

TERRORISM AND THE GLOBAL PUBLIC SPHERE

ÓSCAR GUARDIOLA-RIVERA*

ABSTRACT

This article is a report on my ongoing research concerning the transformation of the (inter)national public sphere into a global public sphere. It takes as its starting point the virtually shattering consequences that the 9/11 attacks may have for two of the discourses that can be posited as constitutive of the new global public sphere: international law and the discourse of 'global' intellectuals. The latter are not conceived under the liberal/enlightenment model, as the judges of society, but rather, as located in an equal footing to the citizens who, having been personally affected by globalization, are in the process of acquiring a cosmopolitan stance. However, this cosmopolitanism is ambivalent: it struggles between a withdrawal onto radical identity and the search for an alternative access to the universal. It is argued here that such a new global audience, for whom traditional legal & political narratives are insufficient, will decide the matter according

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* Pontificia Universidad Javeriana & University of London.

to the logic of hegemony. This implies that inadequate tools of analysis and narratives (legal, political & otherwise) are in the process of being replaced by other more persuasive ones. Moreover, this question of 'persuasion' and hegemony is being worked out through the trans-national web of tele-technologies. It is concluded that new legal & political narratives must take this phenomenon as their starting point.

Key words: Terrorism, 9/11, global public sphere, international law, constitutive outside, state of emergency or exception, narrative, image, technetics, replicants, re-territorialization, taking & naming, political theology, complexity, choice-making, conflict resolution, counter-efficacy, coloniality of power, politics of authenticity, empire, virtual space, lawclash, absolute catastrophe.

RESUMEN

Este artículo es un reporte acerca de mi investigación en progreso sobre la transformación de la esfera pública (inter)nacional en una esfera pública global. Su punto de partida tiene que ver con las consecuencias desastrosas que los ataques de 9/11 pueden tener para dos de los discursos que constituyen esta nueva esfera: el derecho internacional y el discurso de los intelectuales 'globales'. Estos últimos no se conciben según el modelo liberal-iluminista, como la conciencia de la sociedad, sino antes bien, en el mismo nivel de los ciudadanos que, al ser afectados en su persona por la globalización, se encuentran en el proceso de adquirir una posición cosmopolita. Ahora bien, esa posición es ambivalente: oscila entre el repliegue a formas de identidad radical particulares y la búsqueda de una vía alternativa de acceso a lo universal. Mi argumento aquí es que esa nueva audiencia global decidirá la cuestión de acuerdo con la lógica de la hegemonía. Esto implica que las herramientas y narrativas

analíticas (legales, políticas, etc.) se encuentran en proceso de ser remplazadas por otras más persuasivas. Ahora bien, esta cuestión de la persuasión y la hegemonía está siendo elaborada a través de la red transnacional de teletecnologías. Se concluye que las nuevas narrativas políticas y legales deberán asumir este fenómeno como su punto de partida.

Palabras clave: Terrorismo, 9/11, esfera pública global, derecho internacional, afuera constitutivo, estado de excepción, narrativas, imágenes, técnica, replicantes, reterritorialización, toma de posesión & nombramiento, teología política, complejidad, toma de decisiones, resolución de conflictos, contraeficacia, colonialidad del poder, políticas de la autenticidad, imperio, espacio virtual, catástrofe absoluta.

SUMMARY

1. Images on a sphere
2. Fetishes revealed, as the T.V. set shows the storm blowing on the wings of history
3. *Legibus Solutus*: LawClash at the edge of history

1. IMAGES ON A SPHERE

The terrorist attacks on the US on september 11 2001 have potentially shattering consequences for the discourses that make up the global public sphere. I will refer in this paper to two of these discourses and to the implications that the attacks may have in such discourses: that of international law and that of the intellectuals that write for a global audience.

But first, a point of clarification: to conceive the 9/11 attacks as acts of terror in the form of an invasion from the outside by a barbaric evil other is a non-starter. We should remember that the outside is always

constitutive of the inside. What ‘we’ are is, to a great extent, a matter of who and what we identify as ‘them’.

A brilliant illustration of this political point of common sense takes place in the HBO film ‘Conspiracy’. The film reconstructs the events that took place at the infamous Wannsee Conference in Nazi Germany. The conference was a meeting of high ranking officers of the SNDP—all of them lawyers— whose aim was to discuss and approve the so called ‘final solution’. There is a key scene in the film in which the solitary opponent to the ‘final solution’—a high ranking member of the Ministry of Justice Played by Colin Firth— tells a story to Kenneth Branagh, the British actor who plays the Nazi General in charge of securing compliance with the proposed strategy for the total elimination of the Jews. We get to hear the story only at the end of the film.

