its own. World governance, after all, does not mean world government.

We can envisage many reforms for the UNO institutions (first: the abolition of the veto power; second: a composition of the Security Council

which must be really representative of the constituency of the member-states, and so on; something quite close is now required in the writing of the Constitution for the building up of the new EU). But, if we stopped here, it would be a very reductionist operation, it would mean believing in political engineering. Besides political engineering, – and Archer's paper is a great achievement along this line –, we need to re-enter the basic distinction system/social integration within both the political system (or 'world government', e.g. UNO) and the civil society at the worldwide scale.

I will be glad to know Professor Archer's opinion on that.

## VERS DES SOCIÉTÉS DU SAVOIR?

JÉRÔME BINDÉ

La mondialisation ne saurait être réduite à celle des ordinateurs, des télécommunications, des marchés financiers et des criminalités organisées: car elle n'est pas seulement mondialisation en "temps réel", c'est-à-dire en temps virtuel, mais aussi mondialisation dans la durée, et perception des relations dans l'espace entre individus et nations.

L'idée de mondialisation est née en fait dans l'empire romain, chez le grand historien Polybe (200-125 avant notre ère), qui déjà donnait une définition de la mondialisation voici vingt-deux siècles quand il soulignait qu'auparavant – c'est-à-dire avant les bouleversements historiques ayant conduit à la constitution d'un empire à prétention universelle – les événements qui se déroulaient dans le monde n'avaient guère de lien entre eux, mais que maintenant ils étaient tous pris dans un même ensemble.<sup>1</sup>

La mondialisation en tant qu'intégration au monde et essor de l'interdépendance engendre une autre mondialisation, qui est sentiment d'appartenance au monde et de notre commune dépendance. L'interaction crée de la relation, même dans un contexte où le rapport demeure inégal, comme dans tout ordre dominé par une hégémonie. Déjà, dans l'Antiquité, les philosophes stoïciens avaient, des siècles avant Kant, pensé au sein même de l'empire romain, avec un sens aigu de l'anticipation, le concept de cosmopolitisme, où l'on peut voir l'ancêtre de l'universalisme moderne. Si la mon-

<sup>1</sup> "Dans le passé, écrit Polybe, l'histoire du monde a consisté, pour ainsi dire, en une série d'épisodes semblables, dont l'origine et la conséquence sont aussi différentes que le lieu où ils se sont déroulés. À partir de maintenant, cependant, l'histoire devient un vide organique: les histoires de l'Italie et de l'Afrique sont liées à celles de l'Asie et de la Grèce, et tous les événements sont reliés et participent à une fin unique". (*Histoires*, Livre I, ch. 3, §§ 3-4).

dialisation actuelle semble parfois remettre en cause l'universalisme classique, elle engendre aussi la mondialisation des savoirs (je vais y revenir), tout comme celle des consciences, qui s'exprime dans les réseaux, si nombreux aujourd'hui, reliant les citoyens de la planète en dépit des frontières. La mondialisation des événements suscite la mondialisation des volontés, illustrée par l'essor des ONG et des mouvements internationaux de solidarité, mais aussi l'émergence encore timide de formes de gouvernance mondiale, dont témoigne l'organisation de sommets des Nations Unies qui tendent à associer de plus en plus gouvernements, acteurs clés de la société civile, experts en prospective, secteur privé et ONG.

L'essor de l'interdépendance suscite aussi une mondialisation de la société, marquée par l'essor encore fragile d'une société civile internationale et de réseaux professionnels transnationaux: ainsi prend corps l'idée prophétique de Toynbee, selon lequel la culture comprend trois cercles – l'universel, le national ou le local, et le transversal.<sup>2</sup> Face aux tragédies et aux fléaux qui ont marqué les dernières décennies (massacres intercommunautaires, essor rapide du crime organisé et de la violence, notamment terroriste, crises financières, extension de la pauvreté, des inégalités et de l'exclusion), la mondialisation suscite en outre les prémisses d'une "mondialisation du droit" dont Mireille Delmas-Marty<sup>3</sup> a l'une des premières pensé l'avènement. La création de la Cour pénale internationale en constitue un premier signe annonciateur.

La mondialisation favorise enfin l'essor d'une grande idée, hier encore utopique, et pourtant compatible avec les citoyennetés particulières: celle d'une citoyenneté planétaire, dont Edgar Morin a brillamment cerné les contours en pensant l'idée de "Terre-patrie".<sup>4</sup> Ainsi s'accomplit l'antique prophétie des philosophes, suivant laquelle tous les hommes participent de la raison universelle, qui leur impose une communauté de destin, des droits communs mais aussi des responsabilités communes. Selon une maxime de cette antique sagesse, "sur toute la terre, l'homme noble est dans sa patrie".<sup>5</sup>

<sup>2</sup> Arnold J. Toynbee, *A Study of History*, Oxford, Oxford University Press, 1933-1948.

<sup>3</sup> Mireille Delmas-Marty, *Pour un droit commun*, Paris, Seuil, 1994; *Vers un droit commun de l'humanité. Conversation avec Philippe Petit*, Paris, Textuel, 1996; *Trois défis pour un droit mondial*, Paris, Seuil, 1998.

<sup>4</sup> Cf. Edgar Morin, "La terre comme patrie" in *Le Courrier de l'UNESCO*, novembre 1995.

<sup>5</sup> Cette maxime de la philosophie stoïcienne, qui anticipe dès l'Antiquité l'idée de citoyenneté du monde et de la cosmopolitique, est citée par Peter Coulmas in *Weltbürger: Geschichte einer Menschheitssehnsucht*, Rowolt Verlag, 1990.

L'une des conséquences les plus immédiates de cette participation commune des hommes à la raison universelle est la mondialisation du savoir, qui est l'une des expressions les plus originales des transformations de cette mondialisation qui se réalise sous nos yeux. Diffusion croissante des bénéfices de la science et des connaissances à travers les frontières, partage de l'information en temps réel par les satellites de télécommunications ou en temps virtuel sur l'Internet, coordination internationale des travaux de recherche quelle que soit l'université ou l'institution, publique ou privée, qui les hébergent, développement de l'interdisciplinarité – telles sont quelques-unes des manifestations de ce décloisonnement des savoirs à l'œuvre aujourd'hui. Selon un certain nombre d'experts, l'ampleur des conséquences de ce phénomène sur la société autorise à parler d'un nouveau paradigme sociétal en émergence: en clarifier les tendances et les potentialités, c'est là tout l'enjeu d'une réflexion sur les "sociétés du savoir" émergentes.

Or réfléchir aux possibilités futures du savoir et à l'émergence éventuelle de sociétés du savoir suppose qu'on ait conscience d'un premier paradoxe, qui est celui-là même de la prospective, et de la connaissance: le savoir, sauf à le définir en termes transcendants, n'est jamais un lieu auquel on pourrait espérer un jour accéder. Il est chemin, voyage et construction. Mais la surprise de ce voyage est que la quête en est, au sens propre, infinie. Plus on travaille aux frontières de l'inconnu, serait-ce avec les instruments toujours plus puissants de la science, plus le mystère s'épaissit.

Les aventures mêmes de la science moderne, au XXe siècle, nous ont fait passer d'un âge de certitudes et de dogmatisme à un océan d'incertitudes et de doute. Désormais, le déterminisme a cédé le pas à de nouveaux paradigmes scientifiques, davantage marqués du sceau de l'interrogation et de l'hypothèse, et à des conceptions de la nature et de l'histoire, voire du progrès, modelées par la notion d'aléatoire et de complexité. Cependant, la conception d'un temps irréversible mais hasardeux remet paradoxalement au premier plan la notion de liberté et de créativité (Prigogine).<sup>6</sup> Construire des sociétés du savoir n'est donc plus un objectif qui serait de l'ordre d'une nécessité inflexible orientée vers un salut terrestre, mais une aventure de la liberté.

<sup>6</sup> Ilya Prigogine (en collaboration avec Isabelle Stengers), *La Fin des certitudes*, Paris, Odile Jacob, 1996; voir aussi "Flèche du temps et fin des certitudes" in *Les Clés du XXIe siècle*, Paris, Seuil/UNESCO, 2000.



Un deuxième paradoxe doit être évoqué: vouloir construire des sociétés du savoir a-t-il un sens, alors que l'histoire et l'anthropologie nous enseignent que, depuis la plus haute antiquité, toutes les sociétés ont été, ou sont, chacune à leur manière, des sociétés du savoir? Certes, les savoirs construits par ces sociétés étaient, peu ou prou, réservés à des cercles de sages ou d'initiés et reposaient souvent sur le secret. La lente émergence d'un espace public du savoir a été inséparable de celle de l'universalité, de la liberté, de la diffusion des connaissances et de l'éducation par l'école et l'université, par le livre puis l'imprimerie et, plus tard, de l'essor mondial des Lumières et de l'affirmation des droits de l'homme. Cet idéal d'un espace public du savoir, ne saurait être tenu pour définitivement acquis, puisque nous savons désormais que le progrès peut être mortel.

En outre, dans les sociétés du savoir "historiques", les savoirs, transmis selon des procédures prescrites par la tradition, étaient souvent de l'ordre du privilège. S'ils conféraient des pouvoirs immenses, et pouvaient influencer considérablement sur la société, la vie psychique, la guerre ou la maîtrise de la production, ils n'en avaient pas toujours pour autant une incidence directe sur le développement de celles-ci. Ils étaient en outre étroitement contrôlés dans leurs effets. De très grandes inventions sont ainsi restées longtemps sans influence majeure sur la vie des sociétés, sur le développement économique et social ou sur l'Histoire.

En revanche, comme le note Daniel Bell,

"la plus importante transformation de la société contemporaine, qui n'est toujours pas complètement réalisée d'ailleurs, réside dans l'accroissement sans précédent de la codification du savoir théorique (...). La connaissance est depuis toujours à la base de la communication et également des progrès techniques. Cependant, la codification du savoir théorique est sans précédent, et son lien direct avec l'innovation, l'industrie et l'économie est nouveau dans l'histoire longue de l'humanité. Elle ne date véritablement que d'une centaine d'années (...). C'est fondamentalement le savoir théorique et ses avancées qui conduisent aujourd'hui le changement. Cette réalité est particulièrement évidente en biologie".<sup>7</sup>

De ce point de vue, notre époque constituerait un moment singulier de l'histoire humaine. La troisième révolution industrielle a trop vite été impu-

<sup>7</sup> Daniel Bell, "Le savoir théorique conduit le changement" in *Sciences humaines*, n° 32, mars-avril-mai 2001, pp. 64-66.

tée à la mondialisation, ou plutôt à sa phase la plus récente. N'était-ce pas confondre l'effet et la cause? Car c'est la troisième révolution industrielle, fondée sur l'âge de l'information et l'irruption accélérée des nouvelles technologies dans tous les aspects de la vie humaine, qui est en train de changer le monde, et d'en faire un monde mondial.

Fondée sur la révolution cybernétique et biologique, donc sur l'ordre des codes, informatique dès à présent, génétique demain, cette troisième révolution industrielle plie la société de la production matérielle à un nouvel empire, celui des signes de la "société programmée".<sup>8</sup> L'avènement de celle-ci est favorisé par l'essor rapide des réseaux planétaires, privés ou publics, qui sont les agents principaux de la mondialisation, et en accélèrent le cours. Si l'on identifie aujourd'hui la mondialisation à ce règne des ordinateurs, des télécommunications, des marchés financiers, des médias et des réseaux, c'est précisément parce que la phase actuelle de mondialisation est, avant tout, la résultante de cette troisième révolution industrielle.

Peut-on, pour autant, formuler l'hypothèse que nous serions au bord d'un nouvel âge – celui de la, ou des sociétés du savoir? Certes, les nouvelles technologies de l'information et de la communication ne sont pas de simples systèmes mécaniques. Ce sont, selon un expert, des "technologies intellectuelles".<sup>9</sup> Leurs cadres de création et de diffusion sont fort différents de ceux des technologies mécaniques qui fondaient la société industrielle: s'incarnant dans la programmation, la réflexion sur les langages et les algorithmes informatiques, elles reposent sur les savoirs scientifiques les plus fondamentaux, issus des révolutions scientifiques du XXe siècle (théorie quantique, physique des particules, optique, cybernétique, etc.). Les biotechnologies s'appuient elles aussi sur les percées récentes et actuelles de la biologie fondamentale et de la génétique moléculaire.

Les bouleversements de la science, son internationalisation croissante (même si ce phénomène demeure encore assez limité), et les mutations profondes de la production et de l'application du savoir scientifique paraissent promettre l'avènement d'une société de la connaissance. N'a-t-on pas vu croître, dans des proportions colossales, les investissements dans la recherche, l'éducation ou la formation, tant dans le secteur public que dans le sec-

<sup>8</sup> Cf. Alain Touraine, *Critique de la modernité*, Paris, Fayard, 1992.

<sup>9</sup> Cf. Pierre Lévy, *World philosophie: le marché, le cyberspace, la conscience*, Paris, Odile Jacob, 2000 (collection Le champ médiologique).

teur privé?<sup>10</sup> Et cependant, la transformation la plus importante des quarante dernières années dans les principaux pays avancés n'est ni technique ni scientifique: c'est la modification de la place des femmes dans toutes les institutions de la société.<sup>11</sup> Nombre d'analystes estiment donc que les valeurs, la culture politique et le changement des mentalités ou des idéologies demeurent l'une des dimensions essentielles des transformations ou des permanences des sociétés.

Pour un certain nombre d'experts, la notion de "société du savoir" serait donc illusoire. La notion de savoir resterait, paradoxalement, floue et peu efficace au niveau scientifique. Pour décrire les bouleversements que nous vivons depuis plusieurs décennies, on utilise souvent le terme de "*société de l'information*" ou même, selon la distinction opérée par Manuel Castells, de "*société informationnelle*".<sup>12</sup> Car toutes les sociétés ont été des sociétés de l'information, puisque, selon ce chercheur, elles s'appuyaient sur la "communication d'un savoir". Selon Castells, la "société informationnelle" est "une forme particulière d'organisation sociale, dans laquelle la création, le traitement et la transmission de l'information deviennent les sources premières de la productivité et du pouvoir", en raison des nouvelles conditions technologiques de notre époque.

Nous serions donc, selon le mot du penseur brésilien Eduardo Portella, dans "une société d'information à de nouvelles échelles d'échanges".<sup>13</sup> Certes, l'émergence d'une société de l'information, à des rythmes très inégaux dans les différentes régions du monde, suscite de grands espoirs dans le domaine de l'accès au savoir et à l'éducation, de la communication et de la culture. Certains experts n'hésitent pas à parler d'une révolution comparable à l'invention de l'alphabet ou de l'imprimerie. Mais cette révolution des nouvelles technologies devra relever un défi majeur: celui de la distribution extrêmement inégale de l'accès entre pays industrialisés et pays

<sup>10</sup> Cf. Paul A. David et Dominique Foray, "Une introduction à l'économie et à la société du savoir" in *Revue internationale des sciences sociales (RISS)*, n°171, mars 2002, pp. 13-27.

<sup>11</sup> Voir sur ces questions le chapitre 5 du Rapport mondial de prospective de l'UNESCO *A World Ahead: Our Future in the Making* (paru en français sous le titre *Un monde nouveau*, Paris, Odile Jacob, 1999).

<sup>12</sup> Cf. la trilogie de Manuel Castells, *L'ère de l'information* (vol. 1 *La société en réseaux*, vol. 2 *Le pouvoir de l'identité*, vol. 3 *Fin de millénaire*, Paris, Fayard, 1998 et 2000), traduction française de *The Information Age*, Oxford, Blackwell Publishers, 1997.

<sup>13</sup> Eduardo Portella, "Indices de la société du savoir", discours introductif au colloque *Société, connaissance et savoir-faire* (Naples, 6 et 7 décembre 2001), publié in *Diogène* n°197, janvier-mars 2002 pp. 3-5.

en développement ou en transition, et au sein même des sociétés. Bon nombre d'experts estiment que les industries de l'informatique, des télécommunications et de la télédiffusion sont en train de converger, offrant ainsi un vecteur pour l'émergence de sociétés du savoir. Mais s'agira-t-il de sociétés du savoir ou de sociétés du loisir et du divertissement?<sup>14</sup>

La convergence, en un ordre des codes, de l'information, de la communication et de l'informatique sera-t-elle l'événement culturel du XXI<sup>e</sup> siècle commençant ou, avant tout, un événement économique? Certes, la révolution de l'information et de la communication provoque l'essor d'un langage universel: le numérique. La représentation numérique possède des avantages décisifs sur les autres systèmes de représentation: universalité du codage, reproductibilité infinie pour un coût marginal presque nul, ubiquité et instantanéité. Désormais, tous les textes, toutes les images et tous les sons peuvent être représentés sous la même forme universelle de séries de nombres.

Ces bouleversements éveillent de grands espoirs chez un certain nombre d'experts et dans la partie du public qui escompte avoir accès aux technologies, puisque la société de l'information crée une nouvelle génération d'instruments qui pourront favoriser le développement, l'éducation et la transmission du savoir. Certains voient même dans l'Internet la silhouette d'une nouvelle architecture sociale plus démocratique, horizontale, auto-organisée et anti-hiérarchique, "ouverte" et interactive.

Toutefois, nombre d'observateurs et d'experts formulent des diagnostics plus nuancés, voire opposés. "Beaucoup d'information, peu de savoir", note ainsi Portella. Car, on l'oublie trop souvent chez les "technophiles" et les entrepreneurs de la troisième révolution industrielle, information n'est pas savoir! L'essor des réseaux ne saurait, à lui seul, jeter les bases de sociétés du savoir. Les définitions de l'information et du savoir varient certes beaucoup d'un expert à l'autre et, comme le note Castells, cet effort même de définition introduit toujours une dose d'arbitraire dans le discours. Le même expert estime toutefois cette clarification nécessaire. Citant un autre classique de la théorie de l'information (Porat), il donne de l'information la définition suivante: "ce sont des données qui ont été organisées et communiquées".

A ce compte, il faut noter que l'information peut être très exactement du "non-savoir": selon certaines estimations, la moitié des informations qui cir-

<sup>14</sup> Cf. Gianni Vattimo, "Société de la connaissance ou société du loisir?" in *Diogène*, *op. cit.*, pp. 6-12.

culent sur l'Internet seraient tout bonnement fausses; et les rumeurs y prolifèrent. Quant au savoir, il convient avec Castells de rappeler la définition simple mais relativement ouverte qu'en a donné Daniel Bell: "un ensemble de formulations organisées de faits ou d'idées, présentant un jugement raisonné ou un résultat expérimental, qui est transmis à d'autres par un moyen de communication sous une forme systématique". L'information et le savoir sont donc des notions bien différentes: et pourtant, elles possèdent des traits communs (l'organisation d'énoncés et leur communication).

Sans jamais se confondre avec une société du savoir, la société de l'information entretient donc des liens profonds mais aussi très ambivalents avec le savoir, ainsi qu'avec les dynamiques sociales. Nous éprouvons désormais jusque dans le tissu social les conséquences de la troisième révolution industrielle qui, selon un expert, "fait de chacun de nous le moteur immobile d'une infinité de déplacements virtuels". Chacun de nous? Vraiment? Mais de quel "nous" s'agit-il? Celui des 7% de la population mondiale qui a accès à l'Internet? Celui du cinquième de l'humanité qui détient l'essentiel des ressources et des revenus de la planète? Il ne s'agit pas seulement d'un problème d'accès. Car la troisième révolution industrielle, comme l'ont souligné les travaux de prospective de l'UNESCO,<sup>15</sup> s'accompagne d'un nouvel âge de fractures qui dissocient désormais la société, le travail, l'école, et souvent même la famille, voire la nation.

De plus, on a souvent souligné que le monde du virtuel risquait d'entraîner une substitution du monde des simulacres au monde réel – certains y ont même vu une sorte de "crime parfait"<sup>16</sup> ou de "paradis artificiel" technologique. Si tel était le cas, ne risque-t-on pas de voir divorcer dans les faits la société de l'information et les sociétés du savoir? Nombre d'experts évoquent aussi d'autres risques. L'extension de la "technodéficiance", face à des outils dont la vitesse d'évolution surpasse la vitesse, relativement inchangée, de l'assimilation humaine, constituerait comme le "négatif" des sociétés du savoir censées émerger. En outre, en accomplissant le programme cartésien ("se rendre maître et possesseur de la nature"), les technologies, qui sont en fait des technosciences, en arriveraient au point d' "arraisonner" l'être humain, pour reprendre le mot d'un philosophe, et de s'emparer de ce qu'il y a de plus intime en l'homme: son patrimoine génétique par les biotechnologies, et ses facultés mentales par les neurosciences.

<sup>15</sup> Cf. *Un monde nouveau*, op. cit.

<sup>16</sup> Cf. Jean Baudrillard, *Le crime parfait*, Paris Galilée. L'espace critique, 1995.

De surcroît, les technologies tendent, pour ceux qui y ont accès, à vaincre les distances et à assurer la communication dans l'espace: on peut s'informer, communiquer, mais aussi s'éduquer ou se former sans se déplacer. Mais la communication dans le temps, qui s'appelle la transmission, exige une appropriation lente du savoir. Elle passe moins par les techniques que par la présence, la parole, l'institution. Or, la communication dans l'espace tend à reléguer la transmission au second plan. Peut-on dès lors parler de société du savoir authentique si ce savoir – à l'instar des valeurs – ne se transmet plus ou se transmet mal?

Pourtant, la société de l'information, de toute évidence, peut aussi contribuer puissamment à l'émergence d'économies du savoir et de sociétés du savoir. Nombreux sont ceux qui croient que nous aurions accédé aux rives d'une société du savoir parce que la révolution des nouvelles technologies reposerait essentiellement sur de nouvelles connaissances, et sur des informations nouvelles. Mais la deuxième révolution industrielle, à partir de 1850, s'était elle aussi caractérisée par l'impulsion décisive donnée à l'innovation par la science, notamment en Allemagne.

Cependant, comme le souligne Francisco Sagasti,<sup>17</sup>

“le rôle que le savoir joue aujourd'hui dans toutes les activités humaines est devenu stratégique au point que les concepts de développement et de progrès doivent être redéfinis en termes de capacité à créer, maîtriser, utiliser et transmettre le savoir”.

Mais, selon Castells,

“ce qui distingue l'actuelle révolution technologique, ce n'est pas le rôle majeur du savoir et de l'information, mais l'application de ceux-ci aux procédés de création des connaissances et de traitement/diffusion de l'information en une boucle de rétroaction (*feedback*) cumulative entre l'innovation et ses utilisations pratiques”.

Les innovations techniques, qui donnaient des avantages en termes de volume, d'accessibilité, de coûts et d'usage, rendent possible la substitution de la connaissance à la force de travail comme principal facteur de production. Aux yeux de Castells, la compétition, dans la nouvelle économie en réseau, “réside aujourd'hui dans la capacité à produire de la connaissance et à traiter des informations”, comme il l'a souligné dans *Les Clés du XXI<sup>e</sup> siècle*.<sup>18</sup> Si

<sup>17</sup> Francisco Sagasti, “Science, technologie et mondialisation”, à paraître in *Où vont les valeurs? Les Clés du XXI<sup>e</sup> siècle tome 2*.

<sup>18</sup> Cf. *op. cit.* pp. 289-293.

la société devient une société de l'information, l'économie devient une économie fondée sur le savoir.

Cependant, comment passer de la société de l'information – serait-elle coextensive à une économie du savoir – à quelque chose de différent, qui n'est jamais le produit d'une évolution spontanée, et que nous proposons, à titre d'hypothèse, d'appeler "sociétés du savoir"? Certes, il ne faut pas minimiser les transformations cognitives que connaît le sujet humain à chaque révolution fondée sur les technologies "douces" (l'écriture, l'imprimerie, les nouvelles technologies...): comme l'a rappelé Michel Serres aux *Entretiens du XXI<sup>e</sup> siècle*,<sup>19</sup> à chacune de ces révolutions technologiques, nous avons perdu la mémoire, qui est "devenue collective et objective, alors que nous la croyions subjective et cognitive". Selon le philosophe, qui rappelle les travaux du préhistorien Leroi-Gourhan, cette "perte de mémoire" est une donnée constante du processus d'hominisation, que résume le mot de Montaigne: "une tête bien faite plutôt qu'une bien pleine".

De même qu'aujourd'hui les technologies effectuent pour nous l'observation scientifique et les mesures de ces observations, de façon automatique et en temps réel, puis enregistrent ces données sans limite de capacité, le sujet humain se libère du "devoir de mémoire" au sens cognitif du terme; son esprit est de plus en plus libéré d'une ancienne fonction et pourra peut-être, dès lors, développer d'autres capacités, comme ce fut le cas pour la main, qui devint un organe de préhension et de manipulation lorsque l'homme se mit debout, ou pour la bouche, qui devint l'organe du langage quand sa fonction de préhension devint secondaire. En ce sens, la révolution des nouvelles technologies pourrait hâter la transition des *sociétés de mémoire* aux *sociétés du savoir*.

Ces lentes transformations cognitives ne sauraient, à elles seules, nous faire passer de la société de l'information à des sociétés du savoir. Car celles-ci ne résultent pas d'une évolution fortuite ou du seul jeu des interactions économiques et sociales. Si le savoir se construit et se transmet, les sociétés du savoir, elles aussi, s'édifient au travers de médiations institutionnelles et sociales et de politiques à long terme, et elles sont par excellence des sociétés de transmission. Trois pistes méritent peut-être particulièrement d'être explorées à cet égard: l'accès de tous aux sociétés du savoir en émergence; l'éducation pour tous tout au long de la vie; et les universités du futur.

<sup>19</sup> Séance des *Entretiens du XXI<sup>e</sup> siècle* du 9 mars 2001 sur le thème "Les nouvelles technologies et le savoir: prospective et pistes de réflexion". La réponse de Michel Serres à Jeremy Rifkin a donné lieu à une publication partielle sous le titre "La communication contre la culture: entre Disneyland et les Ayatollah" in *Le Monde diplomatique*, septembre 2001.

*1<sup>ère</sup> piste de réflexion et d'action: l'accès de tous aux sociétés du savoir en émergence*

En ce début du XXI<sup>e</sup> siècle, les révolutions des nouvelles technologies, qui résultent de plus en plus de percées scientifiques fondamentales, apparaissent, avec une netteté croissante, comme la condition nécessaire – mais non suffisante – de l'instauration de sociétés du savoir. De même, les disparités considérables qui affectent la diffusion de la troisième révolution industrielle et l'essor de la société de l'information affectent également l'universalité de l'accès aux sociétés du savoir en émergence. La participation à la "civilisation de l'immatériel" est très inégale dans les différentes parties du monde. Pour les 600 000 villes ou villages et leurs 2 milliards d'habitants qui sont encore privés d'électricité, que peuvent bien signifier des expressions comme "sociétés du savoir" ou "autoroutes de l'information"?

De surcroît, 80% de la population mondiale n'ont pas accès aux moyens de télécommunications de base, qui sont les infrastructures-clé de la société de l'information et des sociétés du savoir en émergence. Certes, la masse des internautes croît très rapidement, mais essentiellement parmi le cinquième de l'humanité qui concentre entre ses mains l'essentiel des ressources mondiales. La croissance du réseau risque donc assez rapidement de se heurter au "plafond de verre" de la solvabilité et de l'éducation.

Comment combattre le "techno-apartheid" et le "fossé numérique", alors que les nouvelles technologies constituent, nous le savons, l'une des clés du XXI<sup>e</sup> siècle, de l'accès à l'information et de la mise sur pied de réseaux d'éducation à distance? Les politiques en matière d'infrastructures et de tarifs ne devront-elles pas être revues, puisqu'elles pénalisent actuellement les plus pauvres et avantagent les plus riches? Quelle part sera réservée, dans la société mondiale de l'information, à l'Internet public, et quelle part aux Intranets privés? Le succès de la "Toile" et l'image de "transparence", d'ouverture et de liberté qui y est associée font trop souvent oublier que deux tiers des réseaux, à l'échelle planétaire, sont en fait privés et que, comme le dit plaisamment Castells, le *cogito* de cette économie de la connaissance pourrait se formuler ainsi "Je pense, donc je produis". Mais un système où moins de sept individus sur cent ont accès à l'Internet, en d'autres termes à la partie publique des nouvelles sources d'information, n'est-il pas, comme le suggère Paul Kennedy, "un système anti-démocratique et instable"?<sup>20</sup>

<sup>20</sup> Paul Kennedy, "Malaise dans la mondialisation" in *Où vont les valeurs? Entretiens du XXI<sup>e</sup> siècle 2* (ouvrage à paraître).



A cet égard, la croissance du secret dans les sociétés industrielles avancées, qu'il s'agisse du secret défense ou du secret industriel, financier, technologique ou commercial, ne laisse pas d'inquiéter. Cette croissance, qui a été mise en relief par un rapport remarqué du sénateur américain Moynihan,<sup>21</sup> semble contredire tous les argumentaires utopiques qui vantaient la transparence et le caractère ultradémocratique de la nouvelle société de l'information. Comment favoriser l'accès de tous à des sociétés du savoir en émergence si, de plus en plus, s'érigent les barrières d'un nouveau secret qui affecte de plus en plus sensiblement la science elle-même, et risque d'éroder chaque jour un peu plus la notion d'espace public du savoir, qui était au cœur du projet des Lumières?

Simultanément, les conditions de production des connaissances, des compétences et des savoir-faire nouveaux, tout comme les lieux où ils prennent naissance et se développent, ressemblent très peu à ce qu'ils étaient il y a à peine un quart de siècle. Les acteurs, le décor, les instruments, les moyens de communication ne sont plus les mêmes. Les activités de recherche scientifique et technique constituent un véritable système en réseaux, où les équipes de recherche, de plus en plus spécialisées, et les laboratoires publics et privés, universitaires et industriels, sont en constants rapports d'échanges réciproques. En même temps que croissaient les défis économiques, écologiques et sociaux à relever, la part des ressources publiques dans le financement de la recherche a diminué. Ici apparaît un autre changement qui affecte les liens de la science et de la société: autrefois, la population des chercheurs se trouvait surtout dans les universités. Depuis un demi-siècle, cette population s'est multipliée au point que le plus grand nombre de chercheurs se trouve désormais hors des universités, dans les laboratoires industriels et les laboratoires nationaux, les arsenaux et d'autres institutions. De plus, la recherche fondamentale se développe aussi au sein de laboratoires industriels, puisque ces travaux débouchent désormais sur des applications industrielles majeures.

De ce fait, le contrat entre la science et la société est, comme le note un expert, "en cours de renégociation". Cependant, les nouvelles formes de subvention et de production des connaissances menacent de compromettre les valeurs jusque là cultivées par le monde de la recherche scientifique: par exemple, en restreignant la publication des découvertes, et le libre accès

<sup>21</sup> Daniel P. Moynihan, *Secrecy: The American Experience*, New Haven, Yale University Press, 1998.

de tous les chercheurs aux résultats de la recherche, en étendant sans cesse la portée des droits de propriété intellectuelle, ou en provoquant des conflits d'intérêt, du fait de liens très étroits avec les organismes subventionnant la recherche. La liberté et la publicité de la recherche finiront-elles par prévaloir? Ou faudra-t-il créer de nouvelles institutions, et avec quelles ressources, pour protéger et perpétuer cette vocation?

Enfin, on oublie trop souvent, quand on évoque l'accès de tous aux sociétés du savoir en émergence, qu'il faut commencer par la base! En ce sens, construire des sociétés du savoir fondées sur le principe d'universalité suppose qu'on règle d'abord, en ce début de XXI<sup>e</sup> siècle, les dettes du siècle précédent: la première priorité est donc d'assurer une éducation pour tous. Or, il semble qu'on ait toujours remis à plus tard l'achèvement de cette tâche, et le XX<sup>e</sup> siècle s'est achevé sur l'échec partiel de la grande mission éducative qu'il s'était assignée à l'échelle mondiale: l'éradication de l'analphabétisme.

Il est heureux que le Forum de Dakar sur l'éducation pour tous, réuni par l'UNESCO voici trois ans en partenariat avec de nombreuses institutions dont la Banque Mondiale, l'Unicef et le PNUD, ait rappelé que "l'éducation est un droit fondamental de l'être humain" et qu'il ait notamment fixé à la communauté internationale ces deux objectifs essentiels:

"faire en sorte que d'ici à 2015 tous les enfants, notamment les filles et les enfants en difficulté ou issus de minorités ethniques, aient la possibilité d'accéder à un enseignement primaire obligatoire et gratuit de qualité et de le suivre jusqu'à son terme"; et "améliorer de 50% les niveaux d'alphabétisation des adultes, et notamment des femmes, d'ici à 2015 et assurer à tous les adultes un accès équitable aux programmes d'éducation de base et d'éducation permanente".

Au cours de la génération à venir, nous allons donc devoir relever *à la fois* les défis non résolus du XX<sup>e</sup> siècle et ceux du XXI<sup>e</sup> siècle. Jusqu'au cœur des pays industrialisés, la persistance d'un illettrisme qui touche au moins un dixième et le plus souvent près d'un cinquième de la population montre clairement les limites qui affectent actuellement l'accès de tous aux sociétés du savoir en émergence. Dans le combat qui s'engage pour l'accès au savoir, le *rôle des enseignants* demeurera crucial. Quelles que puissent être les évolutions que connaîtra nécessairement leur métier au cours des prochaines décennies, il est essentiel d'assurer aux enseignants des conditions d'exercice favorables à leur mission et un statut justement valorisé au sein de la société. Si l'on veut donner à l'éducation et à la construction de sociétés du savoir la priorité, on ne pourra le faire qu'en rétablissant, au niveau politique, le prestige et l'autorité des enseignants et le respect envers ceux qui savent, comme l'a souligné Jacques Delors.

*2<sup>me</sup> piste de réflexion et d'action: l'éducation pour tous tout au long de la vie*

Faut-il rappeler que deux tiers des analphabètes sont des femmes, et que l'éducation de base pour tous constitue l'une des meilleures réponses, à moyen et long terme, à nombre de problèmes majeurs qui affectent les sociétés humaines. Mais ce sont tous les niveaux de l'éducation qui doivent aussi être encouragés. Dans certaines régions où les filles sont exclues de l'enseignement secondaire, une femme a en moyenne sept enfants. Lorsque le taux d'inscription des filles y passe à 40%, cette moyenne descend à trois enfants. Cependant, 29% des jeunes filles de la planète ne sont toujours pas inscrites dans les écoles primaires.

Puisque l'éducation pour tous tout au long de la vie sera l'une des clés essentielles de la construction de sociétés du savoir, il faudra s'assurer que le "pour tous" ne soit pas oublié et que les femmes y aient accès à égalité avec les hommes. La troisième révolution industrielle et la mondialisation qui l'accompagne n'ont pas encore trouvé le nouveau contrat social qu'elles exigent. Humaniser la mondialisation, en faire une authentique promesse et un projet, lui conférer un sens, tel devrait être le cap. *L'éducation pour tous tout au long de la vie*, thème dont l'UNESCO a saisi l'importance voici déjà des années et qui est au cœur du Rapport de la Commission internationale sur l'éducation pour le XXI<sup>e</sup> siècle, présidée par Jacques Delors, *sera-t-elle l'un des axes essentiels de ce nouveau contrat social?* Telle est l'une des propositions centrales que nous avons faites dans le Rapport mondial de prospective de l'UNESCO, publié voici deux ans, en anglais sous le titre *The World Ahead: Our Future in the Making*, et en français sous le titre *Un Monde nouveau*. Ce serait un chantier immense, qui pourrait être le grand chantier des prochaines décennies. Dans cette perspective, il faudra en faire un véritable enjeu démocratique, et donc démanteler l'apartheid scolaire et universitaire en pleine expansion.

Construire des sociétés du savoir devrait conduire non seulement à promouvoir, chaque fois que c'est approprié, l'éducation à distance, mais aussi, à développer les facultés d'apprentissage et de découverte permanente. Il s'agit désormais moins d'apprendre que d'apprendre à apprendre. Car la plupart des experts pronostiquent une grande volatilité des métiers et des changements fréquents de profession. Dans cette perspective, il faut envisager l'éducation non plus comme une période d'apprentissage limitée dans le temps, mais comme un processus qui se poursuit tout au long de l'existence. L'éducation pour tous tout au long de la vie ne se résume donc pas à l'addition de l'éducation initiale et de l'éducation permanente: elle suppose

l'essor d'une "société éducative", qui aura dépassé la conception limitative et compartimentée des trois âges de la vie (celui où l'on apprend, celui où l'on travaille, celui où on se repose).

Mais l'éducation tout au long de la vie aura aussi une finalité sociétale et cognitive. Le XXI<sup>e</sup> siècle pourrait ainsi renouer avec l'esprit de Socrate qui, dès l'Antiquité, avait posé comme principe que l'éducation était l'affaire de toute la vie. L'éducation pour tous tout au long de la vie serait un instrument essentiel de la démocratie, puisque le meilleur garant de celle-ci, ce sont des citoyens éduqués et responsables, et donc d'une gouvernance responsable et solidaire de la mondialisation.

### *3<sup>ème</sup> piste de réflexion et d'action: les universités du futur*

Dans cette optique, et compte tenu aussi des nouveaux moyens de l'éducation à distance, ne faut-il pas redéfinir le rôle, les missions, le profil et le fonctionnement des universités? Un philosophe disait récemment: "les universités? Elles sont virtuellement mortes!". Dans cette boutade, il y a une part de vérité. Il est clair que face aux nouveaux moyens de l'éducation pour tous et aux nouvelles exigences de l'éducation pour tous tout au long de la vie, les universités ne peuvent plus fonctionner en vase clos. Elles doivent se libérer du double syndrome de l'usine à diplômes et de la tour d'ivoire pour devenir, d'une part, une ressource locale du développement, et, d'autre part, un lieu de rayonnement culturel et éducatif *pour toute la vie*. De nouvelles pédagogies, de nouvelles relations au savoir sont déjà en train de s'affirmer.

On assiste désormais au développement d'une "éducation sans frontières": à travers les programmes d'échanges universitaires de courte durée, ou l'ouverture partielle des procédures d'admission aux candidats étrangers qui en ont les moyens, peut-on dire la promesse d'universalité à l'œuvre dans l'idée même de savoir trouve un commencement – bien timide – de réalisation? L'éducation supérieure et la recherche paraissent – du moins à première vue – être un peu moins que par le passé l'enjeu idéologique d'Etats nations rivalisant les uns avec les autres. Toutefois c'est une autre forme de rivalité et de concurrence qui a vu le jour sous couvert d'universalité: la compétition entre les universités en est un exemple tout à fait frappant. Au "gold rush" qui tétanisait les esprits aventureux au siècle des pionniers a succédé un "knowledge rush" qui frappe de frénésie quiconque souhaite étudier dans les meilleures universités. Il faudra donc prendre garde aux effets d'exclusion que porte paradoxalement en elle cette conception universaliste et s'assurer d'un égal accès de tous aux nouvelles technologies.

En outre, l'université du XXI<sup>e</sup> siècle ne devrait pas s'enfermer dans un cercle étroitement professionnel: elle devra être citoyenne, si elle veut jouer un rôle décisif dans l'approfondissement de la démocratie et dans l'essor d'une démocratie prospective, se donnant des horizons à long terme. L'université doit aussi saisir la chance qui s'offre à elle, s'ouvrir au monde professionnel et au monde, plus vaste, de l'activité, et tenir compte des besoins effectifs de la société. La formation continue constitue à cet égard une concrétisation de l'éducation pour tous tout au long de la vie: désormais, le cursus est coextensif à la vie entière.

Afin de garantir cet accès crucial à l'éducation tout au long de la vie, Jacques Delors a proposé la création d'un crédit-temps, d'une sorte de "chèque-formation" donnant à chaque individu le droit à un certain nombre d'années d'enseignement qu'il utiliserait en fonction de ses choix, de son itinéraire, de son expérience scolaire et du calendrier qui lui serait propre.<sup>22</sup> Cette solution permettrait notamment de donner une seconde chance à ceux qui sortent tôt du système éducatif. Le cursus d'une "éducation à vie", mais bien évidemment découpée en séquences, serait ainsi à la portée de tous car, comme le stipule la Déclaration universelle des droits de l'homme, "l'accès aux études supérieures doit être ouvert en pleine égalité à tous en fonction de leur mérite". Inscrite dans l'horizon démocratique, estime Eduardo Portella,

la société du savoir ne peut être qu'un droit fondamental de l'homme. Le savoir est un droit humain fondamental, mais ne saurait appartenir à l'humanité sans passer par la société (...). Les droits de l'homme, inséparables des droits de l'Autre – l'Autre en tant qu'idée, culture, croyance, couleur, sexe, insertion ou non-insertion sociale –, ne seront évidents que dans une société où sera assuré le droit au savoir.<sup>23</sup>

<sup>22</sup> Jacques Delors, *L'Education: un trésor est caché dedans*, Paris, Odile Jacob, 1997.

<sup>23</sup> Eduardo Portella, "Indices de la société du savoir" in *Diogène*, *op. cit.*

## GLOBALISIERUNG, GOVERNANCE UND WISSEN EIN KOMMENTAR

HANS ZACHER

„Globalisation, governance and knowledge“ heißt im Deutschen: „Globalisierung, Governance und Wissen“. Das englische Wort „knowledge“ hat ebenso wie das deutsche Wort „Wissen“ eine sehr weite und vielfältige Bedeutung. Ein Kommentar kann sich nicht mit allen diesen Bedeutungen befassen. Er muß sich konzentrieren. Darum soll hier nur von *einem* Aspekt des Wissens gesprochen werden: Von der Erzeugung neuen Wissens, von der Forschung. Das Thema dieses Kommentars ist also: *Globalisierung, Governance und Forschung*.

Daß „Globalisierung“, „Governance“ und „Forschung“ etwas miteinander zu tun haben, ergibt sich daraus, daß *Forschung ein soziales Phänomen* ist: ein Prozeß, in dem Menschen zusammenwirken. Zwar ist das Gewinnen einer neuen Erkenntnis letztlich immer eine personale Leistung, ein personales Ereignis. Aber *selbst unter den Forschern* – also unter denen, die diese personale Leistung erbringen und dieses personale Ereignis der neuen Erkenntnis an sich erfahren – geschieht das in einem unerhört komplexen Prozeß der Darstellung von Wissen, der Weitergabe von Wissen, der Übernahme von Wissen, der Diskussion alten Wissens, der Diskussion der Möglichkeit neuen Wissens, der Diskussion der gedanklichen und der technischen Arrangements, in denen das neue Wissen gewonnen werden soll, schließlich der Darstellung und der Überprüfung der Ergebnisse. Und das alles kann im großen offenen Kreis unendlich vieler Wissenschaftler – wie etwa durch das Schreiben, das Verbreiten und das Lesen gedruckter Werke – ebenso geschehen wie in der kleinen Forschergruppe und in vielfältigen Konstellationen dazwischen – in Kongressen, Seminaren, durch die Begegnung mit Kollegen usw. Es kann in aller Öffentlichkeit geschehen oder unter Umständen der Geheimhaltung. Jedenfalls ist Forschung ein Prozeß

der Weiterentwicklung von Wissen, der sich unter unendlich vielen Wissenden vollzieht, auch wenn sich die entscheidende Leistung der Entdeckung oder Erfindung ganz auf einen einzelnen konzentrieren kann.

Schon daraus ergibt sich, daß Forschung und Globalisierung miteinander zu tun haben. *Globalisierung* heißt: Wie nie vorher in der Geschichte stehen alle Orte der Welt miteinander in einer potentiellen oder effektiven Verbindung – und damit auch die Menschen der ganzen Welt, wo immer sie auch sind und leben; sie können voneinander wissen, können sich miteinander austauschen, sich begegnen, können zusammenwirken. Das *Problem der Globalisierung* ist *erstens*, daß die Möglichkeiten, von dieser globalen Nähe aller zu allen Gebrauch zu machen, und die Vorteile und die Nachteile, die sich daraus ergeben, sehr ungleich verteilt sind. Und *zweitens*, daß diese Möglichkeiten und ihr Gebrauch keine umfassende, sondern nur eine sehr fragmentarische Ordnung haben. So heißt Globalisierung auch: Wie nie vorher in der Geschichte können wissende und forschende Menschen an der Entwicklung neuen Wissens, gleichviel wo sie sich vollzieht, Anteil nehmen; aber die Bedingungen, von dieser Möglichkeit Gebrauch zu machen, sind sehr ungleich verteilt, und sie haben nur eine unzulängliche Ordnung.

Der *soziale Charakter der Forschung* steht jedoch in sehr viel *weiteren Zusammenhängen* als in dem Zusammenwirken der Wissenden und Forschenden. Erst diese weiteren Zusammenhänge machen die volle Tragweite deutlich, die Globalisierung und Governance für die Forschung haben. Sie können mit dem *Satz* ausgedrückt werden, daß *Forschung immer vom Staat und von der Gesellschaft ermöglicht, in Dienst genommen, aber auch begrenzt und verboten wird*. Wie das geschieht, davon hängen die Spielräume der Forschung ebenso ab wie die Energien, welche in die Forschung eingehen. Davon können aber auch die Gegenstände der Forschung abhängen und die Richtung, welche die Forschung nimmt.

*Ermöglichen* heißt dabei: vor allem: die Gewährleistung der notwendigen Freiheit, das Bereitstellen der Mittel, aber auch die Organisation (etwa der Universitäten und der Forschungsinstitute), die Regelung des geistigen Eigentums usw. Das reine Ermöglichen ist für den Fortschritt der Erkenntnis in besonderer Weise wichtig. Es bedeutet, daß der Staat oder gesellschaftliche Akteure (Mäzene, Stiftungen usw.) neuem Wissen eine Chance geben, ohne darauf abzustellen, wem und wozu das neue Wissen nützt. Dieses neue Wissen ist grundsätzlich ein öffentliches Gut. Es erweitert den Vorrat allgemeinen Wissens. Es kann dann für neues Können gebraucht und angewandt und so ebenso nützlich wie gefährlich werden. Richtig organisiert bedeutet das Ermöglichen der Forschung darüber hinaus, daß die aussichtsreicheren

Forschungen der aussichtsreicheren Forscher die besseren Chancen bekommen. Die Verantwortung dafür liegt bei den staatlichen und gesellschaftlichen Institutionen, die Forschung ermöglichen.

Das Ermöglichen kann aber auch in der Absicht geschehen, die *Forschung in Dienst zu nehmen* – zumeist politisch (für militärische, ökologische, administrative usw. Zwecke) oder wirtschaftlich (für die Entwicklung neuer Verfahren oder neuer Produkte). Diese In-Dienst-Nahme gibt dem Ermöglichen der Forschung eine wesentlich andere Gestalt: hinsichtlich der Freiheit der Forscher, der Bereitstellung der Mittel, der Organisation der Forschung usw. In-Dienst-genommene Forschung richtet sich zumeist auf neues Können. Die In-Dienst-Nahme ist deshalb in der Regel so angelegt, daß die Forschungsprojekte und die Forscher die größere Chance haben, die das neue Können mit der größeren Wahrscheinlichkeit hervorbringen. Die Verantwortung dafür liegt bei den staatlichen Stellen und bei den gesellschaftlichen Einheiten, die das neue Können brauchen – also etwa bei den zuständigen Ministerien, bei den Unternehmen usw. Sie erwerben in der Regel auch das geistige Eigentum an dem neuen Wissen und dem neuen Können und Verfügen darüber. Trotz dieser Tendenz zur Ausschließlichkeit der Verfügungsrechte gehen die Ergebnisse in-Dienst-genommener Forschung früher oder später doch in den Bestand allgemeinen Wissens und Könnens ein.

Staat und Gesellschaft können der Forschung aber auch hindernd entgegen stehen: begrenzend oder verbietend. Das geschieht immer dann, wenn Werte und Güter in Konflikt mit der Forschung treten. Das können religiöse Lehren sein. Die Geschichte der abendländischen Forschung ist voll der Konflikte zwischen der Forschung und religiösen Vorstellungen. In der Gegenwart geht es vor allem um elementare Werte, die von den Christen als Schutz der Schöpfung verstanden werden: die Würde des Menschen und die Unverfügbarkeit des menschlichen Lebens, der Schutz der Tiere gegenüber wissenschaftlichen Versuchen, der Schutz der Umwelt. Dazu kommen politische Güter wie etwa die nationale Verteidigung. Aber auch gesellschaftliche Güter und individuelle Rechte kommen in Betracht. Es ist Sache des Rechts, die Freiheit der Forschung zu sichern und abzugrenzen. Aber immer wieder versucht auch die Politik und versuchen auch gesellschaftliche Kräfte, die Spielräume der Forschung einzuengen.

Mit all dem wird deutlich, wieviel Forschung mit *Governance* zu tun hat. Mit dem, was Governance im Staat bedeutet: mit Regierung im weitesten Sinne. Und mit dem, was Governance in der Gesellschaft bedeutet: mit der Führung von wirtschaftlichen Unternehmungen, von gesellschaftlichen



Organisationen usw. So wichtig dabei auch die gesellschaftlichen Bedingungen der Forschung sind, so ist doch offenkundig, daß der Staat eine besondere Bedeutung hat. *Wie* der Staat Forschung ermöglicht, *wie* der Staat Forschung in Dienst nimmt, und *wie* der Staat die Freiheit der Forschung gewährleistet und begrenzt, prägt das nationale Klima, von dem das Gedeihen der Forschung abhängt. Freilich hängt dieses Gedeihen nicht minder von den gesellschaftlichen Bedingungen der Forschung ab. Es gibt forschungsgläubige, forschungswillige, forschungskritische und forschungsfeindliche Gesellschaften. Wie ja auch die Möglichkeiten des Staates, Forschung zu ermöglichen und Forschung in Dienst zu nehmen, von den wirtschaftlichen und den sonstigen zivilisatorischen und kulturellen Leistungen der Gesellschaft abhängen. Aber daran, wie gesellschaftliche Kräfte Forschung ermöglichen können, wie gesellschaftliche Kräfte Forschung in den Dienst nehmen können, und wie die Gesellschaft die Freiheit der Forschung ausweiten oder einengen kann, hat immer auch der Staat einen wesentlichen Anteil. Schließlich bildet der Staat so auch den Rahmen für die Fülle der Wechselwirkungen, die sich zwischen den unterschiedlichen Forschern, Forschungseinrichtungen und Forschungsprozessen vollziehen – anders gesagt: den Rahmen dafür, ob und in welchem Maße sich in einem gewissen Raum eine kritische Masse wechselseitiger Anregung und Ergänzung bildet.

Das Ensemble der Wirkungsbedingungen, in dem sich Forschung entfaltet, ist so weitgehend national bestimmt. Gesellschaftliche Kräfte, die Forschung ermöglichen oder in Dienst nehmen, ebenso gesellschaftliche Kräfte, welche die Freiheit der Forschung ausweiten oder einengen, können zwar über die nationalen Grenzen hinausgreifen. Aber wo immer sie wirken, werden sie wieder darauf verwiesen sein, in das jeweilige nationale Milieu der Forschung einzutauchen.

Im Zusammenhang der *Globalisierung* erwächst daraus ein Spannungsverhältnis: Forschung als soziales Geschehen bleibt in hohem Maße national bedingt; nur ihre Wirkungen breiten sich aus. Die Gefälle der Ungleichheit, welche die Globalisierung zum Ärgernis werden lassen, werden dadurch vertieft. Das zeigt sich vor allem in zwei Zusammenhängen.

Die Möglichkeiten einer *Forscherpersönlichkeit*, sich über die Entwicklung des Wissens zu unterrichten, haben sich im Zuge der Globalisierung zwar immens erweitert. Ihre Möglichkeiten, an der Entwicklung des Wissens aktiv – nehmend und/oder gebend – Anteil zu nehmen, hängen in der Regel jedoch von den wissenschaftlichen Verhältnissen in dem Umfeld ab, in dem sie lebt und arbeitet. Je nachteiliger sich diese Verhältnisse vom höchsten gegebenen

Niveau unterscheiden, desto größer sind auch die Nachteile, welche die einzelne Forscherpersönlichkeit erleidet, die an dem allgemeinen Prozeß der Wissensentwicklung aktiv Anteil zu nehmen sucht. Die Differenz zwischen dem eigenen Umfeld und den besser entwickelten Forschungsräumen führt die Forscherpersönlichkeit in das *Dilemma zwischen Marginalisierung und Wanderung*. Und so oft sich eine Forscherpersönlichkeit für die Wanderung entscheidet, kann dies zur weiteren Marginalisierung des Forschungsraumes, aus der sie gekommen ist, beitragen.

Globalisierung heißt auch: Die *Informationen über den Fortgang des Wissens und des wissensbedingten Könnens* gehen über die ganze Welt. Wie Staat, Gesellschaft und die Wissenschaft eines Landes jedoch diese Informationen aufgreifen und verwerten können, hängt vom Stand der Forschung im Lande ab. *Mit dem Abstand zwischen dem Niveau der je eigenen Forschungslandschaft und den besser entwickelten Forschungslandschaften nimmt der Nachteil des je eigenen Raumes gegenüber den besser entwickelten Räumen zu.* Wieder ergibt sich ein *Dilemma: zwischen der weiteren wissenschaftlichen und zivilisatorischen Marginalisierung des Landes und der Abhängigkeit von dem Wissen und Können anderer Länder* – insbesondere auch der Abhängigkeit von den staatlichen oder gesellschaftlichen Einrichtungen und Persönlichkeiten, die über dieses Wissen und Können verfügen können.

