Introduction

Understanding the Multiplicity of Justice

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Since the end of the Cold War twenty years ago, there has been a dramatic increase in the number of international and transnational institutions for which "justice" has become a central ideological ordering principle, an implicit goal, or, in the case of the International Criminal Court (ICC), a formal basis for institutional action. At the same time, there has been a corresponding rise in the prevalence and cross-cultural resonance of justice as a framing discourse, a transnational normativity that gives shape to, but is not coextensive with, the modalities of international law, human rights, and preexisting cultural and moral imperatives. The problem, we might say, of justice is of course an old one indeed: Its complexities have formed the staple of debates within political philosophy for centuries if not millennia; within both theology and international law the centrality of justice has made it an iconic, if shifting, symbol that has at times come to represent the particular system itself. Justice has served as the illusive endpoint of any number of political and social teleologies, the utopian goal toward which movements of ideas and people have been hurled with sometimes tragic, sometimes heroic, consequences.

More recently, however, the withering away of the logics of the bipolar postwar system provided an opening for the actual building and implementation of both international and transnational systems that had existed as either idea or unrealized possibility, including the international human rights system, the interrelated system of international criminal law, and the more diffuse networks of transnational actors that came to constitute what Eleanor Roosevelt, the chair of the commission that produced the 1948 Universal Declaration of Human Rights, called the "curious grapevine." Most of the transcendent aspirations of the postwar settlement were almost immediately smothered by the constraints of realpolitik that characterized the Cold War. Even though the Manichean struggle between the nation-states of the North Atlantic Treaty Organization (NATO) and the Warsaw Pact actually brought together ideological and political configurations that superseded the individual nation-states that comprised them, the fact remained that great power sovereignty

and supposedly antithetical national security interests formed the backdrop against which the trans- and postnational expressions of postwar optimism were rendered practically irrelevant (although not meaningless).

Beginning in the 1990s, a series of historical and discursive moments marked a decisive shift in this postwar narrative. Following on the heels of the relatively abrupt implosion of the Soviet Union and the authoritarian regimes of the rest of the Warsaw Pact, the racist ancien régime of South Africa crumbled with similarly stunning speed. As the anthropologist Richard A. Wilson describes in his authoritative study of the early years of South Africa's postapartheid transition, the efforts to build a "civic state" based on the revived language of human rights and universal justice were part of a wider historical movement. As he explains, "[t]he quest to build a 'culture of human rights' in South Africa . . . needs to be understood in the context of a sea-change in global politics, and the rise of human rights as the archetypal language of democratic transition . . . Since 1990, nearly all transitions from authoritarian rule have adopted the language of human rights and the political model of constitutionalism . . . " (Wilson, 2001: 1).

At the same time, but more ambiguously, the multiple languages of justice shaped the emergence of new national, international, and transnational regimes in ways that at times intersected with, but at other times diverged from, the more actualized – if still embryonic – "culture of human rights." Justice coexisted on the post–Cold War's global-discursive terrain as the normative partner of "human rights" even as it was fractured into any number of different conceptual, political, and ethical variations: local justice, popular justice, social justice, transitional justice, economic justice, and others. The empirical pluralizing of justice, however, did nothing to clarify important questions that had been exhaustively pursued by theorists from the pre-Socratics to Rawls: What, exactly, *is* justice? What is the relationship between justice and natural/human rights? Does justice reflect a particular social or moral orientation, or is it better understood as an ideal political good? Can we give a legitimate account of justice in the abstract at all? What is the relationship between justice and law? and so on. Instead, empirical reports from the post–Cold War's discursive frontlines revealed these to be the wrong questions.

