

NOTES ON THE GENERAL ECONOMY OF INTERNATIONAL LAW & GOVERNANCE

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I.

FROM THE POLITICS OF THE LEFT TO THOSE THAT HAVE NOTHING LEFT

For some time now the indistinction of left and right has been understood as banal enough to render my hypothesis quite logical and straightforward: if “we” lack flag-positions of “left” or “right” on the basis of which to argue this or that, then decision-making and “political” expression deform, and they do so in a state or manner of what could be called general indecision. This is not to say that decisions are not made—and indeed by individuals or (in)corporated personas who may claim or counterclaim to have decided on this or that from a perspective of “the left” or “the right”—even if invisible hands on their shoulders have displaced their decidability. It is to say, rather, that for some time now, decisions have been made *through* the rule of general indecision and this has changed everything that used to be called politics (as well as anything we may understand as “teaching law *through/and* politics” and vice versa). This transformation, well-evident today, can be described as a move away from the multiverse of restricted economies (micro-politics) to a general economy (politics “as such”).

The “(thing) as such” in philosophy has a long history of use, and it is not the place here to provide for an exegesis. Instead, a sense of it can be made out of the contemporary situation. The politics of the exception (be it sovereign exceptional politics or, at a more global level, an exceptional in-corporation of the world as such) that are witnessed worldwide today (and indeed have been so for a rather long time prior to the recent wars and terrorist events) form, it could be argued, a general economy within each state but also internationally.¹ A supposed general economy, it is important to add, that aims to abide to no particular

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1. On the politics of the exception, see generally GIORGIO AGAMBEN, *THE STATE OF EXCEPTION: HOMO SACER II* (Kevin Attell trans., 2005) (2003). One could find reasons to reconsider aspects of what is stated in this book, but here its core arguments are endorsed fully. In fact, today, to do otherwise, it seems, may be a rather peculiar sign of shortsightedness.

genealogy as to its power and actions. Hence its fictional nature, its supposed temporality, its supposed vacuum as its source, it manages to capture precisely because it is formed as a general economy. A tautological formation that captures its supposed vacuum in order to make it “sacred,” to name it: “civility,” “humanity,” “economy,” “liberty,” “order,” “peace,” and so forth. This is not advocated as a mere difference (a mere us/them) but as “as such”: “politics as such,” “democratic values as such,” “humanity as such,” and so forth. What this peculiar “as such” adds in its emphatic sense is in fact what it takes away from the term to which it is attached. It becomes, in this use at least, an empty term. Hence it is in this sense that one can speak of the emptying of language, the attempt to control it, to make it do the impossible—and with severe consequences. The “as such” then exists as far as the general economy of exception, compromise, corruption, and appeasement operates its machinic production of atrocity.

Is, then, international law today in a state of permanent crisis when it is held to represent and, to an extent, deliver international law and order as such, because of its complicity (and to what extent?) with this general economy? Is international law not, some will say by necessity (but is that so?) transregionally ever escaping its own genealogy? Is this not one of the most pressing questions for those of us that are concerned, from a variety of positions, as to what the futures of international law may be? A general economy to which international law is in complicity to a certain extent is a transformation where precisely only the form of its presupposed essential core changes. An essential core, be it “politics,” “ethics” or “critique,” is posed by both left and right as a transcendental concept. For some time now, the so-called “global” or the “political” (whatever it may be) metamorphoses (through the development of capitalist parliamentarianism) as a general economy beyond right and left: an exceptional decidability on global and local matters deciding precisely not to decide (or at least not to appear as deciding). The “political” appropriates the anonymous polyformity of such presumptuous whateverness (which includes whatever may lie in the alleged “beyond left and right,” often called “humanity,” “globality,” and so forth).

This means that in a general economy what is also revealed paradoxically (to the point of its banality) is that one has to admit that it is always law *and* governance (law and ethics, law and critique, law and politics) in operation as a single system (or general economy). What remains? Law and politics, then, or law and governance are revealed to compose a single system of control (and appeasement) rather than opposed forces. Difference becomes de-differentiated, always in order to avoid answering the question of what is actually different in difference: its genealogy. It might be that legal education can perhaps better serve one of its purposes by following the more modest task of examining the production of its knowledge and genealogy each time, rather than claim some grandiose raising of “political” flags. This is not esoteric or conservative, it is instead what stands most of the time as unthinkable in theory and in practice, in

education and beyond. In other words, “self-reflectivity” is a hard and painful task, and is very rarely undertaken. The “as such” performs the destruction of the “self” by applying abstractly to the whatever of its globality, so that, among else, tracing its genealogy becomes almost impossible.