Diese Dilemmata bedürfen der Auflösung. Auf die räumliche Verdichtung wissenschaftlicher Potentiale kann nicht verzichtet werden. Die größte und wirkungsstärkste kritische Masse gibt der Forschung die besten Chancen. Die größte und wirkungsstärkste kritische Masse, das heißt: die größte Masse aus (erstens) thematisch, methodisch und qualitativ einander ergänzenden Forschungspotentialen, die (zweitens) weltweit die Besten anzieht, und deren Forscher und Projekte (drittens) immer neu im Wettbewerb zueinander stehen. Das neue Wissen und das neue Können, das daraus hervorgeht, kommt – früher oder später – der Allgemeinheit zugute. Diese Bedeutung großer, gleichwohl räumlich konzentrierter kritischer Massen der wissenschaftlichen Forschung hat sich im Italien des späten Mittelalters und der frühen Neuzeit gezeigt. Sie hat sich im 19. und frühen 20. Jahrhundert gezeigt, als Frankreich, Großbritannien und die deutschsprachigen Länder diese Rolle übernahmen. Und sie zeigt sich seit der Mitte des 20. Jahrhunderts in den USA. Dieses Beispiel der USA zeigt zudem, daß die „postmodernen“ Kommunikationsverhältnisse die Vorteile der räumlichen Konzentration der „kritischen Masse“ offensichtlich nicht überflüssig machen. Offenbar bedarf es einer Vielheit von Wegen der Begegnung, des Austausches und der Rivalität, und offenbar auch bedarf es der Einheit der Maßstäbe und der

Techniken, mittels derer die besten Forscher den besseren und die besten Projekte den besseren vorgezogen werden. Die uneinholbaren Vorteile räumlich konzentrierter „kritischer Massen“ können somit nach wie vor nicht preisgegeben werden.

Aber bei der ungleichen Teilhabe an den Prozessen der Forschung darf es ebenso wenig bleiben wie bei der ungleichen Teilhabe an dem neuen Wissen und dem neuen Können. Eine gute globale Ordnung muß Wege des Ausgleiches finden. In den jeweils forschungsferneren Ländern muß eine Kultur der Teilhabe an der Kompetenz und an den Ergebnissen der jeweils forschungsintensiveren Staaten und Gesellschaften entstehen. Das gilt für die einzelnen Forscher, für die sich nicht nur die Wanderung, sondern auch die Rückkehr lohnen sollte. Das gilt auch für die Forschungseinrichtungen, für die es nicht genügen darf, mit den Forschungseinrichtungen in weiter entwickelten Ländern zu kommunizieren. Sie müssen auch zu größeren Ensembles der Anregung und der Ergänzung aggregiert werden. Und sie müssen mit den Forschungseinrichtungen in leistungsfähigeren Räumen in Wettbewerb treten. Dieser Kommentar kann die Lösungen nicht skizzieren. Jedenfalls: *Angemessene Strategien nationaler, transnationaler und internationaler Governance* zählen zu den dringenden Aufgaben der Globalisierung.

## SAVOIR ET MOBILITÉ SOCIALE UN COMMENTAIRE

MICHEL SCHOOYANS

Monsieur le Président,  
Chers Collègues,

C'est avec beaucoup d'émotion que je prends la parole après l'infarctus qui vient de frapper notre collègue et ami Serguëi Averintsev. Hier soir, il me parlait encore de ses projets. Il était, me disait-il, en train de terminer une nouvelle traduction, scandée, du livre des *Psaumes*. Il préparait aussi une nouvelle traduction des *Évangiles synoptiques*. Ce matin même, nous étions assis l'un à côté de l'autre dans le mini-bus qui nous conduisait à la Casina Pio IV, et Serguëi me disait qu'il se sentait un peu fatigué, sans plus. Nous prions, s'il vous plaît, le Seigneur de rendre la santé à Serguëi, afin qu'il puisse continuer à faire bénéficier notre Académie de son immense savoir et de la sagesse toute spirituelle, mystique même, dont il rayonne. Nous disons aussi à son épouse que nous portons avec elle cette épreuve et que nous lui offrons le réconfort de notre prière.

Monsieur le Président,  
Chers Collègues,

C'est hier seulement que j'ai pu disposer du texte de la communication de M. Jérôme Bindé, et c'est avec plaisir que j'en ai immédiatement pris connaissance. Comme nous tous, j'ai suivi avec un très vif intérêt l'exposé à la fois savant et documenté qu'il vient de nous offrir. Je l'en remercie vivement. Ainsi que M. Bindé l'a lui-même souligné, *les sociétés du savoir* qui sont en train de se construire ne concernent actuellement qu'un pourcentage très réduit de la population humaine. A titre d'ordre de grandeur, on

peut estimer que près de 95 % de la population mondiale n'a pas accès aux savoirs de pointe actuellement existants. Ces gens n'ont pas accès aux infrastructures nécessaires ni aux instruments de connaissance indispensables à leur utilisation. D'innombrables obstacles culturels, juridiques, économiques, etc. devraient être vaincus pour que s'élargisse l'éventail des bénéficiaires de ces savoirs.

Il me semble donc qu'au moment où notre Académie se penche sur les sociétés du savoir, elle a aussi le devoir de se soucier de l'immense masse de ceux qui vivent en marge de ces sociétés. Pour ne point en rester, en cette fin de matinée, à des considérations trop abstraites, permettez-moi, Monsieur le Président, de raconter ici quelques histoires vraies dont nous devrions accueillir l'interpellation. Comme nous le verrons, toutes ces histoires – à peine maquillées, par discrétion – se sont passées récemment au Brésil.

#### TROIS HISTOIRES VRAIES

##### *L'histoire d'Aparecida*

La première histoire est celle d'une servante venue du Nord-Est et qui travaille dans une famille de Rio. Comme beaucoup de ses copines, Aparecida est mère célibataire, et elle élève très bien son enfant. Aparecida a eu beaucoup de chance: elle a de très bons patrons. Ces patrons sont pour moi des amis très chers et c'est le plus souvent chez eux que je loge lorsque je suis à Rio. Ces patrons respectent Aparecida, reconnaissent son travail et l'aident à bien éduquer son petit garçon. Or quand Aparecida est arrivée à Rio, elle ne savait ni lire ni écrire. Ses patrons l'eurent vite remarqué et ils envoyèrent Aparecida dans une école appropriée, où cette fille, de 16 ans à l'époque, apprit à lire et à écrire. Aparecida sait lire les manchettes des journaux et des magazines; elle sait prendre note d'un message; bref, elle est "alphabétisée".

Or l'autre jour, je demande à Aparecida de me chercher le numéro de téléphone de Luís Alberto Martins dans l'annuaire téléphonique. Très serviable, Aparecida plonge dans ce volume imposant et commence à le compulsier. La recherche s'avère laborieuse; elle tourne les pages avec frénésie; il devient vite évident qu'elle est en train de "ramer". Je m'approche pour l'aider et je dois vite me rendre à l'évidence: Aparecida sait lire les mots du répertoire mais *ne connaît pas leur système de classement*. Je me rends aussitôt compte que lorsqu'elle a appris à lire et à écrire, *personne ne lui a*

*appris l'ordre alphabétique.* Elle ne sait donc pas utiliser un simple répertoire. Son processus d'alphabétisation est tombé en panne en cours de route.

### *L'histoire de Zélia*

L'histoire de Zélia est assez semblable à celle d'Aparecida. Comme celle-ci, Zélia est venue de l'intérieur du pays; ses parents, séparés, ne se sont pas préoccupés de son éducation, l'ont abandonnée. Zélia avait à peine quinze ans quand elle a débarqué à São Paulo. Comme Aparecida, elle a eu la chance de tomber sur de très bons patrons. Ceux-ci lui ont fait terminer l'école primaire; ils l'ont incitée à faire le cours secondaire. Toujours encouragée par ses patrons, à la fin du cycle secondaire, Zélia a présenté avec succès l'examen d'entrée à l'université, le fameux *vestibulaire*. Zélia a réussi cet examen et elle a donc été admise à s'inscrire dans une faculté de droit. Elle a travaillé dur, demandant souvent des éclaircissements à ses patrons, honteuse d'achopper sur certains examens partiels.

Or un jour où l'échec avait été cuisant, Zélia, fondant en larmes, dit à ses patrons: "Pour moi, il est trop tard; j'ai fait le maximum de ce que je pouvais faire, mais je vois que je ne parviendrai jamais au bout de ces études de droit. Vous autres, patrons, vous ne vous rendez pas compte que vous apprenez un tas de choses dès le berceau, dans la famille, dans votre milieu social, sans peine et sans vous en apercevoir. Moi je n'ai pas eu cette chance-là. J'ai commencé à apprendre grâce à vous, mais il était déjà trop tard..."

### *L'histoire de Tônio*

La troisième histoire est celle de Tônio, médecin qui vit à Recife. Le Dr Tônio est très heureux en mariage; son épouse est charmante; il est père de quatre enfants. C'est un des chirurgiens les plus réputés de la ville, où il est professeur à la faculté de médecine. Nous parlions récemment de l'enseignement. "Notre aîné vient d'être admis en première année de médecine. Nous en avons encore trois au collège secondaire". Quel collège? "Les écoles secondaires du réseau public ne sont pas d'un bon niveau; elles préparent mal à l'examen d'entrée, au vestibulaire. Alors nous devons mettre nos enfants dans des écoles privées, où les mensualités sont de l'ordre de 300 US\$ par mois et par enfant. Ça nous fait 900 US\$ à déboursier chaque mois rien que pour les trois plus jeunes de nos enfants. Plus les livres, l'uniforme, les transports, etc. C'est très cher pour nous et, je le reconnais, inabordable pour beaucoup de familles. Mais il faut faire ce sacrifice si on veut que les enfants puissent ent-

rer à l'université". Et l'université, elle aussi coûte cher? "Chez nous les meilleures universités sont les universités fédérales. Cela est particulièrement évident dans les facultés "chères", comme la médecine. Ces universités fédérales sont publiques et dès lors presque gratuites. Ce sont donc celles qui sont les plus recherchées et qui peuvent sélectionner les étudiants les mieux préparés, c'est-à-dire ceux qui viennent des meilleurs collèges secondaires, qui sont payants". Nous voici au rouet. Cette année-ci, combien y a-t-il eu d'étudiants admis en première année de médecine? "Il y en a eu soixante-dix". Et quelle est la proportion de ceux qui viennent de l'enseignement secondaire public par rapport à ceux qui viennent de l'enseignement secondaire privé? "Sur les soixante-dix admis, soixante-huit venaient du réseau privé et deux seulement du réseau secondaire public. *Notre système scolaire est anti-démocratique*, martèle Tônio. Non seulement les enfants de familles pauvres n'ont guère de chance de faire un cours secondaire ni a fortiori d'entrer à l'université, mais de plus, les universités fédérales accueillent surtout des étudiants issus de familles aisées. La majorité des enfants en âge d'études secondaires n'a pas accès à un enseignement satisfaisant, et les privilégiés qui bénéficient d'un tel enseignement ont de grandes chances de bénéficier bientôt d'un enseignement universitaire de qualité et gratuit. Après quoi ils pourront peut-être aller se spécialiser à l'étranger..."

#### VISAGE DE LA PAUVRETÉ: L'IGNORANCE

##### *Faible volonté politique*

Ces histoires sont riches d'enseignement. Elles suggèrent d'abord qu'*aujourd'hui la forme la plus aiguë de pauvreté, c'est l'ignorance*. Dans le climat néolibéral actuel, le savoir est un produit qui se vend et que l'on achète au *pro rata* du pouvoir acquisitif de chacun. *On vend et on achète du savoir comme on vend et on achète de la santé*. Cette commercialisation du savoir est évidemment un obstacle décisif à la divulgation généralisée des connaissances élémentaires et des moyens d'acquérir celles-ci. Souvent, *il n'y a pas de forte volonté politique* d'en finir avec le fléau de l'ignorance.

Il y a près de vingt ans, l'administration de Rio de Janeiro a demandé au célèbre architecte Oscar Niemeyer de construire des dizaines de "blocs scolaires" dans les quartiers populaires pour que les enfants des familles moins favorisées y soient accueillis, y reçoivent les compléments alimentaires nécessaires à leur développement intellectuel, y soient alphabétisés et

instruits. Beaux, fonctionnels et peu coûteux, ces blocs n'ont guère servi et la plupart d'entre eux sont aujourd'hui désactivés. Après ça, on s'étonne de l'augmentation de l'insécurité urbaine et de la criminalité parmi les jeunes...

### *De la culture de l'ignorance à la démocratie*

Cette confiscation du savoir par les riches est en outre un obstacle à la démocratie. Comme le souligne Amartya Sen, la liberté est l'objet même du développement; elle n'en est pas seulement le moyen. Mais il n'y a pas de liberté sans la généralisation de l'enseignement et de l'éducation. Quelle capacité les hommes et les femmes auraient-ils à *participer* à un projet globalisant s'ils sont incapables de maîtriser jusqu'à leur propre langue? En fait la plupart des dirigeants, même dans les pays émergents, lorgnent du côté du monde ouvrier, concentré géographiquement dans des centres urbains, syndicalisés et électoralement intéressants, mais ils ignorent le *Lumpenproletariat* qui croupit au limbe de la société civile. Déjà objet du mépris de Marx, ces sous-prolétaires sont les oubliés des sociétés du savoir. Qu'ils constituent, selon des estimations respectables, près de 40 % de la population d'un pays donne une idée de l'échelle de la pauvreté actuelle et permet d'entrevoir l'élargissement, à l'avenir, du fossé qui sépare déjà les sociétés du savoir et celles qui sont maintenues sous contrôle par la culture de l'ignorance.

### *L'école, obstacle à la mobilité sociale?*

Il me semble à la fois indispensable et urgent que nous apportions des éléments de réponse à un bouquet de questions aussi graves. *Le système scolaire de beaucoup de pays, même émergents, est un obstacle à la mobilité sociale.* Une certaine conception de la globalisation peut consolider cet obstacle. La moindre des choses consisterait, pour nous, à ne pas avaliser, en consentant à une mondialisation inacceptable, un système aussi *discriminatoire*.

L'occasion d'approfondir ces questions s'offrira sans doute à nous dans le cadre de nos recherches sur les relations intergénérationnelles. Ces recherches seront entre autres appelées à analyser le rôle de la *famille* dans la formation du *capital humain*, explorée par Gary Becker, et à préciser cette notion en la mettant en rapport avec la notion de *personne* humaine. Par là, nous prolongerons tout naturellement notre riche recherche sur le savoir et les sociétés du savoir. Il est clair que l'audience et la crédibilité de notre Académie seront encore accrues et élargies lorsque nous nous pencherons sur ces questions.



RENÉ RÉMOND

J'ose espérer que mes confrères de l'Académie ne m'en voudront pas si j'use de l'invitation de notre président à revenir à la généralité du problème posé par la mondialisation pour prolonger sur un ou deux points les perspectives ouvertes par Louis Sabourin. Je le ferai, en historien dont c'est le propre d'apprécier la singularité d'une situation, de discerner la nouveauté d'un moment et de les inscrire dans une perspective à long terme afin de pouvoir déchiffrer le sens de l'évolution et peut-être d'anticiper sur l'avenir.

Appliquée au phénomène qui retient notre attention, cette démarche a pour premier effet de rappeler qu'il n'est pas absolument neuf. Sans remonter à l'Antiquité et à la *pax Romana* dont la référence faite par un académicien à Polybe nous rappelait une première ébauche du monde connu alors, la mondialisation date des grandes découvertes; les fractions séparées de l'humanité qui s'ignoraient jusque là sont alors entrées en communication les unes avec les autres. Depuis, les relations intercontinentales n'ont cessé de se resserrer, de se développer, généralement dans le cadre de rapports inégaux juridiquement et politiquement. Et cependant la mondialisation actuelle présente bien des caractères absolument inédits. Il n'y a pas seulement amplification du phénomène et accélération du mouvement.

Il y a un trait radicalement neuf: l'abolition de la relation traditionnelle entre l'espace et le temps. De tout temps la distance interposait dans les rapports entre les peuples et les continents des délais. La révolution qui a bouleversé la technologie des communications a supprimé les distances, contracté les temps et comme effacé l'espace. Désormais l'humanité tout entière vit dans l'instantanéité et la simultanéité. Tel est le fait majeur qui caractérise aujourd'hui cet âge de la mondialisation.

Ses effets sont multiples et de toute nature. Il met en contact direct les différents segments de notre humanité. En se côtoyant, ils se découvrent différents; sans doute le savaient-ils intellectuellement, mais c'est autre chose de le vivre concrètement. Ils prennent conscience de leur singularité: ils inclinent à en faire le principe de leur identité. Ils refusent que la mondialisation engendre l'uniformité. La mondialisation explique le surgissement ou, le raidissement des particularismes. Les deux faits sont corrélatifs.

Du même mouvement, les peuples prennent une conscience plus vive des inégalités: ce qui était naguère toléré parce que la distance interposait comme un écran devient insupportable et exaspère les tensions. La mondialisation accroît l'interdépendance mais, comme les partenaires ne sont pas égaux, elle instaure des rapports de dépendance des faibles par rapport aux forts en l'absence de rapports de droit.

Phénomène global, la mondialisation ne concerne pas seulement géographiquement la planète entière; elle affecte aussi tous les secteurs de l'activité des hommes et pas seulement, comme le suggère parfois une vision réductrice et polémique, la seule dimension économique. Mais entre les avancées de la mondialisation dans les différentes directions, il y a d'importants décalages de temps. Ainsi la mondialisation de l'économie a ouvert le feu et pris de l'avance sur celle du droit et de la décision politique. D'où le porte à faux qui suscite le trouble des esprits et explique que la mondialisation, qui est de soi neutre et irréversible, soit devenue un objet de controverses passionnées. L'État était le cadre de la régulation des activités collectives. Du fait de la mondialisation, il est dépassé: il a perdu sa souveraineté et son pouvoir d'encadrer les initiatives. Tant qu'on n'aura pas reconstitué à l'échelle de la planète une régulation, la mondialisation de l'économie, d'autres activités aussi, telle la circulation de l'information, se déploieront anarchiquement dans un espace sauvage où les plus forts feront la loi et imposeront leur volonté.

Aussi plutôt que de s'opposer à la mondialisation, il faut s'employer à la promouvoir là où elle n'est pas encore réalisée. Pour combattre les effets de la mondialisation, ce n'est pas de moins mais de plus de mondialisation que nous avons besoin, en particulier pour la règle de droit et dans l'ordre du politique.

Où en sommes-nous à cet égard? Comment se présente la situation? L'apprécier sera le second temps de mon intervention. Le monde vit, de ce point de vue, un moment particulièrement critique. C'est l'enjeu et le sens de la grave crise dans laquelle sont entrées depuis l'été dernier les relations internationales. Deux mouvements de sens contraire s'affrontent.

Depuis une quinzaine d'années, on pouvait avoir le sentiment que s'ébauchait un embryon d'organisation à l'échelle de la planète, qui répondait à une aspiration et accompagnait une prise de conscience d'une responsabilité commune. Mentionnons dans le désordre, – mais leur convergence n'en est que plus significative –, quelques indices de cette évolution; la reconnaissance du droit d'ingérence, la légitimité conférée au Conseil de sécurité, l'institutionnalisation des rencontres au sommet entre chefs d'État, les efforts pour une gestion raisonnée et partagée des ressources de la planète avec la préoccupation d'un développement durable, et – peut-être plus important que tout – l'instauration d'une justice à l'échelle du globe devant laquelle les gouvernants peuvent être appelés à rendre compte de leurs actes, avec notamment la création de la Cour pénale internationale, institution permanente à compétence universelle. Toutes choses qui participent d'une même logique tendant à répondre à une mondialisation anarchique par une régulation mondiale.

Or, la politique pratiquée par la nouvelle Administration des États-Unis s'inspire manifestement d'une autre logique, qui n'est que la vieille politique de puissance des États obéissant à leurs intérêts particuliers; elle menace de ruiner tout ce qui a été fait dans le dernier quart de siècle pour édifier un ordre international fondé sur la concertation.

La construction, ou la reconstruction, d'un ordre à l'échelle mondiale pour contenir les effets pernicioeux d'une mondialisation sans foi ni loi, implique aussi l'engagement de l'opinion publique mondiale. A cette éducation d'une citoyenneté mondiale, les Églises peuvent apporter un concours des plus précieux. Il leur incombe d'inviter au dépassement des égoïsmes nationaux et d'ouvrir sur l'universel. A cet égard, par le combat qu'il mène par la parole contre la tentation du recours à la guerre pour résoudre les antagonismes, Jean-Paul II donne un exemple de ce qu'il est possible et souhaitable de faire.

**FOURTH SESSION**

**THE GOVERNANCE OF GLOBALISATION:  
ETHICAL AND PHILOSOPHICAL  
PERSPECTIVES**



## UNE AUTORITÉ MONDIALE POINT DE VUE DE L'ÉGLISE CATHOLIQUE

ROLAND MINNERATH

Dans sa célèbre encyclique *Pacem in terris*, §137 (1963), dont nous célébrons cette année le quarantième anniversaire, Jean XXIII affirmait que l'“ordre moral lui-même exige la constitution d'une autorité publique de compétence universelle”. On y lit plus haut que

“les problèmes de dimensions mondiales... ne peuvent être résolus que par une autorité publique dont le pouvoir, la constitution et les moyens d'action prennent eux aussi des dimensions mondiales, et qui puisse exercer son action sur toute l'étendue de la terre” (PT 137).

Plus loin, on lit encore qu'il devrait s'agir d'un “pouvoir supranational ou mondial” (PT 138). Utopie dangereuse, nouveau Léviathan? Il convient de replacer cette nostalgie d'une autorité mondiale dans la suite des interventions du Saint-Siège en matière d'organisation de la communauté internationale. Le vœu exprimé par *Pacem in terris* n'est pas une nouveauté absolue. Il sera souvent répété par la suite, bien qu'avec moins de force.

### 1. *Une idée ancienne*

Sans remonter au-delà du XXe siècle, il est connu que les papes ont encouragé les nations en guerre à observer le droit international et à reconstruire leurs relations dans le cadre d'une organisation garante du droit. Avec une admirable constance, à temps et plus souvent à contre-temps, ils se sont faits les avocats d'une autorité régulatrice des rapports entre les Etats. Dans l'Europe classique de la souveraineté absolue des Etats, on avait assisté avant le début de la première guerre mondiale, à diverses initiatives diplomatiques visant à conjurer un conflit armé. Léon XIII, qui ne pouvait se faire représenter à la conférence du désarmement

de La Haye de 1899, invité néanmoins par le tsar à lui donner son appui moral, avait fait répondre par le cardinal Rampolla:

“il faut dans le consortium international des Etats un système de moyens légaux et moraux propres à déterminer et à faire prévaloir le droit de chacun” (10 fév. 1899).<sup>1</sup>

Il proposait une institution de médiation et d'arbitrage dotée d'une autorité morale reconnue. La Conférence décida la création d'une cour permanente d'arbitrage, mais celle-ci n'avait aucun pouvoir de contrainte, le recours à l'arbitrage restant facultatif.

En pleine guerre, Benoît XV lance le 1<sup>er</sup> août 1917 son *Exhortation à la paix aux chefs des peuples belligérants*. Il y trace les fondements d'un futur ordre international, qui doit rendre à l'avenir impossible le retour à la guerre, notamment par la compénétration et l'interdépendance des économies nationales. Il revenait sur l'institution d'un arbitrage permanent qui serait assorti d'un pouvoir de sanction contre les Etats en infraction. Il ajoutait un autre principe qui reviendra en force par la suite: les changements territoriaux devront se faire en tenant compte de “l'aspiration des peuples... tout en coordonnant les intérêts particuliers au bien général de la grande société humaine”.<sup>2</sup>

Le statut de la Société des Nations adopté en avril 1919 contenait des dispositions que Benoît XV n'a pas désavouées: un système de sanctions et une Cour internationale de justice pour garantir la sécurité collective. Pour la première fois depuis les traités de Westphalie (1648), les Etats européens reconnaissaient la supériorité de la règle du droit dans le règlement de leurs conflits. Benoît XV avait dit clairement dans son encyclique *Pacem Dei* du 23 mai 1920<sup>3</sup> qu'il ne s'attendait pas à une suite heureuse au traité de Versailles. Depuis le premier conflit mondial, la papauté n'a cessé d'appeler l'Europe à se ressaisir en observant la primauté du droit sur la force, en acceptant une institution d'arbitrage et rappelant qu'il existe un bien général de l'humanité comme telle.

Pie XII tout au début de la deuxième guerre mondiale constate l'échec de la SDN et insiste sur l'urgence de reconstruire une organisation internationale qui ait les moyens de faire respecter les traités et en contrôle les révisions.<sup>4</sup> Dans une allocution du 1 septembre 1944, Pie XII exprime son

<sup>1</sup> Cité par Y. de La Briere & M. Colbach, *La patrie et la paix*, Paris 1938, p. 34.

<sup>2</sup> AAS 9 (1917) 417-420.

<sup>3</sup> AAS 12 (1920) 209-218.

<sup>4</sup> Encyclique *Summi pontificatus* du 24 octobre 1939, in: AAS 31 (1939) 413-453; et

appréciation pour la Conférence de Dumbarton Oaks qui devait décider de la future organisation internationale. Il souhaite que celle-ci soit dotée de l'autorité nécessaire pour garantir la paix et prévenir toute agression.<sup>5</sup> Lorsque le statut de l'ONU est adopté, Pie XII reste sur sa réserve. Il n'y voit pas deux requêtes formulées par la papauté, à savoir: le Conseil de sécurité n'a pas les moyens d'empêcher qu'un Etat soit agressé; et la Cour internationale de justice ne peut imposer ses arrêts que si l'Etat décide d'avance de s'y soumettre.

Lorsque Jean XXIII en appelle à une autorité universelle dans *Pacem in terris*,<sup>6</sup> il ne fait que s'inscrire dans un enseignement constant qui puise dans le droit des gens que des auteurs comme Vitoria ou Suarez et Grotius ont pensé entre la fin de l'ordre médiéval et le début des Etats absolutistes d'Europe. Sur leurs traces, la doctrine sociale catholique a développé au XIXe siècle, notamment avec Taparelli d'Azeglio et son *Saggio di diritto naturale* (1848) le concept d'une communauté des nations qui a ses exigences et son droit propres. Par autorité de compétence universelle, Jean XXIII entendait une autorité d'arbitrage dans les conflits entre Etats et de tutelle du droit international. Il ne se prononce pas pour quelque chose comme un Etat mondial, mais pour une autorité de régulation des rapports internationaux.

On peut observer comme une gradation dans l'appréciation que les papes portent sur l'Organisation des Nations Unies. Elle va de la réserve jusqu'à son exaltation. On peut en dire autant de la *Déclaration universelle des droits de l'homme*. Dans son Radio message du 24 décembre 1948, Pie XII exprimait le souhait que

"l'Organisation des Nations Unies puisse devenir la pleine et pure expression de cette solidarité internationale de paix, effaçant de ses institutions et de ses statuts tout vestige de son origine qui était nécessairement une solidarité de guerre".<sup>7</sup>

Jean XXIII avait encore dit que la *Déclaration* soulevait quelques "réserves justifiées", tout en la considérant comme "un pas vers l'établissement d'une organisation juridico-politique de la communauté mondiale" (*Pacem in ter-*

Allocution de Noël, 24 décembre 1939, in AAS 32 (1940) 5-13; de même: Allocution de Noël 24 décembre 1941, in AAS 34 (1942) 10-21.

<sup>5</sup> AAS 36 (1944) 249.

<sup>6</sup> Voir M. Tricaud, *L'Encyclique Pacem in Terris et la création d'une autorité internationale*, dans *Revue générale de Droit International Public*, 1966, p. 117s.

<sup>7</sup> AAS 46 (1949) 5.



ris, 144). Après lui, les papes expriment une appréciation positive de l'ONU et de son rôle de service du bien commun universel.

La constitution conciliaire *Gaudium et spes* (GS 83-90) a consacré de longs développements à la construction de la communauté internationale. C'est la réalisation du bien commun universel qui doit pousser les nations à mieux s'organiser. Il y est dit que les institutions internationales existantes "sont les premières esquisses des bases internationales de la communauté humaine". Celles-ci ont pour tâche de "stimuler le développement", en tenant compte du principe de subsidiarité, "d'ordonner les rapports économiques mondiaux selon les normes de la justice" (GS 86,5). Le concile reprend à son compte l'institution d'"une autorité publique universelle, reconnue de tous, qui jouisse d'une puissance efficace, susceptible de garantir à tous la sécurité..." (GS 82). Sans attendre qu'une telle autorité soit constituée, dit le concile, il faut avant tout mettre un terme à la course aux armements.

Paul VI devait accomplir le premier voyage d'un pape au siège de l'ONU, le 4 octobre 1965. Il aura des paroles extrêmement flatteuses pour l'Organisation, allant jusqu'à lui assigner une sorte de mission temporelle parallèle à la mission spirituelle de l'Eglise:

"Nous serions tentés de dire que votre caractéristique reflète en quelque sorte dans l'ordre temporel ce que notre Eglise catholique veut être dans l'ordre spirituel: unique et universelle" (n. 3).

Auparavant il avait dit:

"Nous avons pour vous un message... Notre message veut être tout d'abord une ratification morale et solennelle de cette haute institution. C'est comme 'expert en humanité' que Nous apportons à cette Organisation le suffrage de nos derniers prédécesseurs... convaincu que cette Organisation représente le chemin obligé de la civilisation moderne et de la paix mondiale" (n. 1).<sup>8</sup>

Jean Paul II ira encore plus loin, toute réserve ayant maintenant disparue:

"Le Siège apostolique non seulement attache une grande importance à sa collaboration avec l'ONU, mais depuis la naissance de votre Organisation il a toujours exprimé son estime et son approbation pour la signification historique de ce suprême forum de la vie internationale de l'humanité contemporaine (n. 3)".

<sup>8</sup> AAS 57 (1965) 880.

Et encore

“Permettez-moi de souhaiter que l'ONU, en raison de son caractère universel, ne cesse jamais d'être le 'forum', la tribune élevée d'où l'on évalue, dans la vérité et dans la justice, tous les problèmes de l'homme. C'est au nom de cette inspiration, c'est à la suite de cette impulsion historique que fut signée le 26 juin 1945... la Charte des Nations Unies... Peu après parut la *Déclaration universelle des droits de l'homme*... pierre milliaire placée sur la longue et difficile route du genre humain... (n. 7)”.<sup>9</sup>

Lors des dernières Conférences internationales au Caire et à Pékin on a pu observer que le Saint-Siège était devenu l'un des plus ardents défenseurs de la Déclaration de 1948, par rapport à laquelle certaines délégations estimaient devoir prendre des distances marquées.

Les papes ont souvent exprimé le souhait que l'ONU et ses organes se réforment pour mieux s'adapter à leur mission (*Pacem in terris* 145). Jean Paul II propose toute une liste de réformes souhaitables dans les organismes internationaux. L'encyclique *Sollicitudo rei socialis* 43 dit, en 1987, que

“l'humanité a besoin aujourd'hui d'un degré supérieur d'organisation à l'échelle internationale, au service des sociétés, des économies et des cultures du monde entier”.

Devant la globalisation économique, Jean Paul II dans *Centesimus annus* (1991) observe

“qu'à cette internationalisation croissante de l'économie correspond l'existence de bons organismes internationaux de contrôle et d'orientation, afin de guider l'économie elle-même vers le bien commun, ce qu'aucun Etat, fût-il le plus puissant de la terre, n'est plus en mesure de faire” (58).

<sup>9</sup> Discours à l'ONU, le 2 octobre 1979, in: AAS 71 (1979) 1150. Voir aussi Jean Paul II, Encyclique *Redemptor hominis*, 4 mars 1979 (n. 17), dans AAS 71 (1979) 257-324:

“On ne peut s'empêcher de rappeler ici, avec des sentiments d'estime pour le passé et de profonde espérance pour l'avenir, le magnifique effort accompli pour donner vie à l'Organisation des Nations Unies, effort qui tend à définir et à établir les droits objectifs inviolables de l'homme, en obligeant les Etats membres à une rigoureuse observance de ces droits, avec réciprocité... La Déclaration de ces droits et aussi l'institution de l'ONU ne se limitaient certainement pas à vouloir rompre avec les horribles expériences de la dernière guerre mondiale, mais elles visaient aussi à créer la base d'une révision continue des programmes, des systèmes, des régimes, précisément à partir de ce point de vue unique et fondamental qu'est le bien de l'homme...”.

Il regrette qu'aux Nations Unies on n'ait pas encore "développé des procédés efficaces, autres que la guerre, pour la solution des conflits internationaux" (CA 21). Il reprend cependant le concept clé qui nous permet de comprendre la notion d'autorité mondiale. En CA 27, Jean Paul II insiste sur la nécessité de "consolider des structures internationales capables d'intervenir pour l'arbitrage convenable dans les conflits qui surgissent entre les nations".

Dans les conflits internationaux qui ont jalonné l'histoire récente, le Saint-Siège a toujours prôné la légalité internationale, la primauté du droit sur la force. Le Saint-Siège déplore que les institutions internationales actuelles ne soient pas en mesure d'imposer le respect du droit. Ce déficit est la mesure exacte de "l'autorité mondiale" qu'il souhaite voir s'établir.

## 2. *Les principes*

L'organisation internationale est un chapitre de la doctrine sociale de l'Eglise. Celle-ci prend appui sur des principes directeurs qui permettent de discerner les orientations qui répondent le mieux aux exigences de la justice.

1. Poser le principe de *l'unité du genre humain* n'est pas réducteur de la diversité des cultures et des formations politiques. Au contraire. Chaque culture est une expression spécifique de l'universalité. Toute culture vivante est ouverture sur d'autres cultures, disponibilité pour donner et recevoir. Au cours du XXe siècle, l'Eglise a dénoncé avec force le nationalisme extrême qui dégénère en racisme et en négation de l'autre.<sup>10</sup> Elle a condamné aussi les formes d'impérialisme qui nient la spécificité des groupes culturels et persécutent les minorités. L'unité du genre humain est à saisir au niveau des valeurs et des principes qui fondent la coopération entre les nations. Ces valeurs inspirent et fondent le droit international. L'ordre international n'a pas été créé pour étouffer la vie des peuples, mais pour leur permettre leur plein épanouissement en collaboration avec les autres. Ces principes, sur lesquels repose l'ordre international sont, selon *Pacem in terris* (PT 1;37;80), la vérité, la justice, la solidarité et la liberté. Les rapports entre les nations sont régis par la loi morale, non par la domination des plus forts sur les plus faibles. "La même loi morale qui régit la vie des hommes doit régler aussi les rapports entre les Etats" (PT 80). L'ordre international postule l'égalité de tous les hommes en dignité et l'égalité en droit de toutes les nations.

<sup>10</sup> Pie XI, encyclique *Ubi arcano Dei*, 23 décembre 1922, in AAS 14 (1922) 673-700; et encyclique *Mit brennender Sorge*, 14 mars 1937, in AAS 29 (1937) 145-167.

2. La prise en compte du bien *commun universel* est une dimension de la responsabilité des Etats. L'idée même de bien commun objectif – comme l'entend le discours de l'Eglise – est aujourd'hui absente de la pensée juridique, qui s'attache plutôt à l'idée de consensus. Au premier plan sont les choix des individus. Le bien commun doit émerger de la négociation des groupes d'intérêts, des idéologies toujours prégnantes, de la capacité de convaincre des partis politiques. Quoi qu'il en soit, aucun Etat ne peut prétendre assurer le bien commun ou l'intérêt général de ses citoyens en ignorant ses prolongements et ses interconnexions avec un bien commun plus vaste que l'horizon national. Aussi longtemps que prévalait la souveraineté absolue des Etats, la conscience d'un bien commun universel était refoulée, de même que l'acceptation de normes contraignantes de droit international.

Dans *Pacem in terris*, le raisonnement est le suivant: les communautés politiques sont devenues interdépendantes. Prise isolément, aucune nation ne peut subvenir à la totalité des besoins de ses membres. Il faut donc identifier un bien commun plus vaste que le bien commun national au service duquel sont constitués les pouvoirs publics des Etats. Il existe en effet un "bien commun universel qui intéresse l'ensemble de la famille humaine" (PT 132). Les procédés habituels que sont les conventions et les traités internationaux, les relations diplomatiques, ne sont plus suffisants pour assurer ce bien commun universel, dit l'encyclique (PT 133).

"Dans les conditions actuelles de la communauté humaine, l'organisation et le fonctionnement des Etats... ne permettent pas de promouvoir comme il le faut le bien commun universel" (PT 135).

Qui dit service du bien commun, dit moyens de le réaliser. Il faut donc que le service du bien commun universel soit assuré par une autorité à compétence universelle. Le bien commun universel se précise dès qu'une action internationale est nécessaire pour l'obtenir, dans le domaine économique et la recherche de la paix. Déjà Jean XXIII observait que les économies étaient intégrées au point de former une unique économie mondiale (PT 130-131). Le service de la paix suppose une autorité capable de faire prévaloir le droit sur la violence, sans exclure le recours à la force légale, lorsque tous les moyens pacifiques ont été épuisés.

3. Pie XII a, à plusieurs reprises, critiqué l'idée de *souveraineté* absolue de l'Etat national.

"La conception qui assigne à l'Etat une autorité illimitée est une erreur, qui n'est pas seulement nuisible à la vie interne des nations... elle cause aussi du tort aux relations entre les peuples, car elle brise l'unité de la société supranationale, ôte son fondement et sa valeur

au droit des gens, ouvre la voie à la violation des droits d'autrui, et rend difficiles l'entente et la vie commune en paix".<sup>11</sup>

Parlant à des Juristes catholiques le 6 décembre 1953, Pie XII revenait sur la question de la souveraineté.

"Chaque Etat est inséré dans l'ordre du droit international et par-là dans l'ordre du droit naturel. Par là il n'est plus – il ne fut d'ailleurs jamais – souverain sans limites... Chaque Etat est immédiatement sujet du droit international. Les Etats auxquels le droit international ne garantirait pas l'indépendance à l'égard de l'autorité d'un autre Etat ne seraient pas eux-mêmes souverains".<sup>12</sup>

En ce qui concerne la construction européenne, Pie XII plaide clairement, de 1948 à 1957, en faveur de l'intégration européenne. Dans un discours célèbre du 13 juin 1957, après s'être réjoui de la signature du traité de Rome, il regrette l'échec de la communauté européenne de défense et se prononce pour une Europe fédérale.<sup>13</sup> La structure fédérale lui paraissait plus cohérente avec un service rigoureux du bien commun. Dans la perspective de l'éthique sociale catholique, la souveraineté est toujours limitée par la loi naturelle. Le droit international est enraciné dans le droit naturel. La souveraineté réside toujours dans un peuple.

L'Eglise a la mémoire du temps long. Elle rappelle que l'idée de souveraineté des Etats n'est apparue dans le vocabulaire politique qu'avec l'absolutisme. C'est Bodin (1576) qui avec ce néologisme désigne le pouvoir suprême, un et indivisible, de la monarchie, qui ne connaît virtuellement aucune limite à l'intérieur des Etats et par rapports aux autres Etats. Jusqu'à la création de la Société des Nations, les Etats ne connaissaient d'autre limite à leur pouvoir que le pouvoir d'un plus fort. Au XIXe siècle l'Etat n'est plus absolutiste mais national. La nation au sens moderne est aussi une invention du XVIIIe siècle. On lui prête une existence autonome par rapport à ses membres individuels et par rapport à l'Etat qui en représente les intérêts. A la limite, la nation pourrait exister sans le peuple. Aujourd'hui, la plupart des constitutions nationales désignent le peuple et non la nation comme la source de la souveraineté.

4. Les notions de bien commun et de souveraineté sont intimement liées à celle de *subsidiarité*. La subsidiarité est le mode de prise en compte

<sup>11</sup> Pie XII, encyclique *Summi pontificatus*, in AAS 31 (1939) 469-470.

<sup>12</sup> Discours aux Juristes catholiques, 6 décembre 1953, in AAS 45 (1953) 796.

<sup>13</sup> AAS 49 (1957) 629.

du bien commun. Elle répond à la question: à quel niveau doit se situer l'autorité apte à assurer le bien commun? L'histoire des idées politiques rappelle que la doctrine de la subsidiarité a été empruntée à Aristote (*Politique* 1252 B 10-29), via S. Thomas d'Aquin, Althusius et Hegel.<sup>14</sup> A l'époque contemporaine, Pie XI fait du principe de subsidiarité l'un des piliers de l'enseignement social catholique. Dans l'encyclique *Quadragesimo anno* (1931) 86-88, il le formule de la façon suivante:

“Que l'autorité publique abandonne donc aux groupements de rang inférieur le soin des affaires de moindre importance où se disperserait à l'excès son effort; elle pourra dès lors assurer plus librement, plus puissamment, plus efficacement les fonctions qui n'appartiennent qu'à elle, parce qu'elle seule peut les remplir: diriger, surveiller, stimuler, contenir, selon que le comportent les circonstances ou l'exige la nécessité”.

Le thème de la subsidiarité sera repris dans les encycliques sociales subséquentes,<sup>15</sup> ainsi que par le concile Vatican II (GS 82,1). A tout bien commun doit correspondre un pouvoir capable de l'assurer. Dans la pensée catholique, le pouvoir est envisagé comme instrument au service du bien commun. Le bien commun, pour citer GS 26,1, c'est

“l'ensemble des conditions sociales qui permettent, tant aux groupes qu'à chacun de leurs membres d'atteindre leur perfection d'une façon plus complète et plus aisée”.

Le niveau suprême de prise en charge de certains aspects du bien commun ne peut plus être l'Etat national. Un bien commun se définit aussi loin que s'étendent des besoins réels à satisfaire. Il existe aujourd'hui un bien commun européen inscrit dans des domaines précis consignés dans les traités. A une échelle plus vaste, il existe un bien commun mondial, comme le montrent la globalisation des échanges économiques et le maintien de la paix.

Le principe de subsidiarité a deux versants. A l'intérieur d'une communauté politique, il est synonyme de suppléance, et doit veiller à ce que chaque niveau de compétence puisse s'exercer convenablement. Au besoin il intervient pour corriger une défaillance. Pour un Etat considéré dans ses rapports avec d'autres communautés politiques, la subsidiarité réside dans des transferts de souveraineté à un organisme communément choisi afin

<sup>14</sup> Cf. C. Million-Delsol, *L'état subsidiaire*, Paris, PUF, 1992.

<sup>15</sup> Voir *Mater et magistra*, 51-58; 64-67; 117; 152; *Pacem in terris*, 140-141; *Laborem exercens*, 18; *Centesimus annus*, 15.

qu'il prenne en charge le service du bien commun que les Etats nationaux ne sont plus en mesure d'assumer.

A l'intérieur des Etats, la subsidiarité invite les individus, dans leurs groupements primaires à prendre leurs responsabilités (famille, profession, commune, syndicat, région). Elle rejette l'Etat providence qui déresponsabilise autant que l'Etat centralisateur qui étouffe les corps intermédiaires. La subsidiarité est la quintessence de la démocratie participative: les décisions sont prises à partir de la base. Dans un Etat fédéral, le gouvernement fédéral exerce de façon subsidiaire les compétences qui lui ont été constitutionnellement dévolues.

L'Union Européenne a inscrit la subsidiarité parmi les principes constitutifs de l'Union.<sup>16</sup> L'Europe est un modèle de subsidiarité supra-nationale institutionnalisée. La Commission précise dans une interprétation officielle du 10 mars 1994:<sup>17</sup>

“Le principe de subsidiarité... s'applique uniquement à l'exercice, par la Communauté, des compétences qu'elle ne détient pas à titre exclusif et traite de la question de savoir si lesdites compétences doivent être exercées par les Etats membres ou par la Communauté”.

Les traités dressent la liste des compétences exclusives de l'Union.

La subsidiarité est aussi un principe en vigueur dans les procédures des Nations Unies. Pour garantir la paix, l'art. 52 de la Charte des Nations Unies prévoit que les différends entre Etats doivent être composés d'abord au niveau régional, avant d'être portés devant le Conseil de sécurité. Celui-ci peut renvoyer une cause au niveau régional. De même les banques de développements (BM, FMI, BIRD) ne doivent pas concurrencer les banques privées ni les banques nationales dans l'octroi de prêts multilatéraux.

### 3. Problèmes et conditions

*Pacem in terris* a été un document phare de l'enseignement social catholique. Il représente la synthèse, intervenue dans la pensée sociale catholique, entre l'affirmation traditionnelle d'un ordre de moralité objectif et les droits subjectifs de la personne. Le droit international lui-même depuis 1948 est construit sur les droits subjectifs de l'homme. Dans cette perspective les Etats fondés sur le droit s'auto-limitent dans leur compétence. Ils

<sup>16</sup> Cf. Traité de Maastricht, 1992, art 3 B.

<sup>17</sup> Cf. J.O.C.E/ n° C-102 du 11 avril 1994.

respectent le rôle de la société civile et la sphère des choix personnels. L'Etat de droit dégage à nouveau la notion de souveraineté du peuple, de l'universalité concrète des citoyens, qui demandent à exercer leur pouvoir de décision à tous les niveaux où la société s'organise: local, régional, national, et international, comme c'est le cas en Europe. Cependant l'harmonie entre le discours international et le discours catholique n'est pas complète.

1. Le souhait d'une "autorité publique de compétence universelle" est accompagné, dans *Pacem in terris*, de trois conditions à respecter (cf. 138-141).

– Premièrement, cette autorité doit résulter d'un accord unanime et ne pas être imposée par la force. Elle ne doit pas être au service des nations les plus puissantes et de leurs intérêts. L'égalité juridique et morale des communautés politiques est un principe de droit. Toutes sont égales en dignité naturelle. "Chacune est comme un corps dont les membres sont les hommes" (PT 87-89).

– Deuxièmement, le bien commun universel se définit aussi en référence à la personne humaine. Il doit avoir pour "objectif fondamental la reconnaissance, le respect, la défense et le développement des droits de la personne humaine" (PT 139). Un pouvoir mondial doit donc créer les conditions pour qu'à tous les niveaux soient respectés les droits de la personne humaine.

– Troisièmement, l'exercice d'une telle autorité mondiale doit être régi par le principe de subsidiarité. Conformément à ce principe, elle ne doit intervenir que pour suppléer à l'insuffisance des pouvoirs nationaux devant les problèmes qui ont une dimension mondiale.

Un Tribunal international d'arbitrage doit dire le droit et un exécutif doit être en mesure de contraindre par la force un éventuel agresseur. Si par son comportement, un Etat se met au ban des nations, la communauté internationale doit avoir les moyens d'intervenir pour le faire revenir sur les chemins du droit.

La doctrine sociale catholique considère que là où existe un bien commun à satisfaire, il doit être pris en compte par une autorité capable de le promouvoir. L'origine de l'autorité capable de servir le bien commun international devra être démocratique dans tous les cas. Une telle autorité suppose aussi l'existence d'une société civile de dimension internationale. Elle doit émaner de la libre décision des Etats souverains, dûment mandatés par leurs citoyens. C'est l'universalité des citoyens concernés par la construction d'une autorité internationale qui est appelée à ratifier ce choix.

2. Le souhait d'une autorité mondiale est l'expression d'une vision théorique des relations internationales. Le Magistère n'ignore pas la dis-



tance entre les réalités empiriques et les souhaits exprimés. Le droit international lui-même reste un idéal qui est régulièrement bafoué lorsque les grandes puissances mènent des politiques unilatérales au service de leurs intérêts propres. L'ONU a été secouée par des crises existentielles chaque fois que ses Résolutions ont été ignorées ou contournées par les Etats. L'idée d'une autorité mondiale reste encore du domaine du vœu. Il n'y aura d'autorité mondiale que dans la mesure où les Etats voudront la reconnaître et la doter de moyens efficaces, le seul moyen efficace étant le droit international librement accepté.

3. Marquer une telle confiance dans le système de l'ONU n'est pas sans soulever, en contrepartie une interrogation. Ces dernières années, les grandes conférences internationales n'ont-elles pas enregistré une distance croissante, voire une opposition entre les vues du Saint-Siège et celles d'une majorité d'Etats libéraux avancés? Ce qui est en jeu, ce sont des divergences de plus en plus marquées dans les conceptions mêmes de l'homme, de la vie et du droit. L'Eglise conçoit le droit international comme ancré dans le droit naturel. Or le droit naturel n'est plus un concept porteur. L'idée même d'une norme morale transcendante accessible à la raison est elle-même rejetée par beaucoup. La divergence entre la pensée catholique et la pensée actuellement en vogue dans la société internationale est de nature philosophique. La première établit un lien entre la liberté individuelle et la vérité objective. Elle soutient que les valeurs sources du droit sont le fondement intrinsèque de la dignité de la personne. C'est cette dignité qui est à la base de la démocratie et non l'inverse.<sup>18</sup> Telle était la vision du *jus gentium* à laquelle l'Eglise reste attachée. La seconde tend à ne retenir comme valeurs que celles qui résultent d'un consensus, la vérité étant conditionnelle et conventionnelle, au gré du nombre et des opinions changeantes. Elle suggère que le relativisme éthique et le positivisme juridique forment les conditions obligées de la démocratie.

L'Eglise catholique n'a-t-elle pas attribué à l'ONU un rôle et un pouvoir qui pourraient se retourner contre elle? Sur la scène internationale comme dans les contextes nationaux, la même tendance est toujours présente: la volonté du plus fort cherche toujours à reprendre le dessus lorsque la société n'est plus capable d'affirmer la primauté des principes et des valeurs universelles. L'appui donné par le Saint-Siège à la construction d'un ordre international n'est pas synonyme d'encouragement à toutes les politiques

<sup>18</sup> Cf. Jean Paul II, *Centesimus annus* 46, dans: AAS 83 (1991) 850.

prônées par l'ONU. On sait que le Saint-Siège occupe une position très minoritaire dans les questions éthiques relatives à la transmission de la vie, à la protection de la vie avant la naissance, à la procréation artificielle, au clonage même thérapeutique, à l'euthanasie.

4. Concrètement deux modèles de mise en œuvre de la subsidiarité par une autorité internationale sont envisageables: le modèle fédéral qui est celui vers lequel tend l'Union européenne, et le modèle inter-étatique qui demeure celui des Nations-Unies. L'Union européenne présente les caractéristiques qui répondent le mieux à la consolidation d'une véritable autorité supra-nationale, car il y a bien un peuple européen qui délègue à ses représentants librement élus, agissant en conformité avec les traités, le pouvoir d'agir en son nom.

A l'échelle universelle, dans le cadre inter-étatique, "une autorité avec une compétence universelle", reste une proposition largement idéaliste. Le Saint-Siège souhaite que les Nations Unies, à condition de ne pas s'écarter du droit des gens, puissent jouer le rôle d'arbitre dans les conflits, et de garant de l'application effective des normes communes. Il n'y a pas de danger de nouveau Léviathan. Le seul danger réel est que le droit international soit considéré comme un droit optionnel que les grandes puissances manient à leur guise.

Le projet d'une autorité mondiale est toujours à reprendre. Dans son message pour la journée de la paix du 1 janvier 2003, consacré à la commémoration de l'encyclique *Pacem in terris*, Jean Paul II demande si

"le temps n'est pas venu où tous doivent collaborer à la constitution d'une nouvelle organisation de toute la famille humaine, pour assurer la paix et l'harmonie entre les peuples?".

La précision qui suit apparaîtra comme une confirmation autorisée de l'interprétation qui a été développée plus haut.

"Il est important, poursuit le pape, d'éviter tout malentendu: il n'est pas question ici de constituer un super-Etat mondial. On entend plutôt souligner qu'il est urgent d'accélérer les progrès déjà en cours pour répondre à la demande presque universelle de modes démocratiques dans l'exercice de l'autorité politique, tant nationale qu'internationale, et pour répondre aussi à l'exigence de transparence et de crédibilité à tous les niveaux de la vie publique".<sup>19</sup>

<sup>19</sup> *Pacem in terris, un engagement permanent*, n. 6 (8 décembre 2002), dans *La Documentation catholique* 2003, p. 7.

## THE GOVERNANCE OF GLOBALISATION: ETHICAL AND PHILOSOPHICAL PERSPECTIVES

VITTORIO POSSENTI

Minnerath's brilliant paper is an example of sound historical analysis combined with an attention to the development of the Church' social doctrine (CSD) on the pivotal subject of 'world authority'. He has carefully explored the doctrinal and historical developments of CSD, drawing mainly on *Pacem in Terris* (PT), *Gaudium et Spes* (GS) and other paramount documents. In my opinion there is little to add to his paper. Preferably we could explore some other sides of the problem. The ethical and philosophical character of the present session suggests that we should not neglect certain comparisons between CSD and contemporary issues in political philosophy on the matter of world authority, peace and security, human rights, in harmony with the deep structural analysis developed by PT, the encyclical that investigated the inner causes of the anarchy to be found in the international context and which was clearly a document firmly grounded in a strong political and philosophical tradition.

An impartial observation of current political trends in international relations suggests that because of the present global system the political dimension is acquiring a new significance. This is contrary to what was expected for many years, namely that a new world order would emerge through economic exchanges, contacts, trade, and the spread of technical know-how. No advanced or developing society can dispense with politics as the place where the common good is sought after, where collective choices are made, and where the defence of the existence of individual societies is implemented.

1) The general subject of our session is the governance of globalisation. This includes the question of a world public authority. We shall see later what would be the best name to designate it. The question of a plan-

etary political authority is so important in relation to war and peace, and indeed in relation to globalisation, that the present state of international relations raises decisive questions that are closely connected with this question: how can we attain an adequate governance of economic, technical and financial globalisation when political globalisation seems to be encountering such serious difficulties; when serious criticisms are being expressed about the United Nations and international law is experiencing a marked crisis; when the international order is dominated by power, national interests, discord, and the violation of human rights; and when the great evils of the human condition – war, oppression, poverty, famine, genocide and mass murder, religious persecution, and violation of freedom – are very present and strongly evident?

The question of a world authority has been traditionally bound up with the question of war and peace. The hope has been that such an authority could put an end to the fundamental cause of war – anarchy in international relations. Among the many words uttered on the subject those of J. Rawls are particularly worth quoting:

One does not find peace by declaring war irrational or wasteful, though indeed it may be so, but by preparing the way for peoples to develop a basic structure that supports a reasonably just or decent regime and makes possible a reasonable Law of Peoples.<sup>1</sup>

For some time international debate has again been posing the question of what, at the level of theory or doctrine, could be the role of such an authority – which is at present non-existent or only opaquely prefigured by a series of international organisations – as regards the dynamics of globalisation. The CSD proposes its own perspective in this area. Here I shall draw on some of its themes in order to begin my analysis.

