TOWARDS A GENERAL ASSEMBLY OF PEOPLES: NOTES FOR CONVERSATION

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I. PREFATORY REMARKS

There can be no better site than the Widener University School of Law for a sustained conversation concerning visions of "a more democratic global system" [hereinafter briefly referred to as "envisioning project"]. Both the site and the thematic invite us to further consider the assumptions underlying each of the three key words.

The site of our conversation indicates a certain order of complexity. On the one hand, it marks the contribution of Professor Andrew Strauss, (independently as well as with Professor Richard Falk) that already envisions "democratic trans-nationalism" as a common future worthy not just of contemplation but also for engaged global social action.[1] On the other hand, it also celebrates the "genius of American law" that facilitates capital accumulation with some worldwide impact. A disadvantage of neither being a political theorist nor a corporate lawyer is that I am unable to locate in Delaware some histories of what Ulrich Beck prefers to call the emergent order of "cosmopolitan corporations" and "cosmopolitan capitalism."[2]

Even so, the site of the Symposium summons us to consider exploring, yet again, the relationship between global capital and democracy, in the vastly changed contexts of hyper-globalization and the two "terror" wars—the wars

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1. *See* Richard Falk & Andrew Strauss, *The Deeper Challenges of Global Terrorism: A Democratizing Response*, *in* DEBATING COSMOPOLITICS 203 (Daniele Archibugi ed., 2003); Richard Falk & Andrew Strauss, *On the Creation of a Global Peoples Assembly: Legitimacy and the Power of Popular Sovereignty*, 36 STAN. J. INT'L L. 191 (2000) [hereinafter Falk & Strauss, *On Creation*]; Richard Falk & Andrew Strauss, *Toward Global Parliament*, 80 FOREIGN AFF. 212 (2001) [hereinafter Falk & Strauss, *Toward Global Parliament*]; Andrew L. Strauss, *Overcoming the Dysfunction of the Bifurcated Global System: The Promise of a Peoples Assembly*, 9 TRANSNAT'L L. & CONTEMP. PROBS. 489 (1999) [hereinafter Strauss, *Overcoming*].

2. Ulrich Beck, *Redefining Power in the Global Age: Eight Theses*, DISSENT, Fall 2001, at 83, 84.

of and on "terror" and affecting the structures and processes of global governance.[3]

The three keywords of our thematic postulate at least eight "things." First, a "global system" is already in place; and it is more than a functioning anarchy. Second, it is inclusive of the presence and voice of non-state actors, which gives them all some deliberative stake in the "envisioning" process and program. Third, because it is thus inclusive, it stands presented as already "democratic." Fourth, such envisioning, even when "decentering" state sovereignty, stops short of the advocacy of any form of world government; rather it aspires to reform/recast global governance. Fifth, envisioning ought to promote conceptions and practices of a global rule of law that make global governance progressively more ethical, just, and accountable. Sixth, the envisioning entails prudence, a difficult virtue extolled by St. Thomas Aquinas. Another way, the tasks are not "metaphysical" but "political"—that is, directed to make and innovate the "global system" progressively more efficient, just, and fair. Seventh, and related, the project needs to find languages that speak to diverse and conflicted communication constituencies (in my rather old-fashioned naming) or publics and counter-publics (the more nuanced phrasing). Eighth, envisioning remains the art, craft, and science of "compossibility,"(a term that Leibniz invented).[4] Here, it signifies the existing together of some incorrigibly cruel features of hegemonic world politics and a coequal respect for a world law, especially articulating aspirations and concerns for the rights, freedoms, and aspirations of the "wretched of the earth."

In aid of furthering the envisioning project, I offer in what follows some account of general and necessary conceptual/normative, historical, and movement reminders and proceed to outline some possible move ahead.

II. LOGICS

At least three types of logics/paralogics remain relevant to the tasks of envisioning a "more democratic world order:" the utopic, pragmatic, and nihilist.

A. Utopic

The utopic logic aspires, Liebniz-like,[5] to imagine the achievement of the "the best of all possible worlds" (or simply the best world). However, the

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3. *See* Upendra Baxi, *The "War on Terror" and the "War* of *Terror": Nomadic Multitudes, Aggressive Incumbents, and the "New" International Law: Prefatory Remarks on Two "Wars"©*, 43 OSGOODE HALL L.J. 7 (2005).

4. *See generally* ARON GURWITSCH, COMPOSSIBILITY AND IMCOMPOSSIBILITY ON LEIBNIZ (Nijhoft 1975).

5. *See generally* GOTTFRIED WILHELM LEIBNIZ, THEODICY (E.M. Huggard trans., 2005).

utopic constructs the best world very differently on sacred and secular registers. Thus, in Liebniz, the utopic concerns both the divine authorship of the universe and the world, moral/metaphysical world and the natural world. Utopic then entails exercises in justification of God's will and reason, raising in the process, the problem of theodicy, which Liebniz fully addressed.[6] The sacred utopic has many histories, engaged in particular by the Buddhist, Islamic, Confucian, Hindu, Jain, and the thought-ways of the earth's indigenous peoples. I believe that any envisioning project needs to accord an equal dignity of discourse to different sacred utopic traditions of constructing the best world, citing different cosmologies and iconographies within different religious and spiritual traditions.