The story goes like this: ‘The mother of a man who deeply hated his father dies. To the surprise of all he does not cry at her funeral; not one tear at the grave of his beloved mother. Years later the father dies, this time the man is inconsolable, he cries a river, incapable of accepting the loss’. The point, if stories shall have one, is a warning: the very meaning of one’s life may be consumed in the pursuit of the life of one’s enemy, for one’s life identity depends on that of the so called other. Put otherwise, the point is that obsession with one goal may well violate one’s best interest: one may destroy one’s life (and that of others one cares about) in the pursuit of the ‘evil other’. Since such a goal can dominate a person’s whole life, such a choice is distinct from the maximization of present aims. Thus, the self- goal becomes a basic or ‘absolute’, dominating, goal: the rational preference. Now, some of the most catastrophic things happen in the world as a result of these ‘selfless’ pursuits; here we confront the very origins of fundamentalism. On this account saints are not as far from terrorists as we would like to think. “They are all true aliens”.

The mandate of the United Nations corresponds to this fact. It is to maintain the conditions that make possible to coexist with the other without making ‘otherness’ and or its reduction to sameness,

the dominating goal of the lives of nations and peoples. In this respect the UN mandate is akin to a principle of equality among nations and peoples. It is not simply to maintain peace for peace's sake or to establish a world-government with unique standards, some sort of *penseé unique*, but rather to make life possible for peoples in the face of other peoples.

I think this mandate and purpose—that entails a commitment to a many-centred human society—still holds. But I also believe that it will be necessary to rethink some important legal categories, not only because of the reality of terrorism but also and perhaps more important, because our domestic communities are becoming global communities. The global community is not yet however a 'community', in the sense of a coherent and navigable discursive terrain. This means that we find ourselves at a time when our rethinking of legal categories and discourses attempts to bring about that which it presumes: a truly global community.

We all know that the word 'global' is itself producing a social transformation of a global nature, but we also know that it is not a new or even process. Some have talked about the Roman Empire and the expansion of Islam and Christianity as precedents of globalisation, others have pointed out that law, governance & order became truly global after 1492. Others have criticised the term arguing that it unduly inflates a series of poorly understood social and market processes. Whatever the case may be, the point is that after 9/11 that world order is different. And this difference has to do fundamentally with a switch of standpoint.

Our new standpoint is the following: we are concerned people coming from a variety of backgrounds—cultural, political, etc.—confronted by a serious attack perpetrated by a non-state organization, whose unity of structure is in question, against a state. But we are also and at the same time state citizens caught up in the middle of a paradox: that of an undemocratic global 'state of emergency' claiming absolute power over the citizens of free and democratic nations.

The reference here is to the state of exception that is called into existence with the sovereign pronouncement of a state of emergency or 'war'. Such a pronouncement generates a grey zone of legality,

constitutional rights and balance of powers, and within this grey zone so-called 'executive orders' reign free, operating without democratic oversight, in order to combat an 'enemy' (defined by the very same Executive) that threatens citizens and sovereignty alike.

Facing such a threat, the language of universal political freedoms cedes the terrain to that of the state of exception as the proper legal & political response in a time of crisis, and to the notion that a political decision-maker in the form of a strong executive plays more efficiently the role of a war machine positioned within a new, uncertain, geopolitical landscape.

Such notions and attitudes remind one inevitably of the debates that took place in the midst of the fall of the Weimar Republic in the 1920's. Particularly, they remind one of the position of internationalist and constitutional lawyer Carl Schmitt concerning the question of the defence of the constitution and the very nature of the political. Schmitt's insight that the nature of the political was one of confrontation rather than amicable conversation still holds, but it does not follow from this realization that law should remain silent, suspended, while the Führer makes a call to arms. Furthermore, it does not follow that 'war' is the correct name and/or procedure for the normalization of the time of exception.

Indeed it has been observed by many international jurists that the use of the term 'war' in reference to the aftermath of the 9/11 attacks is a misnomer, but it nonetheless serves to emphasize the seriousness of the events and the necessity of reliance on all means and ends, as if in a state of war. However, we must not forget the 'as if'. Lawyers and hard-liners are addicted to baroque imagery, and reliance upon allegory is the mark of their trade.

