Encyclopedia of Globalization

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were cosmopolitan in the past, and how different cosmopolitanisms existed before and despite Westernization.

It is possible, then, that what we are witnessing today is a cultural cosmopolitanism, meaning a plurality of cosmopolitan projects. In this sense, cosmopolitanism is mostly exemplified in diasporas and in transnational modes of belonging. Such expressions of cosmopolitanism can be related to what is often called "cultural globalization." Expressions of globality are evident in resistances to the culture of the metropolitan centers, and they are manifest in creative appropriations of and new cultural imaginaries that, unlike earlier cosmopolitan projects, are more present in popular cultures than in high culture. Since the advent of vernacularization—the localization of the universalistic cultures of the great civilization of the axial age—cosmopolitanism has been part of everyday life and has given animus to a wide variety of popular cosmopolitan projects. While one dimension of cultural cosmopolitanism can be associated with a particular lifestyle, there is an undeniable confrontation with the culture of the other in contemporary society. This has wider political ramifications and resonances in contemporary thought, as in philosophies as different as those of Jacques Derrida (2001) and Jürgen Habermas (1998). Despite their differences, the abiding message in all cosmopolitan philosophy is the challenge of living in a world of diversity, as well as a belief in the fundamental virtue of embracing the values of the Other.

Cultural cosmopolitanism is not fundamentally in tension with political cosmopolitanism, at least not any more than the latter is in opposition to legal cosmopolitanism. Democratization requires the recognition that there are no limits to human community, and that the polis and the cosmos are essentially interconnected. Cosmopolitanism has given expression to the utopian aspiration to transcend the immediate context of existence without necessarily deriding it in the name of an unattainable alternative.

See Also

Citizenship, Global; Civil Society; Cosmopolitan Democracy; Cultural Globalization; Global Ecumene; Universalism

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—*Gerard Delanty*

COURTS, GLOBAL

The proliferation of international courts and tribunals is one of the most remarkable changes in international law brought about by the end of the Cold War and the advent of globalization. The concept and practice of international adjudication is not new, but since the early 1990s the

number of international judicial bodies has multiplied, the scope of their jurisdiction has expanded, and the number of the cases handled and judgments rendered has grown from a few a year to a steady stream that has often had considerable impact on international relations and the life of individuals worldwide.

Compulsory settlement of disputes and enforcement of criminal law by an independent judiciary has long been recognized as a necessary requisite for society to claim to be civilized—and to be a "society" at all. At the national level, structured systems of courts routinely enforce the law following established procedures irrespective of the parties' consent.

The international community comprises independent sovereign entities that, in principle, do not recognize any superior authority. Accordingly, consent is necessary before any state or its citizens can be subject to the jurisdiction of an international adjudicative body. The problem of consent distinguishes international courts and tribunals from their domestic counterparts. It ultimately determines the structure of international judicial institutions, as well as the limits of their powers.

This structural constraint provides arguments to those who belittle the idea of international justice as a mere chimera. Such critics argue that, in the international arena, ultimately "might makes right." However, comparisons between domestic and international judiciaries are groundless because they largely assume that the final destiny of the international community is to replicate domestic institutions and distribution of power, and that, until the day the perfect world federation or government is established, existing arrangements are inadequate.

The History of Global Courts

The origin of the present array of international judicial institutions lies in arbitration. Arbitration is a method of settling disputes by way of legally binding decisions reached by one or more persons called arbitrators. The arbitral process is straightforward. Arbitrators, usually highly respected and knowledgeable individuals, are chosen by the disputing parties. Each party appoints one (or two) arbitrator(s), and the selected arbitrators together choose a further arbitrator, who usually chairs the panel. The parties also decide how the panel will go about deciding the case (the "rules of procedure") and what law they will apply to decide the case (the "substantive law"). When arbitration takes place in an international context, for instance to settle a dispute between two sovereign states, the substantive law is usually international law.

The award of the arbitral panel is legally binding for the parties, and noncompliance triggers international legal responsibility. The binding nature of the outcome is one of the elements arbitration shares with judicial settlement and that helps distinguish arbitration and judicial settlement from non-binding means of dispute settlement, such as consultation, mediation, conciliation, and good offices. The outcome of the latter means (usually called "diplomatic means") is a nonbinding recommendation that the parties have a duty to consider in good faith but remain free to implement or disregard.