The sacred utopic has shaped many a best world construction of the moral/normative and material worlds of international law, order, and relations. There is simply no way in which we may fully grasp the origins of international law/relations values, standards, and norms outside the images of the sacred utopic both in Abrahamic and other religious/spiritual traditions. I have in mind here recourse to the doctrines of just war and peace, the equality of all creatures (including humans) before God, an ethic of power arising out of traditions of pious hermeneutics, and the ethic of martyrdom. Further, there exists enough comparative evidence that requires us to take the God-talk seriously, because He is said to speak directly both to the incumbents of the White House as well as the Afghan "caves." In His name, too, many a human rights sin still continues to be "justified," or as Emmanuel Levinas puts this, the evil stands represented in the guise of the good.[7] But also in His name stand constructed some visions of a just world and struggles for their installation.

In contrast, the secular/secularizing utopic informs many a history of creationist endeavours of the best world of international law, relations, and organization. It shares the imageries of a "common law of humankind." It generates, at least in terms of histories of ideas, both the classical liberal and the socialist paradigms of human rights. In terms of effective histories of power, these also "justify" some ruthless practices of colonial occupation and governance as constitutive aspects of a universal "civilizing" mission, radically reinterpreted in the socialist secular utopic in terms of global abolition of capitalist relations and class exploitation. Both the utopic logics (and paralogics) generate their own dystopias, which also "justify" many a gulag regime. The neo-liberal paradigm of hyper-globalization now emerges, in the striking imagery of Pierre Bourdieu, as constructing the "utopia of endless exploitation," a "programme for destroying collective structures which may impede the pure market logic."[8]

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6. *See generally id*.

7. EMMANUEL LEVINAS, BEYOND THE VERSE: TALMUDIC READINGS AND LECTURES 66-67 (Gary D. Mole trans., Indiana University Press 1994) (1982).

8. *See* Pierre Bourdeau, The Essence of Neoliberalism: Utopia of Endless Exploitation, Le Monde Diplomatique, December 1998, Translated by Jeremy J. Shapiro.

On the other hand, the secular utopic as emergent in the "Old" and the "New" social movements remain incredibly diverse.[9] The utopic here remains rather immense and rather misleading on a broad canvas that so readily distinguishes the Westphalian and the post-Westphalian international orderings. I refer illustratively to the following histories of the secular utopic that influenced the achievement of the following:

- Inaugural regimes of global institutions, inclusive of the ILO, the League of Nations, the United Nations and beyond;
- Vast histories of non-violent handling of inter-state disputes networks and institutional arrangements;
- Immense elaboration since Grotius[10] on the doctrine of temperamenta belli, spawning diverse genres of jus ad bello, jus in bello, and jus post bellum;
- New normative and institutional human rights regimes, now subjected to searching critiques that so richly problematize the bright lines between international humanitarian law and international human rights law languages, logics, and paralogics;
- Notable histories of thought and action that presaged, well over a century and half ago, what now comes to pass as the International

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9. I may here mention some contemporary incommensurate instances:

   - John Rawls' movement away from international law to a law of peoples (with all the reconstructions/variations proposed notably by Charles Beitz and Thomas Pogge)
   - The Capabilities Approach as notably feminized by Martha Nussbaum
   - Gayatri Spivak's critique of postcolonial reason
   - Nancy Fraser's celebrated "recognition/redistribution dilemma"
   - Janna Thompson's agonizing concerning the futures of global reparative justice
   - The Fourth World movements of the earth's oldest indigenous peoples that by the sheer survival tenacity pose great discomfort for all the "Empire" talk
   - The complex itineraries of the World Social Forum banner: "Other Worlds are Possible"
   - The pre-figuration of the utopic/dystopic in the ongoing cruel "wars on terror."

I admit that this listing requires several monographic labors of many a combined lifetimes! Writing myself in anticipation of mortality, all I may here suggest for our common project are some active practices of abstinence from encyclopedic gestures that summate with an extraordinary felicity (roughly equating the utopic elements in Davos, for example, with the dystopic in Darfur, all in the name of a "global civil society").

10. Robert Kolb, *Origin of the Twin Terms jus ad bellum/jus in bello*, http://www.icrc.org/web/eng/siteeng0.nsf/iwpList163/D9DAD4EE8533DAEFC1256B66005AFFEF (last visited June 19, 2007).

Criminal Court and other arrangements for coping with mass atrocities under some broad United Nations auspices;

- Extraordinary effort of John Rawls[11] that mark a paradigm shift from international law to a law of peoples placed in some uncomfortable juxtaposition with the contemporary moment summated in the World Social Forum motto: "Another World is Possible";[12]
- Daring pursuit of the notion that women's rights are human rights.

The utopic imagination has always been in place, and heavily at work, in the making of the worlds of international law, relations, and organizations. The question is: How may we read some terminal gestures in the "new" utopic of "democratic trans-nationalism" that at once induces genesis amnesia of the "old" utopic and yet invokes some of its histories in developing visions of a "more democratic" world order?

B. Pragmatic

The pragmatic utopic logic proceeds to construct the imageries of the best world differently. With all its different languages (of realism and cosmopolitanism, for example) it aspires to rationality reform of dominant global governance institutions—that is, it seeks "the bettering of the bad." The "best" here does not emerge as the enemy of good in any envisioning of the ends of transformation and means to pursue these via "transformative" politics. Put simply, the best is that which works best or is made to work best. The utopic of the rationality reform remains based on the fact that the "ends" being already pre-given, the "reform" talk may best realize its potential by some sort of normative structural adjustment of the means to pursue these ends. What is thus pre-given admits many readings. But the reform talk certainly proceeds to regard the following as pre-given.