Having said that, we must emphasize that what matters, from our standpoint, is to clarify three related but different points:

1. That rather than 'war' what is going on is a new global struggle for hegemony,

2. The fact that the use of force indicates a lack of hegemony, rather than the opposite,
3. That a new global public, for whom traditional legal & political narratives are insufficient, will decide the matter according to the logic of hegemony. This implies that inadequate tools of analysis and narratives (legal, political & otherwise) are in the process of being replaced by other more persuasive ones. Therefore, we can expect that the pressing international legal & political issues concerning the characterisation of the attack (as terrorism) and the sort of forcible action permitted (and against whom) will make sense only within the new narratives that are being formed by a changing global public sphere.

The narrative, or rather the image that seems to be emerging is one according to which power produces its own vulnerability; an image that can be staged and disseminated as a global spectacle and thereby used as a violent weapon. At this point technology and technetics matter a lot. The new structure of war has a lot to do with the disseminating and almost replicant capacities of the global mass media. This is the difference between the acts of 9/11 and those of, for instance, the Battle of Genoa or the rebellion in Chiapas. The latter are examples of hegemonic oppositional struggle: their aim is to change particular (state or inter-state) policies, their main weapon and information carrier is the advancement of demands that can be articulated in a discursive manner in the cosmopolitan arena. Although there is a reliance on the use of force, and although certain acts related to this use of force could very well deserve to be qualified as atrocious crimes, what differentiates them from the 9/11 attacks is that the latter were unaccompanied by claims or demands. Only the image. On 9/11 there was no message left behind, only the image of vulnerability, the vulnerability of the strongest, staged as a spectacle at the global level and disseminated like a viral replicant everywhere.

Furthermore, the images were provided by those who were subjected to the attacks the attacks themselves. This was no mere hijacking, in which the attacker hopes to make a demand and obtain its compliance against the release of the victim. On 9/11 the attackers perished without making any demands. And the image got repeated again and again to a many-centred audience, splitting it into decisively differing camps. As it got clearer during the days and months after the attacks, in this case the image carried not one message but was reinterpreted in very different ways by a collective made up of a variety of standpoints situated as a global public sphere.

The image was not aimed solely at the Americans. Indeed there was nothing for the Americans to understand insofar as the point was rather to shatter understanding; at the very least the traditional way in which Americans understood themselves and their role in world affairs. In fact, nothing is as revelatory of this implication as the resultant transformation of US President George W. Bush, from opponent to US involvement in global nation-building to reluctant hero of the hour, global military leader landing in air-carriers top-gun style and architect of nations elsewhere.

Americans woke up from the 9/11 nightmare to find their worldview torn apart. This meant that the discourses which served before to block certain realities from view (US interventionism elsewhere, persistent opportunism, the systematic use of double standards, support of neo-colonialist policies or non-democratic regimes in spite of internal commitments otherwise) became useless. Thus the question that persists to this day: why do they hate us?

Now, this was a therapeutic, ritualistic question that did not seek to be answered. Rather an empty signifier, a fetish to ward off the attack against an American innocence that never existed in the first place.

It was not only American 'innocence' what was revealed to be a fetish. It was in fact the whole structure designed to keep the integrity of the world order what was revealed to be a fetish. For the first time in years t.v. audiences around the world saw what was behind such fetishes as global capitalism, international law or the state.

2. FETISHES REVEALED, AS THE T.V. SET SHOWS THE STORM BLOWING ON THE WINGS OF HISTORY

As pointed out by Susan Buck-Morss, in the days following the Anthrax scare the US state was revealed 'to consist of postal workers walking their delivery routes'¹, international law appeared in the nude as a battlefield confronting very angry 'crusaders' and world capitalism and globalisation were revealed to be good old forms of (re)territorialization. We have known for quite a while that the origin of international law is an act of taking and naming, or put simply, that governing & ordering is to re-populate territories around the world. But we have chosen to remain oblivious to the fact that this initial violence is set up from then on to become an oversymbolised institutional centre, obliged to acquire and justify the monopoly of the use of force. In the process, its violent foundation becomes mystified and its legitimacy becomes a matter of political theology, violence being banned or quite simply ignored. How else could one understand the stance against WMD's held and defended worldwide by those who already have them and developed them in the first place? No contradictions here, but mere political logic in the form of hegemonic struggle and the history of international law as a story of short-time memory loss.