2) As regards the supranational organisation of the world, there is a strong doctrinal continuity to be found in twentieth-century papal teaching, which had its roots in authors of the past, including Luigi Taparelli d'Azeglio of the nineteenth century.<sup>2</sup> This continuity emerged particularly with the pontificates of Pius XII, John XXIII, Paul VI, and John Paul II. In addition, the political thought of Christian inspiration of these years, which was highly sensitive to this question, should not be overlooked: CSD and

<sup>1</sup> J. Rawls, *The Law of Peoples* (Harvard University Press, 1999), p. 123.

<sup>2</sup> Cf. *Saggio teoretico di diritto naturale appoggiato sul fatto*, vol. II, 'Dissertation VI', pp. 227 ff. (Rome, 1949).

Christian thought had a reciprocal influence on each other. A good example is the reflection of J. Maritain, which culminated in *Man and the State* (*L'homme et l'Etat*) (1951), a classic work of twentieth-century political philosophy whose last chapter is dedicated to the political unification of the world. On a broader horizon, we should also recall (not least because it belonged to the same period), the *Preliminary Draft for a World Constitution* of 1948, drawn up by the 'Chicago group', which included such figures as R. Hutchins, G.A. Borgese, M. Adler, S. Barr, A. Guérard, H.A. Innis, E. Kahler, W.G. Katz, and C. McIlwain. Nor should we forget Y.R. Simon's profound studies on authority,<sup>3</sup> a vital subject in *Pacem in Terris*, although it should be stressed that this subject has been largely marginalised for decades in Western public philosophy.

We should first briefly analyse the terms used to refer to the idea of a supranational organisation of the world made necessary by the existence of a universal common good and in particular by the need for world peace and security. *Pacem in Terris* draws on the concept of public powers, which possess breadth, structures and instruments on a global scale. *Man and the State* uses the phrases 'the political unification of the world' and 'the political organisation of the world'. It is worth stressing that neither the aforesaid encyclical nor Maritain refer to a *world state* or a *world government*, which tend to evoke the creation of a new Leviathan, with the accompanying risks of planetary despotism. The question of a world authority cannot be solved through the creation of a super-state, but by seeking to create institutions that work for a pluralistic political unification of the world. In addition, a new Leviathan could well find suitable conditions for its emergence in the state of anarchy of the so-called international order – which should sometimes be more realistically be called the 'new international disorder' – if a power were to emerge that saw itself as uncontrolled, *superiorem non recognoscens*, and which was endowed with crushing military superiority. This has happened before and it is not impossible that it will happen again. Indeed, international disorder involves a Hobbesian law of the jungle in which each power seeks to enforce justice on its own and where it is probable that in the end a hegemonic power, backed by military might, will emerge.

<sup>3</sup> Y.R. Simon, *Nature and Functions of Authority* (Marquette University Press, Milwaukee, 1948); *A General Theory of Authority* (University of Notre Dame Press, Notre Dame, 1980); *Philosophy of Democratic Government* (University of Chicago Press, 1951).

Perhaps *PT*'s recourse to the plural noun 'powers' instead of the singular noun 'authority' suggests that this encyclical did not want to propose a clearly unified and mono-centric character for such an authority, but to leave the door open to a multilateral approach to the subject, at the same time indicating a method by which to seek answers to a plurality of problems. Though the analysis of *PT* takes place at a fundamental doctrinal level and generally does not suggest specific solutions, it may be assumed that its use of the plural noun 'powers' indicates support for multilateral public powers that work through a network that includes many supranational institutions and adopts solutions that are structural (planetary public powers), juridical (e.g. an international penal court), operative, and functional. In this approach, the utmost importance is attached to the creation of regional or continental political unions, such as – or at least one hopes – the African Union. If in the future adequate continental Unions in the five continents of the world were to emerge, this would facilitate the path towards a more effective establishment of world public powers and create a form of subsidiarity in their structures. Given the present state of affairs it is very difficult to attempt to envisage whether these powers should have a federal unity or a pluralistic structure capable of accommodating the permanent diversity of existing political communities, which J. Rawls recently categorised into five types of societies:

The first is *reasonable liberal peoples*, the second the *decent peoples*, then thirdly *outlaw states* and fourth *societies burdened by unfavourable conditions* and finally, fifth, societies that are *benevolent absolutisms*.<sup>4</sup>

3) In my view a prominent element that contributes to the epoch-making importance of *PT* lies in the fact that it illustrates in a doctrinally impeccable manner and in clear language what is really at the heart of the question of peace. This factor may have been suspected by many but was articulated by very few.

Let us now re-read the decisive passages of the text:

The public Powers of individual political communities, being all on an equal footing, however much they multiply their meetings and their endeavours to discover more fitting legal instruments, are no longer able to face and to solve adequately the problems pointed out. And this happens not mainly for a lack of good will and of initiative,

<sup>4</sup> *The Law of Peoples*, p. 4.

but because of their structural deficiency. We are thus driven to the conclusion that on historical ground has disappeared the proportion between the present organization and operation of the principle of authority on world scale from one side and the objective requirements of the universal common good on the other one... Today the universal common good presents us with problems which are world-wide in their dimensions; problems, therefore, which cannot be solved except by public authorities with power, organization and means co-extensive with these problems, and with a world-wide, efficient sphere of activity. Consequently the moral order itself demands the establishment of some form of public powers (§§ 134, 135, 137).

The reasons suggested by *PT* for taking the path towards the hoped-for public planetary powers are three in number: a) the justification for the authority, whose only purpose is to promote the common good. The doctrine of authority has an absolutely central place in *PT*. Developed in §§ 46-54, it concludes with the vital statement: 'The attainment of the common good is the sole reason for the existence of civil authorities'; b) the intrinsic connection between the dimension of the common good and the dimension of authority, so that a new planetary extension of this good must necessarily be matched by a planetary authority; c) the structural deficiency of the public powers of individual political communities, which means that the basic criterion of politics is lacking – a congruence or proper proportion between the structure and dimensions of the authority and the dimensions of the common good to be secured. *Gaudium et Spes* (*GS*) moves in a similar direction, though perhaps with less force. In paragraph 82 it recognises the need for a universally acknowledged public authority vested with the effective power to ensure security for all, regard for justice, and respect for rights.

In both cases, reading between the lines, one can discern a criticism of State sovereignty. However, this is not made explicit and is less articulated and less forceful than is the case in the teaching and declarations of Pius XII.

The *intrinsic relationship between authority and the common good* was a major gain for the CSD and the Church's public philosophy. Here we encounter a marked continuity with the political thought of the trajectories of St. Thomas Aquinas and Aristotle. To have an approximate idea of the scale of the problem, we may recall the definition of the common good adopted in *GS*, which defines it as

the sum total of those social conditions which allow people, either as groups or as individuals, to reach their perfection more fully and more easily (§ 26).

This important definition, which includes a reference to human fulfilment and thus rejects any form of anthropological agnosticism, is different from the liberal and neo-liberal position. This latter tends to minimise or cancel the reality of the common good, to leave inexplicit its connections with the political authority, and fails to embrace anthropological commitments.

Personally, I am convinced of the permanent validity of the perspectives of *PT* on peace and war, and in general of the structural analysis it employs to give weight to important features of the tradition of public philosophy. If anything, forty years later, it is advisable to update the phenomenological picture referred to so that the analysis offered by *PT* is not mistakenly understood as a principally ideal position, but is seen as a practical statement, one capable of guiding action. In a certain sense we need a new CSD document on the world order and peace after the events of 1989-2003, a text attentive in assessing and taking into account the cultural, philosophical and religious differences that now exist in the world, maintaining, where necessary, a distinction between the view of the Church and the view prevailing in Western democracies.

Such a document could also have some other key features: an analysis of new and old forms of State sovereignty, and an up-to-date analysis of the doctrine of the just war as applied to new forms of contemporary warfare. Its criteria should also include the point that the declaration of a (defensive) war is the responsibility of a competent authority. In principle, this authority is the United Nations Security Council. The vital criterion of the immunity of civilians, which has been violated on countless occasions, should also be examined. According to John Paul II

War is never just another means that one can choose to employ for settling differences between nations. As the Charter of the United Nations Organisation and international law itself remind us, war cannot be decided upon, even when it is a matter of ensuring the common good, except as the very last option and in accordance with very strict conditions, without ignoring the consequences for the civilian population both during and after the military operations.<sup>5</sup>

<sup>5</sup> *Address of Pope John Paul II to the Diplomatic Corps*, 13 January 2003. On this vital issue Rawls adopts the supreme emergency exemption, i.e. the possibility of killing innocent civilians in a situation of supreme emergency, whereas Catholic doctrine denies this possibility and admits only the double effect position, i.e. that civilians are not to be directly attacked. The doctrine of double-effects forbids civilian casualties except insofar as they are the unintended and indirect result of a legitimate attack on a military target, and this,



The great burden of responsibility that *PT* places on the political authority implies a renewal of doctrine on the subject, which has hitherto been largely absent from international public philosophy. In Rawls's *The Law of Peoples*, for example, there is no theory of authority, not even a proposal for a global political authority: its pivotal concept is the law of peoples. It is likely that the author omitted the subject of authority not only because it has little currency in public philosophy but also because it is not possible to uphold the concept of authority if the concept of the common good has been weakened or cancelled, as is generally the case in the approaches that now prevail.

The coherence of the analysis of *PT* in linking authority with the common good is not, however, used by the encyclical to suggest specific paths by which to secure a planetary authority. Perhaps in the background of the text lies the idea that it is possible to enhance the power of the UN to the utmost and make it the highest but not the sole expression of such planetary powers. But at the same time a difficult question remains unanswered: how is it possible to construct a global political society or planetary public powers without a world *demos* that in some way designates those public powers from the grass roots up? Without the existence of a global *demos*, who would express that authority? Perhaps here Maritain's definition of a political organisation of the world is less demanding, because it seems not to see as absolutely essential an investiture of the global public powers from below or by wholly democratic paths. In addition, it seems utopian to believe that public powers on a planetary scale can exist and operate only when all of the two hundred or so States in the world have achieved a democratic form. Here perhaps reference can be made again to the relevance of Rawls's classification of States: liberal, decent, outlaw, burdened and in need of assistance, and those based on benevolent absolutism.

4) The two principal obstacles (although there are others) to the establishment of lasting peace are: the *disorder of international relationships*, which are still powerfully conditioned by the sovereignty of States; and the ambivalent impact of the *economic interdependence* of nations during the present difficult phase of political evolution.

The *anarchy of international relationships* and the way States exercise their sovereignty remains the great issue. Anarchy is the structural disorder

in turn, denies Rawls's theory of the supreme emergency exemption. In Rawls's view, Catholic doctrine is in contradiction with the duties of the statesman according to political liberalism (cf. *The Law of Peoples*, p. 105).

that is inevitably encountered by those (the States) that interact without a common government but instead allow themselves to be guided by '*raison d'état*'. This doctrine assumes that the vested interest of a State is the supreme law of its activity, especially as regards its relations with other States. The outcome of this is confirmed today when a survey of what takes place is carried out: the world still finds itself in a situation of uncertainty and danger caused by an anarchy that has once again reared its head. The irrationality of the current political organisation of the world is the cause of the low levels of peace, which, in principle, cannot exist as long as men and nations seek to live together without a common authority, that is to say in a state of anarchy. In this respect little has changed in the structure of international relations since the time of the Peloponnesian Wars, narrated and analysed by Thucydides. As R. Gilpin observes:

The fundamental nature of international relations has not changed over the millennia. International relations continue to be a recurring struggle for wealth and power among independent actors in a state of anarchy. The history of Thucydides is as meaningful a guide to the behaviour of states today as when it was written in the fifth century.<sup>6</sup>

During these last difficult months the great problem that has obsessed international relations since 1648 (the Treaty of Westphalia) has gained new prominence: how can an international system still largely centred on the sovereignty of States, and today of a handful of powerful States – indeed, perhaps just one State – be administered in a way that conforms to justice and legality (or at least that legality determined by the international law now in force)? How can we create an effective international law that limits the sovereignty of States? Some authorities speak of a new international disorder, exemplified by the crisis of global economic institutions and the Iraqi war, and relate it, especially as regards its political dimension, to the difficulties of the United Nations, which, indeed, has often been marginalised and rendered largely incapable of governing periods of crisis. The United Nations, indeed, was created to avoid a return to the Hobbesian state of international relations through the use of procedures that would prevent conflicts.

Unfortunately, the UN is not endowed with the authority necessary to ensure peace and prevent aggression; nor does it seem able to act permanently as an arbitrator in controversies between States and as an effective safeguard of existing international law. This is due to the fact that it is the

<sup>6</sup> *War and Change in World Politics* (Cambridge University Press, 1981), p. 7.

expression of the sovereign States that produce it and whose decisions – and naturally those of its most powerful members – it has to observe. Here, too, we are led to the centrality of the theme of sovereignty. Maritain held that the very concept should be eliminated because it evokes the idea of the absolute and transcendent power of the State over the body politic in the domestic sphere (absolutism and totalitarianism), and the freedom of the State from any moral restraint in the international field, where it is guided only by its own interests.<sup>7</sup> Rawls, too, is fully aware of the seriousness of the issue, to the point that he states in forthright terms:

We must reformulate the powers of sovereignty in the light of a reasonable Law of Peoples and deny to states the traditional rights to war and to unrestricted internal autonomy (*op. cit.*, p. 27).

In essential terms, the present international system is a mixture of Westphalia and the UN; of 1648 and 1945/48. We are still in a situation that we may define as 'Westphalia corrected': 'Westphalia', because the sovereignty of the major States is of pre-eminent importance; 'corrected', because, compared with the situation in 1648, a frame of reference for human rights is now emerging in a significant way, partly, indeed, because of the work of the UN itself. Trying to predict how all this will develop is difficult because there is the risk that the old system of power politics will return. On this point it is worthwhile paying close attention to the doctrine of the pre-emptive strike/war, which seems to be a violation of international law and political justice, as well as a new version of the *ius ad bellum* as the highest expression of the sovereignty of a State. This doctrine undermines the existence of the UN, contradicts its Charter (especially art. 51, which accepts the natural right of legitimate defence only if a member of the UN is the object of armed aggression and until the Security Council has taken the necessary measures to maintain international peace and security), reinstates war as a method of solving disputes, and removes its governance from the UN Security Council. At present, international law has only with great difficulty established the following two key points: the restriction of the *ius ad bellum* to self-defence and the setting of limitations on the right of a State to internal sovereignty.<sup>8</sup>

<sup>7</sup> 'The two concepts of sovereignty and absolutism were forged together on the same anvil. Together they must be banned' ('Les deux concepts de Souveraineté et d'Absolutisme ont été forgés ensemble sur la même enclume. Ils doivent être ensemble mis au rebut'): J. Maritain, *L'homme et l'Etat*, in *Oeuvres complètes*, vol. IX, p. 539.

<sup>8</sup> Here there emerges the grave problem of what kind of relations should be main-

### Conclusion

5) The present-day international situation seems to be moving towards a scenario in which the rule of (international) law is weaker and where military hegemony takes its place. In essential terms, it may be likely that the international system is evolving towards a Hobbesian interruption of the rule of law where the strength of right is replaced by the right of strength, and where the pivotal parameter is military force and its related hegemony.

Although the importance of global public powers in the governance of globalisation needs to be stressed in the only possible way – that they should reduce poverty and inequalities and help in removing disagreements and disputes – it appears necessary to review international economic and juridical institutions, including the UN. The latter should be made responsible, far more broadly than it has been so far, for safeguarding peace and preventing war through a regulation of the *ius ad bellum* of States. Moreover, the remote foreshadowing of planetary public powers to be found in the UN at the present time encounters a stumbling block in relation to the task of enforcing respect for fundamental human rights. In some instances a notable difference exists between how the CSD and the liberal democracies understand human rights, whose uniform *universal* interpretation is impeded by current political, cultural and religious divisions. In the Western consideration of human rights and of natural law as their root, notable is the influence of a version of hermeneutics which is marked by ethical relativism and legal positivism – lines of thought that were vigorously combated by the encyclical *Centesimus Annus*.

We still have a strong impression of precariousness within the international order at the economic, juridical and political levels: wars continue to break out; inequalities have increased; and there is a shortage of effective and just global initiatives. At the same time, the arms race continues as a

tained with those outlaw States that engage in serious violations of human rights. It is Rawls's view that

If the political conception of political liberalism is sound, and if the steps we have taken in developing the Law of Peoples are also sound, then liberal and decent peoples have the right, under the Law of Peoples, not to tolerate outlaw states (p. 81). However, to my knowledge Rawls does not illustrate what is meant by 'not tolerating'; nor does he clarify whether this includes waging war on them indiscriminately. It seems that this is not the case because the fifth of the eight criteria that embody the Law of Peoples reads: Peoples have the right of self-defence but no right to instigate war for any reason other than self-defence (p. 37).

result of a desire to maintain or increase the superiority of a handful of States, with the consequence that it now seems that we have passed from the balance of terror of the Cold War to the present imbalance of hegemony. It is very difficult to answer the question: how can we construct public global powers in an age marked by the growing military and economic hegemony of a small group of States and multi-national companies? Only in the future will we know whether the current crisis of the international system and its law has been temporary or whether we have entered a new phase in which hegemony is combined with more acute conflicts.

## CONTRIBUTO RELATIVO ALL'INTERVENTO DI MONS. MINNERATH

GIAMPAOLO CREPALDI

Desidero ringraziare Mons. Minnerath per le stimolanti riflessioni che ci ha offerto con la sua relazione, che ci permettono una più precisa considerazione del tema affrontato. Da parte mia mi limiterò a prendere in considerazione quella parte della relazione di Mons. Minnerath dedicata al tema della sovranità. Lo farò, avendo presente il contributo che il Santo Padre Giovanni Paolo II ha offerto nei suoi Discorsi annuali al Corpo Diplomatico, che ci consente di cogliere il punto di vista particolare del Magistero sociale sulla connessione che viene stabilita tra sovranità degli Stati e apertura alla Comunità internazionale. Attraverso i Discorsi, è possibile far tesoro di una serie di indicazioni metodologiche ed ermeneutiche di grande valore ed attualità. In questi Discorsi, infatti, il Santo Padre si rivolge non solo agli Stati, ma tramite essi alle Nazioni e ai popoli. Una lettura adeguata dei Discorsi al Corpo Diplomatico offre l'opportunità di rintracciare una teorizzazione piuttosto completa ed articolata delle nozioni di Stato, Nazione, Popolo, e, ciò che più conta, del rapporto fisiologico che intercorre tra queste realtà e la vita concreta delle persone, tra queste realtà e lo scenario internazionale.

Oggi la "sovranità" in senso politico è soprattutto propria degli Stati, ma il Santo Padre ne sottolinea con forza l'origine: essa emana originariamente da *una sovranità morale e culturale*, che appartiene ai popoli e alle Nazioni e che affonda le sue radici nella loro identità più intima, nella ricchezza di umanità di cui sono portatori, nella storia che hanno attraversato e che ne ha fatto qualcosa di unico e di specifico. Lo Stato è "espressione della determinazione sovrana dei popoli e delle nazioni [...], in questo consiste la sua autorità morale" (1979, 2). In questa distinzione c'è tutto lo spazio per proclamare che lo Stato è un bene e contempora-

neamente affermare che la sua autorità è degnamente fondata quando esprime una più profonda sovranità, quella che è come cristallizzata nelle persone storicamente unificate nella Nazione, collegate tra loro in un popolo, identificate in una cultura (cfr. 1981, 4-5-6). Il concetto di sovranità, secondo il Papa, è analogico. Ad essere sovrana, anzi supremamente sovrana, è prima di tutto la persona umana: la sovranità sociale della Nazione deriva da questa originaria sovranità ed ha in essa il suo fondamento. La sovranità politica dello Stato “esprime” la sovranità nazionale, tuttavia senza coincidere mai con essa. Tutta la dignità, anche politica, dello Stato consiste nell’essere “degno” (1984, 4) del valore morale del servizio prestato alle persone, ai popoli e alle Nazioni. Tale *dignità* è la giustificazione morale della *sovranità*: “Gli Stati devono essere al servizio della cultura autentica che appartiene in modo particolare alla Nazione, al servizio del bene comune, di tutti i cittadini e le associazioni, cercando di stabilire per tutti delle condizioni di vita favorevoli” (1984, 4). Questo servizio rende *degno* uno Stato e fonda la sua *sovranità*.

Come sappiamo, il concetto di “sovranità” è un prodotto del pensiero politico moderno ed emerge con lo Stato moderno. Per verticalizzare il potere, che in precedenza aveva una dimensione prevalentemente orizzontale, e per concentrarlo operativamente, nella “*reductio ad unum*” esercitata dallo Stato si è progressivamente elaborato un concetto di sovranità “assoluta”, che ha sempre destato perplessità nel pensiero sociale e politico dei cattolici e nello stesso Magistero della Chiesa. La sovranità del potere “*legibus solutus*” non trova albergo nel Magistero sociale della Chiesa. La riflessione sociale e politica dei cattolici – si pensi al rifiuto espresso da J. Maritain per il concetto stesso di sovranità – ha sempre colto, nelle categorie concettuali tipiche del pensiero politico moderno, una pericolosa separazione della politica dall’etica. Giovanni Paolo II adopera la parola “sovranità” nei suoi Discorsi al Corpo Diplomatico, ma precisandone – e addirittura teorizzandone – il carattere relativo e non assoluto. Anche nella sua cristallizzazione statale, la sovranità è espressione del bene delle persone e dei popoli. La sovranità politica non è mai fondativa della comunità.

In quanto “espressione” della sovranità dei popoli e delle Nazioni, lo Stato ha dei doveri nei loro confronti e, tramite loro, ha dei doveri anche nei confronti della Comunità internazionale (cfr. 1984, 4). La Chiesa ritiene che esista un’“unica famiglia umana” (1986, 5), che richiede, da parte di tutti, forme articolate di solidarietà universale. La Santa Sede intende contribuire “a rafforzare e completare l’unione della famiglia umana” (1990, 4). Pur nel rispetto della sovranità degli Stati è quindi opportuno che crescano

le forme di “solidarietà continentale”, come ad esempio quella europea, e che si superino gli schieramenti politici. Esiste un “diritto delle Nazioni” (1984, 3), fondato sulla cultura omogenea dei popoli; esiste un diritto degli Stati “alla loro integrità e sovranità”; esistono dei diritti della famiglia umana, in quanto l’umanità delle persone non conosce frontiere. Le relazioni internazionali devono cercare nel dialogo le risposte adeguate alla convivenza di questi tre livelli del diritto. È però impossibile ottenere questi risultati senza riscoprire – a questi tre livelli appunto – i relativi doveri e la loro stretta e necessaria corrispondenza ai diritti. Il dovere costruisce la cornice etica relativa al *dover-essere* entro cui si inserisce il diritto. La Nazione, lo Stato, la Comunità internazionale hanno i loro diritti, ma anche i loro doveri da svolgere. Per fare alcuni esempi: i diritti delle Nazioni non possono essere fatti valere con devastanti ribellioni armate; la sovranità degli Stati non deve essere violata da ingerenze illegittime di altri Stati che, nell’intento di destabilizzare la situazione politica, appoggino di nascosto minoranze culturali ed etniche interne sobillandole all’odio. Gli Stati, del resto, devono trovare forme politiche articolate ed adeguate per rispettare le specificità culturali, etniche e religiose al loro interno. La Comunità internazionale deve rispettare la sovranità degli Stati, ma quando

“delle intere popolazioni sono sul punto di soccombere sotto i colpi di un ingiusto aggressore, gli Stati non hanno più il ‘diritto all’indifferenza’. Sembra proprio che il loro dovere sia di disarmare questo aggressore, se tutti gli altri mezzi si sono rivelati inefficaci” (1993, 13).

All’origine del pensiero di Giovanni Paolo II sulla vita internazionale c’è la convinzione che

“il vero cuore della vita internazionale non sono tanto gli Stati, quanto l’uomo [...]. Esistono degli interessi che trascendono gli Stati: sono gli interessi della persona umana, i suoi diritti” (1993, 13).

Per questa fondamentale ragione, i doveri delle Nazioni, degli Stati e della Comunità internazionale riguardano prima di tutto e sopra tutto la persona umana.



## UNA AUTORITÀ MONDIALE PUNTO DI VISTA DELLA CHIESA CATTOLICA

PIER LUIGI ZAMPETTI

La relazione del Prof. Minnerath presenta aspetti di grande rilevanza e che devono essere adeguatamente meditati e commentati.

Mi riferisco in particolare ai principi enunciati riguardanti il bene comune universale, la sovranità dello Stato nazionale e la sussidiarietà.

Questi tre principi sono sottesi da un quarto principio che non è riduttore della diversità delle culture, ma un'espressione specifica dell'universalità della cultura medesima: l'unità del genere umano.

La pace nel mondo può essere assicurata proprio se questi principi sono riconosciuti come principi fondamentali che sottendono e vivificano i diritti universali dell'uomo.

Cominciamo dal bene comune universale. Esso significa bene comune di tutti gli uomini abitanti l'intero pianeta senza distinzione alcuna di etnia, di razza o di religione.

Ora ci domandiamo: esiste un'autorità mondiale in grado di promuovere tale bene comune universale? L'Onu ha l'autorità e i mezzi sufficienti per poter iniziare e sviluppare tale discorso?

La diminuzione dell'autorità dell'Onu, che abbiamo registrato in questo momento storico, è avvenuta soltanto in occasione della guerra tra Stati Uniti e Iraq o è stata conseguenza della precedente insufficienza di tale organizzazione?

Chiediamoci intanto qual è il cammino da percorrere per raggiungere l'obiettivo prefisso.

Il bene comune universale è legato alla difesa e promozione dei diritti dell'uomo nella loro integralità che sono così diritti altrettanto universali. Prendiamo in considerazione in particolare i diritti dell'uomo della terza generazione che riguardano i diritti dello sviluppo e dell'ambiente.

Come sappiamo è stato l'Onu a promuovere la conferenza delle Nazioni Unite sull'ambiente e sullo sviluppo di Rio de Janeiro, nel giugno 1992. Essa è terminata con una Dichiarazione di cui richiamo due principi di grande importanza: il principio primo per il quale "gli esseri umani sono al centro dello sviluppo sostenibile" e il principio quarto per il quale "al fine di pervenire a uno sviluppo sostenibile la tutela dell'ambiente costituisce parte integrante del processo di sviluppo e non potrà essere considerata separatamente da questo".

Ebbene dopo undici anni dobbiamo rilevare che nulla è cambiato. L'ecosistema e il sistema produttivo mondiale non sono stati in alcun modo modificati e regolati.

Proprio in questa prospettiva ci domandiamo: "in che misura l'Onu è in grado di realizzare il bene comune universale e i diritti fondamentali dell'uomo? In che misura l'unità del genere umano è garantita dall'Onu nella quale tutti gli Stati sono rappresentati?"

Sono domande che attendono ancora una precisa risposta.

E veniamo al principio enunciato dal Prof. Minnerath relativo alla sovranità degli Stati. Egli si richiama alla citazione più volte fatta da Pio XII relativa alla "Sovranità assoluta degli Stati nazionali". Per Pio XII: "La concezione che assegna allo Stato una autorità illimitata è un errore che non è soltanto visibile nella vita interna delle nazioni, ma causa altresì danni alle relazioni tra i popoli perché mina l'autorità della sovranità sovranazionale".

Lo Stato nazionale assoluto nasce, come sappiamo, con la pace di Westfalia (1648) che ha segnato l'inizio della dissoluzione del Sacro Romano Impero e ha introdotto la formula "Rex in regno suo est imperator".

Ebbene oggi registriamo l'inizio della dissoluzione degli Stati nazionali nonostante siano retti da regimi democratici. Essi sono pur sempre retti da oligarchie che permettono una certa assolutizzazione dello Stato sul piano internazionale, e una insufficiente democrazia sul piano interno. Insufficienza questa che impedisce la formazione di una vera e autentica autorità sovranazionale, specie con riferimento alle grandi nazioni, come la storia ha largamente dimostrato.

La società delle nazioni, nata dopo la prima Guerra mondiale si è rivelata incapace di risolvere la crisi del capitalismo che ha segnato l'inizio della seconda Guerra mondiale nella quale la conquista dei mercati mondiali è stata una delle cause scatenanti della guerra medesima. Così anche oggi l'Organizzazione delle Nazioni Unite ha cambiato denominazione, ma ha mantenuto il termine e il concetto di nazione. Lo stesso concetto di globalizzazione entra pur sempre nell'ottica degli Stati nazionali. Per questo si tratta

di una globalizzazione di carattere economico che non è certo in grado di garantire la promozione dei diritti universali dell'uomo nella loro integralità. La globalizzazione pertanto non può perseguire il bene comune universale.

Eppure è in questo quadro, non certo positivo, che si è inserito un processo di particolare importanza: mi riferisco alla crisi degli Stati nazionali in quanto tali. Tale processo è molto importante perché si verifica nel momento in cui le nazioni dominanti, ed in particolare quelle che hanno il diritto di veto, ad eccezione della Cina, sono Stati nazionali democratici. La globalizzazione economica attuale ha sottratto una quota crescente di sovranità agli stessi Stati nazionali principali, oggi impotenti a risolvere da soli i problemi economici ed ecologici di importanza mondiale. Il concetto di Stato nazione deve essere sostituito dal concetto di Stato dei popoli. E da questo profilo è il concetto stesso di sovranità che va interpretato e compreso nella sua vera ed autentica valenza. Gli Stati nazionali sono Stati a sovranità nazionale non certo a sovranità popolare. Nonostante il principio della sovranità popolare sia sancito nella maggior parte delle costituzioni odierne esso non è stato finora attuato. Per una precisa ragione. Tale principio è imperniato sulla democrazia rappresentativa. Per essa il popolo ha soltanto la nuda sovranità, ma non concorre all'esercizio del potere che è da esso delegato ai rappresentanti eletti. Il popolo è concepito soltanto come corpo elettorale e dopo le elezioni non ha più funzione alcuna. Già Rousseau, ancora prima che scoppiasse la Rivoluzione francese, aveva osservato, riferendosi al popolo inglese, che esso era libero soltanto nel momento del voto, ma dopo l'espressione del voto diventava più schiavo di prima.

La ragione della crisi degli Stati nazionali allora è da ricercarsi nella insufficienza o nella incompletezza della democrazia rappresentativa, (come ho dimostrato nel mio volume *Partecipazione e democrazia completa. La nuova vera via* Rubbettino Editore, 2002). Lo Stato nazionale è imperniato sul rapporto tra uomo, come essere individuale, e Stato. Trattasi pertanto di un rapporto bipolare. La relazione tra uomo e Stato deve essere invece sottesa da una concezione tripolare. L'uomo non è soltanto un essere individuale, ma altresì un essere sociale espressione della sua stessa natura ontica. La democrazia rappresentativa è una democrazia individualistica perché riduce l'uomo al suo momento individuale. L'uomo deve potersi esprimere anche nel suo momento sociale, e cioè nella costruzione di una società riconosciuta come soggetto nella quale egli possa inserirsi e nella quale egli possa agire. Nasce così una concezione tripolare: uomo, società, Stato; sorretta da due concezioni diverse di democrazia che non si escludono, ma si richiamano vicendevolmente. La democrazia rappresen-

tativa concerne i rapporti tra individuo e Stato; la democrazia partecipativa concerne i rapporti tra società (con riferimento ai differenti soggetti sociali, a cominciare dal soggetto naturale primario che è la famiglia) e lo Stato. La democrazia cessa di essere insufficiente e diventa completa quando riesce ad integrare la rappresentanza con la partecipazione.

E qui emerge in tutta la sua forza ed importanza la Dottrina sociale della Chiesa che concepisce l'uomo come persona nella sua integralità e quindi nella sua natura sociale, che conduce al riconoscimento della soggettività della società diventando così parte integrante del popolo e della sovranità.

Lo Stato nazionale diventa pertanto Stato dei popoli nel quale viene riconosciuta l'autonomia della società a livello interno e a livello internazionale. Si comprende così appieno il principio di sussidiarietà enunciato da Pio XI nella *Quadragesimo Anno* che riguarda appunto il rapporto tra le società inferiori e la società superiore (in questo caso sia lo Stato sia la comunità internazionale).

In tale quadro approvo pienamente l'affermazione del Prof. Minnerath, per il quale "la sussidiarietà è la quinta essenza della democrazia partecipativa". Ma a questo punto vorrei aggiungere che la democrazia partecipativa fondata sul riconoscimento della persona umana e della soggettività della società diventa la quinta essenza della Dottrina sociale della Chiesa.

Per la democrazia partecipativa, infatti, il riconoscimento della soggettività della società sul piano dell'essere diventa riconoscimento della società partecipativa sul piano dell'agire (famiglia, gruppi sociali, terzo settore e via discorrendo).

Tale democrazia partecipativa o democrazia della società si differenzia dalla democrazia rappresentativa che è la democrazia dello Stato che garantisce i diritti individuali e promuove e tutela sia i diritti sociali, sia oggi i diritti dello sviluppo e dell'ambiente, essenziali per il bene dell'intera umanità. Avremo così un'autentica sovranità popolare e una democrazia completa destinata a dare un volto nuovo alla globalizzazione che non sarà più soltanto economica, ma destinata a diventare sociale e politica congiuntamente.

La democrazia partecipativa si richiama direttamente alla persona umana e diventa una democrazia personalistica, dando vita al principio di sussidiarietà sia a livello verticale sia a livello orizzontale in grado di imprimere alla globalizzazione un volto umano trasformandola, per esprimermi con Giovanni Paolo II, in una globalizzazione della solidarietà.

In questa nuova prospettiva si manifesta la forza determinante della Dottrina sociale della Chiesa, destinata ad avere un ruolo decisivo in tutti i paesi del mondo, perché si esprime in un vero ed autentico ecumenismo sociale.

# THE GOVERNANCE OF IMMIGRATION AND INTEGRATION

DANIÈLE JOLY

## *Introduction*

This paper deals with the question of immigration and integration in Europe through the study of the French and British cases. However, the issues developed here are equally salient in the rest of the world. The globalisation process and its concomitant structural adjustments have exacerbated political and economic crises in the developing world. On one hand it has generated enhanced movements of economic migrants and refugees in Africa, the Middle-East, Asia and Latin America. On the other hand it has meant the further deterioration of conditions of life for migrants in their reception country in those regions: as a consequence migrants often work on the margin of legality without any kind of protection and social rights (Patarra, forthcoming). As for refugees they face the closing of borders and hostile protectionism on the part of reception societies in the less developed countries of the world as a result of a global convergence towards restrictive asylum regimes led by industrialised countries. The latter impose a comprehensive approach aiming to maintain refugees *in situ* or as close as possible to their location of origin; they also spread a culture of non-entrée and non-integration for refugees world-wide.

### *1. Post WW II period: laissez faire regime*

The victory of democratic forces and the building of the Welfare State provide the backdrop to the arrival of large numbers of immigrants in Europe after WW II: social democracy and communism prevailed in Europe while it was entering a period of reconstruction. Economic

expansion and population deficit created an acute shortage of labour force especially in undesirable areas of employment. For Britain and France it coincided with the decolonisation of their large empire and the setting up of privileged links with former colonies: the British Commonwealth acquired new members such as India, Jamaica and others while the Union Française and the Communauté formalised the relationship of decolonising nations with France.

This conjuncture led to the importation of immigrant workers from colonies and Southern Europe/poorer European countries to meet the needs of the economy. This was done through an open immigration policy devoid of any state planning. Recruitment was carried out by institutions and private companies from reception societies; another route was that of spontaneous and unorganised arrivals thereafter regularised.

Neither the reception society nor the migrants themselves at this stage conceived this phenomenon as a migration of settlement: it was viewed as temporary labour migration. The word used in Germany 'Gast Arbeiter' expresses the conceptualisation of immigrants in France and Britain in the very initial stages. There was an underpinning assumption that immigrants did not stay or just assimilated of their own accord so that in practice the institutions of reception societies did not extend any effort to integrate them. Immigrants fared for themselves and remained marginalised while an anarchistic installation took place in bidonvilles, hostels and derelict areas of the inner cities (UK), or *banlieues* (France) (de Rudder, 1989). These groups occupied the lower echelons of the labour market and were disadvantaged in their access to resources (employment, housing, health, education) which led to the coining of the phrase 'underclass' by social scientists (Rex and Moore, 1967).

It is worth noting one British peculiarity and an exception in Europe: Commonwealth immigrants became British citizens on arrival as a consequence of the 1948 Nationality Act which derived from a nostalgic conception of the Empire. This did not mean that the movement was construed as a migration of settlement but it had a strong impact on the evolution of the migrants' situation. This partly explains why in Britain immigration rapidly became a political rather than a purely economic issue as in France in the first decade. This also increased the immigrants' capacity to negotiate their position within society through the political process. However at that stage, the migrants themselves were oriented towards the country of origin and planned to return. The metamorphoses of Nationality Laws in France mean that immigrants acquired the rights of citizens at a later stage. In

Britain one notes harbingers of two major trends in the 60s: social programmes on the one hand and 'racial' limitations to immigration (through the voucher system) on the other hand. France was in the throes of the Algerian war of independence (after its defeat in Indochina) and subsequently undertook a housing programme for immigrants.

Asylum became regulated by the 1951 Geneva Convention and the United Nations High Commissioner for Refugees. An international consensus among Western countries arose as a result of several factors: the presence of one million displaced persons/refugees in Europe at the end of WW II; the guilt engendered by the million of victims of fascist regimes who could not escape because of closed borders; the Cold War which generated dissidents to be welcomed by 'the West'. Refugees became a structural phenomenon and the High Commissioner for Refugees whose post was initially created for 3 years became a long-term position. Historical limitations to the Geneva Convention were removed by the New York (Bellagio) Protocol in 1967 and the geographical limitation can also be lifted. Moreover the number of refugees remained small partly because many came through the open labour immigration channel.

What prevailed was a broadly liberal regime of access and integration (Joly, 1996). The universal and selective criteria of the Convention were concomitant with free access to country and procedure. A high rate of recognition under the Geneva Convention was paired with social rights on a par with nationals and permanent stay in the country of reception. Unlike labour migrants refugees were from the time of their arrival considered as long-term residents to be integrated into reception societies by the latter. Nevertheless a proportion of the refugees themselves only envisaged return as a long-term project.

What can be learned from that period is that a good proportion of 'temporary' workers stay on however much intentions, measures and expectations may indicate the opposite either on the part of reception societies or the migrants themselves. One conclusion to be drawn is that an appropriate reception and settlement programme is necessary from the beginning.

## *2. Controlled and convergent regime*

The 70s brought a brutal end to the liberal immigration policy described above. The oil crisis, the economic recession and rising unemployment brought about the closing of doors to immigrants (with the exception of asylum and family reunion) and in France the promotion of

return. The termination of free going and coming between countries of origin and reception accelerated the reunion of families and the consolidation of immigrants' settlement. One significant development throughout that period is the constitution of immigrants as social actors.

Where the state is concerned in both France and Britain immigration restrictions were coupled with an integration programme. This was explicitly stated in Britain by Roy Jenkins in 1966 (Rex and Tomlinson, 1979, p. 41) and introduced in France *de facto* (Frybes, 1992, p. 88). The approach adopted was that of policies aiming to redress social disadvantage. According to John Rex it was a case of attempting to deal with racial injustice and inequality 'by stealth' for fear of a 'white' backlash (Rex, 1988, p. 15). In the UK the 1968 Urban Programme and the 1977 Inner City Policy illustrate measures to deal with deprivation in areas mostly inhabited by immigrant minorities. In France the state undertook a housing programme addressing a specific issue pertaining to immigrant workers with the *Société Nationale de Construction pour les Travailleurs Algériens* (Sonacotra) and a social programme under the auspices of the *Fonds d'Action Sociale* (FAS) (Frybes, 1992).

In contrast with France where the inheritance of the Jacobin Republic precluded the specific recognition of minorities, Britain developed a race relations paradigm with a subsequent focus on ethnic communities. This was formulated through both immigration and integration policies. Racially based immigration regulations which introduced vouchers in 1962, 1964, 1965 were formalised with the notion of *Patriality* included in the 1968 *New Commonwealth and Immigration Act*, and the 1981 *Nationality Act* (enforced in 1983). Immigration restrictions ran parallel to increasingly strengthened anti-discrimination legislation: the 1965, 1968 and 1976 *Race Relations Acts*; the creation of the *Commission for Racial Equality* (1976). An array of specific policies addressing ethnic minorities aimed to redress racial disadvantage, with measures designed to promote equal opportunity, recognise difference and curb discrimination. Although policies emanated centrally, local authorities were devolved the main responsibility to implement them. Section 11 of the *Local Government Act* changed character: from general subsidies to municipalities which housed a good number of immigrants from the Commonwealth, funding targeted ethnic minority needs such as additional posts in schools for English support or the teaching of community languages. In the 80s local authorities began to act upon Article 71 of the 1976 *Race Relations Act* which requested them to take on board the question of equal opportunities but had



remained a dead letter until then. High profile reports resulting from national enquiries reinforced this paradigm particularly with regard to education and the police: the Rampton Report in 1978, the Swann Report in 1985 'Education for All', the Scarman Report on the Brixton Disorders in 1981, the Macdonald Report 'Murder in the Playground' in 1988, the Mac Pherson report, the Stephen Lawrence Inquiry in 1999.

The immigrants/ethnic minorities are the main motor of changes in policies noted above. The ethnic minorities have constituted a network of extended families, institutions and communities. They have mobilised through their associations and their participation in the political process. In the UK where they were granted civil and political rights on arrival they have worked through electoral mechanisms; they are relatively more active in elections than the white population and their geographical concentration awards them considerable political clout locally. They have intensely interacted with local authorities mustering now more than 300 councillors. The UK was also the theatre of grave urban riots which hit the inner cities of its main towns (1980, 1981, 1985) as a result of youth pent-up expectations and frustrations; these events cast fear through the establishment and precipitated enhanced initiatives addressing ethnic minorities. They were directly responsible for the frantic interest demonstrated by local authorities at that point (Joly, 1995).

In France smaller scale riots took place in the 80s while youths of immigrant origin organised *La Marche des Beurs* which gathered much support and a high profile. Immigrants associations flourished after the 1981 election of a Socialist government which granted the freedom of association to foreign nationals (de Wenden, 1988). SOS Racisme and France Plus campaigned against the Front National and against racism, demanding equality. The weaker involvement of immigrants in France was linked to their reduced political rights and to the degree of centralisation which limits local government initiatives. Moreover Republican ideology and the notion of social contract between the citizen and the state made it almost inconceivable for the government to adopt a declared policy singling out populations of immigrant origin: recognising any minority group would have been considered as anathema (Bertossi, 2001). As a consequence national policies remained at the level of general social policies. However, pressure was brought to bear on France to act on the question of discrimination from below (ethnic minority protest) and from above (European Union directives). Anti-discrimination was thus given some attention by the state on a national level (the setting up

of the GELDE and the No 114) while pragmatic local arrangements sometimes began to take into account immigrants' associations.

Immigration and asylum regimes display a discrepancy in the 70s and early 80s as the former mostly derived from domestic concerns while the latter was still informed by international relations and an ethical/ideological consensus of liberalism. Asylum policies thus continued for a time as in the post-WW II situation. Refugees were generally construed positively and benefited from integration programmes. Their settlement often bears witness to the significance of reception society's approach to the refugees: positive experiences tended to result from a positive imaginaire concomitant with constructive and appropriate policies on the part of reception societies (Joly, 1996). The late 80s witnessed a convergence between asylum and immigration regimes, with the development of an increasingly non-integrative and restrictive asylum policy. This will be examined in greater detail in the next section.

The immigration/integration regimes in France and Britain are also informed by the European Union agenda. The latter in turn derives from tugs of war between the various institutions of the European Union (European Parliament, European Commission, Council of Ministers) and among the different member states. While this is not the place to elaborate on their interaction, one can note emergent *lignes de force*. A growing concern for the treatment of ethnic minorities settled on European territory promotes anti-discrimination, equal opportunities and diversity (religious criterion included) as displayed in the Amsterdam Treaty (Article 13) and a number of directives. Equally, perhaps more prominent is the question of border control which has led to the coining of the phrase, 'Fortress Europe'; it is implemented through many conventions, treaties and directives together with 'soft law'.

### 3. *The schizophrenic regime*

A new regime is being forged which does not make immediate sense to untrained observers. It is fraught with apparent contradictions between the objective needs and the perceived needs in various domains of our societies. Several factors must be taken into account to understand the regime for immigrants and refugees. Different groups of social actors contend to pursue their interests within the constraints of established structural and cultural properties as defined above (Archer, 1995). It is within this context that they must interact with changing economic and ideological developments at national, European and international level.

The face of Europe has been modified with the settlement of immigrant populations who challenge a myth of homogeneous national identity in France and Britain which do not perceive themselves as countries of immigration. Moreover a large proportion of those groups is situated in the lower echelons of society. While migrants of the first generation are often prepared to accept lower wages and difficult working conditions because they derive their status from the country of origin, young people born and brought up on European soil tend to formulate aspirations on a par with those of European origin and resent the discrimination they suffer. Measures and promises promoting equal opportunities have sharpened expectations while discrimination continues; greater frustration is bound to develop among young people of ethnic minority background as happened in the 80s. This situation creates potential for social unrest particularly among ethnic minority youths. The mobilisation of ethnic minorities in alliance with organised sectors of society and some strands in the political spectrum has led to the introduction of anti-discrimination policies in France and Britain. Those will need to be kept up to conform with the Treaty of Amsterdam which has given pride of place to anti-discrimination through its Article 13 and in the UK with the Amendment to the 1976 Race Relations Act (in 2000). The discourse of a diversity policy is manifest at the level of the European Union and in Britain although France is still recalcitrant about it for reasons explained above. Whether such policies will be able to deliver on substantial improvements for ethnic minorities is still to be seen. This conjuncture provides the backdrop to developments which affect the question of migrants.

One important feature of the current situation is the dramatic demographic curve in industrialised countries: the ageing of the population is not counterbalanced by a sufficient production of young people (UNDP, 2000). At the same time the dominant neo-liberal economic project has a direct impact on migration world-wide. The dislocation of societies it produces in the developing world coupled with the need for a flexible labour force its model generates in industrialised countries entail increased migration movements. The fact is that all manners of migrants are needed in large numbers, skilled and unskilled, to sustain the economies of industrialised countries; moreover it is clear that their contribution is necessary to provide pensions for the existing population. Given the stringent immigration policies in place, this gives rise *inter alia* to a flow of irregular migration.

Governments have now realised that they must import large amounts of foreign labour force to support their economy and are thus seeking a for-

mula which allows to meet this demand. However they are not in a position to adopt a laissez-faire regime as obtained after WW II for several reasons. Immigration has become a sensitive electoral issue and all the parties have competed in a bid for the most stringent entry policies during the best part of two decades; they have succeeded in establishing an anti-immigrant anti-refugee cultural emergent property. Consequently it is not so easy for politicians jealous of their position at the helm to declare that they were mistaken and that the truth is the opposite of what they said previously: i.e. in reality immigrants are desperately needed and are a good thing for the country. Governments' predicament is compounded by the phantom of a threat to culture and identity through the presence of an established ethnic minority population, particularly embodied in the Muslim religion. A kind of moral panic strikes through the ranks.

The situation is even more unfavourable to refugees. The demise of the Welfare State has been accompanied by a loss of solidarity values which in the post-WW II world were developed in house and extended to refugees. A new form of welfare state nationalism is spreading in some European countries; it is perceived that fragile welfare benefits could be jeopardised by the additional burden refugees are deemed to represent. The end of the Cold War deprived many refugees of their ideological value whereby the West intended to discredit communist regimes through welcoming its opponents and in addition hoped to gain a *bona fide* liberal image through its refugee policies. This was added to the growing numbers of refugees and the Single European Act (designing a European Union without internal borders) so that it led to an increasingly restrictive regime. What is at stake is the control of sovereignty since signatories to the Geneva Convention cannot impose a *numerus clausus* of refugees on their territory or select which refugees they would prefer to have: only the merit of each individual case is supposed to inform a decision to grant refugee status (Joly, 1999). The image of refugees has become tarnished in the politicians' discourse, the media and public opinion. They are perceived as fraudulent scroungers who both steal our jobs and milk our welfare. The 11 September 2001 events have brandished the dreaded spectre of Islam now associated with terrorism in Western minds. This has added the accusation of 'terrorist' appended to 'refugee'. The US global hegemony and its anti-terrorist/Muslim campaign have constructed a new set of international factors unfavourable to refugees and immigrants. Domestic factors do not compensate for this because of a sentiment of insecurity and individualism caused by the challenges confronting our societies. The

treatment of immigrants and particularly asylum-seekers now borders on the fringe of international illegality and surely flouts ethical and human rights concerns.

The conundrum created by the contradiction between an acute economic need for a foreign labour force and aspirations for an homogeneous national identity has led to an arsenal of seemingly incoherent policies. To quote only one example, it defies the mind to fathom why Britain makes a great deal of efforts to recruit skilled personnel in the developing world while seeking every measure in the book to stop highly skilled asylum-seekers from entering the country. As a matter of fact, it is paradoxically because European countries are opening the doors to labour migration that they must demonstrate toughness on asylum-seekers and irregular migration. This is also the reason why a *laissez-faire* policy is out of the question. Governments have to satisfy their electorate that they are not embarking on a u-turn in policies and that they keep the whole phenomenon under control. In the first place, much of immigrant labour importation is kept quiet; they are almost introduced by stealth. For instance no leading government figure boasts that 200.000 work permits per year are delivered in the UK while alarming fuss is made of the 'excessive' 100.000 asylum-seekers. Secondly many resounding declarations affirm the decision to crack down on asylum-seekers and irregular migrants. Those provoke much unease on the part of governments because they cannot control asylum-seekers or irregular migrants' arrival and must expressly go to great lengths to demonstrate that they do precisely that.

There is an intimate link between immigration policies and reception/integration policies. This reluctant but necessary import of immigrant labour is matched by a double act where integration is concerned. On the one hand, it is made clear in discourse and policies that new migrants are coming only temporarily. A kind of guest workers policy is re-introduced with the assumption that these workers will return home after a while. This approach is paralleled in the field of asylum by the recently established status of temporary protection initially implemented for refugees from former Yugoslavia (1992). A non-integration regime holds sway: asylum-seekers are marginalised; both immigrant labour and refugees are awarded inferior residence statuses and enjoy reduced social rights. On the other hand renewed emphasis is placed on measures designed to ensure the allegiance of refugees and labour migrants: citizenship tests and community cohesion measures (UK), *pacte d'intégration* (France) etc. This approach ricochets on settled ethnic minorities. A

return to some form of implicit assimilationism, and debates on potentially 'unassimilable' cultures and religions question minorities' loyalty to the reception state. Much confusion occurs since many of those concerned are not immigrants at all but nationals of France and Britain where they were born and brought up. An amalgam is operated in the discourse of politicians between immigration and security, between newly arrived migrants and French/British youth of immigrant origin, which is then translated into policies. Throughout the dominant discourse terrorism is the prerogative of asylum-seekers while delinquency is the preserve of ethnic minority youth. This was a central theme to the French presidential election campaign and led not only to untold scores for the FN candidate but also to the creation of a Ministry for Security (Ministère de l'Intérieur, de la Sécurité Intérieure et des Libertés Locales) by president Chirac. In the UK the Conservative opposition proposes the detention of all asylum-seekers while the Labour *Home Secretary* requests that Asians should speak only English at home.

In France the majority of ethnic minority youth come from Muslim cultures and in the UK those who hit the headlines through riots in the North of England in 2001 also have a Muslim background. Their salience is compounded by the 11 September events and campaigns against international terrorism identified as Al Qaida networks. A Muslim paradigm is taking shape in France and Britain according to which the actors concerned stress the Muslim character of those populations. In France the Conseil du Culte Musulman was set up in February 2003 with government support to become its privileged interlocutor representing Muslims, whereas a harder line is adopted vis-à-vis the youth of the *banlieues*. In Britain where Muslims have to an extent made a place for themselves in society a hostile backlash could encourage an attitude of enclosure among their communities. In both countries Muslims demand greater recognition and facilities (Joly, forthcoming).

The prevalent message imparted by the body politic and the media promotes the control of immigration and conveys a negative image of ethnic minorities; this takes place against the backdrop of migrants' arrivals in large numbers for a certain period of time. The contradiction between discourse and reality is pregnant with serious social and political problems: it feeds the propaganda machine of extreme right-wing parties undoubtedly enhancing their popularity; it could engender a backlash from white populations and runs the risk of causing serious social cleavages, fractures and possibly further riots.

*What is to be done*

There are no easy answers to the immigration/integration dilemmas facing our societies. The matter is urgent and needs careful attention. In the first place it is essential that anti-immigrant propaganda and all elements which feed it should cease. Courage and transparency from governments and politicians is on the order of the day. If as seems beyond doubt, immigrants are to be brought in, a fully-fledged, detailed and clear immigration policy must be spelt out and explained publicly. A planned and organised policy is required accompanied by a positive discourse. None of this is in evidence so far; on the contrary the hysteria triggered off in public opinion by declarations and measures designed to keep out asylum-seekers obtain the opposite. Further speeches against international terrorism probably designed to justify a war against Iraq laid settled Muslim populations open to enhanced prejudice. Immigration policy also needs to be paired with well-thought out reception policies. The scenario of limited stay for labour migrants and refugees is a fallacy. All the history of migrations demonstrates that a good proportion of temporary stays invariably turn into permanent stay. This adage was verified again in the post-WW II period. Armed with this knowledge, governments have to adopt a long-term vision and propose conditions of settlements which will promote the best conditions for both the society of reception and the migrants enabling them to do good for themselves and contribute optimally to society. This means the end of deterrence measures and marginalisation for asylum-seekers and the awarding of full social rights and long-term residence permits to labour migrants. Above all the negative image perpetuated about asylum-seekers has to be reversed as it has already led to levels of violence which democratic societies cannot countenance: a young Kurd knifed to death on an estate in Scotland and two persons dying in the hands of the police while being deported from France.