First, the global political order, as is, remains intransigent to fundamental reformation. There is simply no available prospect for displacing the "legalized hegemony" of "Great Powers" howsoever concentrated in the figuration of a solitary global hegemon or, alternatively, on some still heavily North-centered reconfigurations of "multi-polar" world orderings. Second, the construction of rationality reform remains innocent of any serious regard for duties of reparation for massive acts of colonization and the cold war are owed by the Great Powers to peoples and territories held hostage to their global imperial interests and pursuits, although expediently defined contemporaneously existing South "rogue states" remain liable to an evolving regime of reparations. Third, and related, despite all the talk concerning the human right to development, development assistance policies remain almost entirely a matter of Northern largess. Fourth, processes and regimes of "disciplinary globalization" already secure in place aim (in Pierre Bourdieu's terms) "to call

11. *See generally* JOHN RAWLS, THE LAW OF PEOPLES (Harvard University Press 2001).

12. World Social forum, http://www.forumsocialmundial.org.br (last visited June 19, 2007).

into question any and all collective structures that could serve as an obstacle to the logic of pure market[.]"[13] Fifth, these also seek to discipline global civil society movements; these may not, beyond a permissible plane, pursue "lost causes."[14] Sixth, disciplinary globalization authorizes transnational advocacy networks to pursue some rather important scavenging roles and functions, which direct attention, and even combat at times with notable success, inefficiency and waste generated by global marketplaces.[15]

This role and function of the so-called global civil society, may not transgress the "benign" growth of techno-science via some practices of insurgent militant politics.[16] Seventh, the two "terror wars" now generate "visions" of collective human security that begin to redefine the reach of civil and political rights. This occurs both in terms of normative content and procedures for their attainment and in some aggravating discourse that also redefines both the legality and legitimacy of the UN Charter-based restraints concerning the use of force in self-defense, surrendering in the process some hard won achievements of international humanitarian law and the law of belligerent occupation. Eight, contrary to the UNESCO adage, war and peace no longer begin in the hearts of "men," but now remain more fully birthed, for weal or woe, by the enormous technopower of globalizing mass media and the armament industries. Ninth, any future-oriented development/imposition of even a minimal order of human rights responsibilities ought to be so framed in terms that respect the "carrying capacity" of the agents, managers, and materially-embodied forces of global capital. This at least means and signifies some tormented histories for future human rights and social action movements. It also further entails the "trading away" of accepted human rights values, norms, principles, and standards in relation to multinational corporations and the awesome commanding heights occupied by the networks of international business transactions. I have here in full view some forms of structural adjustment of human rights logics, paralogics, and languages represented by the former Secretary General Kofi Anan-led "global

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13. Pierre Bourdieu, *The Essence of Neoliberalism: Utopia of Endless Exploitation*, http://www.home-moderne.org/societe/socio/bourdieu/varia/essneoUK.html (last visited June 19, 2007).

14. "Lost causes" refers to the right of collective self–determination of the indigenous peoples of the earth, the recovery of the old/classical rights, trade union rights, and the powers of imagining planetary loyalties beyond the closures that all the "sustainable development" talk so fully imposes.

15. This refers to movements against "sweatshop" labor practices, for international debt reduction, the so-called poverty reduction strategies, the "war" on cartels that sustain drug–trafficking and international sex trafficking, money laundering and visible forms of public corruption, and ethnic and gender-based discrimination at the workplace.

16. This refers to movements for animal rights, radical modes and moves aimed at the preservation of earth's dwindling biodiversity, and some Luddite movements that wreak havoc with informational/digital capitalism, going far beyond the anodyne discourse of the "digital divide."

compact"[17] juxtaposed more fully with the enunciation of human rights responsibilities of transnational corporations and related business entities in the genre of forever decreed "draft" UN norms.[18] Tenth, the pre-given, despite some fancy talk concerning "democratic trans-nationalism," remains severely disciplined overall by, to reiterate, the politics of human hope always continually "structurally adjusted." These ten features/futures need, I submit, a fuller recognition for our envisioning project.

C. Nihilistic

A wholly different nihilistic register suggests, Nietzsche-like,[19] that what is required is not reform, but as a first necessary step, the "devaluation of all values." Based on this sort of trans-valuation, practices proceed with struggles to install "new" values. The nihilistic utopic casts long shadows of doubt on the rationality reform talk as a mere apologia that refurbishes global dominance. Its manifold non-violent constructions proffer some profound challenges to the turgid, and tragic, enactments of global social policy, now so fulsomely crystallized in the lean and mean talk of the Millennial Development Goals.[20] In contrast, the "ethic" of organized insurgent militant political violence (within and across nations) circulates the bodies of suicide bombers and the bodies of thus fully indiscriminately victimized. They stand deployed as articulating somehow as global justice generative, and as the workshops of some "renascent" visions of the best world orderings.

The deployment of the human bodies as generating the languages of ethics pre-dates 9/11 and its fierce aftermaths. The violently legislatively ousted and outlawed, grammars of "glorification" of terrorism in the post-9/11 world, nevertheless co-equally subserve as well as frustrate the current remake of the global orderings.