In any case, the notion that globalisation meant that law became de-territorialized was proved to be inadequate. The Twin Towers, Afghanistan, the millions of people that took to the streets around the world in the days before action in the Middle East started, Guantánamo Bay and Irak — nowadays the infamous images from the Abu Grahیب prison in Irak — may be symbols but they are also a human and material reality, and the image(s) that has circulated through the world media refers to both.

Theologico-political language has been used in order to emphasize the symbolic pole of this reality, but the t.v. image reminds us of a material reality that is not 'theological' or 'religious' in the fundamentalist sense — that of the sacredness of texts and interpretation of world events as

1 BUCK-MORSS, SUSAN, *Thinking Past Terror*. New York, Verso, 2003, 25.

fateful intention—. Rather, it is theological or ‘spiritual’ in the sense that the traumatic intensity of the images of torture and destruction, as cinematic as they appeared, existed, that they were unintentionally actual, irrefutably material and thus irreducible to reinterpretation at the symbolic level.

Examples of spirit in a spiritless time. Spirits in a material world. The t.v. image is theological in the sense in which Jacques Derrida reminds us that there is a fundamental difference between the transcendental realm and that of humans. That humans and gods do not relate to each other as amicable relatives but stand against each other in fundamental misunderstanding. Given that misunderstanding is the starting point, that every human decision is taken in a situation of radical uncertainty, whoever claims for him/herself the standpoint of transcendental vision falls prey to an uncritical illusion. Henceforth, decision –also legal and political decision- becomes problematic, fragile and contingent, which is why it needs to be justified. Hence democracy, as implied by the politics of hegemony.

This means also that justified decisions are mere interpretative compromises and never ‘correct answers’ in some empirio-transcendental, obscure sense. Thus, to see the t.v. image and the act as a symbolic attack on global capitalism cannot be squared with the fact that it was illegal immigrants, the secretaries, the janitors, food servers, clerical workers and firemen who got killed. To say that it was an attack on ‘America’ does not do justice to the many nationalities and ethnic names among the victims. To say that it was a fundamentalist attack against New York as the Sodom of our era says nothing about the ordinariness of friends, family and relatives left behind. To say that the explosion ignited the symbolic place of meeting of those who rule the cuasi-transcendental realm of finance capital erases the many-centred narratives and life-stories of those who perished there.

In much the same way, reactive notions such as ‘the nation under attack’, ‘you are with us or against us’, ‘let’s invade their land, kill their leaders and convert them to Christianity’ are a brutal simplification. For who is ‘us’ and who are ‘them’? These

apparently obvious terms are burdened with meaning. They are complex terms that refer both to the complexity of the regulation that could be used in these circumstances and to the complexity of social facts that would come under regulation.

The term ‘complexity’, as it is used here, does not describe objective properties of natural or social phenomena. It does not refer either to complex objects in contrast with simple objects. Rather it refers to the cognitive situation in which agents find themselves, be these individuals or social or even non-social groupings. The relations that agents make up and project upon their environment as they attempt to orient themselves—that is, relationships of disposition, prediction, planning and manipulation—will be more or less complex in accordance to the circumstances.

These premises allow us to express conditions of complexity under the following four headings:

1. The higher the number of variables that should be taken into account by an agent in order to make a decision, and the wider the extent of possible choices is, the more complex a situation becomes in a given environment.
2. Complexity increases in a given medium in direct relation to the interdependence of the variables present in that medium. This means that the quantity of information that is required in order to make sense –to manipulate or dispose– of the environment is ever increasing, up to a point where quantity becomes quality and the type of operations that are necessary in order to predict the effects of the repetitive relations that interconnect variables in the environment gets transformed.
3. Unstable environmental conditions, and the tendency of its variables to change in non-predictable ways increases uncertainty.
4. Decision-making agents find themselves in a state of ‘cognitive circularity’ as they become more and more aware of the increases

in environmental complexity. Agents begin to take into account the fact that they are not able to define their environment in objective terms (that is, by simply neutralizing disturbances that they themselves have created) and circularly that they are not able to define themselves without making reference to the turbulence of the environment.

The consequences of complexity are many, but for the purposes of this exercise three will suffice:

A first consequence would be that we have become unable to define ourselves (as ‘us’) without making reference to the disturbances created by our own activity in the environment (the outside, or ‘them’). To put it simply, we are both friend and enemy and therefore the very nature of the political is caught up in a state of circularity. For instance, one may wonder whether or not the allies in Irak have become trapped in a situation that they themselves produced, or else, if they were caught up in that situation in the first place. An implication of this state of affairs would be that conditions of security (including forms of certainty such as disposition, prediction, planning and /or manipulation) have become inseparable from conditions of insecurity.

