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***181 SOME REFLECTIONS ON JUSTICE IN A
GLOBALIZING WORLD**

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INTRODUCTION

No one would disagree that justice is an essential prerequisite for the existence of human society qua society; it is in this sense that the ancient sage stated, “*Ubi societas, ibi jus.*” *Jus* in this context means something much more than just “the law” or “the laws” in the technical sense. On the contrary, I submit, the term *jus* in its intrinsic sense denotes the concept of “justice” and, as its incarnation, the concept of *law* rather than “*the law.*” An eminent authority on the problem of justice, John Rawls, in his majestic treatise on *A Theory of Justice*, put it this way:

Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise, laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For that reason justice denies that the loss of freedom for some is made right by a greater good shared by others. It does not allow that the sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by many. Therefore in a just society the liberties of equal citizenship are taken as settled; the rights secured by justice are not subject to political bargaining or to the calculus of social interests. The only thing that permits us to acquiesce in an erroneous theory is the lack of a better one; analogously, an injustice is tolerable only when it is necessary to avoid an even greater injustice. Being first virtues of human activities, truth and justice are uncompromising. [\[FN1\]](#) According to the contractual theory of society developed by people like John Locke, Jean-Jacques

Rousseau, and Immanuel Kant that has formed the bedrock of modern liberal democracy, society, at least in its conceptual framework of “original positions,” is a body politic that every one of its constituent members accepts as serving his own interest best on the basis that (a) it prescribes certain principles of justice which he wishes to see prevail in relation both to him and to the other members of the group and (b) it creates a system of governance that ensures best the application of these principles of justice on the basis of fairness and equality.

Thus, a well-ordered society is one in which a system of governance prevails that will ensure each and all of its constituent members what he or she possesses on his or her own based on the principle of fairness and equality. In this sense, I believe, together with John Rawls, that Aristotle's sense of justice, consisting of refraining from *pleonexia*, i.e., “from gaining some advantage for oneself by seizing what belongs to another, his property, his reward, his office, and the like, or by denying a person that which is due to him, the fulfillment of a promise, the repayment of a debt, the showing of proper respect, and so on,” [\[FN2\]](#) is not essentially divergent from this notion.

For that matter, the formulation of the concept of justice by philosophers of the utilitarian school like Jeremy Bentham and John Stuart Mill as consisting in the realization *182 of “the greatest happiness of the greatest number” should be considered to be in the same context, rather than being advocacy for a fairly simplistic application in society of majority rule in a numerical sense.

It is of course natural that each society in its actual existence, as distinct from the conceptualized ideal type of well-ordered society, may reveal different manifestations of the concrete conception of justice that reflects differences in time and space. In spite of differences in its concrete manifestations, to qualify as society, a well-ordered society has to reflect the system of values shared by society.

The point is that when we try to apply this general notion of justice in society, which prevails as normal in a domestic context, to the problem of justice in an international context, a very different picture seems to emerge.

First, there is a fundamental question of whether

the international system of today is sufficiently welded to the notion of the world as “society” governed by a rule-based order, in the sense in which the notion has been understood in the context of *ubi societas, ibi jus*. It is common knowledge that there is still a controversy about whether the world we live in is sufficiently “normative” to allow us to speak of an “international society” built on a common concept of justice that offers a solid foundation for public order based on shared values of this society qua society.

Second, within the atomistic structure of the present international system, the independent sovereign states that compose it claim to be at the same time both the representative of the public interest of this community in a norm-creating capacity and the representative of private interests of their own in a norm-receiving capacity. A French jurist, Georges Scelle, defined this phenomenon aptly when he spoke of the functions of a state in the international system as consisting in the “*dédoublement fonctionnel*,” the “duality of functions,” of the sovereign state in the international system. [\[FN3\]](#)

Given such a structural set-up of the international system, it is small wonder that even the concept of “democracy,” as a concrete institution to represent an embodiment of justice in society, tends to be a term of ambiguous significance in the context of this system. In effect, the concept of democracy in the context of international society can have totally different connotations in relation to the problem of governance, depending on whether one is talking about applying democratic principles like the principle of “the greatest happiness of the greatest number” in the context of *inter-national society*, consisting of sovereign states, or in the context of *global society* consisting of human individuals.

This essential character of the international system is at this juncture in history going through a major structural transformation. We are entering into a new chapter in the history of international relations of the modern era. The whole structure of the modern international system, centering on the principle of the supremacy of sovereign states as the essential components of international society, together with the traditional tools for managing the system, such as international law, may have to be reexamined and reconstructed in the light of a new structural transformation of the system. In essence, the basic premises of international law as a body of norms governing the system of interstate relations, established and consolidated since the time of the Peace of Westphalia, are being seriously challenged.