This applies too to academic theorists that speak of “empire,” “atrocities,” and so forth but have very rarely refrained from performing their “empire” and their “atrocities,” nor even stopped to reflect on them, in their “non-political” lives. To think of what it may mean to “teach from the left,” it is necessary to include this in the questioning agenda as well, not for reasons of some adventurism in truth or a pseudoreligious claim to honesty, but for reasons of self-reflectivity precisely in the way in which such theories prescribe it. Of course there cannot be a manifesto or collective self-reflection in this sense. It is a deeply private practice, but without irony any longer. Politics is not opposed to the “private realm,” as this, would require someone to define what is and what is not political. This is, it should be acknowledged, becoming more and more difficult to do or is even unimportant. The coming projects of what used to be called “the left” in legal education will be, to risk a prediction, more fragmented, more studious, more spontaneous, less collective in the conventional sense, and less “political,” at least in the general sense described above. The first political act remains, in my view, as an initial step, to stop talking like a politician does. The term politician, as you can imagine, is all-inclusive here and can include those that are unknowingly complicit to the system of such a general economy (where the polis becomes a hyperpolis, a hyperbole of itself encompassing its absolute dual-monstrosity: “a world” against “terror”). The second political act, at this basic level, would entail self-reflectivity in terms of what we teach, how we teach it, and to whom we are teaching it. Hence, a law school that teaches students reflectively both towards the law and towards themselves, explaining that no-one, not even the law, can actually authorize them to speak. NO-ONE AUTHORIZES YOU TO SPEAK—that is perhaps the slogan of one of the futures of legal education. This is not nihilism or a call to inaction, but a powerful and studious modesty that can take risks without a bad conscience. In any case, it is better to try and experience such modesty and teach through it, rather than conform to a habitus of alleged solidarity and comfort where the critic becomes as sterile as the criticized. The final act, of the primary ones that seem so necessary, is to choose wisely worthy enemies (this requires a certain eros even for the enemy, a passion for detail and not a choice led by fashion, party-like behaviour, and career aspirations). We do not need common enemies, but worthy ones.

Now let’s look at the enframing of this general economy in some more detail. There is absurdity to indecision; to paraphrase Karl Marx, there is real abstraction to it.² But what Marx predicted to an extent (he called it—himself

2. The following passage indicates the logic of the term:

The seventeenth-century economists, for example, always took as their starting point the living organism, the population, the nation, the State, several States, etc., but

using an abstraction in a positive sense—"classlessness"³) is what is seen, most vividly since the mid-twentieth century in the West, in a somewhat different form as "universal humanity," "global polis and civility," and this as an answer to what is differentiated as inhumanity, denizenship, uncivility and so forth. "Humanity" has been used as a weapon as much as it has stood as anathema for different sects of the left, and of radical or less radical criticism in general. At times it resembles a debate that has lost all its relevance to the people that mostly represent or arguably need it, and to such an extent that what was once viewed as hegemony (abstraction) came to be seen eventually also as a counter-hegemonic possibility (only to be shown that that possibility—hegemony in *absentia*—was one of hegemony itself). Irrespective of abstraction and a claim to radicality, it is perhaps more helpful today to admit that at least both hegemony and counter-hegemony, to use these age-old terms, have rules (though it has become less and less easy to admit that this is so through bodies that speak them or receive them). Rather than a pseudo-transcendental empiricism where abstraction ("Humanity," "Order against Terror," etc.) through imposing a general undecidability or economy mandates this or that as a matter of predestination (expressing the exceptionality of necessity), here instead is revealed the fact that counter-hegemony as much as hegemony can be genealogically interrogated. Perhaps

analysis led them always in the end to the discovery of a few decisive abstract, general relations, such as division of labour, money, and value. When these separate factors were more or less clearly deduced and established, economic systems were evolved which from simple concepts, such as labour, division of labour, demand, exchange-value, advanced to categories like State, international exchange and world market. The latter is obviously the correct scientific method. The concrete concept is concrete because it is a synthesis of many definitions, thus representing the unity of diverse aspects. It appears therefore in reasoning as a summing-up, a result, and not as the starting point, although it is the real point of origin, and thus also the point of origin of perception and imagination.