The meaningful point for international law here is to ask whether or not the level of complexity in contemporary systems of choice-making and conflict resolution will increase. If the answer is positive then we may expect increasing semantic variety and discontinuity between languages, understandings, techniques and values used within each sub-system in the juridical matrix and its/ their ulterior differentiations. The consequence would be that the meaning of an event experienced within a given social medium—say the 9/11 attacks as perceived in the US, the Bolivarian revolution as perceived by multiple actants in Venezuela, or the unfolding of the Colombian constitutional process since 1991—cannot be transmitted or communicated in the relevant terms of a different social medium—say the UN system, the OAS regional sub-system, or the presidentialist matrices of the division of power in Latin America—. Difficulties of comprehension and prediction follow.

A second consequence is that phenomena of inter-dependence between sub-systems occur more often and become more relevant. Given that these phenomena are the condition(s) of coordination within higher social orbits, the tendency is towards the break-up of more hierarchical structures. Given that choices have to be made in situations of more difficult prediction and intervention, choice-makers are obliged to adapt to a meaningful mass of 'perverse effects'. The latter are results that they have not predicted and they cannot welcome; I propose the terms 'counter-effects' and 'counter-efficacy' in order to refer to these phenomena².

It is important to acknowledge that 'counter-effects' are not errors. It is not the case that somebody did not do what he/she was supposed to do. It is neither the case that somebody did not follow the rules. It is the case that inter-dependence becomes more relevant and no amount of nostalgia for the original place or temporality (the inclusive community) is going to change that, as long as the industrial mode of production persists. This means to say that in modern industrial society we survive thanks to the very same artefacts that destroy us and, once again, no amount of Victorian romanticism (as portrayed for instance in Mary Shelley's *Frankenstein*) is going to change that. The cars that move us everyday to our workplaces are greatly responsible for contaminating our cities, depleting the world of traditional resources and some may say even for wars. Indeed, transportation engenders distances and geographies that can only be covered through means of transportation at the price of a constant augmentation of the costs and the times of

2 My understanding of 'counter-efficacy' is very close to Jean Pierre Dupuy's observation about justice: "Anyone who defines justice in terms of fairness promptly discovers, against his own wishes, the disquieting proximity between 'good' reciprocity, that he procures to posit as formalism, and the reciprocity of exchanged threats and punches (...) one can say of [Adam] Smith what Louis Dumont says about Leibniz; that in his case 'good must contain evil, although it is its opposite'". DUPUY, J.P. *Le sacrifice et l'envie*, Paris: Fondation Saint-Simon/Calmann-Lévy, 1992. Ed. Esp. *El sacrificio y la envidia. El liberalismo frente a la justicia social*. Barcelona: Gedisa, 1998, 327. Dupuy's comment refers to the tradition that goes from Smith to Nozick and Rawls. (Compárese también con su noción de 'contra-productividad'). Compare also with his notion of 'counter - productivity'.

displacement. It is not technology (no Victorianism, no Luddism here) but technetics: the fact that technics engender new technics and technological supports, thereby giving origin to an unlimited number of demands that must be met. This constitutes the centre of the ‘crisis’ of industrial modern societies everywhere.

The point for international law is the following: The system of international law is both a matrix and a set of techniques (theories, practices, venues) whose minimal function is (or has been, traditionally) the containment of the most destructive consequences of modern warfare. It is indeed a Victorian creature, and it has failed as one such creation³. Its functioning was conditioned by the (self)limiting and legislating capacities of the nation-states —(a loss of) power— but these capacities were subordinated to the ‘civilising’ capacities of nation-states —(an excess of) coloniality of power—. This process was conditioned, in turn, not only by military might but also by technological prowess and an always increasing and more ferocious competition between coloniser and colonised states, and between colonial states themselves (in the twin realms of trade, war & technology). Besides, such a political competition was doubled in the economic arena, which is to say that the former was in turn overdetermined by the latter.

In the field of law, an augmentation of such phenomena of interdependence was accompanied by an increasing difficulty to predict and intervene (as the different but related Nicaragua, Rwanda and Kosovo cases have shown, painfully) in order to minimize the effects of modern warfare. Insofar as decision-makers were, and continue to be, obliged to make their predictions, projections and policy guidelines in the absence of sufficient information and knowledge about the lines of interaction, the diplomat, the international lawyer and the claimants must adapt to

3 As masterfully shown by Marti Koskenniemi in his work on the structure and dynamics of international law. See on this Koskenniemi, M. *A Gentle Civiliser of Nations. The rise and Fall of International Law 1870-1970*. Cambridge: Cambridge University Press, 2003.

a mass of 'counter-effects' that becomes all the more significant. Up to the point where counter-efficacy and counter-productivity start to appear systematic and thereby characteristic of the system (the 'global terrorism' issue and its instances: the war in Irak, significantly). Pretty much the same can be said about domestic systems of law.