In the meantime appropriate policies regarding established minorities must be pursued informed by what can be learned from experience. Anti-discrimination and equal opportunities policies have to become effective rather than virtual lest they arouse greater discontent. It necessarily means addressing both racial and social disadvantage and one has to combine general social policies with specific policies directed at minorities. The problem is that this raises general societal issues pertaining to class and deprivation. The state must be particularly careful to develop, at the same time, programmes for autochthonous white populations which share the

same social handicap; otherwise a backlash of hostility and prejudice motivated by relative deprivation will be instigated. It has been shown also that local and national policies are best put in place together: the two are necessary. National legislation and policies enforce country-wide implementation while local policies ensure greater capacity of involvement on the part of minorities: their initiatives and participation in the process are central to a successful outcome (Lapeyronnie, 1993). Young people merit particular attention and a sensitive approach is called for to restore their hope in the future and their confidence in a life project. Research indicates that young people of ethnic minority origin are often better equipped than white youths of the same socio-economic background: through their transnational family and community networks, through their potentially greater sense of identity, through their sharper analytical capacity (Wieviorka 1999; Joly, 2001). They should be given the opportunity to deploy those resources.

Whether new migrants or established minorities are concerned, it is not a declaration of allegiance or mastery of the national language which will ensure the loyalty so desired by governments but the stake they have in their society of residence.

Finally the debate on assimilation versus multiculturalism deserves a few comments. It is frequently perceived, primarily in France that permanent settlement entails assimilation while the maintenance of homeland culture signifies temporary stay and return. It is assumed that equality and difference are exclusive of each other and that the creation of ethnic communities is a sure sign of non-engagement with wider society. This dichotomy must be exploded. Whereas in some cases segregation paired with inequality and poverty may lead some form of ghettoisation (Oldham and Burnley in the UK), the constitution of ethnic communities and associations more often demonstrates integration and active participation in societal institutions (Joly, 1995; Rex and Drury, 1994). In this way minorities evidence a desire to make a place for themselves as individuals and as collectives in the fabric of national societies. Meanwhile, France has not resolved the contradiction between on one hand, the myth of the universal citizen equal in rights paired with the non-recognition of minority groups and on the other hand the reality of 'unequal' citizens resulting from discrimination and prejudice against ethnic minorities (Bertossi, 2002). This goes against the grain of general trends which point to an ethnicisation world-wide and in Europe. The most desirable formula is undoubtedly that of both equality and difference but it cannot be achieved without a concerted effort.



### Conclusion

The face of Europe is undergoing striking transformation derived from diverse sources: the presence of substantial ethnic minority populations, the acceleration of European integration, the globalisation process generated by the neo-liberal economic project and its cortege of privatisations. We are coming to a cross-road: the continuation of current policies promises social fractures and instability not to mention ethical and human rights questioning whilst an appropriate and transparent policy could help reception societies and population of migrant origin to reap great benefits. While drawing on a good deal of research which cannot be developed here this chapter has merely summarised the main issues pertaining to governance of immigration and integration. It endeavours to present the challenges facing contemporary societies and the risks incurred; it will hopefully be a useful tool for our debate.

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## RESPONSE TO PROFESSOR JOLY'S PAPER

PAULUS ZULU

The paper addresses two critical issues which emanate from an inflow of individuals and groups who either leave their countries out of a need to better their social and economic life chances or run away from unbearable conditions which might include persecution and unfair prosecution. Two issues arise out of this state of affairs in the host communities:

- integrating the newcomers into society; and
- assimilating them into citizens.

The first is relatively non-threatening to the host communities in that it only calls for social and institutional arrangements which are not that taxing to the resources of the host country. The second is threatening in that it challenges the allocative capabilities of the host country, and depending on the resource capabilities, the host country might be unable to meet the called for, or expected ethical obligations.

I will proceed to discuss the two propositions of integration and assimilation in perspective. From a Western European or past colonial perspective both assimilation and integration raise different questions than is the case if one views these two propositions from an African, South American or for that matter, Asian perspective. I will leave out guest workers because they present a different set of circumstances. On the whole they are guests and the most that host communities can do, is to be good hosts. Those guests who choose to remain permanently in the host countries become immigrants who compete for citizenship with the host country's nationals.

Regarding refugees, there is something definitive about them, since they have a status clearly defined in international law and, to an extent, provisions for their upkeep are enshrined in the same law.

Coming back, then, to immigrants: who constitutes the majority of immigrants into both Britain and France? The two countries appear to be

experiencing problems of immigration more than the rest of Europe simply because both were huge colonial empires. Their immigrants come mostly from former colonies, and secondly because colonial relations were largely race relations the newcomers bring in with them a race relations problem in a changed context. The theatre is now at home instead of being in a distant colonial outpost. Economically and socially immigrants from former colonies have a sound moral claim to make against the host countries. The passing of the 1948 Nationality Act which made Commonwealth immigrants British citizens has to be viewed within this context. The same applies to the metamorphosis of Nationality laws from France. Put crudely, colonial powers had extracted sufficient resources from colonies and it was time to pay back. The big question is how much? I think this will always be a vexed issue. Probably until problems of inequality are solved – and will they ever be?

Hence with regard to both the integrative and allocative functions, there is an ethical obligation on the part of former colonial host countries to prepare themselves appropriately for the “compensatory phase”. And fortunately there are resources to make this possible. Mechanisms for doing this have to range from the creation of a national psyche to the provision of equitable goods and services to the pulled-in guests turned citizens.

The position changes totally when one brings in the question of Africa, South Africa and Asia where the scale of international exploitation through colonisation is probably miniscule and the moral or ethical claims are, therefore, absent. Under these circumstances, immigrants are first almost refugees without the refugee status, and secondly their condition calls more for assimilation into citizenship than for integration into society. Further the problem has sociological on top of economic dimensions. Sociologically, while immigrants into both France and Britain are relatively articulate in the languages of the host countries, have political clout and can be integrated into the social fabric with relative ease were it not because of race, African immigrants in particular are not. The problem is, therefore, aggravated by both sociological and economic or resource factors.

For instance let us take the case of South Africa with its migration problems arising from political and economic instability in Zimbabwe, Mozambique, the Congo and for that matter, Nigeria. On its own, South Africa has a huge economic backlog manifest in a shortage of housing and rapidly growing unemployment. None of the immigrants that “invade” South Africa can make ethical claims for “payback” time. Admittedly South Africans were refugees in some of these countries during apartheid, but

they had the status of refugees and were more a burden of the United Nations than of the host countries. Nor did South Africans compete with their host nationals for scarce resources save to present a security threat from the South African regime which had serious international constraints to effect that threat. It did in a few instances but this was more of an exception than the rule. The question is: how does South Africa integrate and assimilate its African immigrants, given both the social and economic dimensions without jeopardising its own capacity to survive? There are serious economic and political consequences.

So far for the integration and allocative problems of host countries. The paper does not address a separate set of problems in sending countries. It is often assumed that it is the entrepreneurial and better qualified section of the population that finds migration as a possible alternative. If we accept this proposition, the consequences of emigration to the sending countries could be disastrous with regard to skills and human resources. For instance South Africa is presently experiencing a serious drain in medical and nursing resources in the human sphere as individuals migrate to Britain and North America either temporarily or permanently. This ushers in problems of a very different sort – problems of a deprivation of the very resources needed to create equity which is both an economic and political necessity to redress inequalities.

In conclusion, there is the issue of globalisation without global governance, i.e. global penetration without a global authority with capacity to legislate/regulate and dispense. The United Nations has neither the capability to regulate globalisation nor the resources to remedy the impact of globalisation on victims. For instance, how does one empower developing and often incapacitated states to cater for immigrants temporary and permanent when they (developing states) are themselves in need of assistance to cater for their own nationals?

## THE GOVERNANCE OF IMMIGRATION AND INTEGRATION A COMMENTARY

MINA M. RAMIREZ

I appreciate the paper of Prof. Danièle Joly that presents the issues on the question of immigration and integration through the study of the French and British cases. The paper also shows a concern for the welfare both of immigrants and refugees and calls on countries both of the industrialized ones and some “less developed ones” for policies that insure migrants’ legality and social rights and for more openness to *entrée* and integration.

As an observer from a developing country of social processes affecting the life-chances and total well-being of people, I think that it is pretty obvious that the main reason for movements of people is the imbalance in social and economic wealth between and among countries. Wars and low monetary incentives as well as a high degree of unemployment coupled with an undeveloped social security system become precipitating factors for incidence of refugees and economic migrants.

Governance of immigration and integration in terms of international policies on the part of international bodies should be a global concern considering the fact that labor migration from the monetarily poor countries to monetarily rich countries seems to be inevitable. The factor that causes this labor mobility is that in more highly economically developed countries, children and young are rapidly decreasing simultaneously with the increase of population among the elderly while in the economically underdeveloped and developing countries, children and youth as well as the elderly are fast increasing. Moreover, in this globalization context, the flow of migrants towards the developed countries searching for improved life-chances and the corresponding demand for services needed in these countries will be further accelerated. However, it is also understandable, that the movements

of people with their respective cultural differences breed tensions and conflicts between those of the receiving countries and the people from the sending countries unless a system of fair exchanges between them based on human and social rights principles would be set.

The Philippines is a case in point for understanding the issue of migration from the side of a developing world. Philippines was a receiving country for Vietnamese refugees in the 60s and presently continues to be a sending country for economic migrants.

### *Refugees*

With reference to refugees, the experience of the Philippines as a receiving country is related to the upsurge of Vietnamese refugees in the Philippines during the war in Vietnam which ended in 1975. We still have former Vietnamese refugees in the Philippines but they are already well integrated in Philippine society. As host country, it designed a program for the Vietnamese refugees with the support of *United Nations High Commission for Refugees (UNHCR)*, to prepare them for their final destination country of migration. And those who have not been accepted by other countries have been given all opportunities to stay in a village assigned to them. In this village the Vietnamese can foster and promote their culture while their children enroll in various Filipino schools. So far there have not been cases of hostilities between the Vietnamese and the Filipino children and youth. However, the Vietnamese in the Vietnamese village may also opt to leave the village to settle in other parts of the country. The whole process of governance and integration in this regard has been facilitated largely by the Catholic Church.

### *Economic Migrants (Permanent and Temporary)*

The phenomenon of the Filipino out-migration is striking. As one of the biggest senders in Asia of workers abroad, the Philippine government statistics record departures of overseas land-based and sea-based Filipino workers at an estimated average of 700,000 annually (Department of Foreign Affairs, 1999) An average of 2,511 *Overseas Filipino Workers (OFWs)* left the Philippines daily during the first 8 months of the year 2000, representing an 8% increase over the previous year at 2,293 OFWs leaving daily (Facts on Filipino Labor Migration 2000, Kanlungan Center). To date there are more than 7.2 million OFWs spread in 187 countries and desti-

nations worldwide. Overseas Filipinos include permanent residents abroad (2.33 million), OFWS (2.96 million) and undocumented (1.91 million). They comprise 13.4 percent of the total household population age 15 years above and 19% of its labor force.

Permanent migrants understandably are mostly in the United States (U.S.) due to Philippines' former colonial relationship with U.S., in fact, Filipinos were second to Chinese (20.62 vs. 21.61% respectively) in terms of estimates of Asian population in the U.S. in 1990. Emigration to U.S. started already in 1903 with "pensionados" migrating. The second wave of migrants from 1907 consisted of farm-workers recruited by plantation owners in Hawaii and California. A third wave of migrants in U.S. followed, dominated by professionals and then by housewives, clerical students and students. With the oil crisis in mid-70s came the Filipino contract land-based (recruited for Middle-East countries) and sea-based workers. (Ma. Alcestis Abrera-Mangahas. *Filipino Overseas Migration: 1975-1986*. Social Weather Stations, Inc., pp. 6-10).

The out-migration policy of the Philippines is reflected in the *Philippine Overseas Employment Authority* (POEA), a government bureau established for the purpose of regulating the recruitment and protection of overseas workers. In 1974, a brochure of POEA quoted the former Philippine President Ferdinand Marcos who stated that "the best weapon for economic growth is the export of manpower". Today, Filipinos are in 187 countries of the world. The words of the former Philippine President Marcos have been proven true. In-flows of income to the country is estimated at an average of 8 billion US dollars (400 billion pesos). In the Year 2003 the Budget approved by the Philippine Government is 16 billion US dollars or 804 billion pesos (Manila Bulletin, April 24, 2003) Thus, the earnings of the Philippines from overseas work are equivalent to 50% of the annual budget of the Philippines and 10.5% of the country's GDP, based on the GDP of the Year 1999 of the Human Development Report 2001, which was 76 bn US dollars or 3800 bn pesos. The GNP then in 1999 would have been an estimated 84 bn US dollars or 4200 bn pesos. The earnings of Overseas Work are 9.5% of GNP. Indeed it has been said that "the Philippine economy will remain heavily dependent on Filipino overseas workers". Income from Filipino Overseas Workers (OFWs), according to President Gloria Arroyo speaking to Overseas Filipinos in Singapore and calling them, "modern day heroes", has propped up the Philippine economy especially during the financial crisis of 1997 and 1998 (Agence France, Aug. 26, 2001, Singapore).



The following are the characteristics of Filipino Outmigration: 1) manpower export as a definite development strategy; 2) a broad spectrum of workers (sea-farers, managers, engineers, accountants, nurses, doctors, teachers, entertainers and domestic helpers etc.) desperately on the move to seek greener pastures; 3) under-qualification in order to take on menial jobs (public school teachers and other bachelor degree holders willing to work as domestic helpers abroad); 4) and high incidence of illegal entrants (Ramirez, M., *When Labor Does not Pay, the Case of Filipino Outmigration*, 1997, p. 6).

The situation of high unemployment and of low salaries and wages in the Philippines which due to mass media raises its people's expectations towards the "good life" is the primary cause of Philippine outmigration. A great number of Filipino high school and college graduates from 6,590 high schools and 2,402 schools offering tertiary (college, graduate and post-graduate) education join the ranks of the unemployed in the country and thus are pushed to seek life-chances for themselves and their families outside of the country (Philippine Statistical Yearbook, 1998, cited by Philippine Education for the 21st century. The 1998 Philippine Sector Study. Asian Development Bank's Technical Background Paper No. 2 on Education Costs and Financing in the Philippines with Leo Maglen and Rosario G. Manasan as Consultants, p. 77). The push for working outside of the country is aggravated by the fact that while there are at least a million additional Filipinos yearly with a population growth rate of 2.4% (Human Development Report, 2001) only a small middle class will have to support children, youth and the increasing number of the elderly. Social security is available only to 40% of the population. Small farmers, fisherfolk, urban population in the informal economy, indigenous groups, the self-employed, the small service-workers are not covered by the Social Security System.

A former Secretary of the Philippine Department of Social Welfare and Development laments the situation especially of the "poor working and living conditions of Filipino migrants, particularly the undocumented and the women, and worse, the negative effects on the children of OFWs" (Corazón Alma de León, "Children's Welfare and Governance", Sophia Lecture Series no. 6, Asian Social Institute, 2003). Severe social costs are the consequences of Filipino out-migration. A number of children are deprived of one parent, especially of their mothers, who work abroad temporarily to gather sufficient income to be able to make their children complete a college education. In the meantime, the children suffer anxiety, confusion, and become low performers in school.

*Policies Towards Migrants as a Development Resource*

The phenomenon of globalization advocates liberalization, privatization and de-regulation applied to financial capital, goods and services accompanied by radical changes due to the rapid advance of information technology. Will globalization liberalize the acceptance by richer countries of workers from poorer countries? Demand for services in the economically developed countries due to an aging population will have to call on the work-force of the under-developed and developing countries. At present the U.S. needs teachers, Canada needs care-givers, and Ireland, international social workers. A recent study on “The Migration-Development Nexus: Evidence and Policy Options”, gives this observation:

International liberalization has gone far with respect to movement of capital, goods and services, but not to labor mobility. Current international institutions provide little space or initiatives for negotiations on labor mobility and the flow of remittances. There is a pressing need to reinforce the view of migrants as a development resource. Remittances are double the size of aid at least as well targeted at the poor. Migrant diasporas are engaged in transnational practices with direct effects on aid and development; developed countries recognize their dependence on immigrant labor; and policies on development aid, humanitarian relief, migration, and refugee protection are often internally inconsistent and occasionally mutually contradictory. (By Ninna Nyberg-Sorensen, et al., *IOM International Organization for Migration*. July 2002, p. 5).

The foregoing observation of *IOM* is something to be considered towards improving the life-chances of economic migrants while sending countries strive to address, through their policies, the multi-faceted and interconnected problems of lack of socially-relevant education, unemployment, poverty alleviation, lack of discipline in the practice of a monetized economy, illegal recruitment agencies, and ineffective governance. With economic globalization, bilateral arrangements among countries which ensure the human and social rights of migrants should be sought. Equally important is the campaign for the ratification of the 1999 UN Convention on the Rights of Migrant Workers and their families and the adoption of the UN resolution for the protection especially of the female migrant workers.

*A Long-range Perspective for Integration*

Viewing the phenomenon of refugees and migrants from a long-range perspective, it is necessary to promote international programs for the prevention of undue hostilities between migrants and the people of the host countries. It is important for the UNESCO as well as schools, universities and churches to promote multi-cultural exchanges, cultural feasts aimed at multi-culturality and peace in this globalization context. Through various educational approaches, appreciation of the finest life-values of each culture can be enhanced, an education that critically examines the assumptions of culture to identify and appreciate values which promote the wholeness of life and all life-forms, a heightening of awareness of varied cultural expressions of human dignity and well-being, building of international solidarity groups who live a sense of the common good. Respect for diversity, or multi-culturalism, openness to appreciating various arts and crafts, equal opportunities to contribute to the economy will reshape globalization towards the total well-being of persons, families, communities without exclusion and marginalization.

FIFTH SESSION

THE GOVERNANCE OF GLOBALISATION:  
WORLD PERSPECTIVES



## ETHICS, MARKET AND GOVERNMENT FAILURE, AND GLOBALISATION

JOSEPH E. STIGLITZ<sup>1</sup>

In this essay, I want to look at certain ethical aspects of the way that globalization has proceeded in recent years. I shall argue that in the way that they have sought to shape globalization, the advanced industrial countries have violated some basic ethical norms. Elsewhere,<sup>2</sup> I have argued for the reform of the institutions and policies which have governed globalization, that these institutions and policies, while they may have served the interests of the advanced industrial countries, or at least special interests within those countries, has not served well the interests of the developing world, and especially the poor within those countries. I suggested that unless there were serious reforms in governance, the legitimacy of the institutions would be undermined; unless there were serious reforms in the practices, there well may be a backlash. While there are strong forces pushing globalization forward – in particular, the lowering of transportation and communication costs – the forward march of globalization is by no means inevitable. After World War I, there were marked reductions in capital and trade flows (rela-

<sup>1</sup> The author is professor of economics and finance at Columbia University. The author is indebted to his research assistant Nadia Roumani. Financial support from the Ford Foundation, the Mott Foundation, the Macarthur Foundations, and SIDA is gratefully acknowledged. This paper is a sequel to 'Ethics, Economic Advice, and Economic Policy' an earlier version of which was presented at a meeting in Milan sponsored by the Vatican in connection with the Jubilee, and at a conference at the Interamerican Development Bank in Washington, D.C. in December 2000.

<sup>2</sup> See, in particular, Joseph Stiglitz, *Globalization and Its Discontents* (Norton, 2002).

tive to the size of GDP). Today, within the developed world, there is a growing awareness of some of the darker sides of globalization, as terrorism too can move more easily across borders. But the developing countries have long experienced many of the other darker sides of globalization.

Here, however, I want to approach the subject more from the perspective of practical ethics, a task I had begun two years ago in a paper I delivered in Milan on the occasion of the Vatican's celebration of the new millennium. I want to explore two themes: there are certain *market* failures which not only lead to inefficiencies (Pareto inefficient outcomes) but the incidence of those inefficiencies bears disproportionately on the poor; and there are certain *government* failures in the advanced industrial countries, which too result in Pareto inefficiencies, but the incidence again is mainly on the poor.

Before beginning the analysis, I should perhaps lay out the particular aspects of practical ethics upon which I shall be focusing. I begin from the ethical premise that 'all men are created equal...' and I accordingly take it as a primitive that our perspectives concerning social justice should be nationally and ethnically blind as much as they should be blind to gender and color.<sup>3</sup> Globalization, in short, should extend not only to economics, but to views on social justice and solidarity. While I will not follow Rawls in arguing that social justice requires that we look exclusively at the welfare of the worst off individual (in any country), I shall argue that it is socially unjust if we benefit at the expense of someone who is poorer: at the very least, we should view negative redistributions as ethically wrong.

Some economists have questioned whether ethics has much or anything to do with economics. After all, Adam Smith's basic insight was that individuals, in pursuing their own self interest, were actually pursuing the general interest. There was, after all, seemingly no conflict. Economics, of course, had its limitations: it could not solve all problems. It was not intended to solve issues of social justice, only of efficiency. It was the responsibility of government, and political processes, to address the distributive issues. And these were matters about which economists had little to say – they could only point out the consequence of different policies.

As a practical matter, as I shall comment in the concluding section of this paper, economists, especially at the U.S. Treasury and the IMF, have long well overstepped these bounds. They have put forward as *economic*

<sup>3</sup> One could articulate these views within a Rawlian framework, but I shall not do so here.

*advice* policies which advantage one group at the expense of others. Moreover, economists play only a part – though an important part – in the evolution of globalization. There is a broader political process, in which economists have as often as not been *used*. My critique is more a critique of that political process, and the politicians and bureaucrats who have been responsible for it. I saw first hand how even in a government, like the Clinton Administration, committed to social justice at home, policies were pushed which were at variance with these principles.

When there are market failures, however, individuals in the pursuit of their own interests may not pursue general interests. There can be real conflicts of interest. These have been brought out forcefully in the literature on asymmetric information, where agents may not take actions which are in the best interests of those for whom they are supposed to be acting. They can violate their trust. There is a fine line between ordinary incentive problems and broader ethical issues. We typically do not say a worker who does not give his all for his employer is unethical; we are as likely to blame the employer, for failing to provide adequate incentive structures. But we are likely to say that a worker who steals from his employer is unethical. We do not say that the problem is only that the employer has failed to give the right incentive structure – including providing adequate monitoring. But between these two extremes there are many subtle shades of gray. In the United States, the corporate, accounting, and banking scandals – in each of which individuals were simply acting in ways which reflected their own interests, and most of which were, at the time, totally legal – raised (for most people) serious ethical issues. CEOs and other executives deliberately took advantage of their positions of trust to enrich themselves at the expense of those they were supposed to serve. They did not disclose information that they should have.

These are market failures, failures which led to what I (and most others) view as unethical behavior. There were also public failures. The government not only failed to address the problems posed by the conflicts of interest and the misleading accounting – even after public attention to these problems had been drawn – but with the repeal of the Glass Steagall Act they even expanded the scope for these conflicts of interest. Rather than correcting the market failures they exacerbated them.

At what point do these actions cross over the line, so that they can contribute not only to economic inefficiency but can be considered unethical? Those who commit these acts almost always come forward with self-serving arguments for why what they are doing is in the public interest. For example



the elimination of the restrictions designed to prevent conflicts of interest are described as allowing for more market flexibility, enabling the market to respond better to the ever changing landscape. Likewise, the intellectual property rights that deprived so many in the developing countries of access to life saving drugs are described as necessary to ensure that there is a steady supply of new drugs to meet the health care needs of the world. These arguments often have a grain of truth in them, and those who put them forward may even believe them. But they have only a grain of truth. There is a moral responsibility to think of the consequences of one's actions on others, including the poor, and the failure to do so constitutes an ethical lapse.

In any case, it is areas where markets fail – where, for instance, there are information asymmetries and imperfections of competition, where the informed and powerful can take advantage of the uninformed and weak – that problems of unethical behavior are most likely to manifest. And it is in these arenas that ethical discourse may have the most important impact; by calling attention to these problems, it may be possible to limit the scope of such behavior, to enact policies and reform institutions so that they are less likely to occur.

There is one more preliminary remark. There are some circumstances in which there are a chain of actions which together lead to particular results. The 'package' might be considered unethical, in the sense that great harm is done to the poor, and in some cases those who perpetrate the harm benefit from the actions. (Put aside, for the moment, the question of motive.) But now, assume that the actions are taken piecemeal, that none of the pieces themselves result in the dire consequences. I would argue, however, that if there is a reasonable probability that the adverse consequences follow, that is, that if the other actions which are part of the package are likely to occur, and therefore that the dire results are likely to occur, then the individual actions themselves can and should be viewed as unethical. (This is reflected, for instance, in the fact that we charge someone who has supplied a gun in a murder as an accomplice to a crime, even if it was not inevitable that the crime be committed, that is, even if there was some chance that the person to whom the gun was supplied might not have committed the crime, or even if there was some chance that the person to whom the gun was supplied might have found another mechanism by which to commit the crime.)

Because the ethical issues in trade have already received more attention than those in finance, I shall turn to the latter first.

## ETHICAL ISSUES IN THE GLOBALIZATION OF FINANCE

There are three central issues to which I wish to call attention: first, the design of debt contracts between developed and less developed countries and other aspects of lending behavior; second, dealing with the consequences of excessive debt; and finally, broader issues associated with the global reserve system.

*Lending behavior*

In most religions, there has long been strong ethical guidance regarding lending behavior; partly, I suspect, reflecting the imbalance of economic power between lenders and borrowers. The imbalance of power has a potential to give rise to abuse, with the lender taking advantage of the exigencies of the borrower. There are thus proscriptions against usury. The Jubilee focused on the importance of debt forgiveness, of giving those who have become indebted a chance at a fresh start. Market economics has shunted these concerns aside. Interest rates are determined by the law of demand and supply, just as the law of demand and supply determines the prices of apples and oranges. But the competitive market perspective is, I think, wrong. Credit markets are highly imperfect, borrowers typically have access only to a limited number (usually one, two or three) sources of credit, while creditors face a large number of potential borrowers. Borrowers typically are poorer than lenders, and often they turn to lenders in times of crisis, when their needs cannot be put off. Lenders are sorely tempted to take advantage of the asymmetries in power to gain for themselves an advantage. But even short of this, the structure of international capital markets puts poor and developing countries at a marked disadvantage.

Richer countries are better able to bear the risks associated with interest rate and exchange rate volatility, and such volatility has been enormous in recent years. But in fact, debt contracts – even when the lending is done not by private creditors but by governments and multilateral institutions – place the risk burden on the poor developing countries. The consequences have been disastrous. When the United States raised interest rates in the late 70s and early 80s, it explicitly paid no attention to the consequences this had on others, including to those in Latin America, who had been persuaded to borrow enormous amounts of money (at negative real interest rates). This in turn led to the Latin American debt crisis, and the lost decade of the 80s. In 2002, Moldova, which has seen its income decline 70% since the end of

Communism, had to spend three quarters of its meager public budget to service foreign debt; the burden had increased vastly when the Russian ruble, to which its currency was tied, devalued enormously in 1998.

The more developed countries and especially the multilateral institutions have a duty to advise countries on what are prudent levels of debt, and on how to manage their risks. And, more importantly they should do so in ways which are particularly sensitive to the consequences for the poor. But the lenders have not done so, and arguably, they have often provided advice which has exacerbated the risks to which they are exposed. Most notable in this respect was their repeated advice to developing countries to liberalize their capital markets, opening them up to destabilizing speculative capital flows.

This is an instance in which they put aside their fiduciary responsibility, and allowed the imbedded conflicts of interest to dominate their behavior. Wall Street speculators may have made money by the opening of markets in developing countries, but there was at the time no evidence, or theory, that capital market liberalization led to faster growth, and there was considerable evidence, and theory, that it led to greater instability; and it is the poor that disproportionately bear the burden of this instability. More recently, even the IMF has recognized this – too late for those countries that were forced to follow its advice, with disastrous consequences.

By the same token, before the Russian crisis, the IMF advised Russia to convert more of its debt from ruble to dollar denominated debt. It knew, or should have known, that doing so was exposing the country to enormous risk and inhibiting its ability to adapt. It was clear that the exchange rate was overvalued. But with dollar denominated debt, when Russia devalued, the benefit it got in exports and import substitution from the devaluation would be offset by the cost on the balance sheets.

Rather than working to reduce the market failure or offset the consequences (i.e. to help markets develop incentive compatible contracts in which the rich bear more of the risks associated with exchange rate and interest rate fluctuations) the IMF and other developed country lenders have done what they could to make sure that those who have entered into these unfair contracts fulfill them, whatever the costs to their people.

Perhaps the most dramatic manifestation of this has been in the take-or-pay power contracts which, under the Washington consensus mantra of privatization, were pushed on so many developing countries. One might have thought that large, well informed multinational companies are in a better position to evaluate and bear the commercial risks associated with

such investments than poor developing countries (there are moral hazard issues associated with political risks, but these are insured through multi-lateral and bilateral agencies, such as MIGA and OPIC). Yet, the international economic institutions, the U.S., and other governments encouraged such contracts. Indeed, in the most notorious example, the U.S. government encouraged India to sign such a contract with Enron that (were it carried out) would have generated a return in excess of 20% – even though the company was bearing little risk, and even though at that return, the price of electricity would have to be so high as to impede India's competitiveness – or forced the Indian government to provide huge subsidies, crowding out badly needed expenditures on health and education. Worse still, when the problems have been exposed, even when there have been clear suggestions of bribery and corruption (emphasized by the U.S., for instance, in the case of Indonesia) the U.S. has insisted on the sanctity of the contracts, exercising pressure not to abrogate contracts, putting U.S. commercial interests above the well being of those in the developing country.<sup>4</sup>

*Responding to crises: I. Policy*

Given the huge burden of risk that developing countries have borne, it is not surprising that they have faced repeated crises, and, as we have noted, often these crises are largely the result of events beyond their borders. There are then hard choices on how to respond. There are risks associated with different responses, and different policies affect who bears those risks. Ethics again can help us decide whose interests should be put first: those, for instance, of the international banks who have lent the crisis country money, or the poor people within the country. Indonesia again provides the most telling example, where the IMF provided some \$22 billion to bail out Western banks, but then insisted that food and fuel subsidies to the poor be cut back – there simply was not enough money (though the costs were a mere fraction of what was provided for the bank bailouts). This came after unemployment had soared tenfold and real wages had plummeted – partly because of the policies that the IMF had insisted upon. Evidently, welfare for the poor was not acceptable, whereas corporate welfare was not only acceptable, it was encouraged.

<sup>4</sup> At the same time, some G 7 governments have put pressure on developing countries to renegotiate contracts with their companies, when rates of return that have been yielded have turned out to be too low.

The IMF also insisted on contractionary fiscal and monetary policy, with the predictable result that the economic downturn became worse – indeed, it became a real depression (though the U.S. Treasury insisted that that word not be used) – with enormous hardship. The policies did mean that there was a positive trade surplus, enabling the countries of the region to repay the money that was owed. Again, the interests of foreign lenders were put ahead of those within the country, and especially the poor.

By the same token, international institutions and other countries can decide on whether or how to help the crisis country. Japan provides an example of a model of what might be viewed as ethical behavior (which need not be disassociated from self-interested behavior) in the generous offer of \$100 billion it made to its neighbors in East Asia during the crisis of 1997-1998. It targeted that aid to help rejuvenate their economies. The contrast with the United States is striking. Putting what it viewed as geopolitical interests above the well being of the people in the region, the U.S. did everything it could to squash this initiative (and it was successful in doing so). Then, later, when Japan put forward the more modest, but still generous, \$30 billion Miyazawa initiative, the U.S. tried to ensure that as much money as possible went to restructuring – to bailing out western investors and lenders. Although the U.S. occasionally tried to provide self-serving arguments for why spending the money in that way was also best for the crisis countries, it in effect put its concerns over those of the crisis countries.

### *Responding to a crisis: II. The case of Argentina*

The sequence of events leading up to Argentina's crisis, and the unfolding events afterwards, provides a landscape on which to examine a host of ethical issues of considerable complexity. Of this there can be no doubt: great harm was done to the people of Argentina. Starvation and malnourishment became widespread in a country rich in natural and agricultural resources. The incidence of poverty increased. There is shared culpability. Many contributed to the occurrence and magnitude of the disaster, and there was much finger pointing. The IMF, for instance, who had treated Argentina as its A + student, thereby earning Argentina easy access to international capital markets, suddenly changed its grade and began blaming corrupt politicians (many of them the same politicians who had only shortly before been praised for their good judgment in following IMF advice, without mention of their corruption) and provincial governors for overspending. I have argued that though there is shared culpability, a quick look

at the data puts a different perspective on the events. The federal government was not profligate – at the time of the crisis, its deficit as a percentage of GDP was only 3%, and given the magnitude of the recession, this was a remarkably small number, not a large number. The economists' usual benchmark is the structural, or full employment, deficit, that is what the deficit would have been had the economy operated at full employment. In these terms, it almost surely had a surplus. By way of comparison, the U.S. in 1992, during its last recession (one that was far milder than that in Argentina) had a deficit of close to 5% of GDP. Indeed, it could have been blamed for not pursuing a sufficiently expansionary policy. The government had in fact cut back primary expenditures (that is expenditures net of interest) by 10% over the preceding two years, an impressive political feat. The origins of the deficit that did occur were interest on previously contracted debt, including foreign debt, the privatization of social security, and the severe economic recession. If the government had not borrowed so much earlier, it would have had a surplus. If the government had not privatized social security, it would have had a balanced budget, or even a slight surplus. If the government had pursued expansionary fiscal policies, or had devalued the currency, so that exports could start to grow and imports could have been restricted, then too there would not have been a deficit, or it would have been much smaller. The country had been provided with policy advice, which it followed, and which earned it kudos in the early 90s. But these policies led, with a high probability, to the disastrous outcomes. Providing this advice, without adequate warning of the likely consequences, I suggest was unethical, even more so when the same party provided several pieces of advice, which worked together in the predictable way. For instance, privatization of social security essentially *always* worsens a government's budgetary position. In the U.S., had social security been privatized, our deficit GDP ratio would have been 8% in 1992. This, by itself, would not necessarily be a problem, if the recipient of the (now privatized) social security funds were directed to invest the funds in government bonds, so that there is a ready supply of additional funds to match the (apparent) increase in the government deficit. But it is a problem if the government is told, as it goes into a recession, that it must maintain fiscal balance, regardless of the fact that it has privatized social security. For that imposes an additional large contractionary burden on the economy. Recessions are inevitable, especially in today's highly volatile market economy. If recessions are inevitable, if an institution (the IMF) *always* has a policy of insisting on budget balance, or even near budget balance, even in

a recession, *then* it follows that the act of privatizing social security will almost surely result in an increased severity of the economic downturn.

By the same token, the IMF itself lent, and did not discourage, and by its praise even encouraged lending to Argentina, so that that country became the world's largest debtor. The funds, it was alleged, would enable Argentina to adjust to the structural changes which would enable it to grow faster in the future. We put aside here the judgments about the likely efficacy of the changes in promoting growth. I focus on whether, in lending so much to Argentina, especially given its fixed exchange rate system, they were exposing it to undue risks. Linked to the dollar, with considerable trade outside the dollar region, with Brazil and Europe, there was more than a small likelihood that its exchange rate would become overvalued. Even seeming moderate levels of debt become untenable when interest rates increase enormously, sometimes through no fault of the borrower; as we noted, the developed countries have forced developing countries to bear the risk of interest rate and exchange rate volatility. The East Asian crisis led to high emerging market risk premia, so that Argentina's debt service increasingly became a problem. And there was then a vicious circle: the overvalued exchange rate and the high debt service both contributed to still higher interest rates, exacerbating that country's problems. Even a moderate devaluation might lead to an unbearable debt GDP ratio; the actual devaluation led to a debt GDP ratio of in excess of 150%. Lenders should have known that there is a reasonable risk of devaluation of any overvalued currency – the notion that the overvaluation might be corrected by rapid improvements in productivity or large decreases in domestic prices was simply not very credible – and hence they should have realized the risk to which they were exposing Argentina.

One might say, it is the borrowers' responsibility, not the lenders, but that, I think is too easy an out. For the lenders are supposed to be more sophisticated in risk analysis and in making judgments about a reasonable debt burden. Now having lent too much, the question is, how did the lender (the IMF) respond when it became apparent that the borrower did not or could not repay? The lenders have more than a little culpability in the situation having arisen (as do others providing the advice). The world is stochastic, and a turnaround of well designed and intentional events may lead to excessive debt burdens. In the case of Argentina, however, there was a *prima facie* case that the debt burdens were too high, given the level of international volatility in exchange rates and interest rates: there would be a significant probability of a default. When lenders have a high degree of

culpability in the generation of the excessive debt, there is, as I have said, a moral responsibility to act so in ways which protect the poor.

But that is not what the IMF did. Rather, it imposed strongly contractionary fiscal policies and it encouraged the country to stick with the fixed exchange rate, a policy which had strong political support within the country, influenced no doubt by constant IMF lecturing on the topic and a concern for the risks that hyperinflation might break out once the constraint of the convertibility (fixed exchange rate) was abandoned.

Surely, the 'package' of acts caused, and could reasonably have been expected to cause, untold suffering; and given the predictability of the subsequent actions, even the earlier actions could be considered 'unethical'.

### *Responding to crises: III. Bankruptcy regimes*

Whenever there is lending, there is the risk that the borrower will not be able to repay what is borrowed, or can only do so with enormous hardship upon himself and his family. How countries resolve these situations can be viewed as both an ethical and an economic issue. It is an ethical issue in part because it tests in the extreme how society balances the interests of the well off and powerful against those who are less fortunate. In ancient times, individuals who did not repay what they owed sometimes were thrown in the water with a stone tied around their feet: the punishment was severe. In nineteenth century Britain, individuals were sent to debtor prisons, so graphically portrayed in some of Dickens' novels. Sovereigns who did not repay were subject to invasion by governments of creditor countries: Mexico was taken over jointly by Britain and France, Egypt by the same duo. The practice continued even into the twentieth century, with the bombardment of Caracas by European powers in 1902. Argentina's foreign minister, Drago, roundly condemned the attack on Venezuela, pointing out that lenders should have known that there was a risk of non-repayment. Even more recently, the U.S. has used such defaults as part of the pretense of occupation of Caribbean and Central American republics.

*Debt forgiveness* has long been part of Judeo-Christian tradition, symbolized by the Jubilee, giving individuals the ability to make a fresh start. Bankruptcy can be viewed within the same tradition. Today, debtor prisons and military interventions are no longer viewed as acceptable. Yet the conditions under which individuals and countries are allowed to make a fresh start – and what that exactly means – remain questions of extreme



controversy, with some arguing for more debtor friendly regimes, some for more creditor friendly policies.

An ethical approach should take into account not only the differing economic circumstances of the parties, but also the origins of the problem of indebtedness. Most of us would say that if a lender, say a bank, provides a credit card to a child, and the child uses the credit card to run up huge indebtedness, then the child should not have to spend the rest of his or her life repaying the accumulated debt. The creditor was in a position to judge the consequences of the indebtedness, indeed in a better position than the child. There is a long history of such exploitation on the part of creditors, leading debtors into bondage, and forcing them to pay usurious interest rates.

I would suggest that the loans made, say, to Congo under Mobutu by international financial institutions and western governments are of a similar nature. The lenders knew, or should have known, that the money would not go to the betterment of the people of the Congo, but rather was flowing to the Swiss bank accounts of Mobutu. Given the dictatorship, ordinary citizens could do nothing – but the lenders were in a position to deny him funds. Whatever the motivation – whether it was political (to buy favor in the cold war) or economic (to get access to that country's rich mineral resources) – it is arguably immoral to force the people of Congo to repay these otiose debts. Indeed, the citizens of Congo rightly have a case to bring against the lenders, charging them with having aided and abetted Mobutu in his pillage of their country by providing him with funds, and they should not only forgive the debts, but pay compensatory damages. Several court cases are likely to proceed against lenders to South Africa and the Congo based on these perspectives.

There are other cases where the debt problem is caused, in no small measure, by actions in the lending country. For instance, given the 'market failures' in the debt instruments – which forced the developing countries to bear the risk of exchange rate and interest rate fluctuations – when the United States raised interest rates, it imposed enormous costs on borrowing countries, effectively forcing them into bankruptcy. The U.S. had encouraged the lending – it had not warned the borrowers of the risks which they might encounter from such marked changes in U.S. policy. And when the US raised interest rates, it focused only on the benefits of bringing down American inflation, not the costs, a lost decade of growth that would be imposed on the Latin American countries. Given its culpability, it should have moved quickly towards debt forgiveness;

instead it dithered for almost a decade, forcing Latin American countries to send money back to Washington – a procyclical policy which was at the center of tens years of stagnation.

Similarly, a factor, perhaps a key factor, in the Argentinean crisis and the Ruble crisis was the mismanagement of the East Asian crisis by the IMF. The global slowdown which resulted in low oil prices – combined with a policy strategy that contributed to a shrinking GDP – was a central factor in Russia's inability to meet its debt obligations.

There are some cases, where the consequences of forcing the debtors to repay what is owed are so onerous, that even if the culpability of the lender is limited, debt forgiveness seems ethically compelling. Consider the plight of Moldova, which has seen its income decline some 70% since the beginning of the transition to a market economy. In 2002, some 75% of its meager public finances went to service the foreign debt. Hospitals were without basic supplies. Public services were starved. Poverty was soaring, so badly that many women were turning to a life of prostitution abroad. This would seem to present a compelling case for debt forgiveness.

There are, of course, a number of cases where the moral judgments are difficult. The borrowing country bears some blame for the difficulties which it faces. Russia and Argentina did not have to follow the advice of the IMF. Argentina and Russia did not have to borrow as much as they did. At times the boundaries of blame are blurred.

In some cases, though, the degree of culpability of the lenders may be sufficiently great that the moral case for debt forgiveness seems compelling. Consider, for instance, the IMF loan to Yeltsin in July 1998. The evidence was overwhelming that the exchange rate was overvalued, that the loan would not be able to sustain the exchange rate for very long, that the country would be left more in debt, with little to show for it. Moreover, there was a strong likelihood of corruption – that the money would quickly flow out of the country, quite likely into the pockets of the oligarchs. The lending was largely politically motivated – the U.S. wanted to keep Yeltsin in power. It did not want to face the fact that policies that it, together with the IMF, had pushed had resulted in steep declines in that country's GDP, so that by 1998 GDP was a third lower – and poverty more than ten times higher – than it had been at the beginning of the transition. The loan failed. The money left the country to Swiss and Cypriot bank accounts even faster than the critics had thought possible. The question is, ethically, who should bear the consequences – the people of Russia, who had no say in the loan, or the lenders?

In both the East Asia and Latin American crises, critics of the IMF argued for greater reliance on bankruptcy, and less reliance on bail-outs, which simply put the burden on the borrowers. Especially objectionable were the cases where governments were encouraged, in some instances effectively forced, to assume the liabilities of private borrowers. In effect, the IMF was bailing out the foreign lenders – putting their interests above those of workers and others in the developing country. Belatedly, after the failure of the sixth mega-bailout in almost as many years, the IMF finally recognized the need for greater reliance on bankruptcy and the development of systematic procedures. But its approach again raised ethical concerns. In the case of sovereign debt restructurings, there are other claimants besides foreign (or even domestic) creditors, such as pensioners and children. These needs should, in fact, have primacy; yet the IMF had no systematic way to bring their concerns into the resolution process. Moreover, the IMF, a major creditor, proposed that it be at the center of the resolution, almost a bankruptcy judge; but it is ‘wrong’ to have a vested interest play such a role. There is no way that it can be impartial.

#### *The global reserve system*

The global economic system has exhibited enormous instability, and arguably the IMF, which was set up to help stabilize the global economy and provide finance to enable countries to have countercyclical fiscal policies, has pushed policies that have exacerbated that instability and led to unnecessarily hardship. It has failed to address the problems of market failure (as we noted, poor countries wind up bearing the risk of interest rate and exchange rate fluctuations), and has pushed policies like capital market liberalization for which there is overwhelming evidence that they increase instability – but do not increase growth.

An outsider looking at the global financial system would note one further peculiarity: the richest country in the world seems to find it impossible to live within its means, borrowing some \$500 billion a year (5% of its GDP) from abroad – including almost half from poor, developing countries. Standard economic theory suggests that the rich should lend to the poor; in fact, it appears that just the opposite is happening.

Part of the problem lies with the global reserve system, which entails countries putting aside money in case of an emergency. The ‘reserves’ are typically held in hard currencies – particularly in dollars. This implies that poor countries, in effect, lend to the United States substantial sums every

year. Capital market liberalization, which allows any firm in any country to borrow as much as it can, has only exacerbated the problem. Prudential requirements entail countries holding in reserve an amount equal to their short term foreign denominated liabilities; this means that if a firm within a country borrows, say \$100 million from a U.S. bank short term, the government of that country must set aside \$100 million in reserves – that is, it must lend to the United States \$100 million. Net, the country receives nothing. But when it borrows, it must pay say 18%, while when it lends, it receives less than 2%. There is a net transfer to the United States of more than \$16 million a year – the U.S. benefits, but the developing country suffers.

The instabilities and inequities associated with the global reserve system impose high costs on the poor. There are reforms that would address these problems, including an annual emission of SDRs (global greenbacks), which could be used to finance development and other global public goods. America might be directly disadvantaged (it would no longer benefit as much from the benefits of being the major global reserve currency), but it would gain from the greater stability to the world's financial system. In any case, clearly, it is wrong for the United States to put its own self-interest ahead of those who suffer under the current arrangement.

#### GLOBALIZATION, TRADE, AND ETHICS

I have devoted most of this essay to ethical problems posed by globalization in finance, largely because they have received less attention than the ethical issues which are posed by the global trading system. Here I simply list some of the major ethical problems posed by the current system:

- The asymmetric trade liberalization (in which the South has been forced to reduce its tariffs and trade barriers, while the North has not fully reciprocated) has resulted not only in the North gaining a disproportionate share of the gains from trade liberalization, but some of its gains have come at the expense of poor countries. The poorest region of the world, sub-Saharan Africa, actually saw its income decline as a result of the Uruguay round.

- Agriculture subsidies have been provided in a way which actually *harms* those in developing countries, by forcing the prices of the goods they produce down.

- Developed countries (and especially the U.S.) use non-tariff barriers, such as dumping duties, in ways which are unfair, which exclude the goods

of developing countries, even when, in any objective sense, those countries are not dumping. The administrative procedures are designed to put the developing countries at a disadvantage.

- When, in the Uruguay round, trade opening was extended to services, it was the service sectors which represented the goods produced by the United States upon which attention was focused – particular financial market liberalization – with little attention to the consequences for the growth and stability of developing countries; moreover, service sectors, like maritime and construction services, that represented the comparative advantage of the developing world, were excluded.

- The intellectual property regime does not balance the interests of producers and users (including users in developing countries) appropriately. In particular, the concerns of drug companies for strengthened intellectual property rights trumped broader societal concerns that the poor in developing countries have access to life saving drugs. It has led to biopiracy, where longstanding traditional products in developing countries have been patented by firms from the North.

- While improved labor market mobility would do more to improve global economic efficiency than improved capital market mobility, attention has focused on the latter to the exclusion of the former.

- Some trade agreements have attempted to restrict government's rights to enact legislation and regulations intended to improve the well-being of their citizens. The most recent bilateral trade agreement between Chile and the United States attempts to restrict Chile's ability to impose the kinds of capital controls which were vital in that country's successful macro management in the 90s, and which enabled it to escape the ravages of the global financial crisis. Other restrictions may be even more invidious, affecting the ability to address health, safety, and environmental concerns.

#### *Interactions among policies*

I should note briefly that problems in one sphere interact with those in another. Asymmetric trade liberalization makes the difficulties of adjusting to trade liberalization all the greater for developing countries; but when IMF policies and problems in global financial markets result in developing countries facing high interest rates, liberalization is especially likely to result in increased poverty and lower growth: rather than resources being redeployed from low productivity protected sectors to

high productivity export sectors, they simply move from the protected sectors into unemployment.

Similarly, the V.A.T. tax pushed by the IMF on so many countries not only is inequitable – it is equivalent to a proportional consumption tax – it also impedes development, as in practice it imposes a tax on the ‘formal sector’, the sector which developing countries should be trying to strengthen, since in most developing countries it is virtually impossible to tax the informal sector. But this policy (as well as policies which encourage primary education and discourage tertiary education in developing countries) has the effect of lowering the output price of the informal sector, including the raw materials which are inputs purchased by the developed countries, relative to the goods produced by the developed countries. (In effect, goods which are substitutes, competitive with those produced by developed countries, are discouraged, those which are complements encouraged.) Whether intentionally or not, such policies increase the welfare of the developed countries at the expense of the developing.

In my earlier paper on ethics and globalization, I noted that those who provided advice to the less developed countries also often violated basic ethical – and professional – norms. The advice they gave was incomplete: they did not disclose either the risks associated with the policy of the limited evidence in support of the policies; they did not disclose or analyze the full consequences of the policy, including the consequences for the poor; they tried to sell policies as if they were Pareto dominant, when there were in fact tradeoffs, and in doing so, they undermined democratic processes; in their lack of transparency, often quite deliberate, they undermined democratic processes in the developed countries as well as in the less developed; and they did not fully disclose the conflicts of interest which underlay some of their policies – the gains that they (their countries, and especially particular interests within their countries) would gain. As a result, the ‘minimal’ aspect of the Hippocrates oath – do no harm – has repeatedly been violated.

The issues I have described in this paper can, and have been, looked at through more neutral lenses. We can simply describe the market failures, the departures from efficiency in the design of credit instruments, the consequences to the developing countries. We can describe the incidence of alternative policies. We can engage in economic and political analysis to explain why these failures have arisen. Does the normative-ethical vocabulary enhance these discussions? What is its role?

I want to return to the theme I struck at the onset, that in a Smithian world, in pursuing one's interest one pursues the general interest; you at least help bring about a Pareto efficient outcome. Moral analysis entered in a much more circumscribed way, in the choice among alternative Pareto efficient structures and how they might be maintained (typically, there was little consideration of the moral weight to be given to alternative ways by which a particular goal could be achieved).

In the non-Smithian world with which we are concerned, there are a host of other circumstances in which moral considerations ought to be brought to the table, in which we know that self interest does not lead to socially desirable outcomes. It is arguable that if individuals think about their fiduciary responsibilities, as well as what would advance their own interests better, outcomes would be better. In short, ethics provides an alternative if sometimes uncertain compass with which to guide behavior, but one which may be as or more certain than an undivided devotion to the simplistic pursuit of self-interest. At the very least, it would make individuals feel better about themselves. When selfishness also does not produce efficient outcomes, and could have been predicted to not do so, what satisfaction can the individual have in having done what Smith naively told him to do. Surely, there should be some comfort from knowing that one is at least trying to pursue policies which are not just trying to advance one's own interest. Policies that pay due attention to the plight of those who are less fortunate than oneself.

In a modern economy, individuals constantly face situations where there are asymmetries of information or of market power. Smith's advice in such situations is misguided. When one is in such a situation, one should not necessarily do what is in one's own self-interest. Think about the moral dimensions of our actions, how the poor and weak are likely to suffer, or benefit.

Too often, however, the market failures have been matched with government failures. As we look over the problems of globalization which we have discussed in this paper, it is clear that governments of the advanced industrial countries have tried to manage globalization in ways which benefit themselves, or more particularly special interests within their boundaries. Principles of social justice (or even of democratic processes) which have motivated political activity *within* countries have played little role in driving global economic policies or in shaping the global economic institutions. In a sense, economic globalization has outpaced political globalization, if we understand by that the creation of a polity in which shared values of democracy, social justice, and social solidarity play out

on a global scale. Globalization – the closer integration of the countries of the world – implies greater interdependence, and therefore a greater need for more collective action. While determining the principles which should underlie this collective action is no easy matter, this much is clear: processes in which each nation attempts to push for those policies which are narrowly in its own self-interest are not likely to produce outcomes which are in the general interest.

Ethical guidance may be an uncertain and imprecise compass, but it at least provides some guidance in a world in which the only beacon, all too often, points in the wrong direction.



COMMENTS ON JOSEPH E. STIGLITZ  
 'GLOBALIZATION AND THE WORLD ECONOMIC  
 INSTITUTIONS' AND 'ETHICS, MARKET AND  
 GOVERNMENT FAILURE, AND GLOBALIZATION'

JUAN J. LLACH

I am very glad to have the opportunity to comment on the presentation of Professor Stiglitz to our Academy. His contributions have been very relevant, both to increase our knowledge of the globalized world we are living in and to find a more proper design for world economic institutions and policies.

As a framework of my comment I will use the following typology of four possible states of the world in these times of globalization.

Table. TRADE AND FINANCING: FOUR ALTERNATIVE FORMS OF GLOBALIZATION

		Freedom to trade	
		No	Yes
Financial loosening	Yes	NW Second best 1	NE First best: utopia
	No	SW Today's world	SE Second best 2

\* Editors' note. The first paper was circulated but not presented at the meeting. It is not published here.

They arise from the combination of two dimensions. Although they are, in fact, continuous variables, they are presented as dichotomies just to simplify the analysis. In the horizontal axis we have *freedom to trade*, a clear-cut concept. In the vertical axis we have *financial loosening*, a less precise but anyway useful concept. It includes political economy decisions like debt forgiveness, lower interest rates, softer conditions of the international financial institutions (IFIs) lending or their support to ordered processes of debt restructuring for emerging economies.<sup>1</sup>

The SW quadrant reflects the current state of affairs. The trade liberalization process in the context of the WTO is having serious problems to progress, particularly because of the opposition of the majority of developed countries to fully liberalize food and agricultural trade – including the removal of subsidies – or because of their misleading pressures regarding intellectual property rights.

Looking at the typology, the most important question is, which would be the best way to improve the unfair current situation?<sup>2</sup> Theoretically, there are three possible ways. The first is the straight one, symbolized by the diagonal black arrow in the Table, that will ‘move’ the world to a utopia of free trade and financial loosening. The only problem with this way is that the probability of its occurrence is almost nil.