This heavily cryptic spate of remarks run some obvious, and real-life, narrative risks, for analytic and dissenting voices in a world already consumed with the brutal logics of power now constituting the two "terror" wars. Even so, the risks thus already run, help problematize the newly-fangled narrative legitimization of "democratic trans-nationalism." The "rationality reform" talk I apprehend remains dead on arrival when it does not engage acts of empathic understanding of the deep structures of both "catastrophic" insurgent "terrorism" as well as the equally catastrophic institutionalized practices and forms of global state "terrorism." Put starkly, it may even fail its stated mission

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17. The Global Compact, http://www.unglobalcompact.org/ (last visited June 19, 2007.); *see* UPENDRA BAXI, THE FUTURE OF HUMAN RIGHTS 276-302 (2nd ed., Delhi, Oxford University Press 2006) for an analysis of the norms of human rights responsibilities of the multinational corporations and other business entities.

18. *See* U.N.Doc.E/CN4/Sub 2/2003/38 Rev/2 (2003).

19. *See generally* FRIEDRICH NIETZSCHE, BEYOND GOOD AND EVIL: PRELUDE TO A FUTURE PHILOSOPHY (Walter Kaufman, trans., Vintage 1989).

20. U.N. Millenium development Goals, http://www.un.org/milleniumgoals/index.html (last visited June 19, 2007).

when it instrumentally harnesses the "war on terror" as an opportunity for any envisioning project.

III. TOWARDS A GLOBAL PARLIAMENTARY ASSEMBLY?

The foregoing contexts warrant some revisitation of the Richard Falk-Andrew Strauss proposal for "a Global Parliamentary Assembly" [hereinafter GPA.] In GPA, the secular utopic logic remains primarily presented in pragmatic/programmatic detail. However, the latter does not negate the inherently secular utopic dimension; the utopic keyword is "democracy." Indeed, Falk-Strauss offer many a detailed way of launching a global public discussion around the GPA proposals, based on the premise that all major actors in international law, relations, and organizations appreciate the need for change in the direction of a "more democratic" global system.[21] Put another way, they envisage through the GPA programschrift, some reflexive movements that entirely reshape our approaches to global governance. The opening-up of dialogical/movement spaces itself, is represented as contributing to the future histories of global governance.

All through the animating vision is one in which "world citizenry" becomes an authentic author of a new international law for the 21st century CE and beyond, thus presenting the gift of "democracy" to the global system. The secular utopic contests the existing "bifurcated" system for the creation of international law which "states . . . intermediate between citizens and international order,"[22] as well as (in Falk-Strauss) seeks to extend "democracy" to institutions and processes of global governance.[23]

The secular utopic in the GPA discourse stands offered as necessarily addressing the tasks of repairing the "legitimation crises" of the contemporary world orderings, now deeply imperiled by the power of the nihilistic utopic logics. It urges all to move carefully ahead towards evolution of patterns of global governance in which international law, relations, and organization address in Hirschman—like terms concerns regarding "exit, voice, and loyalty." [24] Acts of denial of the voices of pluriversality of the spheres of human and social suffering impoverish loyalties to world order and generate some violent forms of exit from it. GPA then emerges as a kind of therapeutic move addressing some pathologies of contemporary global governance.

The Falk-Strauss emphasis on the need to devise some ways that accord a co-equal institutional dignity of discourse to the voices of the global civil society rests on the hope that the GPA movement and outcome will enrich the practices of representation. The movement will certainly more fully

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21. *See* Falk & Strauss, *Toward Global Parliament*, *supra* note 1, at 218.

22. *See* Strauss, *Overcoming*, *supra* note 1, at 493.

23. *See* Falk & Strauss, *On Creation*, *supra* note 1, at 195 & n.16.

24. *See generally* ALBERT HIRSCHMAN, EXIT, VOICE, AND LOYALTY: RESPONSES TO DECLINE IN FIRMS, ORGANIZATIONS, AND STATES (Harvard University Press 2006).

confront some current practices of representation of their peoples by the ethically indifferent constituted political communities of formally sovereign. It will also confront equal member-states in the United Nations system, and some supra-national orderings, such as the EU, WTO, NAFTA, AESEAN, APEC, the AU, OAS, and even the SARC, and further related networks. The Falk-Strauss celebration of "democratic trans-nationalism" remains precious. Nadia Urbianti interprets this, rightly, as a civil society privileging perspective that "shares a liberal anti-coercive view of politics and interprets democracy more as a civic culture of association, participation and mobilization than as a process of political decision-making."[25] Written large on the imagination of the GPA are some future histories of intergenerational renovation of opportunities for a "more democratic" global order. Not to commend the aspiration animating this programschrift would be counter-utopic, and even dystopic (if not downright churlish!).

Yet at the same moment, if only to serve this cause better, we at least need to attend to some intransigent-looking issues concerning "democracy," "representation" and the images of a "global civil society." Perhaps, such an engagement may further warrant reimagining the GPA differently.

A. "Democracy"

The secular utopic is based on the hope that over time the organization of "international relations might more closely resemble policymaking within the most democratic societies of the world."[26] Two threshold questions arise: first, how may we imagine "democracy" and second, where, indeed, may we discover the "most democratic societies of the world?" It remains extremely pertinent for any envisioning project to avoid essentialist conceptions of "democracy" in fashioning our responses to these questions. Easy enough to state, this remains a most difficult task.