To make matters worst, instances of counter-efficacy seem to reveal the presence of, if not be fuelled by, a politics of authenticity and nostalgia (national interests, universalism of parochial views and values on liberty, democracy and the like) that can only be interpreted as some sort of Victorian acting-out, that is to say, as the return of the repressed (excess of) coloniality of power. Therefore, it must come as no surprise that the discourse(s) on 'terrorism' (the actual name for systemic counter-efficacy and counter-productivity, an empty name at that) comes accompanied by renewed fears of (global) coloniality that are articulated into critical discourses of (neo)colonialism and/or empire.

Put otherwise, in the actual state of affairs, international law as juridical matrix conveys the visible (for instance, the image of a 21 year-old female American soldier torturing an Iraqi prisoner of war, or that of the beheading of an American hostage at the hands of Iraqi militia) into the domain of language (condemnations, resolutions, treaties, regional or domestic legal initiatives, declarations) in a form that is both formative and bellicose. In delivering the social to the discursive, law as struggle accounts for the paradox of simultaneous order and conflict. In turn, law also designates the way in which the matrical framework of the visible domain, in a given epoch, both forms the discursive domain and enables its dissemination. This accounts for the present dissemination of international legal discourses around the empty signifier 'terrorism' and for the fact that in such a multiverse of discourses one can always find a tension between the critical-aformative (the pessimistic mood) and the critical-performative or constructive (the optimistic mood).

I would like to illustrate this point by way of an examination of two of the most powerful critical responses to the question 'what is terrorism?' available nowadays in the field of international law & legal theory. Following Michel Foucault's proposal that the juridical matrix

has the form of ‘the law of halves’⁴, I will contend that, put together, these responses hold the key for a better understanding of the (law)clash of discourses that characterises the international legal arena. As the reader must be aware by now, rather than solving the paradox (the lawclash of discourses) I am embracing it.

3. *LEGIBUS SOLUTUS*: LAWCLASH AT THE EDGE OF HISTORY

I take it that the debate between DANILO ZOLO and ANTONIO NEGRI which took place in september 2002, concerning the new order of globalization⁵, can be understood as a critical intervention in the ongoing conversation about the contradictions of contemporary international law & liberal justice and specifically, its fate after 9/11.

ZOLO argues that terrorism is and/or follows from an escalation of international instability associated with the affirmation of a strategy of permanent war that is becoming hegemonic. This, in turn, would have lifted the very condition for international law to exercise its minimal function. Indeed, he says, “the condition for an international normative system to be able to ritualize and contain the use of force (obliging all agents to submit to predetermined procedures and general rules) is that no agent in the international order should, because of its overarching power, regard itself, or be considered by the international community,

4 SEE FOUCAULT, MICHEL, ‘La verité et les formes juridiques’, en *Dit et écrits II. 1970-1975*. Paris: Gallimard, 1976. Ed. Esp. *La verdad y las formas jurídicas*. México: Gedisa, 1983.

5 NEGRI, ANTONIO & ZOLO, DANILO, ‘Empire and the multitude. A dialogue on the new order of globalization’, in *Radical Philosophy* 120, July/August 2003, pp. 23-37. Antonio Negri taught at Padua and Paris VIII. His books on legal theory and the new world’s order include *Labor of Dyonisus. A critique of the state-form* (1994) and the best-selling *Empire* (2000), both co-authored with Michael Hardt (who was in Bogota in 2001 for a pathbreaking seminar on legal theory). DANILO ZOLO teaches Philosophy of Law at the University of Florence. His books include *Democracy and Complexity. A realist approach* (1992) and *Invoking Humanity: war, law and global order* (2002).

as *legibus solutus*”⁶. Hence, for ZOLO the strategic aim of the last remaining superpower—the consolidation of its planetary hegemony in order to ensure a stable military presence in the heart of Central Asia, controlling vast resources and completing the encirclement of Russia and China— would explain the relaunch of a neo-colonial strategy—under the pretext of the fight against terrorism—that would in turn account for the contradictions of international law & the new order of globalization. For ZOLO, the only solution to such contradictions passes through a strengthening of nation-states via a multipolar regionalism that would reactivate the international system.