As a response, political philosophers themselves began to explore the implications of justice as social practice and, in the process, offer an alternative to the traditional politico-epistemological dichotomy between the normative and the descriptive. Will Kymlicka, for example, drew on case studies from debates over the political and legal rights of First Nations and other minority Canadians to develop a theory of justice that is at least in part derived from the historical and political realities of multicultural Canada (see, e.g., Kymlicka, 1995, 2007). Likewise, the political philosopher Duncan Ivison (2002) offered a theory of "postcolonial liberalism" to illuminate the "mutual recrimination and misunderstanding" that characterize the contentious

debates between indigenous and nonindigenous Australians. His argument is that a truly postcolonial Australia will be based on a new social contract that is constituted by what he calls "both ways" learning, in which indigenous notions that challenge existing and hegemonic assumptions about "public reason, citizenship, and justice" are fully integrated into a new political and cultural settlement. Drawing in part on the work of the political theorist William E. Connolly, Ivison explores the possibilities of what he calls the "conversation of justice, the framework within which claims of justice are made, and more importantly, recognized and understood by others . . . " (2002: 46). This is not just another, perhaps Habermasian, account of justice, one that simply redirects the analytico-deductive lens from the Platonic ether to the (still abstract) constitutiveness of the public dialogic encounter. Rather, Ivison is genuinely concerned to anchor both the conceptual and political analysis of justice in the "particular [cultural] idiom" in which the meanings of justice emerge as part of a wider dynamic through which "claims and social movements are propelled (or not) 'upwards' . . . " (2002: 46).

Also, it was not only, or most importantly, political theorists who realized that the changing landscapes of the post–Cold War world demanded new approaches to the perennial problems of justice. The Chief Prosecutor of the ICC, Luis Moreno-Ocampo, sought the engagement of a range of academics and practitioners as he labored to establish a workable normative framework within which the Court could initiate and successfully prosecute cases in a manner that was sensitive to local cultural and political realities without sacrificing the Court's essentially universalizing mission. As Moreno-Ocampo soon realized, what was needed was an ICC that was both committed to the prosecution of crimes that violated a universal sense of right – that is, "the most serious crimes of concern to the international community as a whole," as Article 5 of the Rome Statute puts it – and responsive to the open, shifting, and often contestatory normative terrains in which the Court was forced to operate.

In the end, the Chief Prosecutor found an opening in Article 53 of the Statute, which outlines the conditions under which the Court can decline to begin a prosecution. Among these conditions, the Article creates an ambiguous limiting condition around the "interests of justice." Its ambiguity derives in equal measure from both parts of this provision: The Statute neither specifies what kind of interests the Court should consider, nor the kind of justice on whose behalf these unarticulated interests should be working. Whereas some commentators have analyzed Article 53 as an international legal form of prosecutorial discretion (see, e.g., Lovat, 2006), in fact – as the Chief Prosecutor himself recognizes (see Moreno-Ocampo, 2006) – its nuances and institutional potential are much greater. The provision "in the interests of justice" has developed through the opening of four investigations into events in Uganda, the Democratic Republic of Congo, the Central African Republic, and

Darfur as a complicated mechanism through which the tensions can be potentially mediated between an abstract discursive universality and the actual contingencies and normative multiplicity that characterize the contexts in which the ICC must investigate and (eventually) prosecute its cases.

This volume is in part a product of the efforts of the Chief Prosecutor to draw on a range of different perspectives to understand – and, for purposes of the ICC, operationalize – the multiplicity of justice as it is constituted and reconstituted discursively, legally, and politically within the emerging geographies of the post–Cold War. As the former state prosecutor from Argentina who had the most success in prosecuting members of the Argentine political and military establishment for crimes and corruption committed during the military dictatorship of 1976–1983, Moreno-Ocampo had previously pursued justice as both the enactment of formal public rituals of punishment and reparation, and the development of procedural mechanisms through which these public rituals took place. For a civil law prosecutor like Moreno-Ocampo, justice had always been a more ambiguous synonym for the rule of law: Are there transparent rules in place? Are they being followed? If not, is there a system for punishing transgressors and redressing victims? Is this system fairly and nondiscriminately mobilized? Finally, are there ways in which the system itself can be dispassionately evaluated and, if necessary, reformed? As the Chief Prosecutor of the ICC, Moreno-Ocampo discovered from early on that it was simply not possible to merely adapt this jurisprudential understanding of justice to the current and emerging sites of ICC engagement.