As a result, in the real and unfair world we are living in, only two alternatives remain. The first is to move to the NE quadrant, getting a financially looser world, but still very closed to trade. This seems to be the preferred recommendation of Prof. Stiglitz, not only in his presentation to this Academy but also in his recent book.<sup>3</sup> True, he mentions the issue of unfair trade in his two papers. But a stronger emphasis is put on questions like democratization of world economic institutions, the negative role of IMF in advising developing countries – for instance, suggesting contractionary policies – or debt forgiveness. Even in the parts of his paper where he refers to trade issues, his analysis tends to privilege financial considerations.

<sup>1</sup> Argentina's default was, up to a certain point, the result of the New Washington Consensus that considers that default is not a bad thing, after all. But it was, at the same time, a typical case of disordered and very costly debt restructuring process. On the contrary, an eventual support from the IFIs to Brazil to allow it an ordered debt restructuring could be the first case of a new kind of preventive intervention of these institutions.

<sup>2</sup> A situation that I described in ‘Globalization and Governance: The Flip Side of the Coin’, *Globalization: Ethical and Institutional Concerns*, Proceedings, Seventh Plenary Session, 25-28 April 2001, Pontifical Academy of Social Sciences.

<sup>3</sup> Joseph Stiglitz, *Globalization and its Discontents*, Norton, 2002.

Asymmetric trade liberalization makes the difficulties of adjusting to trade liberalization all the greater for developing countries; but when the IMF policies and problems in global financial markets result in developing countries facing high interest rates, liberalization is especially likely to result in increased poverty and lower growth: rather than resources being redeployed from low productivity protected sectors to high productivity export sectors, they simply move from the protected sectors into unemployment.

Another evidence of this approach can be seen in his analysis of the Argentine crisis. In spite of its importance, he does not mention the role of food and agricultural protectionism as the most important obstacle in the redeploying of resources from inefficient to efficient sectors and, as a consequence, in the increase in unemployment.

The second alternative way is to move to SE from the SW quadrant, i.e., putting the free trade issue in the first place. I think that this is the real, structural, long term solution for the economic growth of developing countries that are food and agriculture producers. Without giving to them the possibility of a permanent increase in production and trade, financial problems will appear again, even after a first move to financial loosening. The danger is, perhaps, even greater. A political economy of financial loosening will create in developed countries and IFIs the feeling that all they could do for the developing countries was done, and that a sincere trade liberalization can wait once again.

## ON THE PAPER BY PROFESSOR STIGLITZ

PARTHA S. DASGUPTA

It is a pleasure to comment on Professor Stiglitz' lecture. We have been friends and collaborators for over three decades; moreover, he always has something interesting to say. Today, he has made a number of characteristically astute observations on global economic governance. He has also made a number of rather loose observations. He is such a powerful and well known social thinker that I am going to take a stern line with him over some of the polemical remarks he has made this morning.

If you need groceries in New York, where Professor Stiglitz (Joe to all who have met him) now lives, you will want to go to a grocery store, the reason being that you will almost always find the items you seek on the shelves, even though you have not placed an order for them. This is an illustration of the "invisible hand". It exists. Joe was wrong to deny its existence. What he should have said instead is that the invisible hand cannot survive in as extensive a form as it does without an overarching institution of laws to support it. Since the State is needed to enforce the law, the invisible hand needs a visible hand to enable it to exist. When you go into a store and purchase a good, you are not sure of its quality. Most often, you do not even know the store keeper. Nevertheless, you make the purchase, and you make it on trust. You do that because you know you will have recourse to the law in case the good turns out to be spoilt, or in case it malfunctions. So, the market system would seem to require a reliable legal infrastructure (and thus the State) for its ability to function.

But the legal system is not the only mechanism that enables markets to function. In all societies, even in modern industrial societies, there is a parallel system that helps to ensure product quality, namely, the system that helps to create and maintain "reputation". Your store keeper sells you a good product not only because he fears you will take recourse to the law for

redress in case the product is of poor quality (if nothing else, recourse to the law is time consuming), he also fears that he will tarnish his reputation if you go tell others that he has sold you a bad product. If his reputation falters, others will not go to his store and he will lose business. This possibility also deters him from selling you a shoddy product.

I am using “product quality” in sales as a metaphor for “contracts”. By a contract I mean an agreement among people on the sharing of tasks and on the benefits that are expected from carrying out those tasks. If people are able to trust one another to fulfil their terms of a mutually beneficial agreement, they will have an incentive to enter into the agreement. Contrariwise, if they cannot trust one another, the agreement will not be entered into, and what would have been a mutually beneficial outcome will not come about. The issue is therefore one of trust. I can trust you to keep to your side of the agreement if I am sanguine that you will suffer sufficient losses should you break my trust. What I am suggesting here is that there are two means of making you suffer such losses: (1) the law and (2) withdrawal of future cooperation. The former involves the enforcement of agreements by a third party (e.g., the State), while the latter is mutual enforcement within a long-term relationship.

Thus, contrary to what Joe said, the invisible hand exists. However, it does not always work well: it frequently “trembles”. There are two broad ways in which the invisible hand does not function well. First, the allocation of resources it helps to bring about is influenced by the endowments people have to begin with. If you own very few assets (and remember, assets include knowledge and skills), you will probably not end up with much under the invisible hand. So, the invisible hand cannot deliver equity. Secondly, the invisible hand can harbour “externalities”. By an “externality” economists mean the effects that a transaction has on people who have not been a party to the negotiations that led to the transaction. In a pure market economy, primary education and public health measures, to take only two examples, involve externalities. If I become literate, I benefit, but so do others, because they can now communicate with me via non-oral channels. Similarly, if I am immunised against an infectious disease, I benefit, but so do others, because they are no longer in danger from me. That is why there can be an under-supply of goods and services conferring positive externalities. By the same token, there can be an over-supply of goods and services inflicting negative externalities (e.g., environmental pollution). I should add that market power (e.g. monopoly) gives rise to externalities. I should also add that market imperfections arising from imperfect and

asymmetric information fall under the general rubric of externalities as well: imperfect and asymmetric information give rise to externalities. In short, externalities are a fundamental reason for market failure.

We may conclude that the State's overarching powers are needed not only to enable the invisible hand to function, but are needed so that the invisible hand functions well – redistributing purchasing power and helping to remove externalities.

In his paper Joe is concerned with the international arena. He notes that we lack the kind of overarching international authority that could help the invisible hand to function well in the way national governments in principle are able to. Implicit in Joe's view of the world is that until such international authority is created, it is the moral duty of rich and powerful countries to act in ways that are designed to help the world's disadvantaged. Very movingly, he cites the case of citizens in some of the world's poorest countries (the previous Zaire is Joe's example) who are forced by the world order to pay back to international lenders debts that were incurred by previous, brutal national governments, who had used the borrowed funds to purchase arms for use against those very citizens. To him, and to me, this simply cannot be morally defensible: such debt should be "forgiven", because it can hardly be claimed that those citizens had engaged in the borrowing.

In less malignant environments, governments do not kill their citizens to retain power, they merely loot them. For such cases there is the argument that even if 95 cents out of every dollar aid or loan is wasted, 5 cents do get spent on economic needs. Where then does one draw the line? If 5 cents of benefits per dollar of aid (or loan) is too little, would 10 cents suffice? And if not 10 cents, would 20 cents suffice? I guess the key question is what happens to the amount that is looted by the domestic government. Is it pocketed for grandiose lifestyles, or is it used to suppress the citizenry? I do not believe there is a satisfactory answer to the moral dilemma that Joe poses.

However, in focusing on extreme bad cases (even by the standards of modern African States, Mobuto's government in Zaire was an exception) Joe overlooks one general reason that has been advanced against debt forgiveness, namely, that it encourages bad borrowing. The insurance industry calls the ensuing problem one of "moral hazard". If someone is sanguine that he will not have to repay, he will borrow recklessly. In my judgment, there is a need to distinguish between the governed and those who govern. It is not unusual of concerned people in the North to identify poor countries with rulers in poor countries and the rulers in turn with the poor

in those countries. If it is not possible to reach the poor, it may make perfect moral sense for foreign institutions to cease dealing with predatory States in poor countries.

This said, I have not understood Joe's complaints against the US Federal Reserve. It would appear that he wants the institution not only to be a central bank, but also an aid agency. The problem with the proposal is that if it is to be accountable, an agency established for a purpose must be given a clearly defined role and scope. It would be no good if the international community were to have established the World Bank, the International Monetary Fund, the United Nations Environment Programme, and the many other international agencies that exist today, and to have asked each to shoulder the world's problems. The organizations would not have been accountable, their duties being far too diffuse. The international community would have been faced with a massive amount of moral hazard. The organizations would have been guaranteed to perform dismally.

Decentralization requires not only that public organizations be set their own tasks, but also that they be given their own, clearly defined, objectives. To be sure, the objectives ought to be congruent with one another. But if the organizations are to be effective, their objectives need to be distinct. Plurality of measures arises from a need for effective decentralization. Some agency in the US government ought certainly to be concerned with world poverty and the plight of the poorest, but not the Federal Reserve.

## EIN KOMMENTAR

HANS TIETMEYER

Zunächst möchte ich unterstreichen, was unser Kollege Dasgupta insbesondere zum Schluss seiner Kommentierung ausgeführt hat. Das Thema Demokratie-Defizit kann nicht unabhängig von der Aufgabe der jeweiligen internationalen Institution gesehen werden. Nicht zu unrecht haben ja inzwischen auch viele demokratische Länder ihre Zentralbanken bewusst mit einer weitgehenden politischen Unabhängigkeit von Parlament und Regierung bei ihren konkreten Entscheidungen ausgestattet. Wenn das Mandat klar ist, kann es auch für eine Institution wie den Internationalen Währungsfonds (IWF) sehr wohl sinnvoll und angemessen sein, konkrete Verhandlungen ohne permanente Detailkontrolle durch die Mitgliedstaaten zu führen. Eine gewisse eigenständige Verantwortung des Stabes halte ich für unerlässlich. Aber die genaue Kompetenzabgrenzung muss natürlich schon im Voraus möglichst eindeutig geklärt sein.

Was nun die Thesen von Herrn Stiglitz angeht, so sind sie uns ja durch sein kritisches Buch „Globalisation and its Discontents“ schon vor einiger Zeit weitgehend bekannt geworden. Aus Zeitgründen kann ich hier nur auf einige Punkte kurz eingehen. Ich möchte aber gleichzeitig auf die intensive Diskussion seiner Thesen und Bewertungen in der ökonomischen Fachliteratur hinweisen.

Zunächst stimme ich seiner Grundthese zu, dass insbesondere die internationalen Finanzmärkte neben ihren wichtigen positiven Funktionen nicht selten auch erhebliche Mängel aufweisen, nicht zuletzt infolge asymmetrischer Informationen. Ich stimme auch zu, dass die internationalen Institutionen, die wir bis heute haben, teilweise ausbaubedürftig sind und in einigen Fällen auch fehlerhaft gehandelt haben. Das gilt allerdings keineswegs nur für den IWF sondern ebenso für die Weltbank und andere Institutionen. Weiterentwicklungen und Verbesserungen der Institutionen



und Arbeitskonzepte sind an mehreren Stellen notwendig und erfreulicherweise inzwischen auch eingeleitet.

Viele der bisherigen Finanzkrisen sowie die im Laufe der Zeit entstandene übermäßige Verschuldung vieler Länder bewerte auch ich als problematische und gefährliche Fehlentwicklungen. Die Gründe hierfür waren und sind allerdings zumeist nicht monokausal. Mit Herrn Stiglitz bin ich der Meinung, dass ein Teil der Schulden vieler Entwicklungsländer auch die Folge von Fehlentwicklungen in den großen Industrieländern sind. Das zeigt auch das von ihm erwähnte Beispiel der zinspolitischen Korrektur in den USA zu Anfang der achtziger Jahre. Die Frage ist nur, wo der Fehler lag, bei der drastischen Zinsanhebung oder bei der zu inflationären US-Politik vorher. Ich bin nachdrücklich der Meinung, dass gerade auch für die weltwirtschaftliche Entwicklung eine nachhaltige Korrektur damals dringend war. Wohl hatte die US-Politik der siebziger Jahre infolge der relativ niedrigen Zinsen die Verschuldung vieler Entwicklungsländer insbesondere in Lateinamerika zu leicht gemacht; eine Fortsetzung dieser US-Politik wäre aber auf Dauer auch für diese Länder noch problematischer gewesen als ihre Korrektur. Darüber hinaus darf nicht vergessen werden, dass die Hauptgründe für die übermäßige Schuldenaufnahme zumeist bei den Politikfehlern der Schuldenländern selbst lagen. In vielen Fällen wurden Haushaltsdefizite, die durch militärische Anschaffungen, administrative Ineffizienz und populistische Verteilungspolitik entstanden waren, einfach durch mehr Auslandskredite gedeckt. Hier zeigt sich, dass Kausalität und Verantwortung für die übermäßige Verschuldung vieler Länder nicht einseitig gesehen werden dürfen. Natürlich kann man hier fragen, ob Industrieländer wie die USA, die in den siebziger Jahren durch ihre Politik die Verschuldung der Entwicklungsländer zu leicht gemacht haben, nicht auch später bei der Bewältigung dieser übermäßigen Verschuldung Mitverantwortung tragen müssen. Teilweise haben sie es ja in den achtziger Jahren auch getan. Hier sollte man nicht nur die Hilfen von IWF und Weltbank, sondern auch die Umschuldungsvereinbarungen mit den Gläubigern (z. B. im Pariser Club) sehen und beachten.

Das gerade auch von der Kirche immer wieder angesprochen Thema des Schuldenerlasses für die ärmsten Länder ist zweifellos ein wichtiges Thema. Ich bin sehr wohl der Meinung, dass wir für die besonders armen Entwicklungsländer einen nachhaltigen Schuldenerlass brauchen, der auch in gewisser Weise unabhängig von den ursprünglichen Ursachen der übermäßigen Verschuldung sein sollte. Aber er kann und darf nicht losgelöst werden von der Beurteilung der gegenwärtigen und künftigen Politik dieser

Länder. Nur wenn sie ihre Fähigkeit und Bereitschaft nachweisen, den Erlass der Schulden sinnvoll für die weitere Entwicklung des Landes und seiner Wirtschaft zu nutzen, ist ein solcher Erlass sinnvoll und zu vertreten. Beim Erlass von Schulden muss aber auch klargestellt werden, wer konkret die damit verbundenen Lasten auf der Gläubigerseite trägt. Lange Zeit hat auf Seiten der Entwicklungsländer bei der Forderung nach Kredithilfen des IWF und einem Erlass von Schulden das Beharren auf nationaler Souveränität für die eigene Politik eine große Rolle gespielt. So kam es nicht selten zu Hilfen, die für eine problematische Militärpolitik oder für Korruption verwandt wurden. Dieses Verhalten ist zwar durch die veränderte Politik des IWF inzwischen zurückgedrängt worden. Es ist aber gelegentlich noch immer vorhanden. Deswegen kann und darf auch für die ärmsten Länder ein Schuldenerlass nur bei nachgewiesener Erfüllung der vorher festgelegten Konditionen durchgeführt werden.

Was nun die Ursachen der bisheriger Finanzkrisen einzelner Länder angeht, so waren diese nicht selten sehr unterschiedlich. Herrn Stiglitz stimme ich dabei in einem Punkte weitgehend zu. Vielfach war eine vorzeitige und unkonditionierte Liberalisierung des Kapitalverkehrs eine wichtige Ursache oder zumindest ein verstärkender Faktor für Krisenanfälligkeit. Auch nach meiner Ansicht hat der IWF früher oft zu einseitig auf eine rasche Liberalisierung des Kapitalverkehrs in den Entwicklungsländern gedrängt. So nützlich diese Liberalisierung für die Attrahierung von ausländischem Finanzierungskapital sein kann, so problematisch kann sie werden, wenn das Empfängerland nicht über ein hinreichend entwickeltes internes Finanzsystem mit entsprechender Aufsicht und Transparenz sowie auch über eine eigenständige monetäre Politik mit hinreichenden Devisenreserven verfügt. Deswegen plädiere ich schon seit langem für einen je nach Entwicklungsstand gestuften oder mit eingebauten Bremsen versehenen Übergang zur Freigabe des Kapitalverkehrs. Die chilenische Praxis ist jedenfalls ein interessantes Beispiel. Erfreulicherweise ist auch der IWF inzwischen vorsichtiger mit seinen Empfehlungen für eine rasche Liberalisierung geworden.

Anders als Herr Stiglitz beurteile ich allerdings das Thema Wechselkurspolitik. Die von ihm offenbar befürwortete Fixierung von Wechselkursen bzw. die Anbindung an andere Währungen kann sehr ambivalente Wirkungen haben. Einerseits kann sie die Wechselkursvolatilität reduzieren, die Zinsmargen bei grenzüberschreitenden Krediten reduzieren und den Außenhandel bis hin zum Tourismus erleichtern. Andererseits bindet sie die eigene Währung und Geldpolitik an die Leistungsfähigkeit und interna-

tionale Bewertung der anderen Währung und der dahinter stehenden Wirtschaft und Politik. Nach meiner in diesem Bereich nicht gerade geringen Erfahrung sind die meisten Finanzkrisen der letzten Jahrzehnte durch unrealistisch gewordene Wechselkursbindungen ausgelöst worden. In der ersten Phase bewirkte die Wechselkursbindung meist große Kapitalzuflüsse zu relativ günstigen Zinsen. Im Laufe der Zeit ergaben sich dann jedoch Divergenzen in der Wettbewerbsfähigkeit bzw. der Politik der betroffenen Länder im Vergleich zu dem Land mit der stärkeren Währung. In dem Moment, wo diese Tatsache an den Finanzmärkten bekannt oder auch nur vermutet wurde, kam es oft zu einer abrupten und nicht selten auch erheblich übertriebenen Umkehr der Kapitalbewegungen, wobei der vielzitierte Herden-Effekt eine wichtige Rolle spielte. Bei der Bindung ihrer Wechselkurse sollten insbesondere die Entwicklungsländer deswegen besonders vorsichtig sein. In vielen Fällen halte ich flexiblere Lösungen für sinnvoller.

Wichtiger als Wechselkursstabilität ist ohnehin gerade auch für die Entwicklungsländer zumeist eine stabile Entwicklung des internen Preisniveaus und auch des internen Finanzsystems. Die zentrale wirtschaftliche und soziale Bedeutung dieser internen Stabilität sollte nicht unterschätzt werden. Nur bei hinreichender interner Stabilität der Währung und des Finanzsystems können freie Märkte auch zu einer nachhaltig gemeinwohlorientierten Entwicklung effizient beitragen. Der staatlichen Regulierungspolitik messe ich – anders als Herr Stiglitz – eine geringere Rolle bei. Er überschätzt meines Erachtens auch die Möglichkeiten keynesianischer Makrosteuerung für den internen ökonomischen Wachstumsprozess.

Skeptisch bin ich auch gegenüber seinen Vorstellungen für eine Weltreservpolitik, mit deren Hilfe offenbar durch Schaffung von Liquidität Verschuldungs- und Krisenprobleme einzelner Länder gelöst werden sollen. Für den Fall eines weltweiten Liquiditätsbedarfes ist schon seit langem Vorsorge getroffen worden. Seit den sechziger Jahren hat der IWF die Möglichkeit, im Falle eines weltweiten Liquiditätsbedarfs durch Beschluss der Mitgliedstaaten mit Hilfe von Neuzuteilungen von Special Drawing Rights (SDRs) zusätzliche Liquidität zu schaffen. Eine solche Liquiditätsschaffung ex nihilo ist aber zu recht an strenge Voraussetzungen gebunden. Eine Erleichterung dieser internationalen Liquiditätsschöpfung hielte ich für sehr gefährlich. Das gilt insbesondere für den Fall von Liquiditätsschöpfung zum Zwecke von Entschuldungen einzelner Länder. Das wäre vergleichbar mit dem Fall, dass eine nationale Zentralbank Liquidität zur Finanzierung einzelner Schuldner schafft, und zwar zusätzlich zu der für die Gesamtwirtschaft für angemessenen gehaltenen Liquidität. Ein

solches Verhalten der Zentralbanken wird in den meisten Ländern zu recht als eine problematische Förderung des moral-hazard gewertet.

Bei dem Thema global government der internationalen Finanzorganisationen muss zunächst die unterschiedliche Aufgabenverteilung zwischen den Bretton-Woods-Organisationen beachtet werden. Die Weltbank hat vor allem die Aufgabe, den Entwicklungsländern durch Finanzhilfen und Beratung zu helfen. Hier geht es also auch um eine gewisse Umverteilung von Ressourcen aus den Industrieländern in die Entwicklungsländer. Nach meiner Einschätzung bedarf die Weltbank dabei nicht nur größerer Finanzressourcen, sie sollte und könnte auch die Effizienz ihrer Arbeit noch deutlich steigern. Der IWF hat dagegen zunächst vor allem die Aufgabe der regelmäßigen Surveillance über die Wirtschafts- und Währungspolitik aller Teilnehmerländer. Darüber hinaus stellt er aus den gemeinsamen Fondsmitteln im Falle von Zahlungsbilanzkrisen einzelnen Ländern auf der Basis von vereinbarten Korrekturprogrammen vorübergehend Kredithilfen zur Verfügung.

Herr Stiglitz hat insbesondere die bisherige Arbeit des IWF kritisch beurteilt leider allerdings oft zu einseitig. In einigen Punkten stimme ich seiner Kritik durchaus zu. Das gilt z.B. für einzelne Surveillance-Analysen und auch für einige Korrektur- und Kreditprogramme. Neben einigen problematischen Analysen und Auflagen gab es meines Erachtens in der Vergangenheit bisweilen auch zu großzügig dimensionierte Beistandsprogramme. Der IWF hat jedoch nach meinem Urteil in den letzten Jahren seine Arbeit erheblich verbessert und sich dabei insbesondere auch des Instruments der erweiterten Transparenz seiner Analysen bedient. Darüber hinaus hat er auch die Initiative für die Entwicklung eines Sovereign-Debt-Restructuring-Mechanism (SDRM), einer Chapter 11 ähnlichen Lösung für konkursreife Länder, ergriffen. Interessant ist jedoch, dass nicht nur einige Industrieländer sondern insbesondere auch eine Reihe von Entwicklungsländern diese Initiative bisher ablehnen. Sie sehen darin einen möglichen Eingriff in ihre Souveränität und befürchten eine negative Beurteilung durch die Finanzmärkte. Dagegen wächst gegenwärtig sowohl bei den Regierungen als auch bei den großen Finanzinstituten die Zustimmung zum Einbau von sogenannten Collective-Action-Clauses (CALs) in neue Bond-Verträge. Damit soll eine Möglichkeit geschaffen werden, im Krisenfall auch Inhaber von Bonds in Umschuldungsverhandlungen einzubeziehen.

Diese wenigen Hinweise zeigen, dass der IWF auch bei der gegenwärtigen Struktur und Stimmrechtsverteilung zu Verbesserungen und Weiterentwicklungen seiner Arbeit durchaus in der Lage ist. Die bisherige

Stimmrechtsverteilung wird zwar oft kritisiert. Sie orientiert sich an dem wirtschaftlichen Gewicht der einzelnen Mitgliedsländer in der Weltwirtschaft und ist zugleich der Maßstab für die Bereitstellung von Finanzhilfen für den IWF und seine Kredithilfen in Krisen Geratene Länder. Ich halte diese Stimmrechtsverteilung entsprechend der Wirtschaftsgröße und der Bereitstellung von Finanzhilfen nach wie vor für Gerechtfertigt. Für änderungsbedürftig halte ich allerdings einige Abstimmungsregeln.

Abschließend möchte ich meine Anmerkungen noch einmal zusammenfassen: Wohl sind die bisher geltenden Regeln und auch viele Praktiken im internationalen Finanzbereich unvollkommen und änderungsbedürftig. Aus manchen Fehlern der Vergangenheit müssen Lehren gezogen und die Therapien verbessert werden. Das gilt insbesondere auch für die notwendige Prophylaxe. Bei dem notwendigen Ringen um Verbesserungen müssen jedoch alle Pro- und Contra-Argumente beachtet werden. Einseitige Plädoyers und Kritiken führen nicht weiter. Die Verantwortungsethik erfordert eine sorgfältige Abwägung aller für das nachhaltige Gemeinwohl relevanten Aspekte und Effekte. Und dazu gehört auch die dauerhafte Funktionsfähigkeit der Finanzmärkte und die Stabilität des Geldwertes, ohne die es auf Dauer keine soziale Gerechtigkeit geben kann.

SIXTH SESSION

THE GOVERNANCE OF GLOBALISATION:  
ECONOMIC PERSPECTIVES



# TRADE LIBERALISATION, ECONOMIC GROWTH AND POVERTY\*

L. ALAN WINTERS

This paper examines the relationship between trade liberalisation, economic growth and the alleviation of extreme poverty in developing countries. These are among the most controversial of all issues of economic policy at present and among the most important. It is beyond dispute, I think, that higher levels of output and income in the developing world could improve the prospects of millions of people and, at least potentially, contribute towards improving the living standards of the worst off members of society. Trade liberalisation has been advanced as a major component of the policy cocktail for faster growth and if this view were misguided it would be serious news indeed.

Aside from its effects via economic growth, trade liberalisation also has direct impacts on poverty via prices that poor households receive and pay for goods and services, the wages they command, the scope for government expenditure and the shocks that households face. These effects, too, are subject to great controversy. Economists may have a mild presumption that opening up international trade will benefit poor people in developing countries, because it is expected to boost the real rewards of unskilled labour, via factor rewards, but it is widely recognised that there will be exceptions,

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often extensive ones. Activists, on the other hand, provide a steady stream of horror stories about lost livelihoods and exploitation that could lead the unwary to conclude that trade liberalisation always increases poverty. Again, there is great importance in understanding the links between trade liberalisation and poverty so that the policy debate can be properly informed and liberalisation itself be used to best effect.

This paper attempts to present and assess the evidence on both those routes to poverty reduction without entering directly into policy debate. In part I it critically surveys the literature on the effects of openness to trade on income. This literature has certainly not settled down to a received view, still less a proven conclusion, but given the importance of its subject-matter it is worth asking where it has got to. Part II briefly comments on the link between economic growth and poverty reduction. In both of these parts I am offering new interpretation rather than new results. In part III, however, which considers the static links between trade liberalisation and poverty, I report new results from a study currently underway in the University of Sussex.

The paper is unashamedly positive and economic in approach rather than ethical. This is not because ethical considerations do not matter or that they should be dominated by economic considerations. Rather it is because ethical deliberations must be conditioned by the way the world is: infeasible solutions to the world's problems are not ethical in any meaningful sense. Hence I offer my thoughts on trade liberalisation and economic performance as necessarily only one part of the debate that the Academy, indeed humanity, is having about globalisation.

## I. TRADE LIBERALISATION AND GROWTH

The motivation for supposing that trade influences income is summarised in figure 1 and many other like it in Ben-David (2000). In the nineteenth century openness – measured by the ratio of exports to output, an outcome rather than a policy measure – was more or less constant and the growth of real income per head modest and steady. After the severe disruptions of the first half of the twentieth century openness increased and growth accelerated unprecedentedly: since 1945 income has far out-stripped the extrapolated growth path although since about the 1970s the growth rate has gradually fallen to something like pre-war rates but at a higher level of income. There is much to debate about this figure – which is what this section is about – but it is dramatic enough to be worth debating.

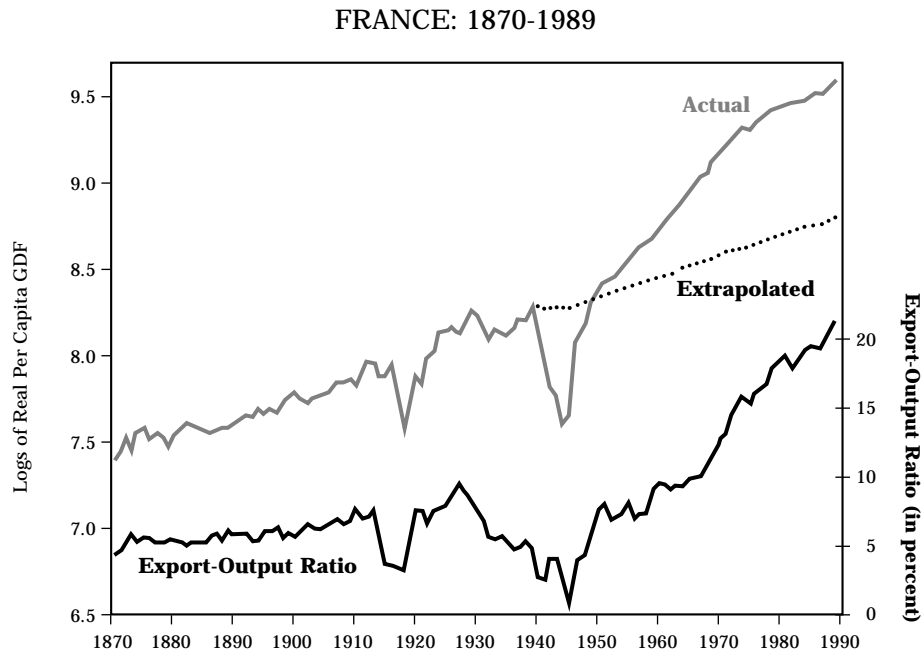


Figure 1. Source: Ben-David and Loewy (1998).

Before embarking on any analysis, however, let me do a little terminological ground clearing. The received theory of economic growth is concerned with steady-state rates of growth that would continue indefinitely if nothing in the external environment changed. These growth rates are quite independent of any transitory or adjustment issues. I will refer to these as steady-state growth, although, in fact, I will not refer to them very much because steady-states under unchanging conditions are essentially unobservable.

In practical terms one should also be interested in long-term transitional growth-rates, by which I mean long-lived transitions from one growth path to another. If trade liberalisation, or any other policy, shifted the economy onto a higher but parallel growth path we would observe actual growth rates in excess of the steady-state rates while the change occurred. Given that major transitions can take decades it is going to be very difficult to tell such transitional rates from steady-state rates empirically (Brock and Durlauf, 2001).

The treatment of trade liberalisation raises similar, but more tractable, issues. In what follows I will try to distinguish openness to trade (often just 'openness' where there is no room for confusion), which is a levels or state variable, from trade liberalisation, which refers to its change. If these concepts are clear conceptually, they are certainly not empirically: both should strictly be measured by policy stances, but since that is so complex, both are frequently proxied by outcome measures. I will briefly allude to these issues below, but illustrations of the empirical difficulties they raise can be found in Pritchett (1996) and Harrison (1996).

I should also clarify that I am considering here only the liberalisation of developing countries' own trade policies, not the opening of markets for their exports or the nature of the 'rules of the game' of the world trading system. The latter pair are important and warrant separate papers (see Hoekman, Michalopoulos and Winters, 2003, on the last). I do believe, however, that quantitatively they are not as significant as developing countries' own policies.

### *I.1. Levels vs. Growth Rates*

The literature on trade and growth is rather casual about which of the various concepts it is referring to. The most obvious relationship is that between openness and the level of income. Simple trade policy theory leads us to expect a positive relationship here, at least if we can measure real income appropriately, although the situation becomes more complex once one allows for effects such as those on investment, productivity, dynamic comparative advantage and agglomeration. If there is such a relationship, taking first differences gives us one between trade liberalisation and the growth of income, and as noted above this could actually be very long-lived.

More recent theory has also explored whether openness could affect steady-state growth rates. Thus, for example, if greater competition or exposure to a larger set of ideas or technologies increased the rate of technical progress, it would permanently raise growth rates. This is an immensely attractive view of the world, but one which is difficult to maintain intellectually. Jones (1995), for example, argues that since the US growth rate has displayed no permanent changes over the period 1880-1987, one must conclude either that it cannot have been determined by factors that change substantially, such as trade policy or openness, or that changes in such factors have been just off-setting, which is

not very credible.<sup>1</sup> More positively Hall and Jones (1997) argue that 'there is a great deal of empirical and theoretical work to suggest that the primary reason that countries grow at such different rates for decades at a time is *transition dynamics*' (italics in original, p. 173). Solow (2001) also makes the same point and it is the starting point for what follows.

### 1.2. *The Direct Evidence*

If the growth effects of trade liberalisation are 'just' transitional dynamics, it is still worth asking how large they are likely to be. Suppose that the transition is spread over, say, twenty years, the issue is essentially what is the income or output gain due to trade liberalisation.

If we consider simple traditional Harberger triangles, losses from trade restrictions as large as 5% of GDP are very rare, and so over twenty years the maximum effect would be 1/4% p.a. on the observed growth rate. Moreover, since some of these losses arise from consumption misallocations and since the effect of trade liberalisation will be to switch output from goods that are relatively dear to those that are relatively cheap, it is likely that increases in GDP measured at initial-period relative prices are likely to be smaller. These sort of calculations underlie the occasionally expressed view that trade policy just cannot be very important. However, there are several reasons for believing that there is more to the story than this.

If we add imperfect competition into the equation the consumption and production gains from trade reform will tend to increase. For example, in CGE modelling exercises, adding increasing returns and large group monopolistic competition to the specification often more than doubles the estimates of the GDP effects of trade reform (e.g. Francois, McDonald and Nordstrom, 1996). If one assumes small group models of oligopoly – surely more appropriate to developing countries – the gains are usually larger as rationalisation effects occur (e.g. Rodrik, 1988, Gasiorrek, Smith and Venables, 1992).

A further refinement is to allow investment and the capital stock to increase following the efficiency gains from trade liberalisation, as in Baldwin (1992). This further doubles or trebles the estimated GDP effects

<sup>1</sup> Or, even worse intellectually, that the underlying relationships have been changing through time. Jones also finds the same constancy of growth in other OECD countries once he allows for a gradually subsiding post-world-war II boom.

(although not the welfare effects), see, for example, Francois, McDonald and Nordstrom (1996) or Harrison, Rutherford and Tarr (1997).

According to Romer (1994) the principal effect of trade restrictions is to reduce the supply of intermediate goods to an economy. Recognising that this can have infra-marginal effects on productivity he argues that overlooking this effect leads to a several-fold under-estimate of the production penalty of protection. Romer's effect will show up in the data as a positive relationship between trade liberalisation and productivity and one can think of further reasons why opening trade may give a one-off boost to productivity – e.g. competition stimulating technology adoption and adaptation, or the elimination of x-inefficiency.

The upshot of these paragraphs is that, while eliminating Harberger triangles alone seems unlikely ever to boost transitional growth rates significantly, more sophisticated models of international trade do appear to promise gains that would be detectable over two or three decades. One direct verification of this is Rutherford and Tarr (2002) who implement a 'Romesque' model over a more-or-less infinite horizon.<sup>2</sup> They find that reducing a uniform 20% tariff to 10% increases the underlying steady-state growth rate of 2% p.a. to 2.6% p.a. over first decade and 2.2% p.a. over the first five decades, and that even after these fifty years the annual growth rate is 2.1% p.a.

None of this theory or modelling guarantees larger returns to trade liberalisation, but they do suggest that it is worth looking for them empirically. Moreover, although Rutherford and Tarr's model contains only level effects and transitional dynamics, their very long duration suggests that it will be difficult to distinguish them from changes in steady-state growth rates empirically, especially in post-war data. That is, given that levels of openness reflect previous trade liberalisation (since all economies were pretty closed in 1945), it is easy to imagine empirical studies linking openness to observed growth rates even though over an infinite horizon it should have no such effect. For this reason in discussing the various results from this literature below I do not make much out of whether they relate openness or liberalisation to growth, although of course in principle it is a very important distinction.

Over the 1990s the conviction that trade liberalisation or openness was good for growth was fostered by some visible and well-promoted cross-

<sup>2</sup> They model a 54-year horizon explicitly and set end conditions to roughly reflect optimisation to infinity.

country studies e.g. Dollar (1992), Sachs and Warner (1995), Edwards (1998) and Frankel and Romer (1999). These, however, have received, and by and large deserved, pretty rough treatment from Rodriguez and Rodrik (2001), who argue, *inter alia*, that their measures of openness are flawed and their econometrics weak. For example, Rodriguez and Rodrik observe that Dollar's measure of trade distortions (the deviation of prices from international levels) bears no direct relationship to trade restrictiveness, that his and Sachs and Warners' measures pick up macro-economic distortions as well as trade restrictions, that Edwards' estimation methods are surprising and that Frankel and Romer do not adequately allow for the possibility that growth causes openness rather than vice versa.

The difficulty of establishing an empirical link between liberal trade and growth arises from at least four difficulties – see Winters (2003a). First, there is some confusion about what 'openness' entails. In the context of policy advice, it is most directly associated with a liberal trade regime (low tariffs, very few non-tariff barriers, etc), but in fact that is rarely the measure used in empirical work. Thus, for example, Dollar's (1992) results rely heavily on the volatility of the real exchange rate, while Sachs and Warner (1995) combine high tariff and non-tariff measures with high black market exchange rate premia, socialism and the monopolisation of exports to identify non-open economies. Pritchett (1996) shows the trade indicators are only poorly correlated with other indicators of openness, while Harrison (1996), Harrison and Hanson (1999) and Rodriguez and Rodrik (2001) show that most of Sachs' and Warners' explanatory power comes from the non-trade components of their measure.

Second, once one comes inside the boundary of near autarchy, measuring trade stances across countries is difficult. For example, even aggregating tariffs correctly is complex – see Anderson and Neary (1996), whose measure depends on imports being determined according to a constant elasticity of substitution sub-utility function with an assumed elasticity – and then one needs to measure and aggregate quantitative restrictions and make allowances for the effectiveness and predictability of enforcement and collection.<sup>3</sup> Such measurement problems are less significant if one has panel data and wishes to identify changes in trade policy

<sup>3</sup> For example, although in 1997 Brazil and Chile had broadly equal average tariffs (12% and 11% respectively), the former was much less open than the latter because its import regime was complex and subject to a good deal of discretionary intervention.

through time for a single country, although even here Anderson (1998) argues that different measures point in different directions. Nonetheless, Vamvakidis' (1999) results, based on a panel data for over one hundred countries, are more convincing than those of purely cross-section studies. Vamvakidis concludes that multilateral liberalisations over the period 1950-89 were associated with increases in rates of growth, while discriminatory regional trading agreements were not.<sup>4</sup>

Third, causation is extremely difficult to establish. Does trade liberalisation result in, or from, economic growth? Frankel and Romer (1999) and Irwin and Tervio (2002) address this problem by examining the effects of the component of openness that is independent of economic growth. This is the part of bilateral trade flows that is explained by the genuinely exogenous variables: population, land area, borders and distances. This component appears to explain a significant proportion of the differences in income levels and growth performance between countries, and from this the authors cautiously suggest a general relationship running from increased trade to increased growth. The problem, however, as Rodriguez and Rodrik (2001) and Brock and Durlauf (2001) observe, is that such geographical variables could well have direct effects on growth in their own right, and that this alone could explain the significance of the instrumental estimate of trade constructed out of them. For example, geography may influence health, endowments or institutions, any one of which could affect growth. These concerns have, however, recently been answered by Frankel and Rose (2002) who repeat the instrumental variables approach of Frankel and Romer and show that the basic conclusion is robust to the inclusion of geographical and institutional variables in the growth equation, which suggests that openness has a role even after allowing for geography, etc.

Causation is a particular problem in studies that relate growth to openness measured directly – usually, these days, as (exports + imports)/GDP. Such openness could clearly be endogenous for both the export and the import share seem likely to vary with income levels. Rodrik, in particular, stresses this point, in, for example, Rodriguez and Rodrik (2001) and Rodrik (2000). Endogeneity, however, could be a threat even when one works with directly measured trade policy, such as average tariffs, for, at

<sup>4</sup> Vamvakidis considers liberalisations only up to 1989 in order to leave enough post-reform data to identify growth effects.

least in the short run, we know that pressure for protection increases as growth falters – see, for example, Bohara and Kaempfer (1991).

The fourth complication is that for liberal trade policies to have a quasi-permanent effect on growth almost certainly requires their combination with other good policies as well. The sort of policies envisaged here are those that encourage investment, allow effective conflict resolution and promote human capital accumulation. Unfortunately the linear regression model, which is standard to this literature, is not well equipped to identify the necessity of variables rather than their additivity in the growth process. Hints of importance of these policies, however, can be found in exercises identifying the structural relationships through which openness effects growth. Thus, for example, Taylor (1998) and Warziarg (2001) both find that investment is a key link and thus imply that poor investment policies could undermine the benefits of trade liberalisation.

An important dimension of the role of other policies is the possibility that openness is correlated with improvements in other policies – see Krueger (1978, 1990). Perhaps the most important dimension is corruption: recent evidence from Ades and Di Tella (1997, 1999) shows a clear cross-country connection between higher rents, stemming from things such as active industrial policy and trade restrictions, and higher corruption. The latter, in turn, reduces investment and hence growth.<sup>5</sup> On standard macroeconomic policy, inflation appears to be lower in open economies. Romer (1993) suggests that this is because real depreciation is more costly in terms of inflation in open economies, so that such economies are less likely to run the risks of excessive money creation.

There is also a well-known static dimension to the question of ‘other policies’. If an economy has other distortions – for example, the severe mispricing of, or missing markets for, elements of the environment or an inability to raise government revenue internally – reducing trade barriers can be harmful. These considerations may indicate the need for caution in the speed and style of liberalisation, although even so, the case needs to be proven.<sup>6</sup>

<sup>5</sup> Wei (2000), on the other hand, suggests that the losses from corruption increase with openness, because corruption impinges disproportionately on foreign transactions, and as a result that open countries have greater incentives to develop better institutions.

<sup>6</sup> The case for revenue tariffs is legitimate for poor countries, because trade taxes are often easy to collect. However, revenue tariffs would not show the large inter-sectoral or inter-temporal variations that we observe in most active trade policy regimes, so I do not believe that revenue is a prime motivation in most cases.



Two methodological points about other policies might usefully be made at this stage. Brock and Durlauf (2001), in a fairly complex discussion of the the statistician's concept of exchangeability, argue that growth theory is too open to be adequately tested with the economists' traditional regression approaches to empirical work. There are too many potential variables and too little information about model structure (e.g. functional form and whether parameters are constant across countries) to allow classical inference to work. Moreover, they argue, the usual search for robustness – the significance and consistency in sign of a particular variable across a range of specifications – is futile if the true determinants of growth are, in fact, highly correlated. Rather, Brock and Durlauf suggest using policy-makers' objectives to identify the trade-offs between different types of error, and from this conducting specification searches and estimation in an explicitly decision-theoretical way, recognising the wide bounds of uncertainty. This is challenging advice, which has yet to be applied to the role of trade liberalisation in growth, but it is a salutary warning about just how cautious we should be about growth econometrics.

The second general observation comes from Baldwin (2002), who argues that the quest to isolate the effects of trade liberalisation on growth is misguided. Trade liberalisation has never been advanced as an isolated policy, nor has it ever been applied as such. Thus, he argues, the only useful question is how it fares as part of a package including, say, sound macro and fiscal policies. Baldwin concludes that, in this context, openness is a positive force for growth.

### *I.3. Growth, Trade and Institutions*

Recent research has laid great stress on the role of institutions in explaining economic growth – for example, Hall and Jones (1997), Acemoglu, Johnson and Robinson (2001). This has led to suggestions – explicit or implicit – that trade policy does not matter. This, it seems to me, is a misinterpretation, which is worth correcting.

First, as Ben-David comments in the summary of his work (Ben-David, 2000), the statement that openness or trade liberalisation affects growth is quite different from saying that it is all that matters or even that it is the most important factor. The work described above refers to the first statement only.

More substantively, in a very thoughtful paper Rodrik, Subramanian and Trebbi (2002) (RST) have argued that institutions far outperform geog-

raphy and openness as explanations of income per head (PPP, 1995) and, indeed, that given institutions, openness has an (insignificantly) negative effect. They find, however, that openness partly explains the quality of institutions and so has a positive indirect effect on incomes. Its total effect, measured in terms of the effects of a one standard deviation change on income level, is about one-quarter of that of institutions. In all of this they are careful to instrument openness and institutional quality to avoid the danger of their being determined by rather than determining growth.

RST measures institutional quality mainly by Kaufmann, Kraay and Zoido-Lobaton's (2002) composite index for the 'rule of law', which includes 'perceptions of the incidence of both violent and non-violent crime, the effectiveness and predictability of the judiciary, and the enforceability of contracts' (p. 6).<sup>7</sup> They follow Acemoglu, Johnson and Robinson by instrumenting institutions with colonial mortality, or, in alternative estimates which broadly support their main results, with the shares of the population speaking English or another European language.

The interpretation of RST's results is quite subtle, as they, themselves, recognise. Perceptions are the key to investment behaviour, so the question of how to influence them is important. Openness apparently explains at least some of their variance and so could have a role to play even if only as a signalling device.<sup>8</sup> RST argue strongly that their theory is that institutional quality determines income and that it is, actually, quite variable through time. They stress that settler mortality is only an instrument, not, as Acemoglu, Johnson and Robinson hint and Easterly and Levine (2002) assert, the driver of the results per se. Nonetheless, their empirical methodology leaves them explaining income levels by openness, which is variable through time and, probably in response to policy, colonial mortality and distance from the equator which are obviously not.

If one heeds Brock and Durlauf's advice and thinks about policy-makers' objectives, the conclusion from RST's work would be to pursue openness vigorously – it is the only thing in this model that you could plausibly manipulate and it is far from ineffective in its indirect effects. Certainly you would also want to pursue other means of improving insti-

<sup>7</sup> As Edmond Malinvaud has noted, representing institutions in simple numerical terms is a daunting task, especially for labour markets, which clearly play a key role in the promotion of growth and the allocation of its benefits.

<sup>8</sup> As is claimed, for example, to stem from China's accession to the WTO.

tutions (the 'rule of law' in this specific model, but more generally in the 'real' world), but, as RST note, we have little idea how to do this and plenty of indications that doing so is difficult. Moreover, in my view (but, not, I believe, Dani Rodrik's) pursuing openness has little opportunity cost in terms of other policies. For most developing countries, large increases in openness will be attainable by simple measures that save rather than spend administrative resources – abolishing non-tariff barriers such as discretionary licensing, making tariffs uniform over goods and sources, and reducing tariffs (to reduce evasion). There are resource intensive components to opening up trade – e.g. meeting standards for export markets – and expanding trade will ultimately entail infra-structure costs, but there is much to be done that is free.<sup>9</sup>

#### I.4. *The indirect evidence – Trade and Productivity*

Despite the econometric difficulties of establishing beyond doubt from cross-sections that openness enhances growth, the weight of the evidence is quite clearly in that direction. Jones (2001) offers a measured assessment and one might also note the frequency with which some sort of openness measure proves important in broader studies of growth – e.g. Easterly and Levine (2001). Certainly, there is no coherent body of evidence that trade restrictions generally stimulate growth, as even Rodriguez and Rodrik concede. The question, then, is where else can we turn for evidence?

Direct evidence on trade and growth can be gleaned from detailed case studies of particular countries and/or growth events. Pritchett (2000) argues that these offer a more promising approach to empirical growth research than do cross-country regressions, and Srinivasan and Bhagwati (2001) chide the economics profession for forgetting these in their enthusiasm for the latter.<sup>10</sup> Case studies find a wide variety of causes and channels for growth, but frequently find openness at the very heart of the matter – see, for example, the NBER study summarised in Krueger (1978). As before, however, the case for openness in general is stronger than that for trade liberalisation alone.

<sup>9</sup> One of my major problems with the current WTO system is the way it is slipping into an ever more resource-intensive agenda – see, for example, Winters (2003b).

<sup>10</sup> They argue that Rodriguez and Rodrik's strictures on the cross-country studies should not undermine one's confidence that openness enhances growth, because that view should never have been based on those studies in the first place.

There is also indirect evidence that examines the steps in the causal relationship between trade liberalisation and growth. The main issue here is the effect on productivity. An influential cross-country analysis of trade and aggregate productivity is Coe and Helpman (1995) on OECD countries, and Coe, Helpman and Hoffmaister (1997) on developing countries. In the latter, developing countries are assumed to get access to their trading partners' stocks of knowledge (measured by accumulated investment in R&D) in proportion to their imports of capital goods from those partners. Thus import-weighted sums of industrial countries' knowledge stocks are constructed to reflect developing countries' access to foreign knowledge. Coe *et al.* find that, interacted with the importing country's openness, this measure has a statistically significant positive effect on the growth in total factor productivity (TFP).

While these results are instructive, Coe *et al.* do not formally test trade against other possible conduits for knowledge, and Keller (1998, 2000) has suggested that their approach is no better than would be obtained from a random weighting of countries' knowledge stocks.<sup>11</sup> One way of reconciling these conflicting results is to relax the strong bilateralism in Coe *et al.*'s access to knowledge measure. The latter implies that the only way for, say, Bolivia to obtain French knowledge is to import equipment from France. But if the USA imports from France (and so, by hypothesis, accesses French knowledge), then Bolivia's imports from the USA should give it at least some access to French. Lumenga-Neso, Olarreaga and Schiff (2001), who advance this explanation, show that recognising such indirect knowledge flows offers a better explanation of productivity growth than any of the earlier studies.

A second approach to the link between trade liberalisation and productivity is cross-sectoral studies for individual countries. Many of these have shown that reductions in trade barriers were followed by significant increases in productivity, generally because of increased import competition, see, for example, Hay (2001) and Ferriera and Rossi (2001) on Brazil, Jonsson and Subramanian (1999) on South Africa, and Lee (1996) on Korea. Kim (2000), on the other hand, also on Korea, suggests that most of the apparent TFP advance is actually due to the compression of margins and to economies of scale. Import competition makes some con-

<sup>11</sup> Coe and Hoffmaister (1999) have, however, challenged the randomness of Keller's 'random' weights.

tribution via these effects, and also directly on 'technology', but overall Kim argues that it was not the major force.

The sectoral studies relate a sector's TFP to its own trade barriers and thus imply that competition is the causal link. But for general liberalisations it is likely that barriers on imported inputs also fall and this could be equally important. At an aggregate and sectoral level Esfahani (1991) and Feenstra *et al.* (1997) suggest such a link, as do Tybout and Westbrook (1995) at the firm level. The last suggest, for Mexico over 1984-90, that there were strong gains from rationalisation (the shrinking or elimination of inefficient firms), that cheaper intermediates stimulated productivity, and that competition from imports stimulated technical efficiency (with the strongest effects in the industries that were already the most open).

Firm level data also allow us to test the perennial claim that exporting is the key to technological advance. While macro studies or case-studies have suggested links to productivity, enterprise level data have shown a much more nuanced picture. Bigsten *et al.* (2000) find positive stimuli from exports to productivity in Africa, and Kraay (1997) is ambiguous for China; Tybout and Westbrook (1995) and Aw, Chung and Roberts (1999), however, find little evidence for them in Latin America and Asia, respectively. The fundamental problem is, again, one of causation: efficiency and exporting are highly correlated because efficient firms export.<sup>12</sup> Hence researchers must first identify this link (by carefully modelling the timing of changes in exports and productivity) if they are then to isolate the reverse one. Tybout (2000) suggests that the differences between his results and those on Africa and China may arise because data shortages obliged the latter pair to use much simpler dynamic structures than he used.

## II. FROM GROWTH TO POVERTY

Economists have long maintained that economic growth generally reduces poverty – i.e. that, on average, growth does not have identifiable systematic effects on income distribution – see, for example, Fields (1989), Ravallion (1995), or Bruno, Squire and Ravallion (1998). These early stud-

<sup>12</sup> The same causation difficulty arises in interpreting the observation that where a region exports heavily, all firms are more productive: is it positive spill-overs or comparative advantage?

ies were based on rather small samples, but recent work based on extended samples and reaching the same conclusions, has stirred up great controversy. One recent, but unremarked, contribution is Gallup, Radelet and Warner (1998), who conclude from a cross-country regression that, on average, the incomes of the poor (the lowest 20% of the income distribution) increase proportionately with overall average incomes. They recognise that in some countries the poor see less than proportionate growth (i.e. 'anti-poor' growth), but argue that there are as many converse cases in which the poor have done better than average. They use a sample of 60 countries, including several developed countries, over varying periods since the mid-sixties, and use GDP per head as the proxy for mean incomes.<sup>13</sup> In addition they identify additional independent factors stimulating the growth of the poor's incomes: lower initial income; better health; temperate location; government savings (held to be a proxy for a sound macro stance) and political stability. Openness – defined by the Sachs-Warner (1995) dummy variable – appears to have roughly the same (beneficial) effect on the growth of the incomes of the poor as on average incomes.

These results were more or less replicated by Dollar and Kraay (2000), although using a larger sample and considerably more sophisticated econometric techniques which examine the relationship between growth and poverty both in levels across countries and in changes through time (national growth rates). Dollar and Kraay relate the mean income of the poor (bottom 20% of the income distribution) to overall mean income plus some additional variables. They never reject the hypotheses that the mean income of the poor moves proportionally with mean income nor, with the exception of inflation, that a variety of other variables affect it only via mean income. Thus while inflation appears to have an adverse effect on the poor in addition to its growth-reducing effects, countries' income distributions are not significantly affected by: government consumption, the rule of law, democracy, social expenditure, primary school enrolment and two measures of openness. The residual errors of Dollar and Kraay's equations are large and so are perfectly consistent with there being instances in which growth hurts the poor. But, as with Gallup *et al.*, such cases are, on average, offset by those in which the poor benefit disproportionately.

<sup>13</sup> It is desirable to use different sources of data for the income of the poor and mean income to reduce the chances that the measurement errors in the two variables are highly correlated.

White and Anderson (2001) categorise growth histories into such 'pro' and 'anti' poor experiences and find that in over one quarter of cases, distributional changes offset growth effects – i.e. that the mean and 'poor' incomes moved in different directions. They are not very successful, however, at identifying the factors that make growth pro- or anti-poor. They run 'standard' growth equations for the income growth of each quintile and examine differences in the resulting coefficients. It is hard to detect clear patterns, but one stark result is that openness is associated with significantly higher income growth everywhere except in the *top* quintile, and that the greatest effects proportionally are for lower quintiles. That is, openness appears to be progressive.