In turn, whilst agreeing on the notion that the *legibus solutus* and international law negate each other, Negri believes that the attempt to revamp a participative and normative international system in the Westphalian sense—already attempted by many, including the World Bank, and as proposed in the expansive literature regarding the construction of a global ‘civil society’—has had no effect. “Even when it aims to respond to the subjective rights of citizens and nations, of groups and associations, as in the case of the constitution of the great world tribunals, juridical reformism has already bypassed classical international law”⁷. For Negri, only on this new terrain—indeed a brave new world—can one act. Negri (and Hardt) have called this brave new world an ‘empire’, after Polybius.

According to them empire is the form taken by a system that is becoming increasingly parasitic and predatory and whose legitimacy rests entirely upon war. They see a shift from disciplinary regimes concerned with individuals and centred on nation-states, to the regimes of control concerned with populations in which (imperial) war determines new territorial and racial borders. These are the borders of ‘empire’, entirely different from those of nation-states in the Westphalian sense. Hence the failure of attempts to reactivate the international system along the lines of multipolar equilibrium,

6 See n. 5, 33.

7 *Ibíd.*

and the emptiness of the many criticisms focusing on the allegedly neo-colonialist stance of the US.

“I would like once again to insist on the fact that Anti-Americanism is a weak and mystifying attitude in the present phase (...) [it] confuses the American people with the American state. It fails to recognize that the US is inserted in the global market just as much as Italy and South Africa are, and that Bush’s policies are those of a small minority within the global aristocracy of multinational capitalism. Anti-Americanism is a dangerous state of mind, an ideology that mystifies the analytic data (...) we should distance ourselves from it”⁸.

For NEGRI, rather than falling into the trap of Anti-Americanism and/or placing our hopes in the classical international legal order, we must propose an adequate space for all the conflicts and “struggles that start from below”. In such a framework there would be no room for nostalgia and the defence of the nation-state, henceforth, no room for nationalism (as a domestic or global recipe) and its twin brother, the *legibus solutus*, the political leader that places himself in the state of exception.

What is this space? For now, we can only contend that it is neither the ‘international space’ of the classical world order nor the ‘place of exception’ of the nostalgic (indeed, retro-Schmittian) new nomos of the earth. Both have resulted, and will result again, in that absolute catastrophe of which Verdun, the bombing of Dresden, Hiroshima, Auschwitz and Latin American civil & military authoritarianism —granted their specificities or even uniqueness— have given us lasting proof.

Who inhabits that space? If one is led only by nostalgia for the loss of the classical international space and/or the nomos of the earth, one would only see a place inhabited by enemies: ‘terrorists’. Panic, paranoia and acting-out would follow. I am afraid that too many of our present reactions to the current situation are informed by precisely such nihilistic affects. Far too quick determinations (such as those present in, for instance, the USA Patriot Act’s definition of

‘terrorism’) that seem to make equivalent the struggles of Al-Qaeda, the Palestinian OLP, ETA, the Brazilians ‘*Sin Tierra*’, FARC, the variety of groups of resistance in Irak, the *Sans Papiers*, the *campesinos cocaleros & desplazados* in Colombia and/or the ‘people of Seattle’ are an example of just such a nihilism. Insofar as they are nihilistic, these determinations are a non-starter. Again, the consequences would be, actually and virtually, catastrophic.

My own research on international law & legal theory can be understood as an attempt to outline the beginnings of an answer by focusing on the role of moving populations, as they re-constitute themselves and associate as actants whose action is recorded technically. I take it that Negri’s remark about “struggles that start from below” refers precisely to the role played by moving populations in the shaping and re-shaping of the new order of globalization, but would contend that him and ZOLO fail to acknowledge that it is not the nature of such populations what matters but rather the symbolic-technetic form of their (actual or virtual) articulation.

My point, for initiating a rethinking of international law, the new global public sphere & the order of globalization, is that there is a place between the nation and empire, virtual in character but nonetheless real, where such articulations are taking place. This is the place of the symbolic, of the image.