KARL MARX, A CONTRIBUTION TO THE CRITIQUE OF POLITICAL ECONOMY 206 (S. W. Ryazanskaya trans., Maurice Dobb ed., Int'l Publishers 1970) (1859). The way in which the term "real abstraction" is used here is dual. First, it indicates that absurdity or indecision or abstraction, as exemplified originally for Marx in terms such as "money" and "value," operates according to rules. Examining the genealogy of such rules is one critical task. Second, it indicates that such terms are now multiple and dominant in all systems and not just the economic. Education as such too is dominated by them. Ultimately, the reason for the use of this term—real abstraction—is philosophical and it is not the space here to explain in detail what that could mean. Its use, here, though does not certainly claim for some ulterior notion of reality to which to return to. That notion of the real in abstraction is a product of the abstraction, and not the other way around. In other words you get the real that you deserve, to be slightly humorous. In addition this does not mean some light-headed lack of reality. In fact, as others argue today, humanity has no first nature or real, but only a second nature, that is, an irreparable one. One aim of critical theory may be then to find ways to undo the control exerted by presuppositions of firstness, sovereignty, predestined end, substance, essence or some notion of primordially, and of justice. On the technical notion of "real abstraction" in Marx, see ALFRED SOHN-RETHEL, INTELLECTUAL AND MANUAL LABOUR: A CRITIQUE OF EPISTEMOLOGY (1978), and also LORENZO CILLARIO L'ECONOMIA DEGLI SPETTRI, FORME DEL CAPITALISMO CONTEMPORANEO (1996).

3. Cf. *generally* KARL MARX & FRIEDRICH ENGELS THE COMMUNIST MANIFESTO (1992) (1872).

the revelation serves only to remind one of the old pseudodichotomy between abstraction and action and the false conclusion that they lead thought always to a necessary passing from theory to action and vice versa; and yet some actions are more sacred than others (always having to tie a norm to a metaphysics and vice versa, and especially so, ironically, when metaphysics is “declared dead”). But what of the passage that is presupposed here, to abstraction, as such? What passes? Is this question not what the radical left placed as a message in a bottle? It is this passage that in the few true self-reflective moments of radicality (which originally meant to go to the root of something, its showing forth, its being-said, its genealogy, the showing of itself as itself) becomes shown (as is the case with every act) but is also understood as such. This understanding does not lead to confusion but to the confrontation with the negativity entailed in an act’s manner: its potentiality. Precisely this is that which resists and is resisted by “the left and the right.” Yet, the answer the neo-left and the neo-right came up with to such moments of radicality during the past century can be summarised in the word “compromise.” If it is true that today everything can be compromised with everything (humanity and war, inclusion and denizenship), then, in this late phase of modernity, and for my preliminary purposes, the character of law and politics or law and governance is measured by: indistinction (compromise, de-differentiation) and general indecision.

Yet perhaps there lies also a “saving power” in the experience of what could be called (the traversal of) fetishism, whereby fetishism reaches the extreme limit of its real abstraction and shows this in action. The general economy destines fetishism (commodities, persons, concepts, matter, and so forth) into the abyss of its reserve potentiality for exercising its exceptionality. However, what is shown when such abstraction is employed is, apart from its immense convincing strategic power, also the fragility of its sacral elevation of this or that thing into a standard, a justification, a right to say right. Instead, through genealogical gnosis what is shown is the possibility to redeem the potentiality of (legal) things by rendering them once more irreparably profane and available for plurivocal use. The return of such things to their potentiality shows not nihilistic fragility, but the traversal of the way in which power is commonly understood in a general economy (as given away, administered by an abstract entity). The fetishization of legal things (concepts; rules; legal facts; names; instruments; policies; files; norms; testimonies; even institutions, as in the proliferation of an international court system, reconciliation and truth commissions, international conventions of protection and so forth), sets impossible tasks and this is far more familiar than it may at first seem. Ultimately it has to do with the question of what it means to act (politically, ethically, legally and so forth). How often it is that a triumphant rule or new treaty is subject to so many limitations or grey areas that its task is by definition impossible and one destined to be compromised. It is safe to presume that this is to an extent the nature of written texts that prescribe, but it seems we have travelled from rule fetishism to its traversal: not anymore a horse for my Kingdom but a compromise for my

exception. The sacralization of certain actions or certain institutions is set outside of scrutiny to be able to monopolize action in order to regulate it, to compromise it, to make it proportional to (un)questionable interests and to escape its otherwise singular genealogy. Instead, neither sacred (theologico-political) nor secular (liberal), the profane turn against the general economy of global law, and governance aims at the return to (legal) things of their potentiality and their opening up once more to plurivocal uses.⁴