Far too many "democratic" conceptions of good governance tend to celebrate "the dream of Westernization" and the nightmare of "enforced universalization" of the "Western model" of "democracy."[27] On this view, "governance" is "good" when it is "democratic" and it is "democratic" to the extent that it adapts, transposes, and transmigrates the eminent virtues of liberal democratic orders to juridico-political architecture of the rest of the world.[28] It follows that any re-structuration of international law, relations, and

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25. Nadia Urbinati, *Can Cosmopolitical Democracy Be Democratic?*, *in* DEBATING COSMOPOLITICS, *supra* note 1, at 67, 69.

26. *See* Falk & Strauss, *Toward Global Parliament*, *supra* note 1, at 217.

27. CHANTAL MOUFFE, ON THE POLITICAL 86 (2005).

28. These may be summated as follows:

- The "rule of law" ingredients [transparency and accountability in the exercise of public power]
- The separation of powers/division of functions models that inhibit the carcinogenic growth of supreme executive power

organization ought to ensure moral cultivation of these virtues where possible and violent imposition where necessary.

All this mystifies approaches to the second question. The corrupt, genocidal, and roguish sovereign characterizes the experience of the "Western" world peoples. The contemporary (and far from duty-free) prized (and also heavily priced) export versions of "democracy" remain obscure some massive histories of Euro-American reigns of terror against the indigenous peoples of the earth, the distinctly European histories of the ruthless colonization of what for a while is allowed to expediently emerge as the "Third World," the barbarity of the "Cold War" articulating the gigantic struggle between advanced capitalist and socialist versions of "democracy" on a world-scale and now the ruthlessness of the heavily imposed neo-liberal ideology. I think that a more secure foundation for a new secular utopic aspiring to a "more democratic" world order stands furnished (to de-contextualize somewhat a Derridean phrase) by "responsibility" towards "memory."[29] The much-vaunted celebration of "global civil society" becomes so much of "counterfeit money" (to evoke Derrida again, in a dissimilar context) when it authorizes erasure of other and older histories of struggles against colonization, apartheid, worker exploitation, and capitalist forms of patriarchy.

I am not saying that the Falk-Strauss genre remains unmindful of the problem of envisaging, as Chantal Mouffe puts this, "a form of commonality strong enough to institute a 'demos' but nevertheless compatible with certain forms of pluralism," thus offering "a pluralistic view of democratic

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- The creation of state-free spaces for social action and movement for dissentient conceptions of governance, rights, development, and justice via a fine regard for constitutionalism, especially the rights of "discrete and insular" minorities
- In particular, solicitous concern with the protection and promotion of the women's rights as human rights Necessarily thus further entailed some fundamental respect for the right to property and contract that structure respect for "free market" consistent with regulatory processes and invigilatory structures that foster "the public interest"
- The overall pursuit of visions of collective human security within which alone may be these manifest virtues may be fully served outside the logics and paralogics of the state as "nomadic war machine" [to here adopt Deleuze- Guttari metaphor.]
- The primacy of civil and political human rights model thus inherently precious in itself and instrumentally crucial as well as in the promotion of social, economic, and cultural rights in a
- Amartya Sen-like view of "development as freedom"
- The independence of judiciary and law enforcement personnel from the overweening executive prowess.

29. JACQUES DERRIDA, SPECTERS OF MARX: THE STATE OF DEBT, THE WORK OF MOURNING, AND THE NEW INTERNATIONAL xix (Peggy Kamuf trans., Routledge 1994) (1993).

citizenship."[30] They explicitly remain aware of the contaminating potential of the Euro-American democratic forms and public cultures. They explicitly refer to manifestations of illiberal or militaristic "political cultures" and to an era of "choiceless democracy" now so fiercely unleashed by globalization.[31] Yet these figurations remain guest artists in their pragmatic narratives; it is not entirely clear how the GPA may constitute a normative device or a free-standing global arrangement, promising any structured immunity from such a contagion.

Attending now to the first question—concerning the imagination of "democracy"—perhaps we can do no better than to read the magical re-construction of the notion of "democracy to come" in Derrida.[32] It is easier to say what this phrase does not mean for Derrida rather than to say what it may specifically mean. It certainly does not mean any political program to usher in some "new" futures nor certainly, for the present context, any world government. Nor does it signify any celebration of historically specific particular political regimes or the actually here-and-now existing liberal democratic societies. Further, neither the name nor the concept "democracy" is to be associated with histories that assume any sovereign "right to philosophy" immune from the voice of the non-European other, a "mono-linguism" of certain self-proclaimed inheritors of messianic "democracy" visions. For Derrida, then, "democracy to come" is not to be grasped as "a fixed political form of society, but rather as process of *democraticization*."[33] He describes this variously.