Indeed both ZOLO and Negri seem to toy with the idea that the symbolic and the ‘information revolution’ are somewhat intertwined in this whole issue. DANILO ZOLO reminds us, for instance, that the 9/11 attacks were intended “to hit the symbols of economic, political and military power” and confronts NEGRI for “having paid insufficient attention to the issue of the ‘de-politicization of the world’ that has been brought about by the great powers of technology and the economy”. However, he fails to develop the implications that the staging of violence as a global spectacle may have for the (re)construction of a global public sphere. Thus, he cannot see that the image-message conveyed by the 9/11 attacks was the dialectic character of power, the fact that power produces its own vulnerability (an instance of counter-

efficacy). This fact leads one in the direction of the complexity of meaning within the imagined political landscape.

Now, when hegemony is under siege, when the imagined political landscape is under attack “there is little tolerance for complexity of meaning” as SUSAN BUCK-MORSS observes, “but complexity is just what the diverse multitude in a global public sphere demands”⁹. She reminds us that what was striking about 9/11 was the speed with which every image taken of the New York disaster was reduced between a week to one image, the American flag, and under it, one caption, ‘the nation under attack’. The same holds for the images of 11-M in Madrid, those of the Abu Grahیب prison and the ones related to the ‘mistakes’ made during the ‘final’ offensive against terrorism in Colombia.

However, as those very same events have demonstrated, the demand for complexity (put forward from below) has made reduction to simplicity (by those in the upper echelons of power) increasingly difficult. In this sense it is erroneous to think that ‘Al-Qaeda decided the elections in Spain’ or, as ZOLO maintains, that the 9/11 attacks could be reduced to a gesture against the symbols of the United States’ “new imperial power”. Matters are much more complex. The Spanish electorate was able to discern and distinguish national solidarity, the attempted reduction to simplicity by the *Poder Popular* government, Al-Qaeda’s unjustifiable articulation of means & ends around a principle of bare reciprocity and the presence of Spanish soldiers in the Coalition in Irak. Its reaction was finely tuned to the articulations of these very different events, thereby avoiding nationalist reaction, panic and subsequent support of the strong leader (Mr. AZNAR) that which goes a long way to explain better the electoral outcome.

Similarly, people around the world was able to see and differentiate (discursively) between the many layers of meaning conveyed by the images of the September 11 attacks, avoiding naïve Anti-Americanism but also uncritical support for the US-led military response. Hundreds of thousands demonstrated against reactive military strikes, and even

9 BUCK-MORSS, SUSAN, *Thinking Past Terror*. London: Verso, 2003, 27.

though they were ignored, at first, thanks to the brutality of simplifications ('you are with us or against us', placing millions of critics of US foreign policy at home and abroad under suspicion) it has become clearer and clearer that such voices cannot be ignored. In this respect also Negri fails to see that the role of the technetic global public sphere may be central to the 'bringing down' (or the redemption) of Bush's cliqué. He argues that "the only concrete and realistic way to bring down Bush's gang is through the aristocratic power of the multinationals' when in fact, today it seems possible that Bush will be brought down (or saved), not by the aristocratic power of the multinationals, but by a series of pictures & videos around which a response is in the process of being articulated 'from below'.

It seems strange that, given the critical position of both ZOLO and NEGRI and their proclaimed interest in the information revolution, they both seem to fail to come to terms with the fact that the new territories and inhabitants of today's world order are 'collectives' made up of humans and non-humans alike and that, consequently, the new language of the global order & international law must somehow respond to that. This can only be explained if one acknowledges that they both fall back upon a position that disavows technics (a characteristic gesture of Modern Western thought).

The disavowal of technics and time¹⁰ leads Negri to (re)ontologize labour & human dignity—thereby, making it impossible for him to think of 'the multitude' or the moving populations as something else than mere movements of people or historical subjects—and ZOLO to (re)ontologize the nation-state in the form of an imperialistic US. The result is somewhat familiar: the 'new' spaces and inhabitants of the order of globalization turn out to be old-fashioned 'historical subjects' and 'historical territories'. This betrays the traces of originalism and monism (mononaturalism) in our (re)thinking of the new world order. The point is that if we are to think the world order as 'new', then we

10 See on this STIEGLER, BERNARD. *Technics and Time. Volume 1. The Fault of Epimetheus*. Stanford. Stanford University Press, 1998. Subsequent to *Empire* (2000) Negri has taken onboard criticisms regarding the notion of 'multitude' in the direction of the question of time; no coincidence here.

may have to abandon such gestures and concepts (originalism & mononaturalism). Indeed, that is the modest, provisional, conclusion of this paper: that the time is ripe for a re-signification of the languages of international law. Furthermore, that such a re-signification may be the key to avoid the lawclash turning into absolute catastrophe.