The most fundamental factors that are at the root of this emerging change in the international system in my view are two-fold. And it is my submission here that these factors can affect the problem of justice in international society in a significant way.

One factor is the emergence of rapidly growing reality of societal integration throughout the world, described as “globalization,” which is transforming international society qua society. This process of societal integration, which is the essence of “globalization,” has to be clearly distinguished from the traditional process of growing interstate interdependence known as “internationalization” that has been going on since the latter half of the nineteenth century. This new reality of societal integration of the world seems to be novel; it is a movement that creates activities that defy national borders and operate on a global scale, irrespective of the system of governance based on a network of national regulatory frameworks. This new phenomenon of globalization has come to create increasing challenge to the institutional framework for the management of the international system built on the principle of national partition of competence within the Westphalian legal order.

The other, equally important, factor at the root of this change in the international system is the growing awareness in the world of the primacy of human beings as individuals and the growing relevance of individuals with pluralistic values to the international system. The traditional international system, founded on the atomistic notion of a community consisting of nation states as the most basic elements of a system based on the principle of sovereign equality, is thus being exposed to a new challenge.

IDENTIFYING JUSTICE IN THE CONTEXT OF PLURALISTIC VALUES

In any sufficiently organized society, law is the instrument that endows the organic body with a basic framework for order in society qua society, based on the conception of justice that prevails in that society. However, for this order to prevail as the societal framework for stability, it has to be consolidated through concrete legal norms that represent the prevailing sense of justice that exists in that society. The complexity of this process becomes apparent,

however, when one realizes that justice, like fairness, is a concept that in its abstract form may represent an eternal and universal value in society in general but when translated into a practical norm susceptible of application, it has to acquire concrete contents that embody the society's abstract notion of justice.

*185 Thus, while the general concept of justice in any society must reflect the elements that represent a universal value inherent in society, the conception of justice as manifested in the form of concrete norms may not be totally free from the idiosyncrasies of a particular society conditioned by time and space. As a result, a concrete legal norm that is regarded as an embodiment of the sense of justice prevailing in one society may not always be accepted by another society as having the same universalist value.

History is full of examples. The problem typically surfaces at the time of ideological confrontation between two societies operating on different value systems that represent the prevailing sense of justice in those societies. For example, in the field of human rights, while everyone may agree on the point that the protection of human rights is a universal value that every human society has to uphold, the concrete contents to be identified as worthy of such protection could be widely different, as the history of the negotiations for the Helsinki Accord of 1975 between the "free world" countries and the "socialist world" countries has amply demonstrated. The ongoing dialogue on human rights between the People's Republic of China and the United States also reflects this problem, as does the controversy surrounding this issue between the world of Islam and other parts of the world.

The problem acquires special significance when we consider how concrete problems arising in today's international economic system present new implications for international public order. For example, it is quite conceivable that the normative systems regulating economic activities in two different national societies, reflecting the sense of values and the conception of justice prevailing in the two societies, come into conflict with each other in this age of active interaction between two societies through transnational socioeconomic activities.

A typical illustration of this problem can be taken from one of the most complex problems in the field of economic activities, the problem of unfair competition. Any society that is concerned with the problem will condemn unfair competition almost by definition as being contrary to its sense of social justice and of public order. At such a high level of

abstraction of the notion of justice, there will be no divergence of positions among different societies-but when it comes to determining which concrete action constitutes an act of unfair competition that society should sanction through a normative rule, the issue is much less straightforward.

It is true that in any society there is a very broad range of activities that are to be regarded as contrary to the society's sense of social justice and subject to legal sanction. It is also true that there is a fairly broad range of activities on the periphery of this problem on which some societies will take an extremely purist and rigid position, while others will show much greater leniency, at least to the extent that such activities in these societies are not punishable by law. In an extreme case, it is not inconceivable that an activity is condemned as an act of conspiracy against the interest of society *qua a body of citizens*, whereas the same activity may be positively approved in a different sociocultural milieu as an act of cooperation to protect the interest of society *qua a body corporate*.

These issues and many similar issues would not pose a serious problem to international public order so long as we lived in the classical world of the Westphalian legal order. Each nation state, as a sovereign in harmonious coexistence with other nation states on the basis of the principles of sovereign equality and nonintervention in their domestic affairs, would insist on the sanctity of its own self-contained system. Within its closed circuit of society, each sovereign government will insist that its own sense of justice in society, as reflected in its own conception of public order, prevail. However, in the brave new world we are now entering, where socioeconomic activities across national borders are the rule rather than the exception, the question of how to determine and *186 apply what constitutes justice and fairness in relation to the rule of unfair competition in a concrete case becomes much more complex.