Although arbitration has been practiced for centuries and in many societies, its use between sovereigns was discontinued for long stretches during the Middle Ages and the Renaissance. It was revived during the 19th century when the United States and Great Britain resorted to it to settle a series of outstanding cases arising out of the Revolutionary and Civil Wars.

The second milestone in the history of modern international adjudication is the institutionalization of arbitration. In 1899 the Hague Peace Conference adopted the Convention on the Pacific Settlement of International Disputes, which created the Permanent Court of Arbitration (PCA). The novelty of the PCA was that it provided states with a readily available list of eminent jurists who were designated by states to be chosen as arbitrators. It also provided a ready-made procedure and a permanent secretariat to assist proceedings. The PCA facilitated arbitration by reducing the practical difficulties of setting up ad hoc arbitral tribunals. The PCA, which still exists in The Hague, had its golden age in the period between the beginning of the 20th century and World War II.

The third turning point in the evolution of international adjudication, the transition from arbitration to judicial settlement, occurred in the first two decades of the 20th century.

The Permanent Court of International Justice (PCIJ), created in 1920, was the first permanent, and truly global,

Rome Statute of the International Criminal Court (excerpt)

1998

Part I. Establishment of the Court

Article 1

The Court

An International Criminal Court ("the Court") is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.

Article 2

Relationship of the Court with the United Nations

The Court shall be brought into relationship with the United Nations through an agreement to be approved by the Assembly of States Parties to this Statute and thereafter concluded by the President of the Court on its behalf.

Article 3

Seat of the Court

1. The seat of the Court shall be established at The Hague in the Netherlands ("the host State").
2. The Court shall enter into a headquarters agreement with the host State, to be approved by the Assembly of States Parties and thereafter concluded by the President of the Court on its behalf.
3. The Court may sit elsewhere, whenever it considers it desirable, as provided in this Statute.

Article 4

Legal status and powers of the Court

1. The Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.
2. The Court may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State.

Part 2. Jurisdiction, Admissibility and Applicable Law

Article 5

Crimes within the jurisdiction of the Court

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:
   (a) The crime of genocide;
   (b) Crimes against humanity;
   (c) War crimes;
   (d) The crime of aggression.
2. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.

Source: Official Website of the International Criminal Court, http://www.icc-cpi.int.

judicial institution of general jurisdiction. It could hear any disputes between two states on any international legal matter or give nonbinding advisory opinions on any dispute of question referred to it by the Council or the Assembly of the League of Nations.

States could appear before the PCIJ only if they had accepted the court's jurisdiction. They could do so either ad hoc, by concluding an agreement to submit a given dispute to the scrutiny of the court, or by inserting into a treaty a clause providing that "in the event of a dispute between the States party to this agreement, the dispute shall be submitted, at the request of any party, to the PCIJ." States could also make open-ended unilateral declarations accepting the Court's jurisdiction on any future dispute with any other state that has done likewise. (These ways in which a state can consent to international jurisdiction are largely valid in the case of other international judicial bodies.)

There were 15 judges on the PCIJ, elected periodically by the Assembly and the Council of the League of Nations. This was done in such a way as to represent the main forms of civilization and the principal legal systems of the world.

The difference between arbitration and judicial settlement is that, in the former, parties can make their own justice à-la carte, by picking the arbitrators, the procedures, and the applicable law, and by bearing all the costs of the process In the latter, however, parties resort to a permanent structure. In general, they do not select the judges hearing a particular case, nor can they shape the rules of procedure to

their own needs, and the case is decided on the basis of international law. Finally, the parties bear their own litigation costs, but the maintenance and support of the court or tribunal itself is assumed by the whole membership of the organization to which that judicial body is attached.

The PCIJ disappeared with the demise of the League of Nations, but it was refounded, with only marginal changes, at the war's end as the International Court of Justice, the principal judicial organ of the United Nations. Following World War II, the number of international judicial bodies swelled in various directions. In addition, standing was gradually expanded to entities other than states, such as individuals, corporations, and international organizations.

Types of Global Courts

In the field of human rights, the first court to be created was the European Court of Human Rights, followed two decades later by the Inter-American Court of Human Rights, and after two decades more by the African Court of Human and Peoples' Rights. These bodies adjudicate violations of the basic regional human-rights agreements, the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950); the American Convention on Human Rights (1969); and the African Charter on Human and Peoples' Rights (1981).