As part of the collaborative process of reconceptualizing justice in light of the dilemmas and potentialities of a post–Cold War international criminal justice regime committed to prosecuting gross violations of human rights and, in the process, fostering – or, as it were, compelling – the formation of a particular transnational normative sensibility, the Chief Prosecutor turned to what he describes as the "global university" (Moreno-Ocampo, 2006). By this he does not necessarily mean actual institutions the profiles, student bodies, and influence of which extend beyond national boundaries or particular regional intellectual traditions. Rather, what he means is that any formal operationalization of a new understanding of justice by the Court must be preceded by a diffuse but systematically critical engagement, one that brings together scholars, practitioners, and even potential (or actual) litigants within a *universitas*, or integrated intellectual community, one bound together by its desire to bring the tools of reflection and critical inquiry to bear on problems that go to the heart of the Court's emerging mission. As the particular sliver of this broader global university that is represented in this volume discovered, however, a paradox looms over any effort to reimagine the meanings of justice in terms of the growing body of empirical data on postconflict reconstruction projects, truth and reconciliation

commissions, and the interplay between more established transnational normative regimes like human rights and patterns of local legal and moral practice.

On the one hand, the evidence from the history of the post–Cold War demonstrates a growing acceptance – including by traditionally recalcitrant actors – of the relevance and legitimacy of international moral–legal regimes and a willingness by state actors to ratify and implement international norms at the national level. Moreover, this recent history also provides evidence of those more ambiguous collective shifts in moral consciousness that mark the globalization of a "culture of human rights." Yet within this history, justice continues to serve as a signifier with more discursive resonance than meaning. It hovers always in the background, apparently framing, for example, the promotion of human rights as a sociopolitical goal, as a description of a still-unrealized global landscape in which universal human rights provide the set of superordinate norms that both define and circumscribe ideal human relationships. Also, because the recent emergence of an expanding global cultural sphere of human rights represents the historical actualization of at least a part of the post–Second World War's utopian project, it is not difficult to find either the will or intellectual energy to likewise try and reestablish the meanings of justice and newly examine their normative potentialities. In other words, the kind of "global university" for which the ICC's Chief Prosecutor has devoted so much of his own good will and energy is one that many scholars are eager to develop.

On the other hand, many of the *magistrorum et scholarium* of this global university are committed to the reestablishment of justice on grounds that are at least partly suffused with the lessons of the empirical. Indeed, this has been the most important and radical dimension to the Chief Prosecutor's desire to incorporate the academic voice into the ongoing development of the ICC's vision: the emphasis on contributions from scholars and practitioners whose reflections on justice are anchored in the contradictions and contingencies of normative practice. It is no coincidence, therefore, that anthropologists comprise a majority of the contributors to the current volume. Anthropologists have been tracking the multiplicity of justice on the post–Cold War terrain with sensitivity and ethnographic care; nevertheless, we must emphasize that this book is not an assertion of disciplinary prerogative. In fact, it is the epistemological privileging of normative practice that makes the broader effort to reconceptualize justice so paradoxical. To draw out implications is to generalize, to go beyond the case studies that form the heart of this book. As we will see, much of what is to be learned here casts doubt on *any* overly abstracted notion of justice. The task, in other words, is to find a way beyond this paradox, to envision a framework for understanding justice that is theoretically substantive enough to serve as a basis for institutional action, but which does not do conceptual violence to what the growing

body of ethnographic research on normative practices reveals to persons – like the Chief Prosecutor of the ICC – who take it seriously.