Fetishism was coined through a long etymological life from its Chaucerian prehistory to its post-Enlightenment sense in the twentieth century in a number of ways (the pidgin *fetisso*, the Portuguese *fetiço*, the Latin *factitious*, *factum*, *facere* and possibly the English *factitious*).⁵ To risk an etymological comment, the fetish then is perhaps linked to acting as well as the facticity of things, their reality, their thingness-as-a-matter-of-factness. Arguably one of the most interesting interpretations was presented in the fifteenth century in the Portuguese use of the term that was conceived in relation to witchcraft, but also in relation to charm and beauty.⁶ It was adopted further by the Portuguese and the Dutch traders to characterize the cult objects of West Africans and to denote their irrational relation to such objects.⁷ In all these cases the fetish is directly linked to a relation to things and as a result to a certain notion of reality as opposed to another not recognized as such. In this sense it was held to be an impediment or a perversion of the so-called natural processes of economic negotiation and legal contact. Desiring a “natural” economic transaction, seventeenth century merchants unhappily found themselves entering into social relations and quasi-religious ceremonies instead. This complex term of the fetish was used by European merchants to signify the difference of African cultures and the severe obstacles they presented to so-called rational commercial relations by giving religious value to fetish-objects that as a result transgressed strictly economic terms or use. This denotes, in the simplest of ways, frustration towards the existence of different economies of “false” representation of things or objects, otherwise supposed as sacred or beautiful, to which participants at times would swear an oath to honour a transaction or exchange—perhaps in the same way in which the founders of international law could claim to universally emancipate, but not tolerate one peculiar thing (any other religion to their own). The differentiation between correct and false representations, or between right

4. For the notion of the profane utilized here, see GIORGIO AGAMBEN, *PROFANAZIONI* (2005).

5. For an analysis of some of these etymological origins, see William Pietz, *The Problem of the Fetish, II: The Origin of the Fetish*, 13 *RES* 23, 23–24 (1987). For the analysis of fetishism presupposed here, cf. GIORGIO AGAMBEN, *STANZAS: WORD AND PHANTASM IN WESTERN CULTURE* 33–35 (Ronald L. Martinez trans., 1993) (1977).

6. See Pietz, *supra* note 5, at 24, 34–35.

7. *Id.* at 23, 42. Distinguishing fetish objects from idols, Africans desired and, happily for the Portuguese traders, seemed to overvalue both the economic and religious worth of the former not for worship, but to achieve material results. See *id.* at 36–43.

and wrong presupposes, as is well known, the hiding of their so-called regional character (their linguistic being) behind a sacralised normativity (a transregional linguistic armor). Always, it seems, trying to hide the action behind its problematization or production as a transregional norm (a rain that rains on all) that allows its de-differentiation and claim to general rule.

It is worth noting then that a norm in action or law is also enacting in abstraction its supplemental justification or its supposed right to say right (and this not only in law but also behind diplomatic, corporate or military barricades. In this sense law and governance work as a single system, the secret kernel of which lies in the way in which one action is sacralised and kept hidden away from the actions that it controls and determines, in order to render itself autoimmune. In this way, self-reflection becomes unthinkable or, at best, yet another matter of regulation. This does not lead teaching and theory to some type of decisionism-quest or a rejection of theoretical work on the question of this passage (this *passing* of judgment) in favour of some equally colour-blind empirical socio-legal supplementation (of more re-form: more courts, more customizations, more complexity). It only requests an acknowledgement of the consequences of such an understanding of a single system or general economy, and a different attitude in thinking both law and political or ethical action. Law as much as politics then is not about the passing from an essence (a metaphysical justification) to an action, but an encounter between actions, each of which is encountered in itself by its ability (potentiality) as much as inability (impotentiality) to do something. One cannot do both, according to the law of non-contradiction. Yet the logic of diction (Latin *dicere*, saying, expression) provides that what a human being, to the extent that she/he speaks, cannot not do is experience this encounter as between two poles (within itself as much as towards another action). The poles are intimate but different and do not allow for fusion. One task then of legal education in this sense could be to show that self-reflection ever entails the encounter between an action and its potentiality as much as its impotentiality. In this sense the system does not become autoimmune to its genealogy (to its root in this or that saying or rendering of the facts) but autopoietic within it, within the potentiality of its genealogy.