In *Sceptres of Marx*,[34] Derrida describes the "New International" in terms of "a link of affinity, suffering, and hope"—an "untimely link" "without co-citizenship, without common belonging to a class"[35] forming an "alliance without institution"[36] that may still engage "to produce events, new effective forms of action, practice, organization, and so forth."[37] "Democracy" far from being any juridical project remains an irredeemably ethical one: "no ethics, no politics," he maintains, "whether revolutionary or not seems possible and thinkable . . . ." Further, that ethics remains inter-temporal in its articulation of "justice with democracy": for answerability/responsibility to "those others who are no longer there or for those who are not yet there presently living."[38] Derrida insists that "no Justice" at all "seems possible or thinkable[39] without the principle of some responsibility beyond all living present, within that

30. CHANTAL MOUFFE, THE DEMOCRATIC PARADOX 55 (2000).

31. *See* Falk & Strauss, *On Creation*, *supra* note 1, at 192.

32. *See generally* RICHARD BEARDSWORTH, DERRIDA & THE POLITICAL (1996); A.J.P. THOMSON, DECONSTRUCTION AND DEMOCRACY: *DERRIDA'S POLITICS OF FRIENDSHIP* (2005).

33. Simon Critchley, *On Derrida's* Specters of Marx, 21 PHILOSOPHY AND SOC. CRITICISM 12, Jan. 1995, at 1, 12.

34. *See generally supra* note 29.

35. *Id.* at 85.

36. *Id.* at 86.

37. *Id.* at 89.

38. *Id.*

39. *Id.* at xix.

which disjoins the living present." Democracy to come then remains a "theme of a non-presentable concept." This must for the present suffice without any further recourse to his provocative corpus—in particular *The Politics of Friendship*[40] that so remarkably suggests the inherent tension between "equality" and "fraternity." In sum, as Caputo insightfully puts this: "Who knows what the democracies are coming to or what is coming to democracy or what democracy is to come?"[41] This inherent undecidability is all that we have, or may be after all left with, in any envisioning of a global democracy also to come.

My reading of the Falk-Strauss corpus invites some tantalizing comparisons. They too, not unlike Derrida, envision "democracy" as a work in progress, rather than any finished/completed product of the desiring histories of governance. With Derrida, Falk-Strauss also seem, after all, to dread the vision of a world state. Perhaps also with Derrida, they uphold the utopic of participatory world governance, which holds a deferred promise for redemption from the roguish behavior of the five permanent members of the Security Council.[42] However, this perhaps marks a crucial difference, unlike Derrida who imagines against their roguish imperium, what interests Falk-Strauss is not any Derridean vision of the "other security council" divested of this imperium but the possibility of a "dangerous supplement" furnished by some new histories of an emergent global civil society, and its consecration within the global governance project and process. Perhaps, Derrida would have welcomed this vision of open and unending post-hegemonic futures. Even so, may I suggest that we remain mindful in our constructions of the new secular 21st century CE project of envisioning a "more democratic" global order/system what Paul de Man described as the "dialectic" of "blindness" and the very heart of insight?[43]

B. Issues Concerning Representation in Some Visionary Anticipations of "Global Civil Society"

Already, in the Falk-Strauss envisioning project, some new performatives of citizen global inflected "democratic trans-nationalism" stand articulated through "new diplomacy" or the "new internationalism" manifested in three success stories, accomplishing the anti-personnel landmines convention, the international criminal court treaty, and the climate change convention. More diffuse, but for that reason no less crucial, remain the acts of reading global

40. *See generally* JACQUES DERRIDA, THE POLITICS OF FRIENDSHIP (Verso 2006).

41. John D. Caputo, *Without Sovereignty, Without Being: Unconditionality, the Coming God and Derrida's Democracy to Come*, J. FOR CULTURAL & RELIGIOUS THEORY, Aug. 2003, at 9.

42. *See generally* JACQUES DERRIDA, ROGUES: TWO ESSAYS ON REASON (Pascale-Anne Brault & Michael Naas trans., Stanford Univ. Press 2005) (2003 & 2005) (citation to original publisher for 2003 essay omitted).

43. PAUL DE MAN, BLINDNESS AND INSIGHT: ESSAYS IN THE RHETORIC OF CONTEMPORARY CRITICISM (2nd ed. Minneapolis, University of Minnesota Press, 1983).

politics of mass protests concerning the regimes of international finance capital and the WTO. One also supplements these readings by some frequent notable recourse to the histories of transnational advocacy networks, such as Amnesty International, Greenpeace, the International Red Cross and its related normative and activist cohorts.

I may not here pursue in any detail whatsoever the issue of "representation" by a corrupt sovereign (or a cartel of corrupt sovereigns) that mock some underlying justificatory logics of representation of peoples by their "own" states. Chantal Mouffe raises a profound question concerning ways proposed for "integration" of globalization from below and above: How may this "unification" project (the globalization from below/above) proceed, after all, to move towards "a global institutional democratic structure enabling the people of the world to bypass the states" and still retain their "meaningful voice in global governance, thereby creating a peaceful global order[?]"[44] This interlocution assumes a specific poignancy, given the belief that the post-Westphalian international orderings already historically signify the makings of a "more democratic" global order.

However, the different images of the GPA must surely attend to the highly differentiated "nature" of the so-called "global civil society" and "global citizenry" in ways that subserve the secular utopic logic of the GPA, which now suggests that a new recasting of representational powers may somehow render compossible "globalization-from-below" with "globalization-from-above."[45] This raises at the threshold some difficult concerns, well worth pondering, even when as I here perforce summarily do bereft of any rigorous scrutiny of the below/above type spatial and hierarchical notions concerning different globalizations.