In the next sections of this Introduction, we develop the book's main theoretical claims. We use the metaphor of the mirror to explain the different ways in which justice must be understood in part reflectively, as a discursive category that both reproduces and shapes cultural, political, and ideological imperatives at the same time it distorts – or refracts – them. In demonstrating both the reflective properties of justice, the book's chapters are subdivided along axes that show how the ethnographic and otherwise empirical encounter with justice's multiplicity leads to three key points of conceptual emphasis: the importance of international law and legal practice – including human rights – in constituting a reflective understanding of justice; the interplay between international and transnational normative regimes for which justice is a primary objective, and the more localized processes from which the all-important narratives of everyday life emerge; and, finally, the ways in which the new multiplicities of justice shed light on the importance of memory and the politics of history in the wake of the post–Cold War "sea-change in global politics" and the instances of profound disrupture that it engendered.

MIRRORS OF JUSTICE

In her analysis of the "disjunctures between global law and local justice" (2006a), Sally Engle Merry captures the essential predicament for those interested in reconceptualizing the meanings of justice in light of what we have learned over the last twenty years from empirical studies of postconflict reconstruction processes, the emergence of human rights as "the archetypal language of democratic transition" (Wilson, 2001: 1), and the creation and functioning of an international legal system that is playing an increasingly important social role within many of the contemporary world's most significant sites of collective trauma and reconciliation. As she explains, the presence of international legal and human rights institutions is structured by "a particular vision of social justice [that is] based on a neoliberal privileging of choice rather than alternatives that could be more community-based or focused on socialist or religious conceptions of justice. These gaps between global visions of justice and specific visions in local contexts create a fundamental dilemma . . ." (2006a: 103).

Merry goes on to show in rich ethnographic detail the ways in which the particular normative visions that motivate the activities of international institutions and their transnational collaborators are "vernacularized" by legal and political actors in the course of ongoing battles over cultural or national identity, the control over economic resources, and efforts to redefine gender relations. To vernacularize in this sense does not mean to simply translate dominant international normative conceptions into local cultural and linguistic terms. Rather, as she develops more fully

elsewhere (2006b), the encounter between international and transnational normativities and local legal and moral visions – an encounter that takes place in a discursive space she calls "the middle" (see also Goodale, 2007) – is essentially constitutive. What is produced, in the case of the vernacularization of a treaty like the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), is a new but necessarily contingent account of human rights that bears the traces of multiple, cross-cutting, and often disparate discursive influences, including international human rights law, the more allusive human rights advocacy of transnational actors, national human rights legislation, and the often intentionally essentialized self-representations associated with particular cultural traditions.

In other words, the particular strand of human rights consciousness that is created in the course of, for example, the debate over Fiji's first country report under CEDAW, is a discursive hybrid that is both greater and different than its parts. Moreover, the many different vernacularized normativities that Merry tracks within the ambiguous middle spaces in which the international and transnational discursive rubber meets the winding local road are both interconnected and dynamic. This means that the account of human rights that is produced within debates over the reform of personal laws in India resonates with the account of human rights produced at roughly the same time in Hong Kong through a campaign by national activists to revise a domestic violence law (Merry, 2006a). Each of these many interconnected accounts of human rights is also essentially dynamic: The meanings of their component parts shift and recombine depending on the issue for which human rights is mobilized; movements in the broader political economies within which different vernacularized accounts of human rights are embedded can diminish or amplify them; and, perhaps most important, the relationship between a particular account of human rights in the vernacular and other discursive hybrids that are constituted and reconstituted in the same social spaces also changes, so that – again, drawing from Merry – in China human rights and social justice coexist differently at different moments in China's contested present.