For Karl Marx fetishism denoted both a structural problem of capitalist society (a social relation assuming a fantastic form or an abstract objectivity) and a subjective relation to things.⁸ What remained unthought in this distinction was of course the passing between an objective reality, i.e., the economy, and a subjective being, and this only through the presupposition of a metaphysics of the will. For Sigmund Freud, in turn, famously, it denoted both recognition and disavowal of reality. As an essential rule then, for something to work as a fetish, in a wider schematic sense, it must be a real differentiation *and* a fantastic presence-absence of objectivity at the same time. The presupposition of this

8. KARL MARX, THE CAPITAL, *in* KARL MARX AND FREDERICK ENGELS COLLECTED WORKS (Int'l Publishers 1975).

supposed dual economy of reality betrays that a fetish has to be perceived as a present object that yet re-presents something other to one's own, that is, as lost, as unattainable, or as impossible (be it "the maternal phallus," "reality as such," etc.). A fetish is thus an actual object that both *presents* the lack from which it allegedly originates and acts as a sign of such unrepresentable nothingness (that is, it is produced as a single system, a general economy of representation, when it always already differentiates its abstraction from its actual activity as a relational sign).

Put as simply as possible, the fetish-thing is to act as both the *presence* of no-thing and as a sign of its absence. That is to say the fetish is first the installation of an undecidability or indecision "before" legal things. Yet in the constant epistemic search for "fetishism" to work as a metalanguage (in law, psychology, economy) that would disavow the irreparable cognition of an act's situatedness, its experience as such, in order to safeguard its alleged uncanniness, its character of tradition (*tradere*, transmission), universality and time immemorial. It seems, however, that the thing at some point can be seen to entail the possibility that it shall turn its head to face those who use it (how else could someone suffer from fetishism?). It is the erotic manner of legal factum or fetish that is each time silenced. For capitalism, however, this is a displacement that is necessary for the world to become what Walter Benjamin, citing Hippolyte Tame, called a world exhibition: "L'Europe s'est déplacé pour voir des marchandises."⁹ Today, the reversal of a certain older sense of fetishism in its singular experience, its exposition as a universal experience, appears as a banal truism—as "a world" devoid of any experience. A law without eros. Capitalism entered its late phase and fulfilled its fetishism by deparadoxifying the undecidable border between the fetish as a real, yet abstract, object and as a disavowal of reality. At the ground of self-justificatory decision making of a global capitalist system lies then the making-absent of its own passing from a regional justification (an action, a judgment) to its autoimmune general economy, transregionally.

It is always worth repeating that rather than as a negative and irreparable destination to an essential lack and its representation as a fulfilled nothingness, fetishism has always entailed the possibility that it be conceived in a positive sense also.¹⁰ That is, as something I enjoy *because* I do not have it as my own, I want it to stay that way despite my attempt to obtain it, to appropriate it. Indeed, what I desire about it is precisely that it is *such* as it is (which is one definition of "eros"). However, the negative understanding of fetishism as originating in a lacking access to a thing-itself that is to be experienced as lost predominates, and with the commodification of every thing in the economy of negative representa-

9. WALTER BENJAMIN, CHARLES BAUDELAIRE: A LYRIC POET IN THE ERA OF HIGH CAPITALISM 165 (Harry Zohn trans., 1973).

10. Cf. generally GIORGIO AGAMBEN, STANZAS: WORD AND PHANTASM, in WESTERN CULTURE (R.L. Martinez trans., Minn. Univ. Press 1993).

tion (or what Marx called “commodity fetishism”¹¹), such absolute fetishization renders desirability more and more thoughtless, experienceless because it links it to a supposed impossibility (the lost essence of thinghood), and yet in doing so experience loses its character of the encounter and becomes more and more secure, and ever smoother. As a result “real” difference becomes interchangeably virtual variation (linear possibilities) or *mere* difference (in economic phrasing, mere value). The fetishized object (a restricted economy of a particular sign-thing named to represent its lack) becomes mediated through a presupposed desire-in-general for “economy as such” (a “free” economy), and is thus neutralized to the extent of its *juridification*, its transformation into a right-in-general (a “free” civility). This juridification or neutralization has made desire more anxious, more difficult to express and fulfill because it can be *anything* or, equivalently, no-thing¹². This may help explain the indifference that is shown today towards the suffering of the majority of the residents of the planet, while knowledge as to their suffering is as widespread as ever. This may further explain how the West can hide behind its esoteric and ethereal disavowal of difference and plurivocity in order to deny its involvement in the destitution of the world’s population (beyond every pessimism or optimism, the yin and yang of the political idiot).