JUSTICE IN THE CONTEXT OF INTERNATIONAL AND GLOBAL SOCIETY

The third area that requires our attention in relation to international public order is a growing dichotomy, if not a clash, between the conception of justice in human terms in an international society conceived of as a global community and the conception of justice in sovereign terms in an international society conceived of as an interstate

community.

Justice in society in relation to its constituent members is a concept that can only be determined in the context of their socio-juridical status in that society. At a time when slaves were not regarded as legitimate elements of society, the problem of social justice in relation to slaves was not on the conscience of the people. In the days when apartheid was an official policy practiced as legitimate in the Union of South Africa, injustice done to the colored population in that country was accepted as legitimate within the notion of public order in that society.

In the context of international society, this would mean that the conception of justice in a given situation could vary depending on whether it was viewed primarily in relation to sovereign states as the constituent members of society in the sense of the community of nations, or in relation to individuals (or groups of individuals) as the real component elements of society in the sense of the global community. In the context of the traditional Westphalian legal order where sovereign states are the basic constituent units of society, justice in international public order as an objective to be realized has always been conceived of primarily in relation to the sovereign states.

While accepting this reality of the current international system, I believe, nevertheless, that in this age of globalization where the absolutist theory of sovereign states is waning, we should follow the approach of Georges Scelle [FNS] and conceive of the law of nations (*le Droit des gens*) as the law of people (*jus gentium*) rather than as the law among nations (*jus inter gentes*). We should pursue the objective of justice not so much in relation to sovereign states as in relation to individual people.

The problem is that with the emerging new reality in the international system, dichotomy is developing between the notion of the international community as global society with human beings as its essential components in the society sense, and the notion of the international community as international society with sovereign states as its basic components. This dichotomy can, and often does, create a tension between the two conflicting approaches to many issues in international relations. It is so because the values in the international community, which will offer the basis of the conception of justice and as such form the contents of international public order, can be divergent depending upon whether one looks at a given situation from the viewpoint of the sovereign states or that of the people involved.

In this situation of dichotomy that pervades our society all over the world, a harmonious equilibrium based on a new framework of international public order seems urgently required between the conception of justice in society as seen from the viewpoint of a state in an inter-state setting and the conception as seen from the viewpoint of a people as a group of individual citizens in a global setting. Ultimately achieving such a harmonious equilibrium should be possible, but first a system of good governance in our respective national societies has to be pursued in such a way that the legitimate aspirations of groups of people with a unifying identity may be legitimately represented and respected in the national system of governance. It means that also within these societies, the degree of autonomy that can meet the aspirations of these groups of people for self-determination is to be essential.

CONCLUSION

It is submitted by way of conclusion to this short presentation that the above discussion on international public order has demonstrated the complexities and difficulties *191 involved in dealing with the concept of justice in the context of international public order in this globalizing world.

The problem of justice on the international level as an essential ingredient of international public order can only be pursued effectively at this transitional stage in the historical evolution of the international system, through the realization of a system of global governance to be built on the basis of what I call the system of *pax consortis*, i.e., a common framework of public order in which the major players of the system try to identify the common conception of justice in a given situation at the nucleus of international public order and work together for its realization. This in turn, is possible only if we, in our respective national securities, can achieve our respective systems of good governance which will ensure people to participate in the political process of decision-making in their respective societies. By contrast, an attempt for a facile formalistic application of domestic institutions of governance that have their roots on a totally different soil, such as the numerical majority rule as the basic framework of democracy on the international level, whether applied in relation to states based on the principle of sovereign equality of states or in relation to individuals based on the size of the population on a global scale, is not going to work. Neither of these

alternatives seems to introduce a system that would ensure social justice in international society in a way that could capture the true spirit of human-based democracy in our globalizing international community.

At this transitional stage in the evolution of the international system, where no system of *global government* is in existence, what one can hope for is a new system of *global governance* that can reflect the general sense of justice within international society as a *global governance* that can reflect the general sense of justice within international society as global society of humankind. Such a system of global governance is possible, at this stage of evolution of the international system, only on the basis of the consensus of all the major players of the traditional international system. It is an essential condition for the success of such a system of global governance, however, that these major players work together in full consciousness of their responsibility for consolidating international public order, transcending their particular interests as individual sovereign states. I firmly believe that the consolidation of a common conception of justice on a global level through engaging in the practice of such system of global governance is the key to meeting the many challenges raised in this presentation.