These lessons from the recent anthropology of human rights are significant for any efforts to try and understand the multiplicity of justice (see also Clarke, 2009; Dembour, 2006; Dembour and Kelly, 2007; Englund, 2006; Goodale, 2009; Goodale and Merry, 2007; Slyomovics, 2005; Speed, 2008; Tate, 2007; Wilson, 2001). First, if it is true that transnational normativities in the vernacular retain what Merry calls a set of "core" meanings even as they also are constituted within "culturally resonant packaging" (2006a: 137), it is also true that the expression of these core meanings in actual legal, political, and moral practice is fundamentally unpredictable. This lesson is indeed a basic one of intellectual histories of all kinds: As ideas enter the currents of history, and spread beyond those from which they originally emerged, they become decontextualized and then unpredictably recontextualized. The new

context is not sui generis, however, but the meaning and resonance of ideas like "dignity," "liberty," and "autonomy" open up in practice in ways that show them to be variations on a core theme the essential meaning of which has been transformed. A powerful example of this unpredictability can be found in Harri Englund's study of human rights in Malawi (2006). As he shows, transnational human rights non-governmental organizations (NGOs) and their national partners made "freedom" a framing discourse within ongoing struggles to reform Malawi's economy and deliver needed services to its poorest citizens. The problem was both that the commitment to freedom came to dominate public debate and thus took the place of actual political and economic reform, and also that the meaning of freedom was recontextualized within Malawi's postcolonial history in ways that made it susceptible to strategic manipulation by the country's ruling elite.

Second, the study of human rights practices demonstrates how fundamentally important what we might call moral agents are in the process of vernacularizing transnational normativities. Despite the concerns by some scholars (e.g, Hernández-Truyol, 2002) that the post–Cold War has been marked by a kind of "moral imperialism" as the foot soldiers of liberalism take their message of freedom and human dignity "where governments are not so anxious for it" (quoted in Korey, 1998), in fact it is the legions of peasant intellectuals, provincial rights activists, jailhouse lawyers, indigenous political leaders, and others who drive the process of vernacularization. This moral agency is complicated and often ambiguous, and its motives are as diverse as the agents themselves, but it gives the lie to persons who might view the normative geographies of the post–Cold War through conventional analyses of geopolitical power. Take, for example, Shannon Speed's ethnography of the vernacularization of human rights in Chiapas (2008). Not only do indigenous Zapatista political and social leaders self-consciously draw from the swirl of prevailing collective rights discourses in ways that are both strategic and entirely self-aware, they also, in the process, articulate a self-consciously alternative *theory* of human rights, one in which rights are both derived from indigenous cultural practice (not transhuman universality) and legitimate only to the extent that they can be effectively exercised within actual political struggles.

Finally, the anthropology of human rights provides a framework for understanding the vernacularization of transnational normativities comparatively: That is, what can be said about the post–Cold War's normative terrains at the most general level? Despite the essential unpredictability of recontextualization, and even with local moral agents directing the process of vernacularization well beyond anything that could have been contemplated by the initially directive set of international and transnational actors, when we survey the contemporary global-normative landscape we must conclude that it is characterized by a *circumscribed pluralism*. By this we mean that an entirely different kind of "legal pluralism" has been forged over

the last twenty years. This legal pluralism is not the one that anthropologists have documented and analyzed so thoroughly, in which multiple legal systems coexist for people in the same social (Moore, 1973, 1986) and ideational (Santos, 1987, 1995) spaces, whether because of a weakness of state institutions, because of the presence of preexisting "customary law," or because it is in the nature of legal-as-normative systems within contemporary nation-states to eventually fragment into several "semi-autonomous" fields of norm-making and enforcement.