Several concerns have been raised about the robustness of these studies of growth, openness and poverty (in addition to those raised above in relation to cross-country regressions). First, the data on the incomes of the poor are clearly subject to error.<sup>14</sup> Reporting errors and sample biases are likely to be serious at the bottom of the distribution and in many cases Dollar and Kraay had to infer the share of the lowest quintile from a broader measure of income distribution. The World Bank's sample of income Gini coefficients (e.g. Ravallion and Chen, 1997 and several later extensions) has been criticised for severe implausibility – e.g. by Atkinson and Brandolini (2001). Knowles (2001) shows that the relationship between inequality and growth can change once one distinguishes between data based on income measures of inequality from those based on consumption data.

Second, some, e.g. White and Anderson (2001), argue that Dollar and Kraay essentially estimate an identity because the mean income of the poor is identically equal to overall mean income multiplied by the poor's share of that income divided by the proportion of observations included in the definition of 'the poor'. Hence, they say, obtaining an elasticity of one on mean income is inevitable. But since Dollar and Kraay include in their equation not the share of the poor but a series of variables that potentially explain it, and since what these variables do not explain could

<sup>14</sup> So too, of course, are those on mean income, but probably less so.

<sup>15</sup> Viewing the Dollar and Kraay approach as explaining the share of the bottom quintile with mean income and a series of other variables does permit a more sophisticated concern. The share of the poorest quintile is a pure number bounded strictly between 0 and 0.2 and effectively between about 0.02 and 0.15. Mean income is unbounded and defined in monetary units. As the sample is expanded to include countries with a larger and larger range of mean incomes, the coefficient on mean income

in principle be picked up by mean income, driving its elasticity away from unity, the critique is misplaced.<sup>15</sup>

Third, there is also the possibility of endogeneity problems. Recent research has suggested that income distribution (and by association, poverty) determines growth rates (and hence mean incomes) – see Aghion, Caroli and Garcia-Peñalosa (1999).

Finally, the average income of the poorest quintile is a very crude indicator of poverty – especially absolute poverty. Ravallion (2001) offers a general discussion of the poverty-growth link and also regresses the absolute poverty ratio on mean income. A 1% increase in mean income results, on average, in a fall of 2 to 2.5% in the number in absolute poverty. Of course, individual experience will vary around this average growth elasticity of poverty, with one of the most important determinants being initial levels of inequality. The more compact the income distribution the greater the share of population likely to be clustered about the poverty line and hence the greater the effect of moving the distribution bodily in one direction or the other.<sup>16</sup>

Ravallion and Datt (1999) explore the factors behind pro-poor growth more thoroughly in the context of differences between Indian states. Higher farm yields, higher development spending and lower inflation all appear to reduce poverty. Most interesting, however, is higher non-farm output: this also helps to reduce poverty but much more strongly where farm productivity is higher, the rural-urban divide smaller and rural education better (all of which indicate relatively higher initial levels of rural income). Translated into the terms of national growth (and probably openness), pro-poor growth seems more likely to occur where initial conditions give the poor the ability to take advantage of the opportunities it generates.

Despite the methodological challenges to the recent literature, there is little reason to challenge the traditional conclusion that growth, *on average*, benefits the poor, nor to suggest that growth generated by greater openness

will tend towards zero in order to accommodate the bounded share to the expanding independent variable. However, this would not prevent us from identifying a relationship in which the share of the poor fell systematically over the observable range of income. Thus, while it is desirable to specify a functional form that recognises these boundary conditions and the way in which they could distort the estimates, there is still content in Dollar and Kraay's failure to find such a relationship in their log-linear model.

<sup>16</sup> Ravallion (1998) suggests the robust empirical rule of thumb that the elasticity of the poverty count with respect to mean incomes is roughly proportional to  $(1 - \text{index of inequality})$ . Ravallion also notes that if the income of the poor is proportional to mean income economic growth benefits the poor far less than average in absolute terms.



is any worse than other growth in this respect. These observations are an important antidote to frequently voiced concerns to the contrary, and place the burden of proof on those who would argue the contrary in any specific case. It is quite clear, however, that on occasions growth has been accompanied by worsening poverty and the intellectual challenge is to identify why.

### III. TRADE LIBERALISATION AND POVERTY

This section considers the direct, static, impact of trade liberalisation on poverty. It is based on a conceptual framework for thinking about such issues – basically a taxonomy – that I have discussed elsewhere (Winters 2000, 2002), but it advances the argument by applying the framework to a specific case empirically. Thus here I discuss the ways in which trade liberalisation in Vietnam over the mid-1990s can be traced through to household welfare and poverty dynamics. It is based on ongoing work in the University of Sussex – see Niimi, Vasudeva-Dutta and Winters (2003a,b), from which more details may be found.<sup>17</sup>

Vietnam is an ideal candidate for such an application in the sense that it has surveys of the same 4,302 households in 1992-3 and 1997-8 – the Vietnam Living Standards Surveys (VLSS). Hence the research focuses on this five-year period. In another sense, however, Vietnam is less than ideal. Since the start of the *doi moi* reforms in the late 1980s the Vietnamese economy has been undergoing a more or less continuous transition. This has, at times, been halting and confused and is certainly not yet complete, but it seems to have had quite marked effects on incomes and poverty. Thus a major challenge for the research has been to identify the international trade reforms, separate them from other shocks and plot their transmission through to poor households. As noted above, the most significant link in this process quantitatively is likely to be the impact of openness on economic growth and hence on poverty. The practical problem, however, is that a five-year period is not long enough to distinguish between the various contributors to economic growth.<sup>18</sup> Moreover, most of the critics of

<sup>17</sup> The work described is part of the project 'The Impact of Trade Reforms and Trade Shocks on Household Poverty Dynamics' (ESCOR-R7621) funded by the UK Department for International Development, for the benefit of developing countries.

<sup>18</sup> The same limitation applies to analysing the effects of trade liberalisation on the volatility of incomes and risk-coping strategies. These are undoubtedly important for the poor, but having only two observations spanning five years preclude our commenting on them.

trade liberalisation focus on its static effects felt via prices, wages and transfers, e.g. the lost livelihoods. Hence for these two reasons this work focuses on the latter.

### III.1. *Economic Reforms*

The process of 'economic renovation' or *doi moi* was set in motion in 1986 and gathered momentum in the early 1990s with the objective of transforming Vietnam from a centrally planned to a market economy. The institutional reforms during this period included the encouragement of the private sector and the establishment of the legal basis for contract, banking and financial sector reforms, taxation reforms, the establishment of economic courts, the consolidation of property rights, land reform, and the rationalisation of state-owned enterprises (SOEs). A further important facet of the renovation process was the dramatic change in external sector policy from inward-oriented import substitution to outward-orientation. Changes included:

- The removal of constraints on trade outside the CMEA bloc:<sup>19</sup> by 1993 all foreign transactions were in convertible currency,
- The rationalisation and unification of the exchange rate in 1989 and further liberalisation of foreign exchange controls,
- The relaxation of import and export controls and a move towards a tariff-based system of trade management,
- Export promotion and the establishment of export processing zones,
- The relaxation of controls on entry into foreign trading activity and the simplification and eventual elimination in 1998 of the licensing procedure,
- The initiation of an 'open door policy' to promote foreign investment and the creation of a legal framework to approve and regulate foreign direct investment (FDI), and
- Integration with the world economy via regional and multilateral trading agreements.

<sup>19</sup> The Council of Mutual Economic Assistance consisting of the former Soviet Union, Eastern European socialist countries and Cuba.

Customs tariffs were introduced in 1988 for the first time and classified according to the international Harmonised System (HS) from 1992. The maximum and average tariff rates (especially on consumer goods) have remained high to date, and although the average tariff rates do not seem out of line with those in other developing countries, most of the items imported are in the high tariff bracket (between 30 and 60%). In addition, there have been several retrogressive measures in the form of rising export taxes, temporary prohibitions on imports of consumer goods, and other barriers introduced as anti-smuggling measures. Overall, both the import tariff and export tax systems are still complex and suffer from frequent changes (CIEM, 2001), so that despite all the reforms, Vietnam's trade regime must be considered to remain quite restrictive and interventionist (International Monetary Fund, 1999).

The complexity of Vietnamese trade policy makes it very difficult to trace the effects of tariff and other policy changes on households and so we decided that we had to rely on outcomes – prices and quantities – rather than policies directly, in order to identify the impact of the trade liberalisation. In these we detect dramatic changes, and there must be at least a reasonable presumption that the external sector will have had significant effects on poverty and that outcomes have been heavily influenced by the many changes in policy noted above.

### III.2. *Economic Outcomes*

Despite their incompleteness, the impact of the reforms on the Vietnamese economy has been tremendous. The economy grew at approximately 7-8% p.a. between 1990 and 2000 and at over 5% p.a. even following the Asian crisis in 1997. Firm domestic credit policies, tight monetary policies and interest rate reforms stabilised the hyperinflation of the 1980s. The exchange rate remained relatively stable after the rationalisation of the multiple exchange rate system and successive devaluations (CIE, 1998). Glewwe *et al.* (2000) show that, based on the World Bank poverty line, absolute poverty incidence declined during the 1990s from 58.1% to 37.4% between 1992-93 and 1997-98.

The share of international trade (exports plus imports) in GDP increased from about 52% to 71% between 1992 and 1998 (GSO statistics).<sup>20</sup> The external sector reforms stimulated strong import growth with

<sup>20</sup> There are discrepancies in trade data between various sources, but all tell the same story about the increase in openness.

imports continuing to be dominated by machinery and intermediate goods (amounting to approximately 70% of total imports). This reflects both the industrialisation of the Vietnamese economy and the structure of protection, with its bias against imports of consumer goods (IMF, 1998, 2000). Exports also grew strongly – apparently in line with comparative advantage. The contribution of agriculture, forestry and fisheries to total exports fell steadily, being offset by an increase in the shares of handicrafts and light industrial goods (IMF, 1998, 2000). By 2000, the combined exports of the textile and garments industry (one of the fastest growing export sectors) and the footwear industry were higher than those of the four chief agricultural exports – rice, coffee, rubber and marine products (CIEM, 2001). One of the most dramatic changes was in the opposite direction, however: *pre-doi moi* Vietnam was a net importer of rice, but by 1997 she was the world's second largest exporter of rice by volume (Minot, 1998).

Rice is hugely important in Vietnam, and figures significantly in the subsequent analysis. The de-collectivisation of agriculture and land reform in 1988 greatly increased the incentives to produce rice. Domestic prices were liberalised in 1989. Simultaneously, export quotas were removed and trading rights extended with the result that exports boomed and prices rose. In a related development real fertiliser prices (i.e. relative to the CPI) fell by 19% between 1993 and 1998. Throughout the 1990s nearly all fertiliser requirements were met by imports and these were regulated by import quotas with the objective of stabilising domestic prices and the concomitant effect of keeping average prices significantly above world prices (Nielsen, 2002). Thus the price changes noted must be seen as a significant and conscious trade liberalisation.

It is difficult to divide credit for the improvement in the rice economy between the domestic and the trade policy reforms. Arguably, both were necessary. The domestic reforms clearly impinged more directly on farmers than did the trade reforms, but in the absence of the latter, which allowed Vietnam to operate in world markets, it is inconceivable that prices and quantities could both have increased so much.

### III.3. *Channels of Causation*

Winters (2000, 2002) suggests three static channels of causation between trade liberalisation and household poverty: the prices that poor people pay *and receive* for goods and services, labour market effects on wages and/or employment, and the effects of the resultant changes in government expen-

diture and other taxes on real disposable income including services received in kind. The last probably receives too much attention anyway – see for example, McCulloch, Winters and Cirera (2001) or Winters, McCulloch and McKay (2002) – and certainly does not appear to have been very significant in Vietnam. Hence our research considers the other two.

Given the deep and extensive reforms of Vietnam's trade regime, we would expect to observe significant changes in the prices of some tradable commodities. Table 1, which reports the proportionate changes in the real retail prices of the selected consumer goods and services (from GSO statistics) confirms this.<sup>21</sup>

TABLE 1: *Price Movements 1993-1998 (Real Prices in Dong)*

<i>Consumer Goods/Services</i>	<i>Change</i>	<i>Consumer Goods/Services</i>	<i>Change</i>
Mackerel	76.87	Papers	3.46
Vitamin C	40.40	Fresh carp	0.90
Permanent wave	35.49	Shelled nuts	0.37
Sea shrimps	33.31	Black beans	-0.69
Fish sauce	32.53	Green beans	-1.95
Paddy	26.15	Soya curd	-1.99
Spring rice	26.05	Glutamate	-3.24
Salt	21.55	Soya beans	-3.66
Beef topside	21.30	Pork	-4.03
Glutinous rice	20.68	Kerosene	-4.44
Haircut	16.50	White sugar	-6.29
Cotton fabrics	13.75	Electricity	-17.78
Supply water	13.65	Vitamin B1	-18.17
Chicken carcass	11.80	Beer	-22.45
Duck's eggs	10.76	Photograph	-25.23
Petrol	10.39	Woollens	-37.97
<b>CPI (% Change)</b>			<b>48.5</b>

Source: Calculations based on GSO statistics (provided by CIEM).  
Nominal prices deflated by official CPI index.

<sup>21</sup> These figures need to be treated with some caution as most of the individual prices increase. The nominal prices were deflated by the CPI obtained from GSO, but the information on how the CPI was constructed is not available and needs further investigation.

It is clear that Vietnam's leading export products such as rice and marine products saw relatively higher price increases during this period than did other products. Rice is extremely important, being the most important single source of income for the majority of Vietnamese households and accounting for about 30% of household income in 1998. It is not possible to insist that these price increases were due solely to trade liberalisation, but there seems very likely to be a strong trade component. Although the price data are not available for coffee which was another booming export commodity in Vietnam over our sample, secondary sources – e.g. Minot (1998) – support the favourable effect of liberalisation-induced price changes on producers. However, more recently these households have been shown to be vulnerable to the considerable volatility of international coffee prices so some care must be taken not to interpret relatively short runs of data as implying permanent effects.<sup>22</sup>

In contrast to their benefits for producers, price increases in consumer goods, especially rice, are bound to have adverse effects on net consumers. According to our calculations based on the VLSS 92-93, rice accounted for 44% of total food expenditure on average and 53% for poor households. Rice alone comprises about 75% of the total calorific intake of the typical Vietnamese household (Minot and Goletti, 1998). Clearly rice prices will be a major determinant of poverty and deserve close attention. Our work provides some of this but we cannot provide an exhaustive study as we cannot adequately identify the component of the effect of rice price increases on poverty that depends on individual households' consumption patterns.<sup>23</sup>

The data on employment and wages are subject to huge uncertainty. The *doi moi* reforms had a substantial impact on the sectoral composition of output, with the industrial and services sectors growing far faster than agriculture during the 1990s. Despite the high output growth, however, total employment apparently grew by only about 2-3% in this entire period

<sup>22</sup> That coffee producers have lost their previous gains as world prices have fallen from their 1990s peak is not evidence that trade is harmful. With very low domestic consumption, the alternative for producers was not to produce coffee at all – i.e. to have foregone the gains that we find in our survey. Having said that, however, it is not clear that much official effort was devoted to warning potential producers that prices could go down as well as up.

<sup>23</sup> This is because of the way in which we measure poverty: following the World Bank and Vietnam's official statisticians, poverty is defined relative to the cost of a standard consumption basket – 2,100 calories per day per head plus minimal non-food expenditures.

(IMF, 1998, 2000) and was characterised by the absence of job creation in the industrial sector despite its being the fastest growing sector (MOLISA statistics provided by CIEM). On wages, Chandrasiri and de Silva (1996) use ILO data to argue that real wages fell following liberalisation, while the IMF (1998, 2000) suggests that real earnings (covering all cash income including payments in kind, bonus payments, and social security contributions) increased strongly. The wage data in the VLSS household surveys are of poor quality at the household level. However, wage data from the VLSS commune questionnaires suggest that between 1992-93 and 1997-98 real agricultural wages increased by about 38% and 36% for male and female labour respectively.<sup>24</sup> In addition table 1 shows that the real price of hair-cuts increased by 16.5% between 1993 and 1998. All of this can be taken as indicating increases in wages over this period.

To link trade reform and labour markets we undertook two exercises. First we have identified the commodities for which exports and imports changed most over 1993-98 and traced these back to their producing industries and occupations. *Prima facie*, if trade 'matters', these are sectors and occupations that we would expect to show up most strongly in explaining household experiences. The export sectors are clothing, footwear, sea-food and food-processing<sup>25</sup> and the import sectors textiles, machinery, leather, chemicals and metal industries. These sectors figure in the household analysis below.

Second, we conducted a factor-content of trade analysis to identify from the input-output structure the demands for three classes of labour created by the export growth and destroyed by the import growth over 1993-98. The traditional analysis in which \$1 of imports displaces \$1 of local output (and hence the factors of production that go into it) suggests that trade contributed very little to net labour demand over 1993-98, mainly because import growth was strong. However, the assumption of 1-for-1 displacement makes little sense for a poor developing economy such as Vietnam: rather imported capital and intermediate goods are employment creating in their purchasing sectors. When this is recognised, trade liberalisation looks much more benign. See Niimi *et al.* (2003b) for more detail.

<sup>24</sup> The commune questionnaires were conducted only in rural areas. These are the average figures for the wage for preparation, planting, caring for crops and harvesting.

<sup>25</sup> We do not include agriculture because (a) it offers relatively little wage-employment (as opposed to self-employment) and (b) most food is at least partly processed before it is exported.

### III.4. *The Econometric Analysis of Household Poverty*

This section tests the extent to which the observable liberalisation-induced changes identified above contributed to the reduction of poverty. It estimates a multinomial logit model on household data, and asks whether the production activities and characteristics that would a priori dispose a household towards an escape from poverty actually do so. This is mainly of interest per se, but it also provides a means of testing the operational significance of the framework provided by Winters (2002).

Multinomial logit models analyse the probability of being in a particular state out of several unordered alternatives.<sup>26</sup> We examine the poverty transition between 1992-3 and 1997-98 in terms of multiple (unordered) choices – specifically (1) being poor in both periods (P→P), (2) being non-poor in the first period and becoming poor in the second period (NP→P), (3) being poor in the first period and becoming non-poor in the second period (P→NP), and (4) being non-poor in both periods (NP→NP).

The model requires us to define one category as a 'base' and then calculates the probabilities of an observation being in one of the other categories relative to being in the base. In the results below we report the results as relative risk ratios (RRR), which report the ratio of the probability of each outcome relative to the probability of the base category. Since all continuous variables have been standardised, the coefficients on these variables represent the impact of a one standard deviation change in the explanatory variable on the relative risk ratios of the household being in each outcome. Any coefficient less than one implies that the variable reduces the probability of the household being in the nominated category. The percentage change in the probability is given by the coefficient minus one, multiplied by one hundred. This latter rule applies to both dummy and continuous variables.

The VLSS contains two waves of data: 4,800 households in 150 communes surveyed over October 1992 to October 1993 and 6,000 households in 194 communes surveyed over December 1997 to December 1998. The samples are believed to be representative and, critically, a panel of 4,302 households are identifiably surveyed in both waves. The poverty line used in this work is the official poverty line, which is based on the ability to afford

<sup>26</sup> Niimi *et al.* (2003a) discuss the shortcomings of and alternatives to the multinomial logit and carry out various sensitivity tests to the results reported here.



a specific basket of goods designed to provide a given calorie intake, plus some non-food expenses – see World Bank (1999) or Glewwe *et al.* (2000).<sup>27</sup>

The modelling is related to that in Justino and Litchfield (2002) and Glewwe *et al.* (2000), but differs from these in that we focus closely on the trade effects and explore both urban and rural populations. Starting from a ‘standard’ demographic view of household poverty dynamics, we add a number of additional variables to reflect the trade links: rice production, coffee production, land and fertiliser use, and the ratio of household members working in the leading export industries (seafood, food processing, garments, and shoes) to the number of adults in the household.<sup>28</sup>

With one exception all the variables refer to households’ characteristics or activities in the initial period. This is partly to avoid problems of simultaneity whereby poverty experience might determine the behaviour modelled on the RHS of the equation rather than vice versa. But it also reflects the desire to test the conceptual framework as a predictive tool. That is, to see how well the framework would predict the effects of trade reform if it were applied *ex ante* using only the information available in the initial period.

Appendix I reports the ‘basic’ equation (model 1) with no trade variables, which explains poverty dynamics as a function of region, ethnicity, demography, human capital (education), occupation, health, infrastructure and seasonality.<sup>29</sup> Though precise comparisons Glewwe *et al.* (2000) and Justino and Litchfield (2002) are not feasible, they seem to tell a pretty consistent story. Location, education and occupation of the household head, and infrastructure variables were among the major factors that increased the probability of escaping poverty relative to being poor in both years, while belonging to a minority ethnic group and illness of the household head increased the probability of falling into poverty relative to being non-poor in both years.

The effects of the various trade variables are largely orthogonal to the ‘basic’ effects and so, although Appendix I reports the equation in full, in

<sup>27</sup> Its value is 1.160 million dong in 1992-93 and 1.790 million dong in 1997-98 (World Bank, 2001).

<sup>28</sup> We also measure various non-trade effects in slightly different ways from Glewwe *et al.*

<sup>29</sup> The results are reported as relative risk ratios (RRR), which report how a variable affects the chances of an observation falling in each outcome. Any coefficient less than one implies that the variable reduces the probability of the household being in the nominated category. The percentage change in the probability is given by the coefficient minus one, multiplied by one hundred.

Table 2 of the text we report only the coefficients on the trade variables. These come from a 'tested down' version of the model which incorporates a certain amount of search for the best model (data-generating function). Collectively the trade variables are strongly statistically significant and loosely speaking, allowing for trade variables, just in terms of initial values, improve one's ability to explain poverty dynamics by 10%.

Table 2 starts with our basic 'trade-inclusive' model (column A). It includes among the regressors the household's initial production of rice and coffee and the proportion of workers initially holding jobs in export sectors. All have positive effects, the first two are strongly significant, both in the system as a whole (i.e. for the three equations the system together) and in explaining just the escape from poverty, whereas the last is significant for the system as a whole and only at 10% for escape from poverty alone. For example, *ceteris paribus*, a one standard deviation increase in a household's initial production of coffee more than doubles its chances of escaping from poverty in 1998, while a one standard deviation increase in rice output increases it by over 50%. Adding these three variables increases the pseudo- $R^2$  of the system from 0.23 to 0.26.

Column B reports our preferred 'trade-inclusive' equation. One important refinement is the regional dimension to the rice result. The production effect is weaker in the Mekong Delta than elsewhere.<sup>30</sup> As well as being the major producing region for rice exports, the Mekong is also characterised by larger farms and a much greater use of hired labour (Minot, 1998). Thus, as production increases less accrues to the household as a producer and more to the labour he hires; correspondingly, household income owes more to wages deriving from others' rice production than it does elsewhere in Vietnam. A similar attenuation is also evident in the other major rice area, the Red River Delta. Once these two regional variants are permitted the rice production effect elsewhere in the country increases somewhat.

<sup>30</sup> The rice production effect in the Mekong in column (B), Table 2 is an increase of 5% in the chance of escaping =  $100 \times (1.7 \times 0.60 - 1)$ .

TABLE 2: *Relative Risk Ratios from the 'Trade-Related' Multinomial Logit Model*

Model I (columns A-B): RRR for escaping from poverty – i.e. for (P→NP) relative to base (P→P)  
 Model II (column C): RRR for falling into poverty – i.e. for (NP→P) relative to base (NP→NP)

	<b>Model I</b>		<b>Model II</b>
	<b>A</b>	<b>B</b>	<b>C</b>
<b>Agricultural variables</b>			
Quantity of rice production	***1.56	***1.75	*0.51
In Mekong River Delta		**0.60	1.51
In Red River Delta		**0.85	1.15
Quantity of coffee production	***3.00	***2.32	1.00
Qty. of fertiliser – rice		***1.46	1.13
Qty. of fertiliser – non-rice		*1.70	*0.79
<b>Trade variables</b>			
Ratio of household members working in export	*1.11	***1.25	*1.19
Change in the ratio (export)		**1.17	1.06
Pseudo R2	0.26	0.27	0.27

Note: \*\*\* significant at 1% level; \*\* significant at 5% level; \* significant at 10% level in the single equation reported.

(1) The export sector includes seafood, food processing, garment and shoes (rubber and plastic products).

A second refinement adds variables for the initial use of fertiliser. As fertiliser prices fell heavy users could sustain material increases in real consumption. We distinguish between rice and non-rice fertiliser effects, because the latter may reflect greater opportunities for exploiting the fall in price as farmers can switch between crops rather than just increase use for a single crop. Large initial users of fertilizer for non-rice crops may grow crops or farm under circumstances which respond to fertiliser usage and

thus have greater opportunities for substitution than those who use little fertiliser to start with. The table shows strong positive effects from fertiliser use although non-rice use is significant only at 10%.

The third major dimension of the trade liberalisation operates via the employment market. There are at least three ways of making a link between initial employment in an export sector and the escape from poverty. Existing workers could get real wage increases, existing workers may be able to work longer hours, or it may be that initial employment indicates a location close to exporting firms and hence better chances of the household obtaining more jobs as the firms expand.

In order to explore these possibilities more closely, we break our rule of using only initial values as explanatory variables, and add the change in the proportion of adults with employment in export sectors. This captures the third hypothesis above and also is consistent with a reserve-army of labour view of the economy whereby an export boom generates more jobs but at constant real wages. Given the stock of workers in agriculture and the state-owned enterprises the reserve army model is plausible and, given the relatively low skills required for most manufacturing export jobs, there is little reason to expect that new workers will be less productive than incumbents over the 5 years between our surveys.

Including the change in employment in column (A) has negligible effects on all the other coefficients and their significance but quite strong effects on that on initial employment. It increases from 1.11\* to 1.19\*\*, while the change in employment gets a coefficient of 1.14\*\* (regression not reported). When the change in export employment is added to the model with the agricultural refinements the coefficients on both it and the initial level become strong and positive. Incumbency does have advantages in escaping poverty (via wages or hours presumably, neither of which we can test because the data are so noisy), but so too does a household's ability to supply new workers. Methodologically the lesson here is that for predicting the poverty effects of trade liberalisation, agricultural shocks may be well captured by initial activity in the affected sector because mobility is relatively low in these sectors.<sup>31</sup> For manufacturing, however, although initial employment captures some of the likely effects, some will be less predictable because mobility into manufacturing jobs is high.<sup>32</sup>

<sup>31</sup> By the same token negative shocks will hit hard in agriculture, as, for example, the decline in coffee prices since 1997 is reported to have done in Vietnam's Central Highlands.

<sup>32</sup> We also experimented by looking at employment and change in employment effects in import sectors and in manufacturing in general. Neither added much.

The sample for descent into poverty is small and so the results in column (C) of Table 2 are poorly defined. In an economy growing at an 8% p.a. descent into poverty is likely to be mainly an idiosyncratic event. Nonetheless, the results are broadly consistent with the analysis of escape from poverty even if they are not very significant statistically. Overall, we would not make much of this set of results, but they clearly lend some further support to our model of the poverty consequences of trade liberalisation.

While the trade effects appear to be estimated sufficiently precisely to reject the hypothesis that they have arisen by chance, we also should consider their contribution to explaining poverty dynamics, by asking how much better we can explain the observed outcome if we recognise the trade component. The increase in the pseudo- $R^2$  from 0.234 to 0.266 suggests that trade adds a further 14% to the explained variation in poverty experience but that much variation remains unexplained. The proportions of correct predictions from the model tell a similar story. The basic model classifies 59.90% of households correctly, over-predicting no-change outcomes (P→P and NP→NP) and strongly under-predicting the changes. Adding the trade variables improves the overall success rate by about 1.5 percentage points or 2.5% and materially improves the predictions for escapees from poverty.

The results so far offer convincing evidence that international trade reform has affected individual household poverty dynamics in Vietnam, and that by taking it into account we are better able to predict which households prosper and which do not. This lends considerable weight to the analytical framework proposed and to the view that 'trade matters'. It does not, however, tell us directly whether trade reform reduced poverty. For that, we need to create a counterfactual – '1998 without trade reform' – and it is here that the uncertain division of responsibility between trade policy, other policies and exogenous shocks really takes its toll.

As noted above we use initial household characteristics as variables and then essentially infer the change in their value between 1993 and 1998 from the coefficients. Hence, we can estimate the effects of trade reform on overall poverty by setting the 'trade-related' coefficients to zero (the corresponding RRR to unity) and recalculating the predicted changes in poverty.<sup>33</sup> For

<sup>33</sup> Because we standardised the variables in the regression equation, we also need to subtract  $\beta\bar{x}/s$  from the constant to ensure that the equations go through the same mean point as before, where  $\bar{x}$  is the mean value of the trade variable,  $s$  its standard deviation and  $\beta$  the trade coefficient set to zero.

some effects, however, the change in the value of a characteristic is due to things other than trade, so the appropriate reduction for this exercise may be less than 100%. For the sake of illustration we also consider reductions of one-half in these coefficients.<sup>34</sup>

If none of the trade effects had applied, about 250 fewer households (out of 4,302) would have escaped from poverty and 668 more would have been in poverty in 1998. If trade effects are set to half the estimated coefficients, the contribution of trade reform is still large – nearly 100 additional household escaping from poverty (about 10% of those that did) and nearly 300 fewer households in poverty (about 10% again). There are reservations about exactly how well we are capturing these effects, see Niimi *et al.* (2003), but overall these are quantitatively important effects.

#### IV. CONCLUSION

This paper marshalls two sets of evidence that trade liberalisation has significant effects on households' poverty status. First, a careful interpretation of the literature shows that trade liberalisation does, in general, contribute towards economic growth and that, in general, this contributes towards poverty reduction. It does not argue that trade liberalisation is sufficient for growth or even that it is the most important explanation of differences in growth rates across countries. I do not apologise for this however. The stakes are so high when we deal with the growth of whole economies that getting even minor policies right offers huge returns. More importantly, I would argue that trade policy is one of the few determinants of economic growth that can be relatively easily and cheaply manipulated, and that for this reason alone it commands our attention.

Part III of the paper shows that Vietnam's trade liberalisation of the mid-1990s shows up in household income data in exactly the sort of places one would expect. Again, trade variables are not the major determinants of changes in poverty status but they play a material role. In the course of inferring this result, the research indirectly validates the approach to trade liberalisation and poverty suggested by Winters (2000, 2002). It is comfort-

<sup>34</sup> This exercise is essentially a simulation. We are comparing predictions under two sets of conditions, not actual and predicted values. Thus the results are predicated on the relevance of the estimated model.

ing to feel that we have effective tools for thinking about the question, and it is worth stressing that the framework makes very clear that the direct static effects of trade liberalisation on poverty can be negative under certain circumstances. The purpose of the framework is not to promulgate universal conclusions, but precisely to aid the identification of potential poverty problems on a case-by-case basis.

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#### APPENDIX I. Regression Results of Multinomial Logit Models (Relative Risk Ratios)

MODEL 1: Without trade variables

MODEL 2: With trade variables

	NP → P		P → NP (Escaping Poverty)		NP → NP	
	Model 1	Model 2	Model 1	Model 2	Model 1	Model 2
<b>Geographic characteristics</b>						
Urban	0.911	0.998	**1.716	***1.979	***2.442	***3.231
Northern Uplands	1.412	1.726	1.188	1.257	1.155	1.325
Red River Delta (North Central)	1.082	1.814	**1.445	**1.667	1.261	***2.489
Central Coast	1.523	1.650	0.986	0.970	***2.658	***2.706
Central Highlands	1.282	0.830	**2.256	1.019	***6.600	**3.177
South East	***3.965	***3.879	***5.423	***4.736	***19.678	***18.482
Mekong River Delta	***5.027	***4.580	***2.126	***2.175	***9.605	***8.213
<b>Ethnicity (Kinh)</b>						
Chinese	1.806	1.905	0.765	0.715	*3.952	**4.883
Other ethnicity	0.864	1.006	***0.386	***0.430	***0.359	***0.453
<b>Demographic characteristics</b>						
Female head of household	0.994	1.058	0.984	1.016	1.085	1.197
Age of household head	0.951	0.959	***1.305	***1.316	***1.456	***1.464
No. of males 60+	0.968	0.925	0.918	*0.895	*0.879	***0.829
No. of females 55+	1.122	1.085	1.092	1.074	*1.118	1.076
No. of males 19-59	0.997	0.933	0.993	0.942	0.977	*0.892

No. of females 19-54	1.138	1.070	*1.115	1.073	**1.152	1.073
No. of children 15-18	0.969	0.889	1.029	0.969	**0.893	***0.782
No. of children 6-14	***0.460	***0.411	**0.887	***0.807	***0.631	***0.538
No. of children 3-5	***0.604	***0.560	***0.760	***0.725	***0.520	***0.475
No. of infants 0-2	***0.581	***0.558	***0.784	***0.765	***0.548	***0.515
<b>Education variables</b>						
<b>Head</b>						
<b>(No education)</b>						
Primary school	**1.688	**1.706	***1.835	***1.833	***2.126	***2.066
Lower secondary school	**1.779	**1.836	***2.844	***2.834	***3.455	***3.548
Upper secondary school	1.584	1.764	***3.227	***3.343	***6.734	***7.564
Tech/voc school	1.275	1.383	***1.989	***2.023	***4.696	***5.132
University	***0.000	***0.000	**10.061	***12.707	***46.400	***69.795
<b>Spouse</b>						
<b>(No spouse)</b>						
No education	1.097	1.038	0.938	0.887	1.128	1.083
Primary school	1.061	1.043	1.073	1.087	**1.637	**1.699
Lower secondary school	1.222	1.209	1.061	1.052	1.273	1.294
Upper secondary school	**2.966	**3.096	1.454	1.426	***2.399	***2.447
Tech/voc school	*2.913	**3.230	***2.735	***3.021	***6.234	***7.334
University	***0.000	***0.000	2.409	2.251	***6.413	***6.214
<b>Occupations (Head)</b>						
White collar	***5.733	***6.111	***3.291	***3.528	***7.465	***8.349
Sales/Services (Agriculture)	1.657	*2.168	1.498	**1.846	***3.252	***5.065
Production	1.185	1.234	0.966	1.167	1.249	**1.608
Not working	0.678	0.745	***0.604	**0.634	0.783	0.939
<b>Illness shock</b>						
Household head ill for more than a week in past 4 months	**1.828	**1.995	1.221	1.249	1.030	1.090
<b>Infrastructure</b>						
Access to electricity	1.422	1.381	***1.541	***1.446	***3.481	***3.364
Road	0.620	0.733	***1.666	**1.605	**0.680	0.768
Food shop	1.409	1.459	***1.611	***1.766	***2.190	***2.317
Daily market	***2.015	***2.205	1.093	1.208	***1.512	***1.613
Primary school	0.456	0.441	0.782	0.767	*0.496	**0.483
Lower secondary school	1.110	1.030	0.872	0.792	**1.382	1.164
Upper secondary school	1.091	1.175	1.042	1.098	**1.565	***1.736
Post office	***0.566	**0.561	***0.622	***0.619	***0.378	***0.363
Clinic	1.634	1.531	***1.923	***1.756	**1.701	***1.841

<b>Agricultural variables</b>						
Quantity of rice production		1.769		***1.753		***3.445
In Mekong River Delta		0.752		**0.601		***0.505
In Red River Delta		**0.710		**0.845		***0.612
Quantity of coffee production		***2.358		***2.315		***2.359
Quantity of fertiliser for rice		***1.679		***1.460		***1.491
Quantity of fertiliser for non-rice		1.557		*1.696		**1.969
<b>Trade variables</b>						
Ratio of household members working in export <sup>(1)</sup> to no. of adults		***1.649		***1.254		***1.517
Change in the ratio <sup>(2)</sup>		*1.186		**1.173		**1.169
<b>Duration between two surveys</b>						
	0.932	0.920	***1.500	***1.432	***1.375	***1.394
<b>Seasonality</b>						
(Interviewed 1st quarter)						
Interviewed 2nd quarter	0.626	0.629	1.054	1.065	0.928	0.960
Interviewed 3rd quarter	0.941	1.156	**1.341	***1.594	***1.821	***2.190
Interviewed 4th quarter	0.820	0.788	***1.845	***1.668	***1.965	***1.994
No. of observations	4302	4302	4302	4302	4302	4302
<b>Pseudo R<sup>2</sup></b>	0.234	0.266	0.234	0.266	0.234	0.266

Source: Calculations based on the VLSS 92-93 and 97-98.

Note: \*\*\* significant at 1% level; \*\* significant at 5% level; \* significant at 10% level.

(1) The export sector includes seafood, food processing, garment, and shoes (+rubber and plastic products).

(2) It should be noted that the categories for occupation slightly differ between the VLSS 92-93 and the VLSS 97-98.



## ON THE PAPER OF PROFESSOR WINTERS

PARTHA S. DASGUPTA

Professor Winters' paper is a model of exposition. It is also a fine contribution to our discussions at the Academy this year, in part because it offers a viewpoint of globalization that can be set against that of Professor Stiglitz: We have two contrasting views on offer. Winters' exposition is balanced, and he offers empirical evidence to support his claim, that trade expansion has come in alliance with economic betterment in the world's poorest countries.

Winters' evidence is based on findings from cross-country regressions. As you know, in a cross-country regression an economic quantity in need of explanation (e.g., the annual percentage rate of growth of GNP per capita) is regressed against other economic quantities (e.g., per capita GNP at some earlier date, an index of a nation's openness to trade, population growth rate) so as to see if there is a significant correlation between the quantity to be explained and an explanatory variable of interest.

Two criticisms are regularly advanced against such exercises. First, it is argued that correlation is not the same as causation. Even if the variable to be explained in a regression (Y), is found to be correlated with a variable X, it does not mean that X is a causal agent of Y. Secondly, it is noted that changing the specification of the model (e.g., introducing additional explanatory variables and deleting others) can affect the extent to which a particular variable (X) influences the variable to be explained (Y). In a field of inquiry I have myself been much involved in, namely, demography, a number of experts on cross-country regression analysis have recently moved from their earlier view that population growth has had little to no relationship with economic growth in recent decades, to the view that it has displayed a negative relationship. It is not so much that the analysts have studied wholly new evidence, it is more that their model specifications have

changed. Similarly, there are macroeconomists who remain unconvinced of the message Professor Winters reads from the regression analyses reported in his paper.

A third criticism that is sometimes raised against cross-country regression analyses is that such studies miss national particularities. National case-studies are the response of such critics. They study the particular institutional structures in a given country to be studied (including their culture and norms), they study past policy choices, and then offer a narrative of what happened in that country. The variables included in such case-studies are frequently of a kind that cannot be included in cross-section studies. One reason is that they may be far too many (more than the number of countries in a regression analysis!), another is that many such variables may not come in measurable forms, at least not on a cross-country basis.

But there is a fourth criticism that can be levelled against trying to reach an understanding of contemporary development processes from cross-country regressions, which is that GNP per capita is not the correct index of economic development. I want to develop this line of criticism in what follows.

At our annual Academy Meeting last year I showed that growth in GNP per capita is not the right index of economic development, but that growth in wealth per capita is. I also showed that in measuring a nation's wealth we should include not only manufactured wealth (roads and ports, buildings and machines) and human wealth (knowledge and skills), but also natural wealth (natural resources, ecosystem services). So, it is worth asking what the findings would be in cross-country regressions if, instead of regarding the rate of growth in GNP per head as the index of economic development (i.e. the variable to be explained,  $Y$ ), we were to use growth in wealth per capita as the index to be explained.

I do not know the answer, but I would guess that openness to trade would not look as good a thing as Professor Winters concludes from his evidence. And the reason why I believe openness is not wholly beneficial is that many services humanity obtains from Nature are unpriced. They are unpriced because they have no markets. Therefore, expansion of international trade in those commodities that do have markets can place additional pressure on those goods and services that are unpriced. For example, an expansion in international trade in timber can be expected to have a deleterious effect on ecosystems within watersheds (e.g., water purification, soil preservation). But this in turn would lead to a decline in natural wealth, which, if it were sufficiently large, would mean a decline in aggre-

gate wealth per capita. But the analyst would not know that from a study of movements in GNP per capita, because GNP does not take into account the depreciation of capital assets. In short, my criticism of Professor Winters' analysis is that he has used what I am persuaded is a wrong measure of human welfare.

This said, I am not arguing against openness of trade per se. What I am suggesting is that when international agencies espouse trade expansion, they should simultaneously urge domestic governments to take note of the recommended expansion's effects on Nature. As it happens, the world's poorest live directly on Nature for their food and amenities. So, to pay particular attention to the effect of economic policies on Nature in the world's poorest economies is also to pay particular attention to the poorest people in them. This must be right.

COMMENTS ON L. ALAN WINTERS,  
'TRADE LIBERALISATION,  
ECONOMIC GROWTH AND POVERTY'

JUAN J. LLACH

The two main purposes of Professor L. Alan Winters rich contribution are to review the literature and, on the other hand, to give additional evidence to support three relationships that are crucial for the understanding of modern economic development. The first one is the relation between trade liberalisation or trade openness and economic growth. The second is the effect of economic growth on poverty and the third one is the direct effect of trade openness or policies on alleviating poverty.

1. *Trade Liberalisation and Openness Effects on Economic Growth*

In the first part of the paper we find a critical review of the literature devoted to analysing whether trade liberalisation and, more frequently, trade openness have a clear effect on economic growth or not. Most of that literature is based on econometrics and cross-country regressions. However, after reviewing the literature and its soft results, some doubts arise about the adequacy of this research strategy by itself. As Winters quotes, these doubts were timely pointed out by Pritchett and Bhagwati and Srinivassan who suggested the necessity of the complementary approach of case studies and, I would add, in comparative historical perspective.

The author's review is very precise and allows us to assess not only the influence of trade but of other independent variables as well. They can be as influential as trade variables in the explanation of economic growth. At the same time, they could contribute to explain why the econometric relationships between trade, growth and poverty look weak and sometimes controversial. The same can be said of different, broad-

er approaches to the conceptualisation and measurement of openness. In the following paragraphs I will mention some of these complementary approaches.

a) *Geography and institutions*. Professor Winters rightly emphasises their importance and I would add only a couple of examples. Until the Second World War to be developed was equal to be Western European – including the Anglo Saxon Offshoots (as in Maddison, 2001). Later on, during the last forty years or so, some East Asian countries, but only them (and Chile), have either entered this category or converged towards the level of GDP p.c. of developed countries (Llach and Roldán, 2002). Early institutional developments, interacting with geographical spillovers, appear to be the main determinants of this concentration of economic development.<sup>1</sup> Needless to say, trade seems to have played an important role too but as I shall argue below, interacting with geography and institutions in such a way that it is very difficult to isolate its effects.

b) *World market structures*. Another possible explanation of the weak relationship between trade liberalisation and growth could be found in the international market structures prevailing at different historical times. Early developed countries emerged as world industrial producers with few established competitors and, in some cases, in a non-protectionist context. On the contrary, most developing countries have typically faced more crowded and, at the same time, monopolistic<sup>2</sup> world markets with different doses of protectionism. As a result, it has been more difficult for them to compete in industrial markets and to reveal their potential comparative or competitive advantages in that field.

c) *Alternative trade policies*. Winter's analysis concentrates the attention basically on one kind of trade policy, i.e., liberalisation. Since it is very difficult to deal econometrically with it, his analysis tends to replace it with an outcome, the openness measured as usual by exports or imports proportions of GDP. The author rightly points out, however, that both things are different, and I would add very different. Openness is an outcome that can be reached through very different trade policies, including the coexistence of low tariffs with high non-tariff barriers like quotas

<sup>1</sup> In addition to proximity, other geographical dimensions, like size, are very relevant as determinants of openness or closeness.

<sup>2</sup> Monopolistic structures do not imply monopolies, but mainly advantages of technology and product differentiation.

or health, environmental or social regulations.<sup>3</sup> All of them could contribute to weaken the econometric relation between trade and growth. Some examples of alternative ways of integration in the world markets are the following.

c.1) *Simulation of trade liberalisation*. Some of the fast growing Asian countries adopted a very gradual programme of trade liberalisation, particularly regarding imports. In the meantime, they implemented efficient socio-political agreements of income policy, successfully simulating market conditions. Japan is the outstanding example of this policy, whose success seems to have lasted until the late eighties.<sup>4</sup>

c.2) *Export-led growth*. Combined or not with simulation of market conditions, most Asian countries adopted an *export-led growth strategy*. Through a paraphernalia of export promotion policies – frequently compatible with industrial protection – they avoided the disasters of the protectionist import-substitution strategies typical of most Latin American countries from the Second World War until the eighties.<sup>5</sup>

c.3) *Free trade or custom union agreements*. As previously mentioned, most developed countries, openness was in part sheltered under the umbrella of a continental union, like the European Union or the deep integration between Canada and the United States, now extended to Mexico in the NAFTA. An important proportion of the openness of these countries comes from intra-union trade. On the contrary, regional trade blocks used to be less common, until recently, in many developing countries. A logical result of all this could be a positive association between trade and growth in developed countries, a weak one in many developing countries and a blurred one in the aggregate.

d) *Agricultural and food protectionism*. Most developed countries have decided to maintain high protection and subsidies to agriculture and food, buying perhaps some social cohesion through this device. The fact is that this protectionism has limited very clearly the openness and growth of

<sup>3</sup> An interesting example of these non-tariff barriers can be found in recent statements by Robert Zoellick, the United States Trade Representative, saying that his country will not allow the participation of foreign capital in 'critical' sectors like energy generation or water supply. This statement was presented to the World Trade Organisation in April 2003.

<sup>4</sup> The exhaustion and obsolescence of this policy could be one of the causes of the structural stagnation that began in Japan in the early nineties.

<sup>5</sup> Through these policies Asian countries were able to avoid different problems, including the lack of imported inputs studied by Romer and quoted by Winters.

many developing countries, darkening once again the association between trade and growth.

e) *Macroeconomic policies.* Good macroeconomic policies, particularly those related to fiscal solvency and the exchange rate regime are very critical to the success of trade liberalisation. One of the most interesting comparisons regarding this point is between Chile and Argentina. Both countries decided to unilaterally open their economies, Chile in the eighties and Argentina in the nineties. While Chile enforced fiscal equilibrium, capital controls and floating exchange rates, Argentina embarked on a monetary convertibility accompanied with looser fiscal policies and no capital controls. The resulting growth rates were very high and sustainable in Chile, but high only at the beginning in Argentina, that finally collapsed. Since we can find incredibly different macroeconomic policies around the world, they could be another missing link in the relationship between trade and growth.

Finally, as the author very clearly states, causation is very difficult to establish in the relationship between trade and growth. Would France, Germany or the USA have been as industrialised as they are if they had implemented trade liberalisation at the early stages of their development process? We cannot, of course, answer this counterfactual question. But it is very important to keep it in mind in order to understand the complex relations between trade and growth.

## 2. *From Growth to Poverty*

My comments on this section are very brief because the relationship between economic growth and poverty is much more indisputable than that of the previous section. As Winter says,

despite the methodological challenges to the recent literature, there is little reason to challenge the traditional conclusion that growth, *on average*, benefits the poor, not to suggest that growth generated by greater openness is any worse than other growth in this respect. These observations are an important antidote to frequently voiced concerns to the contrary, and place the burden of proof on those who would argue the contrary in any specific case. It is quite clear, however, that on occasions growth has been accompanied by worsening poverty and the intellectual challenge is to identify why.

Let me add that the case of Africa, the continent with higher poverty incidence and lower secular economic growth is clear enough.

The problem of endogeneity mentioned by Winters, i.e., that income distribution (and poverty) determines growth rates and not the other way round, is a very interesting one, challenges some of the established viewpoints and deserves deeper investigation.

Finally, measurement problems of the income of the poor are very important, particularly in rural areas. This, together with agricultural protectionism and its serious damage on some of the world's poorest populations, could be one possible explanation of the weak nexus between growth and poverty in some studies.

### 3. *Trade Liberalisation and Poverty*

In the third section of his paper Professor Winters presents a very interesting case study of Vietnam during the nineties, trying to establish a positive nexus between trade liberalisation and poverty reduction. The evidence is very interesting and supportive of the author's hypothesis. However, there are some methodological problems that are worth mentioning. First, as the author says, the period chosen for data availability reasons, i.e., 1992-3 to 1997-8, looks too short to reach solid conclusions. Second, in the same period, trade liberalisation coincided with the continuity of the transition from socialism to capitalism and it is very difficult to separate the effects of these two deep reforms. Third, the policy package was a combination of export-led growth and regional trade association varieties of trade liberalisation. It included, among other policy tools, export promotion, export-processing zones, FDI promotion, regional trade agreements and very high import tariffs (that, by the way are not in line with those in other developing countries, from my point of view). As the author says,

both the import tariff and export tax systems are still complex and suffer from frequent changes, so that despite all the reforms, *Vietnam's trade regime must be considered to remain quite restrictive and interventionist.*

Fourth, there was important support from multilateral institutions, including loans to develop coffee production. Incidentally, they were so important that they gave place to a world excess supply of coffee which was very damaging for Latin American producers.

Going now to the findings regarding the link between trade liberalisation and poverty I must say in the first place that the research strategy is original and very promising. The results, on the other hand, clearly establish a posi-



tive association between trade variables and poverty alleviation. However, the link does not look very strong, since the inclusion of trade variables adds only 14% to our capacity to explain the ways to escape poverty. On the other hand, partly based on price effects and volatile as they are, some of the conclusions must be taken cautiously. In the case of coffee, we must take into account not only the aforementioned subsidies, but also the fact that coffee is a commodity, very volatile as they all are.

Finally, trade reform has affected individual households and taking it into account we are better able to predict which households prosper and which do not. It does not, however, tell us directly whether trade reform reduced poverty.

#### 4. *Conclusions*

We are not 'econometrically sure' that trade liberalisation or openness explains a significant proportion of economic growth, particularly of developing countries. However, we are 'historically sure' that crude protectionism and closeness are clear enemies of economic development and that no country has got sustainable economic development closing its economy. Although Professor Winters does not explicitly mention this last point, I think it is the main message of his contribution.

As Professor Winter says, his paper

does not argue that trade liberalisation is sufficient for growth or even that it is the most important explanation of differences in growth rates across countries.

It argues,

however, that it is one of the few determinants of growth that can be relatively easily and cheaply manipulated.

Some doubts arise, however, about the optimality of a unilateral trade liberalisation in a protectionist context, at least for countries that have comparative or competitive advantages in agriculture and food. Regional blocks could be a better alternative, at least in the transition to the freer trade world that, we hope, will result from the continuity of Doha's WTO round.

Regarding poverty the author is very clear, emphasising that in the case of Vietnam 'trade variables are not the major determinants of changes in poverty status but they play a material role'. He adds that

the framework makes very clear that the direct static effects of trade liberalisation on poverty can be negative under certain circumstances. The purpose of the framework is not to promulgate univer-

sal conclusions, but precisely to aid the identification of potential poverty problems on a case-by-case basis.

The shortest way to summarise my comment is to say that Winter's paper makes an important contribution to our knowledge of these issues and to the improvement of the research strategies to deal with this difficult matter. Furthermore, he has made an uncommonly honest effort to find the truth and not to prove the truth of an a priori ideology.

## FREE MARKET AND PROTECTIONISM IN A GLOBAL SCENARIO WITH INEQUALITY

JOSÉ T. RAGA GIL

The Third Millennium of the Christian era has started with a project that is a true challenge for mankind today. This challenge consists in creating a common area, without boundaries, without restrictions, without discrimination, in which the whole human family can live and develop. A model for all types of relationships is needed. We will focus on those relationships of an economic nature between individuals, states and regions, developed in freedom, without interference from public authorities that could affect such freedom, using the technological tools that scientific and technical research have made available, and, above all, those in the field of information and communication. In short, we are talking about the concept of globalisation.

In essence, the immanent spirit of the globalisation project is not new; in fact, it has been present in economic behaviour from time immemorial. The desire to broaden the horizons of productive activity, to open new ways through which to distribute manufactured products or raw materials, has been a permanent feature of humanity. The Phoenician trade routes in the Mediterranean Sea provide a good example of this globalisation spirit. The silk route, the spice route and, of course, the Atlantic trade routes that came into being following the discovery of the New World clearly show man's desire to widen the geographical area within which he acts, to influence and be influenced in all types of relationships, including those that are economic in nature, that arise from contact with individuals and local social groups that are outside of the normal everyday field of reference.

Perhaps the new feature in the twenty-first century is society's awareness of the importance of the global project, as well as the role that each person is called to play in that project, as well as awareness of the current situation in which we find ourselves, with its possible concomitant risks, and the responsibility of each person in facing such risks.

*Trade, a relationship between people*

It is worth recalling a very obvious point at the outset: trade is a relationship between people. This is a relationship between individuals that connects the beginning and end of the economic process and which, at the same time, gives meaning to this process. In this way, trade is upheld as the most efficient means of transferring income from consumers on the demand side to producers on the supply side, the location of both parties and the distance between them being totally irrelevant.

Trade, on the other hand, is something natural and spontaneous. The commercial relationship starts as a logical consequence of even the slightest form of productive specialisation. Accordingly, there is nothing strange in the fact that in the sixteenth century the Salamanca School, composed of theologians and moralists, considered *real exchange*, commerce with a purpose, to be a legal practice, being illegal only the so-called '*dry exchanges*' because they generally led to usury.<sup>1</sup>

The greater the freedom trade has to develop in, the greater the resulting benefit for consumers. Free trade, without interference, drives nations, states and communities to concentrate their productive efforts on those goods and services for which they enjoy competitive advantages, letting other countries produce those which they are best suited to produce. This culminates in the process of exchange of one for the other, which leads to the greatest good for society as a whole.

Pope Leo XIII warned of the dangers arising when this power, concentrated in the hands of a few, damages market freedom:

The evil has been increased by rapacious usury, which... is... under a different form... the concentration of so many branches of trade in the hands of a few individuals, so that a small number of very rich men have been able to lay upon the masses of the poor a yoke little better than slavery itself.<sup>2</sup>

Eighty years later, the risk of the few dominating the many would once again be highlighted.