First, how may we read some histories of linkages between representation and territorial bounded political communities? Mary Kaldor has recently suggested that thus bounded notions "realized civil society" of necessity "linked civil society" to the "war-making colonial state, which constituted a limitation on civil society itself as well as a barrier to the development of civil society elsewhere."[46] She suggests that we read "new" social movements in terms of some new telelogies that interrogate the limitations caused by war and colonialism.[47] I do not explore here the richness of Kaldor's contribution concerning the "changing definition of civil society" save to tangentially attend to one central implication: How may any GPA project so reconstruct "representation" so as to avoid enhancing the power of elements in global civil society that celebrate the primacy of "societies organized for war?" On what basis may we construct representational power and process that authorizes democratically informed exclusion of the articulations that privilege militarized forms and practices of global governance, and in the process recuperate

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44. MOUFFE, *supra* note 30, at 95.

45. *Id.*

46. MARY KALDOR, GLOBAL CIVIL SOCIETY: AN ANSWER TO WAR 44 (2003); *see also* UPENDRA BAXI, THE FUTURE OF HUMAN RIGHTS 33-58, 200-234 (2nd ed. 2006).

47. *See id.*

legitimization for the "nomadic war machine" of a "global system?" Or, put another way, how may we over-privilege/escalate the representation in the GPA-like proposals those elements that variously protest the nomadic global war machine?

Second, it remains indeed true that some excruciating dilemmas surround the notion of "more democratic," conceived always as expansively inclusive. Indeed, the doctrine of sovereign equality of states as constituting the Grundnorm of international law, relations, and organization remains problematized by the GPA discourse; "letting the multitudes in" remains thought/imagined in this genre as providing their more secure (and in Falk's notions) more humane futures of/for global governance. For this very reason, we also need to invigilate some undifferentiated celebration of the grammars of "inclusion." While Falk and Strauss remain then in very distinguished company when they urge inclusiveness as an all-encompassing virtue for any envisioning project, the question of exclusion is always present in any move ahead for a "more democratic" political ordering. Indeed, in some ways it is a terrifying question if only because it presents itself as the justificatory logic of the very constitution of the political, as Derrida has so often reminded us, but especially in *Rogues*.[48] Precisely because there are no known just ways to identify "friends"/"enemies" of democracy, the question notoriously persists: "Who/what may we exclude/disarticulate in limine from an over-inclusive imagery of the GPA"?

Third, the issue already stands posed, in a different context, by some current agonized global diplomacy postures concerning the electoral triumph of Hamas in Palestine. Differentially, it also stands posed by designating some agents of the wars of "terror" as worthy of only the Guantanamo Bay-type conferral of a new "global citizenship." Critics (myself included) of the now happily aborted UNDP privatization of the United Nations system well know how the proposed device of special facility sought to legitimate the "mainstreaming human rights" via billion dollar funding by the most egregious MNC human rights offenders. They unstintingly and fulsomely indulged in human rights-based visions of exclusion. So do now the critics of the "empty signifier" christened by Kofi Anan as the "global compact." Even Amnesty International earlier posed the problem of how human rights movements may, after all, devise an arms length/stand-off postures concerning violently pursued ethno-nationalist secessionist/autonomy movements. Further, how may we bring to the GPA, some arch practitioners of post-Auschwitz/postcolonial/post-socialist genocide-makers of "ethic cleansing"? How may we, on a wholly different register, engage with John Rawls, who germinally, in his last work *The Law of Peoples*, posed the problem of inclusion/exclusion in terms of the "foreign policy of well-ordered peoples" in their actual dealings with the "outlaw" state regimes, societies, and even entire peoples?[49]

48. *See generally* DERRIDA, *supra* note 29.
49. *See generally* RAWLS, *supra* note 11.

Fourth, surely even the GPA discourse of representation may need to foreground some necessary and general distinctions between forms of inclusivity necessary for servicing "technical" regulation while contenting those that continue to reincarnate orders of global "political" law, characterized (to here invoke Ranajit Guha's withering phrase) as "domination without hegemony."[50] This was a distinction that that Eugene Pashukanis memorably pursued at the severe cost of his own martyred luminous life. Chantal Mouffe now reframes this divide in different terms, contrasting between conceptions of politics as a "resolution of technical problems" with an "active engagement of citizens . . . thanks to an 'agonistic' confrontation about conflicting hegemonic projects."[51]

Regardless, for the present moment, I need to say that further thinking concerning the GPA ought to pursue rigorously representational inclusivity in the domains of the making/remaking of technical international law, relations, and organization. It should do so in ways that enable/empower the least developed societies and worst–off peoples around the world to be full and equal partners in the evolution of biodiversity, biotechnology/nanotechology/WTO TRIPS/GATS regimes and the more "democratic" management of the digital divide. As concerns the global political lawmaking/unmaking, it remains unclear how the GPA-type politics of hope may begin even to silhouette a new international polity, and its politics. Put another way, the issue posed, in manifestly politically incorrect ways, is: How a "more democratic" global order/system may still avoid the stakes (to here use an altogether politically incorrect term) of "false consciousness"?

IV. TOWARDS A MORE PLURALIST CONCEPTION?

It is not the case that the Falk-Strauss GPA envisioning remains insensitive to histories of production of human rightlessness and social suffering. Even so, it may not be entirely unfair to suggest that the GPA genre may not quite situate the complex and contradictory relationship between the so-called "global society" and different and difficult histories of local/subaltern struggles of resistance to the practices directed against micro-fascism of power.