Rather, the globalization of human rights and other transnational normative discourses has begun to reconfigure the geographies of law by both compressing the gap between law and nonlegal normativities (especially morality), and horizontalizing the relationship between legal orders through the universalizing rhetorics of rights, equality, and, as this book reveals, justice (see also Clarke, 2009). If the vernacularization of these rhetorics creates, as we have argued, a kind of post–Cold War normative pluralism that exists in those middle spaces *between* the global and the local, it is a pluralism that is circumscribed by the demands of local moral agents as much as by the transnational norms from which they draw (Clarke, 2009). We must be clear that we are not arguing here that the normative landscapes of the post–Cold War are becoming homogenous or "flattened" in the way that globalization gurus like Jeffrey Sachs and Thomas Friedman (in their respective ways) have argued. As the comparative study of rights and justice in practice has demonstrated, the actual ways in which local political and social struggles *can be* articulated through the process of vernacularization are constricted by the limited range of logics present in transnational normative discourse; at the same time, the meanings of "human rights" and "justice" for local actors take on significance only in the course of actual political and social struggles, only through the process of vernacularization.

A recent volume of case studies and critical analysis of the practice of human rights provides particularly compelling support for the idea of a circumscribed pluralism (Goodale and Merry, 2007). The chapters cover a wide geographical and discursive range, from the conflict between human rights and citizen security in contemporary Bolivia to debates over the role of human rights in the drafting of a new constitution in Swaziland. Yet what emerges from this empirical diversity is the fact that in the post–Cold War period patterns have emerged in the way grievances are articulated, collective memory is constructed, and moral identity is constituted (or contested) (Clarke, 2009). These are patterns that can only be discerned through what is contingent about each site of normative vernacularization, whether it is the interplay between Buddhist, western/secular, and nationalist conceptions of the person in Nepal (Leve, 2007), the tensions between human rights discourse and "indigenous culture" in Colombia (Jackson, 2007), or the apprehension (and misapprehension) by activists and victims of major new rights instruments like the 2000 United Nations (UN) Human Trafficking Protocol (Protocol To Prevent, Suppress And

Punish Trafficking In Persons, Especially Women And Children, Supplementing The United Nations Convention Against Transnational Organized Crime; Warren, 2007).

Each of these insights from the study of human rights practices – unpredictability, the importance of moral agency, and the emergence of a circumscribed pluralism – also can be gleaned from the chapters in the current volume and, more broadly, can be used to help us understand justice as distinct constellations of ideological, social, and political practices over the last twenty years. Nevertheless, as the chapters in the volume also demonstrate, there are key differences between justice and other transnational normative discourses in the post–Cold War, and it is in marking these differences that the volume's most far-reaching implications are to be found. First, justice does not stand in a coequal relationship with human rights as one among several transnational normativities. This problem is one of the most frustrating for persons tracking these transnational discourses empirically: How do justice and human rights exist in relation to each other in comparative practice, and how is this relationship to be understood theoretically? Transnational actors often promote justice and human rights as if they were conjoined normative twins, as in "our NGO works around the world for the protection of basic human rights and justice," but equally often, justice is offered as a vague characterization of some future end-state toward which the present realization of human rights protections under law and a corresponding diffusion of a "culture of human rights" are the desired means. We think that on this question the chapters in the volume demonstrate that justice is functioning discursively in most cases as an ever-receding and ever-shrouded social ideal, rather than as an alternative normative orientation characterized by a set of concrete expectations and practices.

Second, the chapters in the volume underscore the ways in which as a discourse justice is formally *contextual*. This is obviously not to say that all discourse – normative or not, transnational or not – is not contextual in some sense, but justice is contextual in a way that human rights is not, and this difference further distinguishes the comparative emergence and praxis of justice over the last twenty years. Indeed, on this point, human rights must be seen as the exact opposite of justice. Human rights norms are formally *universal*: Their jurisprudential and social meanings are initially established and articulated through the identifiable body of international instruments produced through the international treaty drafting and ratification process; human rights norms are highly specific as to form (rights) and content (the right to life, bodily integrity, etc.); and, most importantly, human rights norms are meant to be immune from substantive interpretation based on historical, cultural, political, and other contingent factors. Even though, as we have seen, this formal universality is profoundly transfigured as it is globalized along the networks of transnational advocacy and then, most importantly, vernacularized in the course of ongoing social