Under the driving forces of new systems of production, national frontiers are breaking down, and we can see new economic powers

<sup>1</sup> Friar Tomás de Mercado '*Suma de Tratos y Contratos*'. Ed. Fernando Díaz, Sevilla 1571. He uses the expression '*dry exchanges*' for those changes with no commercial end.

<sup>2</sup> Leo XIII, Encyclical Letter *Rerum Novarum*, 15 May 1891, n. 2.

emerging, the multinational enterprises, which by the concentration and flexibility of their means can conduct autonomous strategies which are largely independent of the national political powers and therefore not subject to control from the point of view of the common good. By extending their activities, these private organisations can lead to a new and abusive form of economic domination on the social, cultural, and even political level.<sup>3</sup>

The fact that the papal doctrine drew attention to these situations that were contrary to the will of God and which could lead to a trade structure based on the power of some to impose their objectives on the community in general, does not mean that the alternative is to limit these commercial relations, since when they operate correctly they encourage the participation of the whole human family for the common good of humanity.

... in recent years it was thought that the poorest countries would develop by isolating themselves from the world market and by depending only on their own resources. Recent experience has shown that countries which did this have suffered stagnation and recession, while the countries which experienced development were those which succeeded in taking part in the general interrelated economic activities at the international level.<sup>4</sup>

The result appears to be obvious. Exclusion cannot be contemplated but, at the same time, we cannot ignore the risk of possible situations of dominance that end up suffocating a community's ability to develop. A feature of this situation of dominance is protectionism in world trade. It goes without saying that all protectionism damages the efficient and beneficial structure of the free market.

Free trade to which we have referred, as a rule of improved productivity and greater welfare, has been constantly attacked by those who favour protectionism, an approach that can only be justified on the grounds of selfishness. The twentieth century provides a good example of the introduction of protectionist measures and their chaotic consequences.

The successive rounds of GATT and then the WTO have attempted to eliminate, or at least reduce, the protectionist impact of customs duties. And it is fair to say that universally there has been a substantial drop in the level of protectionism through customs duties. However, at the same time,

<sup>3</sup> Paul VI, Apostolic Letter *Octogesima Adveniens*, 14 May 1971, n. 44.

<sup>4</sup> John Paul II, Encyclical Letter *Centesimus Annus*, 01 May 1991, n. 33.

a new form of protectionism of a very different nature began to appear.<sup>5</sup> In this sense, Baldwin would say that 'The international trading economy is in the anomalous condition of diminishing tariff protection but of increasing use of non tariff trade-distorting measures'.<sup>6</sup>

The new protectionism is similar to customs duty protectionism in its ability to discriminate between national products and those coming from abroad. Nevertheless, it is different in the sense that the form of protection is less transparent and, therefore, more difficult to identify, at the same time as it is very easy to discriminate not only between national and foreign goods and services, but also between the different types of products being imported.<sup>7</sup>

This protectionism deserves a special mention if we consider that it protects those more developed countries from the products of less developed countries. The Common Agricultural Policy in the E.U. is an example of global discrimination against products from developing countries.

For this reason, the complaint of John Paul II on this point is especially relevant.

The *international trade system* today frequently discriminates against the products of the young industries of the developing countries and discourages the producers of raw materials.<sup>8</sup>

Faced with this reality, voices are raised on a daily basis proclaiming the free trade competitive system as being best able to deliver economic development and social welfare. Ironically, the states that make these claims are the same ones that apply protectionist measures. The voice of the Pope is eloquent, when he appeals:

Each local situation will show what reforms are most urgent and how they can be achieved. But those demanded by the situation of international imbalance... must not be forgotten.

<sup>5</sup> J.T. Raga, 'El nuevo proteccionismo y los países en desarrollo', in F. Fernández (ed.) 'Estudios sobre la Encíclica *Sollicitudo Rei Socialis*', Unión Editorial, Madrid 1990, pp. 471-491.

<sup>6</sup> Robert E. Baldwin, 'The New Protectionism: a Response to Shifts in National Economic Power', National Bureau of Economic Research, Working Paper 1823, Cambridge, Mass. 1986, p. 1.

<sup>7</sup> J.T. Raga, 'La dimensión internacional de la Economía', en Alfonso A. Cuadrón (coord.) 'Manual de Doctrina Social de la Iglesia', Chapter 26, Biblioteca de Autores Cristianos, Madrid 1993, p. 624.

<sup>8</sup> John Paul II, Encyclical Letter *Sollicitudo Rei Socialis*, 30 Dec. 1987, n. 43.

In this respect I wish to mention specifically: the *reform of the international trade system*, which is mortgaged to protectionism and increasing bilateralism.<sup>9</sup>

As we have seen, free trade and competition are far from being the rule; rather, they are the exception. At the same time as protectionism through customs duties goes down, examples of discriminatory protection abound, which are often accompanied by production subsidies as additional elements of discrimination and protection.

*Inequality: a fact*

We could discuss until blue in the face the way things would be if the economic model were started from scratch. The fact is that this is a historic moment, the start of the Third Millennium, and certain realities are impossible to ignore. The most alarming thing is the disparity existing between continents, countries and individuals, in their culture, their resources, their capacity to produce, their possibilities to contribute to human development itself, their living conditions, and so on. These are points that affect individuals at their most intimate level, leading them to question why these discrepancies exist. And, above all, how to reduce such inequality.

The theoretical model of a free and competitive economy holds that the available resources are used with greater efficiency and the needs of the population are met more adequately, thus providing the greatest level of utility possible. What would have occurred in the real world, had this economic model in fact existed, we cannot know, although even supposing that on a global basis a greater level of efficiency had been achieved, it would not have guaranteed a more equitable distribution of it.

In addition, however, we have already said that the model has been buried by countries and groups of countries interested in protecting their national populations against what could be considered an aggression against their economies. Thus, the model that applies in practice is one of protectionism rather than one of freedom.

As a result, inequality is a fact, one which humanity should be ashamed of. Paul VI condemned it in this way:

Flagrant inequalities exist in the economic, cultural, and political development of the nations: while some regions are heavily indus-

<sup>9</sup> John Paul II, Encyclical Letter *Sollicitudo Rei Socialis*, 30 Dec. 1987, n. 43.

trialised, others are still at the agricultural stage; while some countries enjoy prosperity, others are struggling against starvation; while some peoples have a high standard of culture, others are still engaged in eliminating illiteracy. From all sides, there rises a yearning for more justice and a desire for better guaranteed peace in mutual respect among individuals and peoples.<sup>10</sup>

Looking at the GNP p.c. data,<sup>11</sup> one must ask if an individual that possesses, on average, a gross income of US\$ 36,970 per year is capable of understanding what living with US\$ 100 per year actually means. Or, in other words, if the average Swiss, Japanese or Norwegian can understand, or at least imagine, what the life of the average inhabitant of Ethiopia, Burundi or the Democratic Republic of Congo is like. The difference is so great, that the risk exists of only being able to digest the data in a purely statistical way.

This information is more than just statistics. A consequence of the level of life that is determined by the previous information is the alarming differences in the highest and lowest infant mortality rates of different countries. It is hard to remain indifferent when confronted with the evidence that only three of each thousand children born in Japan or Sweden will not live beyond their first year, whereas one hundred and sixty-one children in Afghanistan and one hundred and forty-six children in Sierra Leone do not live to celebrate their first birthday.<sup>12</sup>

We are talking about children that are all conceived, whether in Japan, Sweden, Afghanistan or Sierra Leone, by the grace of God, without difference or distinction between them, since such differences are contrary to the will of the Creator.

Something similar occurs with life expectancy. A child born in Japan can expect, on average, to live to be eighty-one years old, while a Swiss or Swedish child can expect to live to be eighty. However, if fate dictates that a child is born in Zambia, it is unlikely that he will live for more than thir-

<sup>10</sup> Paul VI, Apostolic Letter *Octogesima Adveniens*, 14 May 1971, n. 2.

<sup>11</sup> See 'Informe sobre el Desarrollo Mundial 2003. Desarrollo sostenible en un mundo dinámico', Banco Internacional de Reconstrucción y Fomento/Banco Mundial. Washington, D.C. 2003, Coedición del banco Mundial, Mundi-Prensa Libros, S.A. y Alfaomega Colombiana, S.A.

<sup>12</sup> See United Nations, 'Statistical Yearbook', United Nations, Forty sixth issue, New York 2002.



ty-eight years, while in Sierra Leone, Malawi or Botswana if he is lucky he will live to celebrate his thirty-ninth birthday.<sup>13</sup>

There can be no justification for these differences on the grounds that a free and competitive economic system requires that there be no interference with economic activity or its system of distribution through the free market. In addition, we have already seen that, contrary to what is proclaimed, neither the economy nor trade are free.

It is precisely because the problem persists that John Paul II has been moved to lament that:

... one must denounce the existence of economic, financial, and social *mechanisms* which, although they are manipulated by people, often function almost automatically, thus accentuating the situation of wealth for some and the poverty for the rest.<sup>14</sup>

It is time for the careful analysis that the Holy Father calls for. We are talking about globalisation and equal treatment within the universal framework of economic freedom and competitiveness. That is the secret of globalisation, yet we are the first to act differently when we protect our economies against less-developed economies. But if we were to consider fully the problem of inequality, we would take a radically different approach to that taken today, precisely by attending to the obvious disparities which are our starting point.

Because, it is worth recording that:

In trade between developed and underdeveloped economies, conditions are too disparate and the degrees of genuine freedom available too unequal. In order that international trade be human and moral, social justice requires that it restore to the participants a certain equality of opportunity. This equality is a long-term objective, but to reach it, we must begin now to create true equality in discussions and negotiations.<sup>15</sup>

<sup>13</sup> See 'Informe sobre el Desarrollo Mundial 2003. Desarrollo sostenible en un mundo dinámico', Banco Internacional de Reconstrucción y Fomento/BANCO MUNDIAL, Washington, D.C. 2003, Coedición del banco Mundial, Mundi-Prensa Libros, S.A. y Alfaomega Colombiana, S.A.

<sup>14</sup> John Paul II, Encyclical Letter *Sollicitudo Rei Socialis*, 30 Dec. 1987, n. 16.

<sup>15</sup> Paul VI, Encyclical Letter *Populorum Progressio*, 26 March 1967, n. 61.

*An economic reflection, beyond economics*

It is perhaps worth recalling certain principles concerning man, economics as a human activity, the natural destination of goods, the disordered growth of wealth, dividing the world of equality into two sub-worlds, one rich, the other poor, and so on.

Whatever formula, whatever model that we try to apply, must be analysed in the light of its humanity. It is not true to argue that each and every structure serves faithfully the dignity of humanity. There is no scientific advance, no model of life, no discovery worthy of the name if its aim is not to consolidate the greatest recognition of the dignity of man. Man is more and above any other thing in the world of creation. From this perspective,

The economy in fact is only one aspect and one dimension of the whole of human activity. If economic life is absolutized... the reason is to be found... in the fact that the entire sociocultural system... been weakened, and ends by limiting itself to the production of goods and services alone.<sup>16</sup>

This absolutization of *homo oeconomicus* is enslaving man today. Making the economic phenomenon the centre around which human existence gravitates has reduced man to an animal that attempts unconsciously to cover those needs that are, materially, most important. For this type of man, brotherhood does not exist. Insensitive to the needs of others, he feels himself to be alone and by living for himself he even forgets the purpose of his own life and his role in the context of humanity.

For this reason it is necessary to analyse carefully why man is currently in this state and to discover his role in society. Nowadays, we need people capable of feeling outraged at the differences in the lives of individuals created equals.

... the present situation must be faced with courage and the injustices linked with it must be fought against and overcome... Urgent reforms should be undertaken without delay.<sup>17</sup>

At the very beginning, we stated that trade, and economic relations in general, occur between people, not between abstractions. Given this, the relationship between individuals and also between the nations where those people live, must be based on truth and freedom, not on force that humiliates the person who uses it and subjugates the person who suffers it.

<sup>16</sup> John Paul II, Encyclical Letter *Centesimus Annus*, 1 May 1991, n. 39.

<sup>17</sup> Paul VI, Encyclical Letter *Populorum Progressio*, 26 March 1967, n. 32.

Markets in countries with high potential demand – the rich countries – should be opened up to all products as a matter of urgency, but particularly to the products of those countries that have most difficulties, by eliminating the protectionist practices that are currently used. It is a sad reflection of the state of things that on 26 February 2001 the European Union approved a plan to open completely its markets to the products of the forty-eight less-developed countries in the world; yet, following the demands of France and Spain, this plan will not be effective until 2008.

Measures of this nature, at the same time – it should be recalled – as we are proclaiming the freedom of the market as the basis of the model of globalisation in which we are immersed, cannot be subjected to stalling behaviour adopted because of the specific interests of certain countries. The dismantling of the protectionist policies of rich countries aimed at the products of the poor countries must be carried out without further delay.

The establishment of the most-favoured nation clause, applied with greater generosity to all countries with weaker economies, together with a generous commitment to draw up and implement development models that are compatible with the productive capacities of each nation, are requirements of the universal common good.

Together with these measures that tend to address the short term, the great challenge of the developed world concerns education and training. Cooperation in this field is extremely urgent to improve the quality of *human capital*, its skills and capacity, to improve the living conditions of the population.

We must remember that both rich countries and international institutions have frequently opted for the easy, but not the most suitable, option. While poor countries need education, technology, infrastructure, health care, and in general new horizons that provide a glimmer of hope, rich countries and international institutions have preferred the comfortable way out of granting credits, even while being aware of their immediate volatility and the impossibility of their being paid back.

John Paul II commented on this process of indebtedness in the following way:

Recent years have also witnessed the worsening of international debt, a worrying trend which, like an insidious blanket, envelopes everybody, debtor and creditor countries, credit banks and international institutions.<sup>18</sup>

<sup>18</sup> John Paul II, Encyclical Letter *Sollicitudo Rei Socialis*, Appendix, 30 Dec. 1987, n. 10.

An indebtedness that, in general, ends up being a noose around the neck of the indebted country.

On this point the doctrine of the Church is also categorical:

The principle that debts must be paid is certainly just. However, it is not right to demand or expect payment when the effect would be the imposition of political choices leading to hunger and despair for entire peoples.<sup>19</sup>

### *A final appeal*

We are faced with a problem that is not new. We wish to build a world without boundaries, a globalised world. It would be a grave error while building this new world to forget the phenomenon that today affects human existence: inequality in the living conditions of peoples and individuals. The Christian message calls us to action: the anguished cries of the needy, both at home and abroad, can be heard louder and louder. The new problems of the end of the nineteenth century remain the new problems of today.

Today the principal fact that we must all recognise is that the social question has become worldwide... Today the peoples in hunger are making a dramatic appeal to the peoples blessed with abundance. The Church shudders at this cry of anguish and calls each one to give a loving response of charity to this brother's cry for help.<sup>20</sup>

This process of globalisation to which we are committed will only be possible if we develop at the same time the idea of interdependence, the idea of mutuality, in the sense of mutual interest, of community action.

We must be aware that we are starting this process on the basis of huge differences between the most favoured countries and those that lack even the most essential products. Equal treatment, based on reciprocity, may therefore be highly unjust. Supranational organizations have a great responsibility; and governments of both rich and poor countries are responsible for the task which faces us. However, their responsibility does not eliminate or diminish one bit the responsibility of individuals. It is the trust in the individual human being which makes us approach the problem from a different angle, conscious of our capacity for action.

<sup>19</sup> John Paul II, Encyclical Letter *Centesimus Annus*, 1 May 1991, n. 35.

<sup>20</sup> Paul VI, Encyclical Letter *Populorum Progressio*, 26 March 1967, n. 3.

The good Pope John XXIII correctly underlined that

Although in our day, the role assigned the State and public bodies has increased more and more... it is quite clear that there always will be a wide range of difficult situations, as well as hidden and grave needs, which the manifold providence of the State leaves untouched and of which it can in no way take account. Wherefore, there is always wide scope for humane action by private citizens and for Christian charity. Finally, it is evident that in stimulating efforts relating to spiritual welfare, the work done by individual men or by private civic groups has more value than what is done by public authorities.<sup>21</sup>

Indeed, there is always plenty of room for the personal exercise of pity and charity and for this reason we must not forget our responsibilities. We have already said that poverty is not a list of cold statistics, even though we find ourselves obliged to present the information concerning poverty in this way. Poverty means people suffering, faced with the need to provide themselves with basic necessities, incapable of being able to do so and dying at the limit of scarcity. Our model, meanwhile, is designed on the basis of globalisation.

The greater our degree of commitment to solidarity on a global level, the more meaningful this globalisation will be. In short, it is the immediate result of brotherhood, of solidarity as a way of life, of solidarity as a virtue.

On the path... toward the overcoming of the moral obstacles to development, it is already possible to point to the *positive* and *moral value* of the growing awareness of *interdependence* among individuals and nations...

It is above all a question of *interdependence*, sensed as a *system determining* relationships in the contemporary world, in its economic, cultural, political, and religious elements, and accepted as a *moral category*. When interdependence becomes recognised in this way, the correlative response as a moral and social attitude, as a 'virtue', is *solidarity*. This then is not a feeling of vague compassion or shallow distress at the misfortunes of so many people, both near and far. On the contrary, it is a *firm and persevering determination* to commit oneself to the *common good*; that is to say to the good of all and of each individual, because we are *all* really responsible *for all*.<sup>22</sup>

<sup>21</sup> John XXIII, Encyclical Letter *Mater et Magistra*, 15 May 1961, n. 120.

<sup>22</sup> John Paul II, Encyclical Letter *Sollicitudo Rei Socialis*, 30 Dec. 1987, n. 38.

It is true that in the world in which we live and given the model that we wish to build, the role of material means and technology, particularly new information and communication technology, is primordial. This was also the case in the past as regards scientific and technical progress. What is unacceptable is that our reverential attitude towards material means, or, still worse, our fascination for the instruments that technology places in our hands, leaves us with little time for brotherhood. It is clear that the global world to which we aspire will either be constructed for the whole human family or, quite simply, it will not be the great work of humanity that many hope for.

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# VERS QUELQUES PRINCIPES ÉTHIQUES POUR LA GOUVERNANCE DE LA MONDIALISATION FINANCIÈRE

EDMOND MALINVAUD

ENGLISH SUMMARY

*Toward a few ethical principles  
for the governance of financial globalization*

## 1. *Introduction*

That we need ethical principles about this subject is undisputable. Indeed considerations on what would be just often emerge, and forcefully, in debates about globalization. That the Church ought to make such principles explicit is not disputable either. But it is obviously challenging for her, given that her social teaching kept almost fully silent about financial operations during the last century. Here an attempt is made to elaborate a document presenting thoughts which could help the Church to position her doctrine concerning financial globalization.

## 2. *Independently of globalization, what would just finances be?*

It seems to be both advisable and feasible for the Church to speak on the morality of financial operations, however varied they may be, and on the morality of the norms and rules which regulate these operations. Operations of lending and borrowing are recognized as legitimate in principle, conditionally on the right of the borrower not to suffer exploitation. The contract must be fair when settled and must be later fairly implement-

ed, when it may happen that natural justice ought to take precedence over legal justice. Similarly, contracts about the exchange of risks are legitimate, such as those in which an agent insures another against some risk, or accepts to assume part of the cost of the possible risk. But considerations analogous to those concerning loans arise about risk premia. Added to them is the moral obligation for the insured agent not to deliberately take chances with respect to the risk in question.

### *3. Which trends carry on financial globalization?*

An old phenomenon which dates as far back as the Renaissance and experienced ups and downs, financial globalization accelerated in the 1980s with the fast liberalization of international capital movements in many countries. A regime of floating exchange rates between major currencies had then replaced the Bretton Woods system for international payments. Today, after a series of severe financial crises in a number of emerging countries during the past ten years, we witness a widespread questioning of the vision which had led to expect from the earlier trend manifest and widely shared benefits. The moralist, anxious to uncover adequate ethical principles for the future, cannot avoid making a diagnosis on the recent evolution of financial globalization and on the phenomena which carried it on.

### *4. Financial globalization between industrial countries*

Analysis of the dilemmas confronting the choice of a financial regime has been much discussed among economists concerned with globalization. The idea is now well accepted that three objectives, each one taken as desirable, are jointly incompatible ('the inconsistent trinity', as is often said): (i) full freedom of cross-border capital movements, (ii) free choice by the country of the monetary policy that is judged the most favourable, given its macroeconomic situation, (iii) a fixed exchange rate. When the progress of globalization undermined the viability of the Bretton Woods system, a regime of free capital movements and floating exchange rates between large monetary zones was accepted by OECD countries. Many consider today that the experience of the last thirty years is positive: this regime operates as well as could be hoped.

Will that always be the case in the future? Is it not a lack of prudence to admit the hypothesis without reservation? For instance, does not the recent fast rise in debts of many households, firms, banks and States run



the risk of dangerously weakening the resistance of the financial system when it will be faced again with a bubble of the exchange rate of a widely used currency? Are we not collectively at fault when accepting to so put our system to the test?

Even if we consider such fears as unfounded, the need is nevertheless well felt to make our financial system more morally satisfactory. We need countervailing powers to the dominating propensity of capital and a strengthening of international authorities in charge of financial governance. We must impose a better transparency of economic operations and of information affecting them. We must remove the rule-exempt zones that 'tax havens' are. New progress in legislations and regulations must keep pace with the growth of financierization, in particular for the protection of those who are the least able to benefit from it.

Particularly relevant from the point of view of this paper is a serious scrutiny of all those misbehaviours in the global economy which have their origin in the advanced industrial societies. Responsibility of these societies is then commensurate to their power. Examples of such possible misbehaviours are easy to find, such as spreading the practice of large scale corruption, overlooking duties of corporations toward local populations where subsidiaries are operating, indulging in greedy pick-and-run operations anywhere a source of quick profits may be identified.

##### 5. *'Poor countries' in the global finance*

In the poorest countries domestic financial markets are almost nonexistent. But some financial operations take place, including some in which foreign parties are involved. These countries may receive gifts and loans. Actually, many have excessive debts, must pay high rates of interest and have been led to strongly reduce expenditures which would have been requested for their development (health, education, investments in infrastructures and productive capacities). The international community indeed felt obliged to bring some assistance to the solution of such problems faced by 'Highly Indebted Poor Countries', an assistance which played a helpful, although still insufficient, part.

It is relevant to note that, notwithstanding their low participation in the benefits of financial globalization, poor countries receive foreign direct investments (FDI), at a level which is significant for them. Moreover, the global flow of FDI reaching them was multiplied by 2.5 during the 1990s.

These investments are very unevenly distributed across countries. Their volume has a high correlation with an index of 'the investment climate'. However, a debate exists among economists on the real value of the contribution brought by FDI to the receiving countries.

When persistently joining, for over two decades, those who deplore the sharp decrease in the international public aid to development and speak for its restoration to higher levels, the Church unambiguously exhibits her option for the poor. When speaking for the cancellation of international debts of the poorest countries, the teaching of the Church rightly addressed acute problems and made an impact. Perhaps however, it was too systematically inspired by the duty to bring assistance to the poor, whereas the natural right of insolvent debtors to receive a fair treatment might often have been called upon.

Dealing with ethics the Church might, it seems to me, bring her support to the direction adopted during the last few years in order to formalize strategies of poverty reduction. Under the label of the PRSP approach is meant a procedure the promotion of which was first worked out by agreement between the World Bank and the FMI, then more generally endorsed by participants in the conference 'Financing for Development' held in Monterrey. The basic idea is to make explicit a strategy document that each country would draw up and that would be accepted as a reference for a better collaboration with all international governmental organizations involved in financing poverty reduction. A number of poor countries have already accepted to enter into the procedure.

#### *6. Difficulties peculiar to emerging countries – A diagnosis*

Acute financial crises afflicted emerging countries during the last decade (Mexico in 1994-95, East Asia in 1997-98, the Russian Federation in 1998, Brazil in 1998-99, Argentina and Turkey in 2001). Industrial countries are not justified when indulging their self-interest and simply noticing that contagion effects have been definitely more limited than they were in 1930 after the Wall Street Black Friday. For the local populations these crises meant much disarray and misery. Their recurrence in various parts of the world shows that they have a systematic character, which calls for an explanation and requires a reconsideration of practices and policies applied during the last decade.

In order to frame this explanation and this reconsideration, two features of a diagnosis are relevant: (i) volatility of the flows channelled

through international capital markets, (ii) the crucial part played by foreign exchange rates, which also turn out to be quite volatile. The full text of this paper provides some documentation about these facts. Concerning the exchange rate of the domestic currency of an emerging country hit by a financial crisis, the dominant pattern is to see that, after a rather long period during which the rate against the dollar had been maintained about constant, competitiveness had been so much damaged that the challenge was no longer sustainable: a deep devaluation was suddenly accepted.

A convincing explanation of the phenomenon runs as follows. Since the collapse of the Bretton Woods international monetary system industrial countries learned how to live within a system of floating exchange rates. But the latter option is not really open to most emerging countries, because fluctuations of their exchange rate would be very destabilizing for them: an initial devaluation would quickly generate consequences which would magnify it. This for two reasons, both linked to the fact that the financial system of the countries involved is not yet developed enough and robust enough.

On the one hand, the devaluation would undermine the confidence of the domestic and foreign agents, which would shift demands for assets away from those denominated in national currency. On the other hand, it so happens that debts of most emerging countries, including their public debts, are denominated in international currencies (most often dollars). Thus a devaluation increases the burden of the service of these debts, so that debtors have to sell dollar-denominated assets or to borrow still more.

Again a deeper devaluation follows. Faced with such dilemmas the emerging countries involved can hardly avoid restricting international capital movements.

### *7. Toward an ethical framework for emerging countries*

Which ethical principles would be appropriate for better answers to the difficulties which were discussed in the previous section? To deal with this question, we shall briefly wonder about the duties of various agents responsible for such difficulties.

(i) Residents of the countries concerned, households and firms, have to abide by legal norms and by a demanding business ethic. Less obvious may look a consequence of the duty of solidarity toward those close neighbours who are the fellow citizens, namely to maintain or strengthen, within reasonable limits, the national preference in the choice of real and financial investments.

(ii) From national political authorities increased caution is required. Indeed, analysis of the various crises of the last decade shows that, in most cases, national authorities had some responsibility in the occurrence and/or the seriousness of the crisis. This increased caution of national governance concerns various policies, belonging mainly to management of the exchange rate regime, to macroeconomic regulation and to surveillance of the financial system. It will operate in a context where international contribution to the cure of crises may become more parsimonious or more costly for the countries so assisted.

(iii) Reconsideration of responsibilities and duties also concerns international financial institutions (IFI). Before dealing with the substance of this reconsideration it is appropriate to think about the ethics of those who serve in these institutions and about the ethics of those who watch, criticize or advise them. Serving in IFI is standing in the outposts of the governance of globalization, equally with those who serve for restoring peace. This fact commands a strict ethics of public service. As for specialists of social sciences who are observing the IFI staffs they should feel the sympathy deserved to those entrusted with difficult tasks. They should see themselves in their place, with the same requirement of rigour in analysing problems and in working out solutions.

(iv) Many changes took place since the IMF and the World Bank were instituted after the Bretton Woods Conference. The statutes of those two institutions still give a dominant role to industrial countries, in particular to the USA. But concerning the financial governance, as we saw, these institutions now have to deal mainly with problems which have their origin and their main impact in non-industrial countries. Ethics certainly recommends a new balance in the statutes.

(v) When the study of a reform of the international financial architecture was undertaken after the Asian crisis, a genuine and serious spirit prevailed both at the IMF and at the Financial Stability Forum (in which by the way emerging countries participate). The main paper here gives some references to the present state of the issue. The most delicate question concerns the solution to give to extreme cases in which a country is perceived to be insolvent. Although it is literally incorrect, the comparison with the legal treatment of insolvency of a firm makes sense for ethical reflexion: it seems to be then fair to institute a formal procedure for the solution of such cases. This necessarily requires a temporary suspension of any judicial pursuit against debtors of this country, followed by a global treatment for the termination of all standing claims. Notwithstanding the difficulties in implementation of

such an idea, to arrive at clear conclusions about it is indispensable for a significant progress in the governance of financial globalization.

Should not moreover the Church wonder about which requirements to impose in order to promote justice in the loans to emerging countries, including IMF loans? It would be very bold to prejudge the result of this examination. We easily imagine a number of questions which ought to be surveyed: expiry dates, interest rates to apply, currencies of the loans and of their service. Assuming all that would be a matter of negotiation with borrowers, will the negotiation occur in fair conditions?

(vi) Some present protests do not bear on the architecture of the international system but rather on the principles inspiring the policies applied by IFI. The two most important criticisms seem to respectively concern the liberalization of capital transactions and the stance of the macroeconomic policies to impose on countries experiencing a crisis. In both cases the IMF in particular would blindly follow preconceived principles, labelled as ideological by the protesters: full freedom of capital transactions and the balance of public budgets would have to receive priority and to be achieved as soon as possible; no consideration would be given to prerequisites about the development of the national financial system, no consideration either to the surrounding business trends.

These criticisms are worth considering, even though well informed persons must recognize that they often present a caricature of the principles that inspire IMF. Considering the criticisms does not mean endorsing them. Indeed, to fully settle the debates is very difficult. In this respect the conclusions of economics as a science are not clear-cut. Some critics argue that IFIs have no economic theory which would validate the principles inspiring their actions. Indeed, those institutions would be fooling themselves if they believed that the existing body of economic theories provide a validation of these principles: each one of the theories in question makes unrealistic assumptions about the world on which we have to act. Unfortunately, the same statement also applies to any alternative workable set of principles which could be proposed. Factual conclusions derived from economic observation are overall more relevant, although these conclusions themselves come up against the same fundamental difficulty: complexity of the economic and social world. I submit that, facing the present uncertainties blurring our knowledge, wisdom recommends not only a dose of pragmatism but also suspicion about the most extreme choices.

\* \* \*

In conclusion, ethical reflection should be active, but in a somewhat uncertain context. Some diagnoses are today taken for granted, for instance on the importance of the governance of financial globalization or on the advisability to take into account, in this governance, the varying degree of financial maturity across countries. But claiming to be secure in issuing categorical recommendations would in many cases be foolish.

\* \* \*

### 1. *Introduction*

Le besoin de principes éthiques à appliquer à la gouvernance financière de la mondialisation est peu discutable, car des considérations sur ce qui serait juste interviennent souvent, et avec force, dans les débats sur le sujet.

Qu'explicitier ces principes s'impose à l'Eglise n'est pas discutable non plus. Mais que ce soit difficile pour elle est aussi évident, compte tenu du silence de son enseignement social sur les opérations financières au cours du dernier siècle.

Cet article doit être comprise comme une tentative destinée à l'élaboration d'un document de réflexion qui aiderait l'Eglise à positionner sa doctrine relative à la mondialisation financière. Si je crois à l'existence d'un besoin, ma capacité pour y répondre peut être contestée. C'est pourquoi je dois être bref. Je vais évidemment chercher à tirer parti de ce que nous avons appris à l'Académie Pontificale des Sciences Sociales, quant à la mondialisation financière, lors de nos échanges de 2001 et 2002.

### 2. *Indépendamment de la mondialisation, que seraient de justes finances?*<sup>1</sup>

Pour faire bref, je parlerai seulement de quatre catégories de devoirs, contreparties de droits reconnus aujourd'hui dans nos sociétés. Les deux premières catégories concernent les opérations de prêt ou d'emprunt, consi-

<sup>1</sup> Je me suis déjà exprimé sur ce sujet à deux occasions. Je ne me suis pas alors limité à la justice des opérations intéressant l'échange intertemporel ou l'échange des risques, parlant aussi de l'éthique du management, que je vais passer ici sous silence pour simplifier. Voir "A gap in the social doctrine of the Church about the priority of labour over capital: the proper role of finance", *Rivista internazionale di Scienze sociali*, No. 3, 2002 (une version abrégée est parue dans *Work as Key to the Social Question*, Pontifical Council for Justice and Peace, Vatican City, 2002, p. 129-45); "Que doit-on entendre par de justes finances? Clarifications préliminaires à un consensus sur l'éthique financière", conférence à la Banque d'Italie, 22 mars 2002.

dérées comme légitimes en principe. Mais cette légitimité est sujette au respect du droit de l'emprunteur à ne pas être exploité. Cela intervient de deux façons. D'abord, au moment de la conclusion du contrat qui doit être équitable, de même que les contrats de vente doivent l'être, ce qui exclut par exemple d'imposer un taux d'intérêt usuraire en profitant de la naïveté ou de la détresse de l'emprunteur. Ensuite, au moment de l'exécution du contrat dans le cas où les conditions s'appliquant au débiteur et au créancier diffèrent assez de ce qui était anticipé pour que le strict respect des termes du contrat soit injuste, la morale naturelle prenant alors préséance.

De même, les contrats d'échange des risques sont légitimes en principe, tels ceux dans lesquels un agent couvre un autre contre certains risques ou partage un risque avec lui. Mais des considérations analogues à celles s'appliquant au contrat de prêt interviennent alors quant aux primes de risque. S'y ajoute l'obligation morale pour l'assuré de ne pas s'exposer délibérément au risque assuré. De plus, la morale réprouve la création artificielle et la prise artificielle de risques, telles que celles intervenant dans les jeux de hasard comportant d'importants enjeux.

Une autre catégorie de devoirs est devenue de plus en plus importante avec le développement des marchés financiers où les échanges sont de fait anonymes: des obligations de transparence pour les entreprises par actions et les émetteurs d'obligations, sur tout ce qui peut affecter l'équité des transactions. Un juste équilibre doit alors être trouvé entre le droit légitime à la confidentialité de la vie privée et les obligations de transparence en cause.

Nos démocraties nationales et leurs économies de marché ont construit les instruments pour assurer le respect de ces droits et celui des devoirs qui en sont la contrepartie (lois sur l'usure et sur les faillites, traitement du surendettement, traitement juridique de la responsabilité civile, réglementation des jeux, obligations de publier des comptes fidèles, dispositifs garantissant la sécurité des opérations). Il serait pertinent pour notre propos de voir lesquelles des considérations éthiques sous-jacentes à ces pratiques pourraient être retenues par l'Eglise.<sup>2</sup>

<sup>2</sup> De fait certaines de ces pratiques nationales ont inspiré, à partir de la fin des années 1980, la recherche de solutions à l'endettement de certains pays. Cela nous a été rappelé l'an dernier par M. Camdessus dans "Prêts internationaux, finance internationale, réduction de la pauvreté et des inégalités", *Miscellanea 3* (p. 93). Il s'est agi soit d'introduire dans les contrats de prêt dès leur acceptation des clauses de renégociation conditionnelles, soit d'instaurer des procédures d'interruption temporaire des poursuites à l'encontre de débiteurs défaillants de pays gravement endettés. Nous y reviendrons.

Que l'Eglise s'exprime sur la moralité des opérations financières, quelque diverses qu'elles soient, comme sur celle des règles et normes qui encadrent les opérations en cause, semble en effet à la fois opportun et réalisable. Ce serait une première base utile pour élaborer les principes éthiques à proposer à la mondialisation financière.

### *3. Quelles tendances entraînent la mondialisation financière?*

Phénomène ancien que l'on peut faire remonter à La Renaissance, la mondialisation financière a connu une expansion particulièrement rapide après 1870.<sup>3</sup> Jusqu'en 1914 de plus en plus de pays rattachèrent leurs monnaies à l'or. Un système crédible de taux d'échange fixes en résulta. Les taux d'intérêt convergèrent entre pays et les mouvements internationaux de capitaux connurent une rapide croissance. La globalisation économique concerna aussi les marchés des biens et du travail.

De 1914 à 1945 cet édifice sombra. La première guerre mondiale, l'instabilité des années 1920, finalement la Grande Dépression signifièrent un sursaut du nationalisme, de l'isolationnisme et de politiques économiques de moins en moins coopératives. Une succession de dévaluations compétitives des taux de changes, de contrôles sur les mouvements de capitaux et de relèvements des droits de douane eurent pour effet non seulement de désynchroniser les évolutions des prix et des taux d'intérêt mais aussi de pousser certains pays à une complète autarcie, que la seconde guerre mondiale ne pouvait qu'aggraver.

L'ère post-Bretton Woods connut une reconstruction progressive. Le commerce international se développa rapidement, accompagnant une croissance économique remarquable. Mais les préventions qui s'étaient formées entre les deux guerres à l'encontre des mouvements internationaux de capitaux ne furent pas aisément oubliées. Le Fonds Monétaire International accepta d'abord le contrôle de ces mouvements afin d'éviter le retour de crises financières. Pendant une vingtaine d'années cette ligne de conduite fut maintenue, bien que l'activité sur les marchés des capitaux ait lentement reprise. Mais dès la fin des années 1960, la croissance des mouvements de capitaux devint telle qu'elle imposa en 1971 la suspension de la convertibilité du dollar en or. Ce fut la fin du système de Bretton Woods

<sup>3</sup> Voir par exemple M. Obstfeld et A. Taylor, "Globalization and Capital Markets", NBER Working Paper 8846, March 2002.



qui avait permis le maintien de taux de change fixes entre la plupart des principales zones monétaires.

Le monde occidental s'installa dès lors *Nolens volens* dans un système de changes flottants, au moins entre grandes zones. La plupart des pays trouvèrent intérêt à libéraliser leurs marchés des capitaux et à les ouvrir vers l'extérieur pour assurer leur position dans l'économie mondiale. De fait la mobilité internationale des capitaux augmenta à rythme accéléré, comparable à celui qui avait prévalu un siècle plus tôt.

Aujourd'hui nous assistons à une remise en question de la vision qui avait conduit à attendre de cette évolution de manifestes bénéfices, largement partagés. A nouveau nous nous trouvons confrontés à des conflits politiques et à des défis économiques et sociaux. Mais ce ne sont plus les mêmes que de 1914 à 1945. Le moraliste, soucieux de dégager des principes éthiques adéquats à l'avenir, ne peut pas aujourd'hui faire l'économie d'un diagnostic sur l'évolution récente de la mondialisation financière et des tendances qui l'entraînent.

Or, pour des raisons qui apparaîtront par la suite, ce diagnostic amène à distinguer trois groupes de pays que l'on peut dénommer les pays industriels, les pays pauvres et les pays émergents.<sup>4</sup> Examiner successivement chacun de ces groupes, encore hétérogènes, devrait permettre de construire peu à peu un système éthique cohérent.

#### 4. La mondialisation financière entre pays industriels

Aujourd'hui, après deux décennies de progrès rapides de la mondialisation, les pays de l'OCDE, auxquels il convient d'adjoindre quelques autres pays, la plupart petits,<sup>5</sup> semblent vivre dans un régime crédible de changes flexibles entre grandes zones monétaires. La volatilité des cours sur les marchés financiers est notoire, mais ne semble pas menacer le maintien du régime en lui même. Ces deux assertions doivent être précisées, et peut-être aussi qualifiées de provisoires.

L'analyse des dilemmes auxquels le choix d'un régime de change est confronté a été abondamment discutée chez les économistes. Il est maintenant admis que trois objectifs, spontanément perçus comme chacun sou-

<sup>4</sup> Cette distinction est empruntée à World Bank (2002), *Global Development Finance – Financing the Poorest Countries*.

<sup>5</sup> Voir World Bank (2002), Appendix 1.

haitable, sont incompatibles entre eux (la “trinité incohérente”, écrit-on parfois): (i) liberté des mouvements internationaux de capitaux, (ii) liberté pour le pays de choisir comme il l’entend la politique monétaire la plus favorable à sa situation macroéconomique, (iii) stabilité des taux de change. Quand les progrès de la mondialisation ont compromis la viabilité du système de Bretton Woods, un régime de changes flottants entre grandes zones monétaires a été accepté par les pays industriels, comme nous l’avons vu. Beaucoup estiment aujourd’hui que l’expérience des trente dernières années est positive: ce régime fonctionne aussi bien qu’on pouvait l’espérer, car les grandes fluctuations des taux de change dont il a été le siège, par exemple entre dollar et mark, n’ont pas déclenché de crise financière grave.

Cela sera-t-il toujours le cas à l’avenir? N’est-ce pas manquer de prudence que de l’admettre définitivement? Par exemple, la considérable augmentation actuelle de l’endettement de beaucoup de ménages, d’entreprises, de banques et d’Etats ne risque-t-elle pas de gravement fragiliser le système financier des pays industriels vis-à-vis d’une éventuelle bulle du change d’une grande monnaie? Ne sommes nous pas collectivement fautifs d’accepter de mettre à telle épreuve notre système?<sup>6</sup>

Même si nous estimons de telles craintes infondées, le besoin ne se fait pas moins sentir de moraliser notre système financier. Il faut des contre-pouvoirs à la tendance dominatrice du capital et un renforcement de l’efficacité des autorités internationales chargées de la gouvernance financière. Il faut imposer une meilleure transparence des opérations économiques et des informations qui les affectent. Il faut éliminer les zones de non-droit que constituent les “paradis fiscaux”. Il faut accompagner la croissance de la financiarisation par de nouveaux progrès de la législation et de la réglementation des opérations financières, notamment pour la protection de ceux qui sont les moins en mesure d’en profiter et pour le service desquels des institutions adéquates doivent exister.

Dans le cadre de cet article il faut aussi attacher une attention particulière au fait que dans l’économie globalisée actuelle beaucoup de comportements répréhensibles proviennent des sociétés industrielles avancées. La responsabilité de ces sociétés est alors d’autant plus grave qu’elle doit être

<sup>6</sup> “L’économie des Etats-Unis est-elle vulnérable à une crise financière de même nature que celles dont d’autres ont souffert à travers le monde dans la dernière décennie?” se demande Catherine Mann dans “Perspectives on the US current account deficit and sustainability”, *Journal of Economic Perspectives*, Summer 2002. L’auteur cite des raisons expliquant une moindre vulnérabilité mais elle ne va pas jusqu’à déclarer celle-ci négligeable.

mesurée par référence à leur opulence et à leur puissance. Les exemples de tels comportements répréhensibles viennent aisément à l'esprit. Par exemple la pratique de la corruption à grande échelle dans certains secteurs du commerce international résulte d'abord des entreprises et des Etats industriels. La tentation est forte pour les entreprises multinationales de tenir pour négligeables les effets de leurs décisions sur des populations locales vivant loin de leurs sièges. De riches capitalistes privés ou de grands fonds de pension du Nord peuvent se livrer à des opérations spéculatives à court terme sur les devises ou les actifs financiers de pays du Sud et en retirer des profits dont la contrepartie est un appauvrissement du Sud.

De plus je ne peux que m'associer à ce que Joseph Stiglitz expose ailleurs dans ce volume quand il signale que la charge de supporter les conséquences néfastes des aléas ayant affecté l'économie mondiale a été souvent transférée par les pays industriels sur les pays en développement et que cela est foncièrement inéquitable.

##### 5. *Les "pays pauvres" dans la finance mondiale*

Les pays les plus pauvres ne sont guère en mesure de profiter de la mondialisation financière. Pour bien caractériser leur situation la Banque Mondiale a, dans le rapport de mars 2002 cité précédemment, cherché à les regrouper dans une catégorie particulière qui se distingue de celle des "pays industriels" et de celle des "pays émergents". La Banque a alors retenu deux conditions pour classer un pays dans la catégorie en cause: (i) que le Revenu National Brut par tête n'y ait pas dépassé 755 dollars en 2000, (ii) que le pays n'ait presque aucun accès aux marchés internationaux des capitaux. Cela a conduit à identifier 69 pays, dont 6 ont plus de 50 millions d'habitants (Pakistan, Bangladesh, Nigeria, Vietnam, Ethiopie, République démocratique du Congo). Parmi les pays éliminés par la seconde condition rappelée ci-dessus, on retiendra surtout l'Inde, l'Indonésie, l'Ukraine.

Dans les pays pauvres ainsi définis les marchés financiers internes sont quasiment inexistants. Mais des opérations financières s'y réalisent, y compris des opérations internationales.<sup>7</sup> Ces pays reçoivent de sub-

<sup>7</sup> Je n'insisterai pas ici sur le fait que les résidents de la plupart des pays pauvres ont effectivement la possibilité d'effectuer des placements à l'étranger, même souvent là où cela est illégal. World Bank (2002) montre que, relativement au PIB, ces sorties de capitaux sont aussi importantes que dans les pays émergents et qu'elles y sont plus volatiles (pages 69, 70). Il est clair que les élites des pays en cause ont des devoirs moraux en la matière.

stantiels transferts émanant de nationaux travaillant à l'étranger. Ils font l'objet de dons. Ils reçoivent des prêts. De fait beaucoup sont surendettés, doivent acquitter des intérêts à taux élevés et ont été amenés à réduire fortement des dépenses qui auraient été favorables à leur développement (santé, éducation, investissements en infrastructures et capacités de production). La communauté internationale s'est d'ailleurs mobilisée pour apporter une certaine assistance à la solution de ces problèmes pour les pays pauvres très endettés (PPTE). M. Camdessus (op. cit., p. 93-94) nous a rappelé l'an dernier que cette assistance avait joué un rôle bénéfique quoique encore insuffisant.

Il est important de noter que, malgré leur faible participation aux bénéfices de la mondialisation financière, ces pays reçoivent, à un niveau significatif pour eux, des investissements directs internationaux. Au total le flux de ces investissements a été multiplié par 2,5 au cours des années 1990. Les investissements directs sont très inégalement répartis entre pays et on constate une bonne corrélation de leur importance avec un indice de qualité de l'"investment climate" calculé par la Banque Mondiale (l'indice se réfère aux conditions macroéconomiques, au cadre juridique, à la stabilité politique, à la stabilité des politiques, à l'existence d'infrastructures, à la formation de la main d'oeuvre, etc.).

Il y a cependant débat entre économistes sur le bien que ces investissements ont pu apporter aux pays qui les ont reçus. Le débat porte en particulier sur le rôle des nombreuses implantations de banques européennes qui se réalisèrent dans la décennie 1990, chaque banque étant apparemment soucieuse de se ménager les avantages d'une implantation précoce. Bien que le débat ne puisse pas être tenu pour clos, il faut cependant noter que les investissements directs sont nettement moins volatils que les autres mouvements internationaux de capitaux et que peu de pays pauvres cherchent à les dissuader.

En s'associant avec persévérance depuis plus de deux décennies à ceux qui ont déploré la baisse de l'aide publique internationale au développement et réclamé son relèvement, l'Eglise manifeste sans ambiguïté son option en faveur des pauvres. Je n'ai pas à insister ici sur l'opportunité, malheureusement toujours actuelle, de cette manifestation.

En se préoccupant de la charge insupportable que représentait le service de la dette extérieure pour bien des pays pauvres, en prônant l'annulation des dettes internationales des pays les plus pauvres, l'enseignement de l'Eglise s'est aussi attaqué à un sérieux problème et a porté. Peut-être a-t-il cependant paru trop systématiquement inspiré par le devoir d'assistance

aux pauvres, alors que le droit naturel des débiteurs insolvable à un juste traitement aurait souvent pu être invoqué.

S'agissant d'éthique l'Eglise pourrait, ce me semble, apporter son appui à l'orientation prise récemment pour éviter que la rigueur financière, inévitable dans les pays en difficulté, pèse sur les gens les plus pauvres de ces pays, ainsi que cela avait pu être le cas dans le passé. L'orientation vise à donner priorité aux stratégies de réduction de la pauvreté. Elle a été décrite l'an dernier par M. Camdessus (p. 91-92) (voir aussi World Bank, 2002, page 91). L'approche dite des "cadres stratégiques de réduction de la pauvreté" (PRSP),<sup>8</sup> d'abord imaginée par accord entre la Banque Mondiale et le FMI, a été cautionnée par la conférence mondiale "Finance et développement" tenue au printemps 2002 à Monterrey. L'idée de base consiste à expliciter un document stratégique qui soit mis au point par chaque pays concerné et qui soit accepté comme référence pour une meilleure collaboration avec toutes les organisations internationales gouvernementales participant au financement de la réduction de la pauvreté dans ce pays. Un certain nombre de pays pauvres ont déjà accepté cette procédure.

L'Académie pourrait s'intéresser à la mise en oeuvre de cette orientation, par exemple en étudiant l'utilité des investissements qu'elle conduira à réaliser, la viabilité des plans de financement dont ils bénéficieront et la légitimité des conditions accompagnant ceux-ci quant aux politiques à appliquer par le pays. L'objectif principal serait de tester si se concrétise l'intention du "consensus de Monterrey", à savoir passer d'une relation d'assistance à une relation de partenariat entre les pays pauvres et ceux qui les financent.

#### 6. *Difficultés propres aux pays émergents – Le diagnostic*

Des crises financières graves ont affecté les pays émergents depuis une dizaine d'années: Mexique en 1994-95, pays de l'Est asiatique en 1997-98, Russie en 1998, Brésil en 1998-99, Turquie et Argentine en 2001. A chaque fois de violents changements dans les taux de change sont intervenus, manifestant la présence de déséquilibres insoutenables des échanges extérieurs et se traduisant en violents déséquilibres intérieurs.<sup>9</sup>

<sup>8</sup> "Poverty Reduction Strategy Paper".

<sup>9</sup> Pour caractériser les variations des changes la meilleure référence est constituée par ce que les techniciens appellent le "taux de change effectif réel" de chaque monnaie concernée par rapport à l'ensemble des autres. Pour les pays émergents ces taux sont très volatils et connaissent de brusques baisses au moment des crises. Des chutes de l'ordre de 50 pour cent ont été constatées pour le Mexique en 1994-95, pour l'Indonésie et

Nous ne pouvons pas nous satisfaire seulement de constater que les effets de contagion ont été plus réduits qu'ils l'avaient été en 1930 après "le vendredi noir" de Wall Street. Pour les populations affectées ces crises ont signifié beaucoup de désarroi et de misère. Leur renouvellement dans diverses parties du monde montre qu'elles ont un caractère systématique qui requiert une explication et exige une reconsidération des pratiques et politiques appliquées dans la dernière décennie.

Or, pour cadrer cette explication et cette reconsidération, un diagnostic semble de mieux en mieux se dégager: l'ouverture au marché mondial des capitaux a été plus ou moins prématurée, car les marchés financiers domestiques et les systèmes financiers y étaient insuffisamment préparés. Où en sommes nous plus précisément dans la compréhension du phénomène?

World Bank (2002) donne quelques éléments qui permettent d'apprécier l'évolution et la structure de la participation des pays émergents aux mouvements internationaux de capitaux.<sup>10</sup> Ces pays bénéficient d'investissements directs étrangers dans la même mesure que le font les pays pauvres, relativement à leur PIB (ce qui signifie un montant global beaucoup plus élevé). L'aide publique est beaucoup moins importante pour eux et la participation aux marchés des capitaux beaucoup plus significative. Cependant les ressources nettes apportées par ces derniers sont très volatiles. Par exemple, en milliards de dollars, ces ressources sont passées de 1991 à 1996 puis 2001, de 11 à 62 puis à 10 pour les obligations, de 8 à 49 puis à 19 pour les actions. S'agissant des ressources nettes à long terme apportées par les prêts bancaires, la volatilité est encore plus forte: 5 en 1991, 52 en 1998, 32 en 2001.<sup>11</sup>

Une autre façon d'apprécier la participation aux mouvements internationaux de capitaux est fournie par l'indicateur dit "de Feldstein-Horioka". Pour une année particulière et l'ensemble des pays émergents par exemple, c'est le coefficient de corrélation déduit de la régression statistique de l'investissement intérieur par rapport à l'épargne, régression calculée sur l'é-

la Thaïlande en 1997-98, pour la Russie en 1998 et pour le Brésil entre 1998 et 2003. Pour l'Argentine la chute a dépassé 70 pour cent en 2002.

<sup>10</sup> Il existe évidemment des bases de données détaillées sur les mouvements de capitaux enregistrés dans les balances des paiements. Il existe aussi d'autres présentations synthétiques de résultats apparaissant dans ces bases. Mais je suis trop peu familier avec cette documentation pour en tirer mieux parti que je le fais ici.

<sup>11</sup> Ces données en milliards de dollars concernent l'agrégat "pays émergents + pays pauvres". Mais les seconds pays n'y ont qu'une importance négligeable.

chantillon constitué par les pays en cause. Un coefficient égal à 1 résulterait de l'absence totale de recours au financement extérieur des investissements, un coefficient nul traduirait cette année là une complète mutualisation entre pays du financement de leurs investissements, cela grâce au marché international des capitaux. Selon les résultats donnés par World Bank (2002) page 57,<sup>12</sup> ce coefficient varierait assez peu d'une année à l'autre. Pour les pays pauvres il serait passé d'environ 0,4 dans les années 1970 à environ 0,6 dans les années 1990, ce qui traduirait une baisse de la participation aux mouvements internationaux de capitaux (avec toutefois retour à 0,4 de 1997 à 1999). Pour les pays émergents il aurait oscillé autour de 0,3 depuis 1977, traduisant donc une meilleure insertion de ces pays dans le marché mondial des capitaux.

Quant au diagnostic sur l'origine et la gravité des crises financières subies par les pays émergents, y intervient aujourd'hui l'idée que les fluctuations des taux de change sont particulièrement déstabilisantes pour ces pays. Une dévaluation initiale du change aurait rapidement des conséquences qui l'amplifieraient. Cela pourrait tenir aux anticipations des opérateurs sur les marchés des capitaux: la confiance des opérateurs nationaux et étrangers serait ébranlée, ce qui suffirait à déplacer les demandes de titres vers des actifs financiers libellés en monnaies étrangères, et ce déplacement provoquerait un supplément de dévaluation. Pour la plupart des pays émergents la déstabilisation pourrait aussi tenir à ce que beaucoup de leurs dettes ont été contractées en monnaies étrangères, y compris des dettes publiques. Toute baisse du change accroîtrait le coût en monnaie nationale du service de ces dettes. Face à des recettes en monnaie nationale, nombre de débiteurs se révéleraient alors défaillants, ou devraient vendre des titres, ou encore emprunter à nouveau. Nombre de ces réactions auraient pour effet direct de déprimer davantage le cours de la monnaie nationale.