Little republics of protest against the imperial formations of international law, relations, and organization already diversely exist, and these resist any global summation in the metaphor of a "global civil society." Further, even when these often feel empowered by upward transnational representations of their lived experience of suffering, the translation of their rightlessness and suffering in terms of global social action and policy seem to them often excessively appropriative. One has just, to take as a most recent example, the

50. *See generally* RANAJIT GUHA, DOMINANCE WITHOUT HEGEMONY: HISTORY AND POWER IN COLONIAL INDIA (1998).

51. MOUFFE, *supra* note 30, at 104.

"global civil society" furthered but still staggeringly lean and mean discourse concerning the Millennial Development Goals!

I suggest that the GPA discourse needs to more specifically address the construction of a new global "level playing field" for the voices of the world's dispossessed, deprived, and the disadvantaged peoples. It, put another way, needs to safeguard itself against any romanticized conception of democratic inclusion that may accord an equal dignity of representation for forces / fields / agents / managers of neo-liberal utopia of "endless exploitation" alongside the communities of human rightlessness and social suffering that these so effectively and efficiently bring into being. Precisely because, I believe with Jacques Rancière (in his by now justly celebrated Ten Theses on Democracy)[52] that "democracy" always entails forever innovative modes of politics, which continually foreground the emergences of "parts" of the demos, which "have no part" in forming the whole. In other words, I suggest here a notion of a general assembly of world peoples primarily comprised by the voices of human suffering.

Towards this end, I suggest, here shorn necessarily of any further refinement that we re-imagine this partaking differently from the proposed GPA devising of representation. This needs to happen in ways that protect and promote the presence and participation of the communities of hurt and harm constituted severally by performative acts of contemporary globalization and some antecedent histories of colonialism, imperialism, and the various phases of the Cold War.

Rather than engage in some ahistoric constructions of "global citizenry," proposals for inclusive participation ought at least to provide for direct (and as far as possible within the pragmatic utopic) and effective representation of the following communities of imposed suffering:

> Those violated by wantonly imposed mass disasters caused by multinational enterprises (the Bhopal inflicted harms to the Ogoni peoples and even tragically much beyond);
>
> The millennially wounded communities of peoples harmed by the practices of imposition of ancient wrongs, communities of hurt and harm peoples (such as the indigenous peoples) as yet unredressed by all our human rights talak / tasks;
>
> Peoples subjected to international sex trafficking and child abuse;
>
> Peoples living with disability;
>
> "Disposable peoples" now increasingly constituted by unethical immigration policies that deny a modicum of human rights to refugees and asylum seekers;

52. Jacques Ranciere, *Ten Theses on Politics* 5 THEORY & EVENT, Issue 3.

> Peoples subjected to forms and practices of primitive global accumulation;
>
> Peoples subjected to practices of ethnic cleansing and related forms of ethnonationalist violence;
>
> Communities of danger and fear already installed by the two "terror" wars (inclusive of the victims of the old and new forms of militant insurgency of non-state actors and of state terrorism).

This listing may not be further refined but also even unfortunately further extended. Even so, in the present opinion, a differentiated notion of "world citizenry" furnishes a better guide than that which merely ensures "global civil society" as the representative voice for suffering peoples. Saying this does not gainsay the important agendum of further empowerment by way of inclusion of "cosmopolitan corporations," dissenting academics within the existing formations of techno-scientific power, and articulators of some new visions of collective human security in the times of "terror," even when these summarily signify some troublesome juxtaposition of violent regime-changers and the right to peace movements.

Thus, at stake remains a deeply pluralistic conception of GPA as a permanent general assembly of various suffering communities of peoples. How do we make this embodiment subject to an order of compossiblity, the being together of the globally produced and violently constituted subjectivities with the communities of "conscientious" violators?

The utopic affair directed to a renovation of a greater potential for (to here invoke Michael Burawoy's fecund phrase regime) of the "politics of production" and the "production of politics"[53] also necessarily remains at stake at the Symposium. It includes forms that go beyond the conduct of national/supranational poetics of global governance via some fierce workshops of the Euro-American state formative practices, and their multifarious/nefarious entrenched modes of universalization of liberal/free market democracy everywhere. More mildly put, how may the agendum of a differently constituted GPA address the somewhat complex, contradictory and intransigent itineraries of legal/juridical transplantations/transmigrations in the name of "good" global governance?

I sincerely hope that these rather vagabond meditations may still somewhat advance our common Symposium purpose. By a word of explanation, I need to say that I have already preformed the elemental virtue of the "walkabout," which I learned from my activist association with the Australian aboriginal communities. This is a virtue that leaves no "ecological footprint" nor advances the peregrination of hyper-globalizing habitus of "colonization without colonizers." Perhaps, we need fuller recourse to some already

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53. MICHAEL BURAWOY, THE POLITICS OF PRODUCTION: FACTORY REGIMES UNDER CAPITALISM AND SOCIALISM 254-56 (1985).

deliberatively forfeited cosmologies that include everyone, without at the same moment hurting no one.

Put another way in the idiom of the Mahatma (made familiar to the globalizing yuppie generations via the Sir Richard Attenborough film Gandhi), any conception of GPA must remain a global workshop not just for practices of "freedom" but also for the practices of just freedom for all.