Regional economic integration areas, such as the European Economic Community and the Common Market for Eastern and Southern Africa, have also given birth to judicial bodies to decide disputes between member states, community organs, individuals, and companies, based on the content and implementation of community laws. Examples are the European Court of Justice, the judicial organ of the European Communities; the Court of Justice of the Cartagena Agreement, the judicial organ of the Andean Community; the Central American Court of Justice, part of the Central American Integration System; and the Economic Court of the Commonwealth of Independent States.

The need to ensure implementation of rules, certainty of law, and dispute settlement is paramount in the trade, commerce, and investment sectors, but this is a field where arbitration still plays an important role. The dispute-settlement system of the World Trade Organization (WTO) evolved out of the diplomatic means that had been employed by states party to the General Agreement on Tariffs and Trade to settle disputes. Since the creation of the WTO in 1995, the dispute settlement system of the organization relies essentially on arbitration-like procedures at the first instance, and on quasi-judicial procedures at the appellate level. The International Centre for Settlement of Investment Disputes provides a forum to facilitate arbitration, like the PCA, between investors and states, and there are also several dozens of institutions that facilitate arbitration on commercial matters in international disputes between private parties, such as the Paris-based International Chamber of Commerce or the London Court of International Arbitration.

The latest addition to the constantly growing array of international judicial bodies is the family of international criminal courts and tribunals. The first attempts to prosecute internationally individuals who have committed crimes that are of concern to the international community as a whole, such as war crimes and crimes against humanity, date back to the 20th century. Among these early attempts, the most significant were the Nuremberg and Tokyo Military Tribunals, established in the wake of the Second World War to prosecute German and Japanese war criminals. These first rudimentary experiments in international criminal justice were either short-lived or did not function as expected. They were also criticized for their military nature and the fact that legitimacy rested on the victor's right to decide the fate of the defeated enemy, rather than on law.

The division of the world during the Cold War halted international cooperation in the international criminal field. Prosecution of violations of international humanitarian and criminal law was left to domestic courts, when feasible, but such violations were largely left unpunished.

The drive to ensure prosecution and avert impunity for international crimes restarted in earnest in the years following the end of the Cold War. The creation by the UN Security Council of the International Criminal Tribunal for the Former Yugoslavia in 1993 and the International Criminal Tribunal for Rwanda in 1994 addressed many of the legal and moral issues created by the Nuremberg and Tokyo Tribunals, but it also raised new concerns about ad hoc justice. These concerns, together with the momentum

created by the new ad hoc international criminal bodies, opened the way for the establishment of the International Criminal Court in 1998.

Finally, toward the end of the 1990s and the beginning of the 2000s, a new generation of criminal-justice bodies emerged, epitomized by the Special Court for Sierra Leone. These bodies combine national and international elements, comprising both national and international judges who apply a mix of national and international laws.

The constellation of international courts and tribunals is large and constantly expanding. It comprises extremely diverse bodies that are the result of peculiar historical and political circumstances. In this field, any generalization is fraught with risks. However, it is evident that, in over a century of evolution, the purpose of international courts and tribunals has been fundamentally redefined. While at the outset they could be portrayed as cost-effective and straightforward tools to settle disputes between sovereign states, as an alternative to raw force and diplomatic chicanery, they have gradually evolved into instruments of justice. At the beginning of the 21st century, the main function of international courts and tribunals is implementing international law rather than settling disputes. Disputes might be settled as a result of this process, but this is only a welcome by-product, not the justification for their existence, as it was in the early days.

By translating abstract norms into cogent and binding reality, international courts and tribunals make global justice and become essential tools for the building of the international legal system and the furtherance of the international rule of law. They serve a community that is much larger than that of less than 200 governments. Inevitably, the narrow ambits of any given dispute are transcended. In theory, decisions of international courts and tribunals are binding only for the parties to a given case and do not create legal precedents for those who are not party to it. In reality, however, precedents do matter. International judges are well aware of the fact that every time they speak they are contributing de facto to the development of an overarching international legal order, whose subjects are not only sovereign states but also a broader international society, including individuals, nongovernmental organizations, and corporations.

See Also

Crimes Against Humanity; Criminal Law; General Agreement on Tariffs and Trade; Human Rights; International Centre for Settlement of Investment Disputes; International Criminal Court; International Law; League of Nations; United Nations Organization; World Trade Organization; DOC-69; DOC-72; DOC-73

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—Cesare Romano

Credit Cards

A credit card is, literally, a card that enables a purchase to be made on credit. There is little doubt that plastic cards, both credit and debit, have helped foster the globalization process by making personal travel and currency transactions far