Pourquoi les anticipations des opérateurs seraient elles systématiquement défiantes? Pourquoi les emprunts devraient-ils se faire en monnaie étrangère plutôt qu'en monnaie nationale? Dans les deux cas ce serait parce que le système financier du pays ne serait pas encore assez développé et assez solidement implanté. Pour y remédier il eût fallu encore créer de nouvelles institutions, améliorer la législation et la réglementation, faire com-

<sup>12</sup> Les discussions entre spécialistes ont montré que les coefficients de corrélation de l'indicateur de Feldstein-Horioka sont très sensibles au choix des échantillons de pays sur lesquels ils sont calculés. D'autres résultats présentent des coefficients nettement supérieurs.

prendre que le nouveau dispositif apportait assez de garanties, susciter ainsi la formation de nouvelles habitudes chez les opérateurs, etc... Toutes ces étapes, encore à concrétiser, exigeront inévitablement du temps.

On conçoit facilement que les caractéristiques ci-dessus évoquées des pays émergents affectent les dilemmes posés pour eux par la “trinité incohérente”. Tant qu’ils ne seront pas financièrement plus robustes, ces pays resteront exposés aux effets, pour eux dévastateurs, de l’instabilité des changes. On peut comprendre qu’ils puissent éviter de laisser leur taux de change flotter librement comme le font les grande zones monétaires des pays industriels. Soucieux de trouver un moyen de contrôle de ce change et soucieux de garder une certaine autonomie de leur politique monétaire, ils vont vraisemblablement être conduits à retenir de plus en plus souvent l’un des arrangements intermédiaires qui comportent tous quelque interférence gouvernementale sur les mouvements internationaux de capitaux.

Cela ne signifie pas que l’objectif de complète libéralisation de ces mouvements soit nécessairement abandonné, mais plutôt qu’il doit être conçu dès lors comme objectif à long terme trouvant sa place dans un programme de construction d’un système financier robuste. C’est précisément ce sur quoi a insisté l’an dernier M. Camdessus. Il a dit (page 88):

“Renoncer à [une libéralisation ordonnée des mouvements de capitaux] aboutit à se priver de ce que la mondialisation peut apporter de meilleur”.

Puis il a rappelé que les Pères fondateurs du système de Bretton Woods avaient donné pour mandat au FMI de libéraliser progressivement les transactions courantes. Il a ensuite ajouté (page 89):

“Il a fallu plus de cinquante ans pour qu’environ 150 pays accèdent [à cette libéralisation] ... Nul ne peut prévoir le délai qui sera nécessaire pour atteindre un tel résultat en termes de mouvements de capitaux. Chaque pays devrait y parvenir à son rythme et s’y préparer par des réformes financières sagement échelonnées, un renforcement de ses équilibres macroéconomiques, et celui de ses dispositifs de surveillance prudentielle du secteur financier”.

Cette section est précisément inspiré de ce qu’ont argumenté deux économistes dans un article auquel le lecteur peut souhaiter se reporter.<sup>13</sup> Outre l’analyse de toute la période remontant à la fin du XIXème siècle, l’ar-

<sup>13</sup> M. Bordo and M. Flandreau (2001), “Core, periphery, exchange rate regimes and globalization”, Working paper 8584, National Bureau of Economic Research, Cambridge.



ticle apporte d'abord des preuves de ce que, sur les années 1974-1996, l'intégration au marché international des capitaux ait été nettement inférieure pour les pays émergents à ce qu'elle était pour les pays industriels.<sup>14</sup> Il rappelle que très peu de pays émergents sont en mesure d'émettre des obligations dans leur propre monnaie et montre que ces pays figurent justement parmi ceux dont la financiarisation intérieure a été la plus poussée. Surtout il développe la thèse selon laquelle les pays émergents ont de bonnes raisons pour chercher à éviter le régime des changes flottants, les crises des années récentes ayant révélé l'existence d'une ligne de fracture à cet égard entre pays industriels et émergents.

### *7. Vers un cadre éthique pour les pays émergents*

Quels principes éthiques seraient adéquats pour que soit mieux répondu aux difficultés qui viennent d'être évoquées? Conscient des limites de ma compétence, je serai assez bref sur cette question, pourtant cruciale aujourd'hui. Nous ne pouvons bien en traiter sans distinguer les devoirs des divers responsables de ces difficultés.

(i) Chez les résidents des pays en cause, particuliers et entreprises, le respect des normes légales et d'une exigeante éthique des affaires a une importance sur laquelle je n'insiste pas. Moins évident peut paraître une conséquence du devoir de solidarité vis-à-vis des proches que sont les concitoyens, à savoir de maintenir ou de renforcer la préférence nationale dans le choix des investissements et placements financiers. Les économistes ont bien identifié en général l'existence d'une telle préférence nationale. Parfois, notamment quand ils parlent de "biais national", on peut se demander s'ils ne la désapprouvent pas. De fait, la préférence nationale peut entraver la croissance des niveaux de vie nationaux. Mais il faut savoir en accepter raisonnablement le prix quand, et là où, cela contribue à contenir le risque de crises financières récurrentes.

Plus généralement les devoirs de résidents devraient être clairs et à la mesure des difficultés rencontrées par le pays pour équilibrer ses relations économiques internationales. Malheureusement dans les pays en crise qui avaient complètement libéré les mouvements internationaux de capitaux, on a constaté une fuite de nombreux patrimoines de résidents vers des placements à l'étranger.

<sup>14</sup> Les spécialistes noteront des différences de méthode avec la pratique usuelle d'emploi des indicateurs de Feldstein-Horioka.

(ii) Chez les responsables politiques nationaux une prudence accrue s'impose, une prudence à la mesure des grands dommages que les crises entraînent pour leurs pays. L'analyse des diverses crises montre en effet que les autorités nationales ont eu, dans la plupart des cas, une responsabilité dans l'arrivée et/ou la gravité de la crise. Cette prudence accrue de la gouvernance nationale comporte divers aspects, surtout dans la gestion du régime de change, de la politique macroéconomique et de la surveillance du système financier. Elle se situe dans un contexte où l'aide internationale à la résorption des crises risque de devenir plus parcimonieuse et plus coûteuse pour les pays ainsi aidés. Nous ne devons pas nous cacher en effet qu'il serait irresponsable pour les autorités chargées de la gouvernance financière internationale de laisser s'accréditer l'idée qu'elles pourraient fournir une assurance sure contre les crises.

Ce serait irresponsable pour plusieurs raisons: ce serait dissimuler que les pays ainsi aidés auraient souvent à supporter des hausses massives des intérêts à acquitter, ce serait sous-estimer les résistances des pays appelés à financer les liquidités ainsi investies dans les lourdes opérations de sauvetage, ce serait surtout ignorer l'effet pervers que peuvent avoir à la longue les comportements d'*aléa moral* sur lesquels K. Arrow en particulier avait attiré l'attention de l'Académie en 2001.

La prudence des autorités nationales exige une surveillance constante des tendances qui affectent la balance des paiements, l'inflation et l'équilibre des budgets publics. Elle exige des interventions correctrices de toute montée des déséquilibres, interventions à pratiquer d'autant plus vite que la conjoncture paraît bonne et sécurisante. En particulier toute montée du déficit de la balance des paiements courants, toute dérive du change à l'intérieur de sa bande de fluctuation en cas de "peg", toute perte de compétitivité en cas de change rigide fixé, exige un réalignement bien avant le déclenchement de la crise.<sup>15</sup>

(iii) Bien entendu la reconsidération des devoirs et des responsabilités concerne aussi les institutions financières internationales, Fonds Monétaire International et Banque Mondiale surtout. Avant d'en traiter je crois utile de faire une pause pour dire quelques mots sur la déontologie de ceux qui servent dans ces institutions et sur la déontologie des scientifiques qui les observent, les critiquent ou les conseillent.

<sup>15</sup> Des signes apparaissent montrant que la nécessité de cette prudence des autorités des pays émergents est de mieux en mieux comprise. Voir à cet égard World Bank (2003), *Global Development Finance – Striving for Stability in Development Finance*, particulièrement "Overview and Policy Messages", p. 1-4.

Servir dans ces institutions c'est être aux avant-postes de la gouvernance de la mondialisation, à l'égal de ceux qui servent à maintenir ou rétablir la paix entre nations. Dans un cas comme dans l'autre l'échec, une crise financière ou un conflit armé, est lourd de conséquences sur beaucoup de contemporains. Cela oblige à une stricte déontologie de service public, une déontologie à laquelle beaucoup de serviteurs publics adhèrent dans le monde, quoique la plupart dans des contextes moins dramatiques. Je n'ai pas à insister sur ce que peuvent être des manquements à cette déontologie, sauf l'un d'eux: se préoccuper de sa propre image (il est si facile et si tentant de cacher son échec personnel, ou tout autre manquement à la déontologie, en prenant une posture de justicier, et cela se constate parfois chez les fonctionnaires internationaux).

Quant aux spécialistes des sciences sociales qui observent les dirigeants du FMI ou de la Banque Mondiale, ils devraient d'abord éprouver la sympathie que l'on doit à quiconque est chargé d'une lourde tâche. Trop souvent on constate au contraire une antipathie posée en principe. Les observateurs scientifiques devraient se mettre à la place de ceux qu'ils sont portés à critiquer, avec la même exigence de rigueur dans l'analyse des problèmes et de leur solution. Ils devraient s'imposer notamment de faire passer leur ego au second plan (il n'en est pas toujours ainsi dans les sciences sociales).

Plus précisément en ce qui concerne notre sujet, les principes qui inspirent l'activité des institutions financières internationales (IFI), la place qu'y tiennent les préoccupations éthiques, les éventuelles réformes à y apporter, nous sommes, je crois, bien préparés à l'examiner avec le sérieux qui convient, cela grâce aux contributions entendues et discutées à l'Académie en 2001 et 2002. Il nous suffit d'insister de plus sur les problèmes qui focalisent l'attention aujourd'hui, notamment après le livre de Joseph Stiglitz<sup>16</sup> et les diverses prises de position qui l'ont suivi.<sup>17</sup> S'agissant de ce que nous devrions à mon avis étudier, je vais d'abord évoquer la légitimité politique des IFI, puis ce que nous avons appelé en 2001 "l'architecture financière", enfin deux questions qui font particulièrement débat: la liberté des mouvements internationaux de capitaux, la rigueur de la politique macroéconomique à suivre dans les pays émergents.

<sup>16</sup> *Globalization and Its Discontents*, W.W. Norton, New York 2002.

<sup>17</sup> Parmi elles je recommande en particulier: B. Eichengreen, "The globalization wars: an economist reports from the front lines", *Foreign Affairs*, July/August 2002; B. Friedman, "Globalization: Stiglitz's case", *The New York Review*, August 15, 2002.

(iv) Bien des choses ont changé depuis que FMI et Banque Mondiale ont été créés à la suite de la conférence de Bretton Woods. Les statuts de ces deux institutions donnent toujours un rôle dominant aux grands pays industriels, en particulier aux Etats-Unis. Or, pour des raisons bien présentes ci-dessus, ces institutions ont à traiter surtout de problèmes ayant ailleurs leur origine et leur impact. N'y a-t-il pas là une source d'injustice? Même sans en avoir conscience, les représentants des grands pays industriels n'ont-ils pas tendance à privilégier le point de vue des créanciers plutôt que celui des débiteurs, voire à servir les objectifs politiques de leurs pays dans la compétition internationale? L'éthique recommande indubitablement un rééquilibrage, qui ne devrait d'ailleurs pas bénéficier uniquement aux pays émergents.

Rappelons nous cependant que, évoquant l'an dernier "la recherche d'une égalité plus grande dans la participation de l'ensemble des pays à la gouvernance mondiale trop souvent réservée aux pays du G8", M. Camdessus a déclaré: "Mieux vaut reconnaître qu'on entrevoit guère de progrès dans ce domaine pour l'instant". Pourquoi en est-il ainsi? On peut donner plusieurs réponses à la question. Quant à moi j'y vois surtout la traduction d'une difficulté beaucoup plus générale, celle de la faiblesse des institutions actuelles de la gouvernance mondiale: pour bien exercer leurs fonctions elles devraient avoir légitimité et efficacité, donc autorité vis-à-vis d'Etats souvent peu motivés pour se sacrifier à l'intérêt commun. Nous en sommes loin. J'ai le sentiment que beaucoup de responsables, conscients de cela, s'inquiètent de la perte d'efficacité dont pourraient souffrir les grosses interventions financières qui s'avèreront encore utiles dans l'avenir, si un vaste aréopage devait en décider.

(v) Une nette impression se dégage de la relecture des pages 293 à 314 de *Acta 7* qui ont publié nos travaux de 2001, à savoir le sérieux avec lequel la réforme du système monétaire international a été entreprise après la crise asiatique des années 1997 et 1998, cela au FMI et au delà au Forum de Stabilité Financière (notons en passant la participation de pays émergents au forum). L'exposé principal du Professeur Griffith-Jones et les commentaires de nos collègues K. Arrow et H. Tietmeyer en rendaient compte, sans cacher ni les points qui faisaient encore discussion ni le fait qu'il fallait aller au delà de ce qui avait été réalisé. Revenant sur ce dernier point l'an dernier M. Camdessus avait signalé cinq "chantiers" importants et plus ou moins actifs. Le dernier a été évoqué dans l'alinéa précédent. Les autres le seront aussi, sans que je le mentionne systématiquement.

L'Eglise n'aura sans doute aucune difficulté à suivre M. Camdessus dans la condamnation des "comportements peu scrupuleux" qui entravent la

transparence des marchés et les déstabilisent. Elle n'aurait pas non plus de difficulté à envisager, comme il l'a fait, que des règles soient édictées "dont l'application ne dépende pas de la bonne volonté des agents".

La question la plus importante et la plus délicate dans la réforme de l'architecture financière concerne la solution à apporter aux cas extrêmes dans lesquels un pays est perçu comme insolvable. Or cette solution présente d'importants aspects éthiques, sur lesquels Joseph Stiglitz attire l'attention dans sa contribution à ce volume. Bien que littéralement elle soit abusive, la comparaison avec le traitement législatif de l'insolvabilité d'une entreprise ou d'un particulier est éclairante pour la réflexion éthique. C'est pourquoi je recommande un "détour scientifique".

Les problèmes de surendettement ont été plus ou moins bien résolus par les pays développés dans le cadre de leur gouvernance financière nationale. Les lois sur la responsabilité des entreprises mises en sociétés, les lois sur les faillites, les modalités de traitement du surendettement des ménages se sont inspirées d'importantes préoccupations d'équité. Il conviendrait de bien dégager ce qu'ont été ces préoccupations, quels dispositifs elles ont conduit à retenir, quelles améliorations les soucis de justice suggèrent d'apporter à ces dispositifs. Quand tout cela aura été fait les problèmes posés par l'endettement international n'auront pas été pour autant résolus. Mais les principes à retenir pour leur solution apparaîtront mieux qu'aujourd'hui.

Au stade actuel il semblerait juste que soit instituée une procédure formelle pour la solution des cas d'insolvabilité des pays. On pense naturellement à une suspension temporaire de l'ensemble des poursuites à l'encontre des débiteurs du pays, puis à un traitement global de la destinée de toutes les créances en suspens. Quelle instance serait chargée de ce traitement? Quels critères de droit devrait-elle appliquer? On conçoit aisément la difficulté de ces questions, auxquelles des éléments de réponse ont déjà été proposés. Aboutir serait indispensable pour réaliser un progrès significatif dans la gouvernance de la mondialisation financière.

L'Eglise ne devrait-elle pas de plus s'interroger sur les exigences de justice à respecter dans les prêts aux pays émergents, y compris les prêts du FMI? Il serait très hardi de préjuger du résultat de cet examen. On imagine sans peine une liste de questions à passer en revue: les échéances retenues, les taux d'intérêt pratiqués, les monnaies des prêts et du service ultérieur de la dette. A supposer que tout ceci soit matière à négociation avec le pays emprunteur, la négociation se réalise-t-elle dans des conditions équitables? Voilà donc un sujet d'étude.

De même M. Camdessus a évoqué comme encore sujet à examen (après la conférence de Monterrey si j'ai bien compris) la possibilité d'"introduire ex ante dans les instruments de prêt des clauses de renégociation des termes des contrats ... en cas de graves difficultés de l'emprunteur". Ne devrions-nous pas nous faire une idée sur ce qu'il serait juste de retenir à cet égard? Peut-être conviendrait-il d'ailleurs d'élargir le contenu des clauses de renégociation envisagées à des cas dans lesquels les conditions économiques auraient fortement changé depuis la conclusion du contrat, cela indépendamment de la gravité de la situation confrontant le pays emprunteur?

(vi) Certaines protestations actuelles concernent non "l'architecture" du système international, mais plutôt les lignes directrices des politiques appliquées par le FMI, surtout quant à la libéralisation des mouvements internationaux de capitaux et quant au degré de rigueur de la politique macroéconomique à imposer aux pays en crise. Le FMI s'inspirerait de principes arrêtés a priori, qualifiés d'idéologiques par les protestataires: la complète libéralisation des mouvements de capitaux et l'équilibre des budgets publics seraient à réaliser en priorité, le plus tôt possible; aucun compte ne serait tenu de conditions à réaliser préalablement dans le développement du système financier national; aucun compte ne serait tenu de la situation conjoncturelle. En d'autres termes, les exigences retenues ignoraient ce que l'expérience des pays industriels conduirait au contraire à recommander.

Ces critiques me semblent devoir être considérées, même si toute personne bien informée doit convenir qu'elles présentent une image caricaturale des principes qui inspirent le FMI. Mais les considérer ne signifie pas nécessairement qu'on les épouse. De fait, trancher la question est très difficile. Quant à moi je me garderai de le faire devant notre Académie, cela pour deux raisons. D'une part je ne connais pas les faits d'assez près pour savoir ce qu'un bon examen technique, soucieux d'une justice équitable, aurait décidé dans chacun des cas qui ont fait problème. D'autre part les enseignements généraux de la science économique sont trop mal déterminés pour fournir une référence dénuée d'ambiguïté.

Certains critiques font valoir que les IFI n'ont pas de théorie économique justifiant les principes dont elles s'inspirent. Je suis assez d'accord avec cela. Plus précisément je dirai que ces institutions s'illusionnent si elles croient trouver dans les théories existantes la justification de ces principes: chacune des théories en cause fait des hypothèses irréalistes quant au monde sur lequel il s'agit d'intervenir. Malheureusement on peut le dire aussi quant à tout ensemble de principes alternatifs qui serait proposé pour

remplacer ceux suivis actuellement.<sup>18</sup> Les enseignements factuels de l'observation économique sont au total moins indéterminés que ceux des théories, quoiqu'ils butent sur la même difficulté fondamentale: la complexité du monde économique et social. Sans doute, face à ces incertitudes, la sagesse recommande-t-elle une dose de pragmatisme et la méfiance vis-à-vis des choix les plus extrêmes.

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En conclusion, la réflexion éthique doit se poursuivre activement, mais malheureusement dans un contexte quelque peu incertain. Quelques diagnostics sont aujourd'hui permis, notamment sur l'importance de la gouvernance de la mondialisation et sur l'opportunité pour cette gouvernance de tenir compte de ce que le degré de maturité financière varie beaucoup d'un pays à l'autre. Mais prétendre trancher avec sécurité en émettant des recommandations catégoriques serait dans bien des cas inconsidéré.

<sup>18</sup> Afin que ma remarque ne soit pas mal interprétée je précise: je considère l'ensemble des théories existantes comme constituant une source essentielle de connaissance sur les phénomènes économiques. Mais il faut utiliser cette source à bon escient et de façon appropriée. Pour les problèmes complexes examinés dans cette note elle n'a aucune implication directe qui puisse être énoncée en un ou deux principes simples.

## SOME CONSIDERATIONS CONCERNING ETHICS IN FINANCIAL GLOBALISATION

JOSÉ T. RAGA GIL

First and foremost I would like to start by both thanking and congratulating Prof. Malinvaud for his very perceptive ethical reflection on a subject as complicated as international financing, in the context of the freedom of movement of capital and in a world where great inequalities between countries exist. Accordingly, the purpose of this paper is to recognize the content of his presentation, while adding one or two thoughts which, if they serve any purpose, it will be merely to support the ideas expressed in the main document.

Adopting the classification of countries that Professor Malinvaud uses in his excellent contribution, one which I fully agree with, I will focus on the financial flows to developing nations, above all those poor countries where the problem facing us exists most starkly. I will not therefore refer to industrialized countries, since I consider that the contractual relationship, both as regards giving and receiving financial resources, takes place between equal parties, even where such a relationship is between a given state and an international body like the International Monetary Fund or the World Bank. That relationship, on the basis of equality and the great number of financial opportunities that often exist between industrialized countries, makes those ethical problems in the contractual relationship, a particular cause for concern for the Church and the Academy, of little importance.

The problems arise when we turn to poor countries, that have poorly developed financial structures, where indeed they exist at all, and therefore find it very difficult to gain access to wide financial markets where they can defend their interests, choosing between various alternatives. Countries that, moreover, urgently need to escape from the poverty in which they are ensnared, having to face the challenge of being in a weak-



er bargaining position, which, in most cases, will lead them to accept contractual conditions that damage their economies, obliging them to continue in the so-called poverty spiral.

We underline this inequality between the parties, that exists between lender countries (industrialized countries and international financial bodies) and borrower countries (poor countries), because, in these cases, as is laid down in the Social Doctrine of the Church, freedom to contract is not sufficient to guarantee justice in the conditions of such contracts. On this point, Pope Paul VI said:

... if the positions of the contracting parties are too unequal, the consent of the parties does not suffice to guarantee the justice of their contract, and the rule of free agreement remains subservient to the demands of the natural law ... an economy of exchange can no longer be based solely on the law of free competition, a law which, in its turn, too often creates an economic dictatorship. Freedom of trade is fair only if it is subject to the demands of social justice.<sup>1</sup>

Here then is the root of our concern in a world where, not without certain fallacies, the flag of freedom is draped over intentions that would not meet the lowest standards of justice or are even consistent with the freedom that is proclaimed.

#### *An initial distinction*

When we refer to international financing and, above all, when we consider this scenario of inequality, it is worth distinguishing between financing directed at the productive sector (which can be broken down between financing for activities in the private and in the public sector) and that which is carried out, generally directed at the public sector, to finance the public activities of the government of a country.

In the *financing of productive activities*, above all if they are carried out in the private sector of the economy, there are, in principle, less ethical concerns. The first reason for this is that the parties that have negotiated the loan have done so, even from a position of inequality, in such a way that situations of alarming injustice are usually eliminated. In some cases, this is because they are multinational entities, with their bargaining power, which receive the loans, while in others, in loans to small local entities, it is

<sup>1</sup> Paul VI, Encyclical Letter *Populorum Progressio*, 26 March 1967, n. 59.

because, despite their size, such entities often have alternative sources of financing where the social purpose that the resources in question aim to support is a very significant factor (take, for example, the experience of microcredits in countries with limited business financing).

In addition, the Church itself has approved of the function of capital used to finance productive activity. In the words of Pius XI,

... the investment of superfluous income in developing favourable opportunities for employment, provided the labour employed produces results which are really useful, is to be considered ... an act of real liberality particularly appropriate to the needs of our time.<sup>2</sup>

This statement by the Pope, in a year – 1931 – when the effects of the Great Depression of 1929-30 were taking a heavy toll in terms of unemployment and where there were few grounds for hope for a better world, still holds true at the start of the twenty-first century, when much of mankind is still without the prospect of work and submerged in poverty.

The Social Doctrine of the Church therefore clearly distinguishes in this case between finance destined to aid productive activity and that whose destination is not known. Moreover, the requirement is not limited to the destiny of resources; rather, it includes two additional ethical requirements: on the one hand, that the production of goods be of those that are useful for people; and on the other, that the investment financed tends to increase the prospects of paid work. The first requirement could be considered today as the production of goods that are commercially justifiable (that is, those that aid human existence, without jeopardising their dignity), while the second would refer particularly to labour-intensive – rather than capital-intensive – productive activities. This situation coincides with the possibilities offered by an economy where education is rudimentary and the workforce is therefore poorly skilled.

In a similar way, the Vatican Council II stated that:

The distribution of goods should be directed toward providing employment and sufficient income for the people of today and of the future. Whether individuals, groups, or public authorities make the decisions concerning this distribution and the planning of the economy, they are bound to keep these objectives in mind. They must realise their serious obligation of seeing to it that provision is made for the necessities of a decent life on the part of individuals

<sup>2</sup> Pius XI, Encyclical Letter *Quadragesimo Anno*, 15 May 1931, n. 51.

and of the whole community. They must also look out for the future and establish a proper balance between the needs of present-day consumption, both individual and collective, and the necessity of distributing goods on behalf of the coming generation.<sup>3</sup>

That does not mean that, given this state of things, the organization of production has to threaten the dignity and interests of workers and, in general, of those countries labelled as 'poor'. On the contrary, it should be considered as an intermediate state of affairs, which leads to an enrichment of capacities, skills and knowledge that will permit an advance to a more developed state. The threat to the dignity of the worker, on the other hand, is always unacceptable. This is established in the doctrine laid down by, among others, Pope John XXIII, who stated that,

... if the organisation and structure of economic life be such that the human dignity of workers is compromised, or their sense of responsibility is weakened, or their freedom of action is removed, then we judge such an economic order to be unjust, even though it produces a vast amount of goods whose distribution conforms to the norms of justice and equity.<sup>4</sup>

Although experience undoubtedly shows that the conditions of financing of public sector productive activities differ from those applying to the private sector, we shall not at present differentiate them, since this would lead to unnecessary divisions. In any event, there are wider differences within public sector financing, not connected to productive projects, and that are controlled by the lender, including, naturally, the financing of transport or communication infrastructures, so necessary for development and, of course, those related to education, health and so on, that are vital for an organized and dignified life.

*Financing of the public sector* that is unconnected to controllable productive projects is especially worthy of consideration. This is because of the onerous conditions often attached to such lending, where 'onerous conditions' means those that are more stringent than normal market conditions, and that, accumulated over time, end up constituting an unbearable burden on the borrowing countries.

In many cases, the loan is granted when there exists more than reasonable doubt about the ability to repay it. Such doubt is already present

<sup>3</sup> Second Vatican Council Pastoral Constitution *Gaudium et Spes*, 7 Dec. 1965, n. 70.

<sup>4</sup> John XXIII, Encyclical Letter *Mater et Magistra*, 15 May 1961, n. 83.

because of the very nature of the borrower (countries that are classified as 'high risk'), but it is aggravated by the high interest rates applied to the loan which reflect, it is said, the probability that the debtor country will be unable to pay. In short, a premium is applied to the market rate of interest that, drawing an analogy from insurance theory, covers in an actuarial sense the probability of the risk of failure.

It is clear that even if we are to accept the reasoning behind the additional interest rate, we cannot ignore the problems that this high cost of capital entails when financing works of infrastructure or service, or the simple general expenditure of public authorities.

We must add to this the volatility of governments of poor countries, for whom indebtedness is not seen as a problem because they will not be faced with the responsibility of having to pay back money borrowed, and who view accumulating debt as almost an objective per se, rather than a difficulty. The problem may be aggravated even further, if such lending occurs at a time when there is a surplus of financial resources on the international market, as happened in the second half of the 1970s and the beginning of the 1980s.

Foreign debt is a burden that creates insoluble problems for those countries that suffer it. This is why the voice of John Paul II has been heard, stating that:

At present, the positive efforts which have been made ... are being affected by the ... unsolved problem of the foreign debt of the poorer countries. The principle that debts must be paid is certainly just. However, it is not right to demand or expect payment when the effect would be the imposition of political choices leading to hunger and despair for entire peoples. It cannot be expected that the debts which have been contracted should be paid at the price of unbearable sacrifices. In such cases it is necessary to find ... ways to lighten, defer or even cancel the debt, compatible with the fundamental right of peoples to subsistence and progress.<sup>5</sup>

This call could not be more timely, particularly when creditor countries and international financial bodies, that know the financial world well, are aware from the outset that paying back such loans will be difficult, particularly if they are in a strong, stable currency and the debtor country has a fragile, volatile currency. Such attitudes, rather than favouring debtor

<sup>5</sup> John Paul II, Encyclical Letter *Centesimus Annus*, 1 May 1991, n. 35.

countries, prevent them from developing and entering the developed world, rendering them incapable of benefiting from the advantages that a wide and free market could have on the movement of financial resources.

It is for this reason that rich countries have a particular responsibility towards their poorer brethren, a responsibility to help them to integrate into the world economic community.

Stronger nations must offer weaker ones opportunities for taking place in international life, and the latter must learn how to use these opportunities by making the necessary efforts and sacrifices and by ensuring political and economic stability, the certainty of better prospects for the future, the improvement of workers' skills, and the training of competent business leaders who are conscious of their responsibilities.<sup>6</sup>

In this responsibility, a specific appeal is made by the Second Vatican Council addressed to the richest nations:

In financial transactions they should beware of hurting the welfare of their own country or of the countries. Care should also be taken lest the economically weak countries unjustly suffer loss from a change in the value of money.<sup>7</sup>

In addition, an examination of the actual state of events is highly instructive as regards this series of problems. The high indebtedness of developing countries has not been matched by the creation of wealth or the growth of availability of productive, transport or communication infrastructures. Not even the parity of their currencies compared to the currencies in their real economic world has been reinforced and stabilized. In other words, without going into more detail at present, it can be said that the financing of the public sector in its widest sense but particularly that which is not related to specific projects that are controllable by the financing entity, far from being an economic or social advantage for the debtor country, ends up being a burden that is enormously difficult, if not impossible, to bear.

This statement reminds us of the appeal made by Monsignor Mendes de Almeida, at that time President of the Bishops' Conference of Brazil, who within an international symposium, in the presence of a number of multinational companies from different productive sectors and also in the presence of various banks and financial entities, requested that they all returned to Latin America, bringing investment and technology to improve

<sup>6</sup> John Paul II, Encyclical Letter *Centesimus Annus*, 1 May 1991, n. 35.

<sup>7</sup> Second Vatican Council, Pastoral Constitution *Gaudium et Spes*, 7 Dec. 1965, n. 70.

the living conditions of its people, while at the same time issuing a warning, mainly to financial institutions, that any financial loan be made in the private sector, *never* to the public sector, for the reasons set out above.<sup>8</sup>

### *Certain fallacies*

Naivety, which is typical of childhood or even adolescence and a sign of hope in such phases of life, can be disastrous if it is the trait of those who have to manage public assets or those who have in their hands the task of rationally and efficiently allocating scarce resources for different ends among the great human family, particularly if we consider that the ones who suffer most are the ones that have the least.

For this reason, the repetition of fallacious arguments that cannot stand up to any rigorous examination in the context of responsible decision-making is a clear example of social irresponsibility, incompatible with ethical reflection based on Christian principles, as exists in the Social Doctrine of the Church. This is particularly so if the decision-making in question aims to alleviate situations of poverty, that in many cases are alarming, reducing the enormous gap between rich and poor that constantly causes the Christian conscience so many problems.

When the fallacy, which can be understood to mean the deception or lie used to cause harm to another, is applied against those that lack almost everything, against those who, like Lazarus, wait outside the banquet hall before picking up the left-over crumbs, those that enjoy the feast have a responsibility that cannot be denied. Building a theoretical world which has little to do with reality, in order to apply the so-called rules of the game so as to enjoy privileges that marginalize the most needy, is tantamount to building models on the foundations of evil. Nothing good can come of this asymmetry, of this egoism and deception, for humanity. All it leads to is a predominance of conflict and aggression.

### *Market freedom*

According to the texts currently in force and the treaties that regulate international bodies and relations, market freedom has become accepted as

<sup>8</sup> Speech of Mgr. Mendes de Almeida in the Symposium on 'Multinational Enterprises and Investments in Developing Countries', UNIAPAC, Wolfsberg (Switzerland) 17th to 19th May 1989.

the indisputable way of guaranteeing, so it is said, a greater degree of efficiency in the international employment of resources. The claims made are taken even further. Thus, it is now said that the problem of underdevelopment is precisely due to the lack of universality of such freedom or, what amounts to the same thing, obstructions of such economic freedom in poor countries.

Previously in the GATT, and now in the WTO, considerable advances have been made in dismantling tariff barriers that reduced freedom in international trade. International finance has become ever more streamlined; financial resources flow effortlessly from one market to another, thus demonstrating an aspect of transparency and freedom that has little to do with reality, as also occurs in product markets.

Now is not the moment to become involved in a debate about the goodness of the classical and neoclassical models with respect to the objective of economic efficiency and its improved capacity to generate income and wealth, other things being equal. We are even prepared to accept that in optimum conditions the market exercises its distributive function and that, through the natural incentives that the market provides, it is capable of improving the living conditions of the poor in a more efficient manner than when this objective remains in the hands of the state.

What we will analyse here is this: the fallacy of freedom. What we call freedom, in the markets for both goods and financial resources, appears to be threatened by protectionism in the former and preferences in the choice of debtors in the latter. Those countries that claim to enjoy the greatest amount of freedom – the Member States of the European Union and the USA – are in fact those that close their markets most quickly and most effectively when they believe that their products may be damaged by imports. Consider the scandalous example – albeit not the only one – of the market in agricultural products in both cases.

From the perspective of honesty, and without needing to call on arguments based on ethics and solidarity, since these must be considered after those concerning justice have been fulfilled, the question that needs to be addressed is this: what is the point of the productive and financial efforts of all developing countries as producers of agricultural goods – banana, pineapple, papaya, mango, sugar, cocoa, coffee and so on – when they find that rich countries have closed their markets to such products, in order to protect their products or rather, put more crudely and more cruelly, the income of their farmers from those who work in poor countries?

We advise them, with great expertise, to make every effort to achieve a balance of payments and to prevent their trade relations with foreign coun-

tries from deteriorating. This task is difficult to achieve when, faced with the rigidity of oil imports and those of industrial and manufactured products of rich countries, markets where demand for their products exist remain inaccessible for those who simply hope for an opportunity.

In the light of this, the developed world continues unchanged, preaching about the virtues of freedom, about a model that it has created with efficiency rather than solidarity in mind, a model that it is not even prepared to support when it sees some domestic interest – which, on occasions, is simply electoral interest – to be endangered.

Before promoting solidarity, which is also necessary, we must first satisfy the need for justice. Justice in this case clearly means respecting the rules of the game that, in the context of globalisation, have been designed by the rich countries themselves, emphasizing the efficiency advantages that we expect from them. We must start trying to satisfy, for requirements of world order, the old legal principle of *pacta sunt servanda* – agreements must be kept. Once this principle is guaranteed, then we can act on the basis of solidarity; otherwise, we run the risk of confusing attitudes, calling something virtuous when it does not even fulfil the requirements of fair behaviour.

#### *Governments and the common good*

Believing that all governments are committed to the common good of the people, that is, the well-being of each and every one of a country's inhabitants, is an expression of naivety. Such naivety deserves be punished in cases where the government is controlled by bloody dictators that subject society to their will, denying them their natural inalienable rights, governing for the enrichment of themselves and their families and those close to them who helped them to remain in power.

Financing these governments, alleging that the international financial system cannot become involved in the internal problems of each country is pure hypocrisy that conflicts with the Christian message. It is obvious that such financing will have no beneficial effect at all for such a society, which, moreover, becomes indebted, thus limiting its prospects of future growth. It is clear that if the effects of financing end up being noticeable at all, it will be in the purchase of arms which the dictator will use to punish increasingly his own people. The innate corruption of these financial agreements should prevent them from ever being entered into, as indeed they are not in the developed world.



The concept of honour, the basis of the principle of financial activity that is summed up in the scrupulous fulfilment of obligations entered into, amongst others the very objective of the financing, appears to have been forgotten, as is clear from the number of cases that exist of the financing of corrupt governments. Without reducing at all the responsibility of the recipient of the financing, he who grants it is not free of blame either.

We should recall the papal doctrine of Pope Pius XI, where he considered the use of capital to provide opportunities for paid work to be a commendable sign of freedom, provided that such work is used to produce goods that are useful for the community. Conversely, we can say that capital used to feed corruption springs from corruption itself. And here euphemisms have no place.

#### *A doctrinal appeal*

John Paul II has expressed the point eloquently:

... one must denounce the existence of economic, financial, and social *mechanisms* which, although they are manipulated by people, often function almost automatically, thus accentuating the situation of wealth for some and the poverty for the rest. These mechanisms, which are manoeuvred directly or indirectly by the more developed countries, by their very functioning favour the interest of the people manipulating them. But in the end they suffocate or condition the economies of the less developed countries. Later on these mechanisms will have to be subjected to a careful analysis under the ethical-moral aspect.<sup>9</sup>

It is clear that the problem does not reside in the mechanisms, but rather in the people that designed them or now manage them for their own gain and to the detriment of the most needy. Unfortunately, examples abound of attitudes that, far from extolling man, humiliate and degrade him. Because

... among the actions and attitudes opposed to the will of God, the good of neighbour and the *structures* created by them, two are very typical: on the one hand, the *all-consuming desire for profit*, and on the other, *the thirst for power*, with the intention of imposing one's will upon others.<sup>10</sup>

<sup>9</sup> John Paul II, Encyclical Letter *Sollicitudo Rei Socialis*, 30 Dec. 1987, n. 16.

<sup>10</sup> John Paul II, Encyclical Letter *Sollicitudo Rei Socialis*, 30 Dec. 1987, n. 37.

Profit and power: ingredients that often form part of the conditions of an asymmetric market and, of course, largely shape the attitude of the corrupting party and that of the corrupted in international relations.

Perhaps for this reason once again it is instructive, however hard it may be for modern ears, to start using again terms that apply to any epoch of life and, therefore, also to a financial scenario of globalisation such as the one we are now considering. In the words of John Paul II:

*Sin* and *structures of sin* are categories which are seldom applied to the situation of the contemporary world. However, one cannot easily gain a profound understanding of the reality that confronts us unless we give a name to the root of the evils which afflict us.

One can certainly speak of *selfishness* and of *shortsightedness*, of *mistaken political calculations* and *imprudent economic decisions*. And in each of these evaluations one hears an echo of an ethical and moral nature.<sup>11</sup>

It is this moral resonance which justifies and underpins the valuable contribution given by Prof. Malinvaud.

<sup>11</sup> John Paul II, Encyclical Letter *Sollicitudo Rei Socialis*, 30 Dec. 1987, n. 36.

## GLOBALISATION MAY SERVE THE MAN

BEDŘICH VYMĚTALÍK

Globalisation evokes increasing fear, the number of its adversaries seems to be growing. Current problems of the world economies – often perceived as consequences of globalisation – support these tendencies too.

The economic recession that has been affecting these last years both American and West-European economies, financial crises gradually and repeatedly produced in various parts of the world bringing drastic consequences upon the standard of living of the population in the affected countries – all that seems to justify any anti-globalisation fight in the view of its adversaries.

Critical remarks mainly highlight the following facts:

- 1) Actual globalisation only serves a small group of winners while the number of the defeated is growing,
- 2) Decisions are influenced by multinational enterprises and financial markets, and realised outside the framework of democratic processes,
- 3) Decisions mostly encumber social justice as well as the environment without any respect for man,
- 4) The evil fruits of globalisation – evil, criminality, violence – are becoming more visible,
- 5) The largely deregulated financial system becomes incomprehensible, unstable, without the necessary rules; it enables the rise of duty-free capitalism, which makes profit even from crises all over the world and at the same time brings poverty and income deflation to many underdeveloped countries.

After the crisis in Malaysia, George Soros – one of the protagonists of the financial capital – openly said: 'There is something wrong with the market if an individual like me can damage the financial system of the whole country'.

But globalisation itself cannot be found guilty of that. Globalisation by itself is not good or bad. It depends on the way people cope with it. Globalisation may serve the man, too.

Of course, certain rules and certain limits are to be supposed. They can usually give positive results in a long-term perspective, and obviously they are not the interest of those seeking benefits in the current situation.

The glorified shareholder value – prevailingly perceived as an immediate maximum profit without any respect for long-term consequences – therefore seems to be far more attractive. Furthermore, if nowadays the financial world loses the link with the goods and services exchange and if it tends to be transferred into the sphere of speculations, then it is easy to understand that the character of such speculations itself excludes any long-term perspective.

Therefore, pessimists are convinced that a change may only be provoked by a big crisis, the result of which – in the interest of its own salvation – shall be a change of ‘the rules of play’.

Optimists speak about the necessity to create a global world order taking into consideration all people. Especially in the financial area a need for a new world financial architecture is generally recognised. But it is not clear how to achieve it. Ideas such as a world central bank, world insurance or even the well-known Tobin tax are being repeated as evergreens without any effective result. Suggestions to establish world rules for procedures in the case of state bankruptcy are not being considered as serious.

The world ostentatiously glorifying egoism as a way to success meets with little understanding of any effort to observe ethical rules or even solidarity (although extremely needed).

Outside any attention is also the fact that, in the economies of many countries, out-of-date and no longer effective approaches are still accepted, furthermore increasing the gap between poverty and wealth. The American economist *Robert Reich* in his well-known book *The Work of Nations* (Alfred A. Knopf, New York 1991) speaks about the ways of out-of-date, obsolete, old-fashioned thinking. Replacing such ‘ways’ with other ones – modern, positively contributing to both wealthy and poor people – might be the first generally acceptable step which could help to achieve an initial consent for seeking ways towards a globalisation which is a servant of mankind.

Let me present several examples:

1) Nowadays it is generally accepted and recognised that human knowledge is the decisive source of growth of wealth in the present world. Work as its practical application is becoming the decisive factor of success in world competition. Uncertainty dominating the present labour

world, the threat of discharging people from their work even if they are qualified specialists – all this is not in favour of optimum success in world competition. Sooner or later it will be indispensable to seek new alternatives with more benefits for man.

2) The pressure to decrease salaries or even to transfer production into countries with inexpensive labour force is generally considered as a possible way to improve economic results or even to 'recover' enterprises. This is true in a short-term perspective or to a very limited extent only. In a long-term context or on a global scale – if no alternative income sources for potential clients are found – such an approach obviously results in a decreasing effective demand. The long-term economic perspective is endangered.

3) It is also generally accepted that productivity growth makes it possible to dismiss people out of the working process without any possibility for them to find new employment. Within a measurable space of time only the fifth part of the population able to work should ensure the needed quantity of goods for everybody. Step-by-step discharging of employees is considered unavoidable and fatal, and in this opinion mankind has to look for other ways of survival. But this opinion is rather one-sided. In the collection of lectures presented at the symposium in Bonn in 1997 published by Prof. Arthur Utz under the title 'Massive Unemployment and the Economics Order' (A.F. Utz: *Die massive Arbeitslosigkeit und die Wirtschaftsordnung*, Duncker & Humblot, Berlin 1998) an interesting comparison is presented between productivity and employment growth in Germany and in the USA in the years 1961 – 1995. In Germany productivity increased in the course of 35 years by 154% whereas in the USA only by 54%. Germany was oriented to rationalisation investments, the USA much more to increasing production capacities. 90% of the growth of German production was covered by existing workers whereas in the USA just by one third of them. The system accepted in Germany managed to decrease the employment rate, whereas and on the contrary in the USA the production capacities extended and the number of working positions increased. The considerations concerning the end of labour possibilities seem to be at least premature. The possibilities of increasing investments in new fields, especially in the environmental area, alternative energy sources etc. are not at all exhausted, and the first enterprises to use these possibilities will undoubtedly gain competitive advantages.

4) Another idea is also broadly accepted: the idea of the need to limit taxation of wealthy people in order to make it possible for them to spend more on investments and thus to support economic development, and at

the same time the need to limit public expenses and thus reduce deficits of the state budget. A large political party in the Czech Republic even proposed to forbid deficit budget by law.

In Professor Robert Reich's view, nowadays such ideas are no longer valid. The free movement of capital all over the world makes the former liaison between savings level and capital price weaker and weaker. On the contrary, public expenses in the education system and in an up-to-date infrastructure are a really significant factor able to attract investors and to create relatively good labour positions.

5) I could give you more examples where a re-evaluation of the existing approaches may benefit both the economies and man.

At this time it seems problematic to make suggestions for creating a specific form of global order by putting away or at least moderating existing problems. The experience of the former League of Nations or the United Nations is not too encouraging, and it does not provide too much hope of achieving a global agreement, either. Furthermore, there is a fear of an eventual totalitarian world rule. The ideas of a democratic co-operation are in general unrealistic in the world where egoism and ruthlessness are manifested.

Maybe, some positive solutions could be achieved with the help of the experience acquired in the creation of the European Union, and maybe the origin of similar blocks built from below on democratic principles could lead to a certain form of a global co-ordination.

Anyway, it is nowadays possible to use in a positive way many possibilities presented by the globalisation process, in the first place to stop extending the gap between poverty and wealth.

It may be dangerous not to respect these possibilities. It may even be a mortal distress to omit this key problem in the present society whose life is based on an unavoidable growth of consumer demand.

In this sense, some of the positive possibilities were shown in the past years in the USA by creating a large stratum of 'employed capitalists'.

If it is possible to renew successfully the confidence lost as a result of accounting frauds and corruption affairs, to introduce more efficient measures against further plotting, to achieve share prices corresponding to real values, to overcome current critical phenomena in the world economies, and especially to find appropriate forms to improve the standard of living of the population (maybe not directly connected with salary growth), then all these may be considered significant steps to use the changes caused by the globalisation process for the benefit of man.

# TOWARD A FEW ETHICAL PRINCIPLES FOR THE GOVERNANCE OF FINANCIAL GLOBALISATION

HANS TIETMEYER

## I. GENERAL REMARKS

Like E. Malinvaud I am of the opinion that the Church could formulate some ethical principles for the governance of financial globalisation. It would in my view, however, be necessary to restrict such a formulation to some fundamental and general orientations and to avoid detailed comments on procedural and institutional solutions. Although I personally support the general line of Malinvaud's note a statement by the Church should not go as far in addressing the procedural and institutional problems and giving concrete answers to his detailed and mostly appropriate questions.

## II. SOME COMMENTS TO THE CONTENT OF THE INDIVIDUAL CHAPTERS

### II.1. *What would just finances be?*

I agree: The settlement of financial contracts as well as their implementation must always be done in a fair way by both partners. Taking advantage of the naivety or distress of one side would run against the principle of fairness. And in this context: Accurate information is of crucial importance. Precise information for financial development is, however, in many cases very difficult, because of the often long time horizon and the potential impact of unforeseeable events. So certain risk-premiums are in financial markets normal and appropriate. It is true – as Malinvaud mentions – that strict adherence to the terms of the contract can in special cases be unfair. The reference to the term 'natural justice' in comparison to 'legal justice' can, however, open the door for misuse too. In my view we should be very cau-

tious with such a counterbalance. On the other hand I agree with his ethical condemnation of an artificial creation of risks or an artificial gambling, especially in cases where both sides do not have the necessary expertise.

I also fully agree that appropriate transparency and information duties are of crucial importance for the proper functioning of today's financial markets, which due to the growing use of securities and risk-splitting are becoming more and more anonymous. Because of the fast growing internationalisation of these more and more anonymous financial activities and institutions national rules and laws and their national execution are no longer enough. Rules must increasingly be executed also at the international level via international cooperation of national authorities. For this purpose the development of common standards and the international cooperation of supervisors and jurisdiction-authorities are of growing importance.

## *II.2. The trend carrying on to financial globalisation*

To the historical development I would like to make only three short comments:

- The collapse of the fixed-exchange-rate system of Bretton Woods was mainly the consequence of divergent macroeconomic policies in the most developed industrial countries. Flexible exchange rates are unavoidable as long as this can and likely will happen in future too.

- Also in Europe the policies of the EU Member Countries diverged often seriously till the beginning of the nineties. After full liberalisation of capital movement as a consequence of establishing the so-called 'internal market' and the growing willingness of countries to give up monetary sovereignty the decision to move into an Economic and Monetary Union was taken by the Maastricht Treaty. With the move into this Union the EMU Countries transferred a substantial part of their national policies to the supranational level in Europe.

- The grouping of countries into three groups (industrial countries, poor countries and emerging countries) is not without problems. There are not only huge differences within the groups, there can also be big changes over time.

## *II.3. Financial globalisation between industrial countries*

I am convinced: The future of globalisation will bring new dimensions of problems for the financial markets in the industrialised countries too as we can see already today.



In the past the financial markets of the industrial countries were mainly faced with exchange-rate volatilities. Besides this sort of volatility the industrial countries might be faced more and more with another dimension of problems on their financial markets. The growing internationalisation and dominance of securities has produced – as already mentioned – a much broader anonymous risk-distribution. On the one hand this development reduces a lot of direct risks between the real economy and the directly involved financial institutions. On the other hand the worldwide distribution of risks increases not only the potential for contagion effects; it can also enlarge worldwide uncertainties and multiply negative sentiments in critical periods.

To avoid such effects in the future precautionary activities in the following areas are of the utmost importance:

- Monetary policy especially in the leading countries must do better than in the past to hinder the development of bubbles on the financial markets.
- All countries must develop efficient supervision systems including efficient transsectoral and transnational cooperation. I share Malinvaud's view that there should be no room for exempt zones.
- Of crucial importance is in all countries an appropriate transparency on behalf of the private sector as well as of the public sector.

#### II.4. *'Poor Countries' in the global finance*

The so-called 'poor countries' are not only differing in their economic status but also in the origins and causes of their poorness. Besides climate, natural resources, traditions, education, heritages of colonisation and so on, very often also the lack of appropriate governance and political leadership is playing a big role.

Public and private aid via transfer of capital and the help of individuals or groups is in most cases necessary and the Church should encourage such help. But this of course is not enough. The countries themselves must also create conditions for attracting private capital from outside. Foreign Direct Investment (FDI) can and must play an important role in economic development too. It will do so, however, only, if there is inside the country appropriate and realistic governance based on reliable rules. The same has to be said for debt forgiveness. Even the HIPC-Initiative of the IMF and World Bank can only contribute to more and lasting wealth for the people if the freed resources are used in a really productive way. Debt relief is clearly not a panacea. It is true, the Monterrey Consensus has published a lot of well drafted theses. But words alone cannot help very much.

One point seems to me very important: The poor countries as well as many emerging countries need more access to the markets for agricultural products in the industrialised countries. Without a better division of labor also in this area it will be very difficult for poor countries to stimulate and improve their economic development.

## II.5. *Difficulties peculiar to emerging countries*

Most of the financial crisis faced by the emerging countries in the eighties and nineties had indeed – as Malinvaud rightly points out – one important origin in the fact that the domestic financial systems were not sufficiently prepared to face the consequences of an early opening to the international markets.

Besides this fact there was, however, in most cases also another deficiency: I mean too rigid or too long a fixation of the exchange rate to the dollar or another world currency. I have been many times a critic of the IMF for recommending at the same time full liberalisation of capital movement and the fixing of the exchange rates. Fixing the exchange rate can borrow for some time credibility on the markets. But this borrowed credibility must be replaced in due time by building up one's own credibility. If this is not the case, the fixing of the exchange rate can end in collapse.

No doubt, emerging countries need enough inflow of capital. But taking into account the risk of collapsing this inflow should not be based and stimulated by a fixing of the exchange rate on an artificial base. Between full floating and rigid fixing of the exchange rate there are also solutions in between: Gradual adjustments, basket orientations, wider bands and so on, probably combined with some indirect influence on capital movements (as for example Chile did).

## II.6. *Toward an ethical framework for emerging countries*

I support fully the ethical requirements mentioned by Malinvaud for the residents (households and firms) and for the national authorities in the emerging countries.

As far as the international financial institutions (IFIs) and their activities are concerned we should not underestimate the reform steps already undertaken in the last years. The new MD of the IMF, Horst Köhler, presented a year ago an interesting paper at a conference in Washington on 'Humanising the Global Economy' sponsored by the Canadian, the Latin-American and

the US Conference of Catholic Bishops. In this paper he commented on the lessons learned by the IMF and elaborated on the reform-process and the changes already undertaken in the activities of the Fund. Besides these reform activities inside the IMF one should not underestimate the work of the Financial Stability Forum (FSF) established by the G7.

Of course there are still weaknesses in the global governance of financial markets and the international institutions especially in the area of formal legitimacy. It is, however, important not to put the effectiveness of decision-making in the international institutions and informal cooperation circles at risk. The experience with the UN procedures is not encouraging.

It is difficult to select the right themes in this area for a possible statement of the Church. I agree with Malinvaud: There would be no problem in endorsing the Camdessus condemnation of unscrupulous behaviour which hinders the transparency of markets. There is in my view also no problem in underlining the need that loans to the emerging countries should be based on fair conditions. But can the Church really comment on appropriate expiry dates, interest rates, currency selection, negotiation and execution procedures and so on?

Besides some general comments on what fairness in this area means, I see here a chance for giving more detailed orientations to the following points.

I have personally supported for a long time the inclusion of 'Collective Action Clauses' (CACs) in bond contracts for negotiation in case of serious difficulties faced by the borrower. I am happy to see that this idea is now gaining support not only by the political authorities but also by the banking community. Extending such a negotiation clause to any unforeseen change in business conditions could, however, open the door for undermining almost every contract.

The other point which is not mentioned in the paper is the 'Sovereign Debt Restructuring Mechanism' (SDRM) – a Chapter 11 – like solution for sovereigns proposed by Ann Krüger. In the meantime it has become clear that this proposal is not only opposed by most banks in the industrialised world but also by most of the emerging countries themselves. They fear that such a mechanism could undermine their credit standing and could produce even higher interest burdens for them. Without their consent I do not see a realistic chance for an approval of such a mechanism.

As regards the two most important criticisms on principles inspiring the policies applied by the IFIs – mentioned by Malinvaud – my short comments are as follows:

– On the unconditional demand for full freedom of capital transactions I have already made my reservation. However, there is no simple alterna-

tive in the direction of more official control. Freedom of capital movement is clearly a benefit if appropriate conditions are there.

– As far as the demand for balancing the budget is concerned, there is also not a simple answer. If there were an undisputed definition of ‘structural deficit’ or of ‘financing productive investment’ I could imagine a more flexible definition of balancing the budget. A dose of pragmatism might in some cases be appropriate. However, one should not underestimate the risk of losing confidence by the investors. Regaining the confidence of the investors in a crisis situation is of the utmost importance. A positive statement by the IMF alone will not compensate for the lack of confidence.

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