Is it by accident that this rather embarrassing difficulty may be of interest to us interested in law, whose academic vocation has been declared to be the study of the norm, of the right to have rights? It is getting harder to think so. There is a striking similarity between this reverse fetishism (where desire does not refer to a particular erotic desire but becomes predicated upon desire-in-general or in economic terms “consumption”) and of the structure of rights (which becomes predicated upon some right to say right or right-in-general, be it “humanity,” “civility,” etc.). The structure of what is the right to enjoy this or that right—*privilegium*, a “Law of law” or “Right of rights”—is more peculiar than it may at first seem (that is, as a mere source of justification). It is a peculiar system of representation: right-things, in one view, are to be thought as grounded on the abstraction of a general right. It is a general right that is perceived as emanating from an absent source (imitating the theological paradigm under names now like the universal, Nature, Sovereignty, a Law of law, World Society, Humanity etc.) at the very same time that it is presented by this or that juridical right as its faithful exemplar in a particular discursive enunciation. In becoming a general “desire” (i.e., humanity, civility, etc.) a right acquires a totalitarianism of its own, such that its absolute claim to universality requires (be it “security,” “freedom,” “humanity,” etc.) a right to be answered only by another right. As a result

11. Cf. MARX, *THE CAPITAL*, *supra* note 8.

12. Philosophy, politics, economics and law share “things as such”: i.e., ideal things, *res*, *res extensa*, *res publica*, objects of experience or of judgment, the thing-in-itself, things to be used or commodities to be exchanged, things as phenomena, things in action, things as equipment ready to hand, virtual or spectral things, material things, immaterial things, no-things, imaginary things and so forth.

those that have nothing left or no rights are made unable to participate in the alleged universality. How universal is such a universality? In this sense fetishism is *reversed* and instead of desiring contingent and “real” differences what is desired is a pre-empted and compromised difference, as in the securitization (de-differentiation) of differences both within and outside the nation-state. When a potential difference is perceived necessarily as either secure or a threat then it is always-already transformed and de-differentiated. The problem is not translation or transformation but the manner in which this takes place without self-reflectivity and institutional modesty. The way in which, each time, such de-differentiation takes place becomes then of great interest to the legal scholar that desires to remain self-reflective to the production of such governmental necessities. Only, by now, both “contingency” (exception) and “necessity” (norm) are bankrupt ontological machines that form a unitary system of control, and the age old antinomy is deformed in what can be widely perceived as a general state of exception that knows nothing of paradoxes.

The enjoyment of rights *has* to be generally right: after all, there must be something Right about rights. What this reveals also, however, apart from a necessary structure in legal conception, is that at the level of its grounding this or that right does not enjoy such a secure foundation, as it is often assumed, since it is based on an abstraction or a lack (Right). Elevating the necessary abstraction or lack of a universality, as the old discourse on European human rights suggested, does not always fool one into disregarding real differences but it is capable of doing so. Especially since the suffering of “humanity” becomes a matter for “humanity” rather than for particular actors involved in the relevant destitution. This is not to say that involvement cannot be or should not be shared (quite the opposite) but how this is to be conceived is not necessarily a question of a universal juridical responsibility; or indeed of a critic’s responsibility to mouth empty phrases like the very politicians or institutions it criticizes. Hence, perhaps, a particular human right is by necessity bipolar—for instance, in that a right simultaneously encompasses a present particular right and an absent general right (humanity). But in this it is pseudo-bipolar. This pseudo-bipolarity further manifests that such a right-in-general sets a further limit between humanity and inhumanity and produces both, thus linking “humanity” by a contingent necessity not just to the fact of not having rights at times (inhumanity), but further to a hidden paradoxical right to have or to not have rights, in general (a necessary contingency). Bipolarity is not the problem, but how one understands, teaches and institutes it is. And this, further hints at least, that the legal concept of right has, by definition, something to do with desire and not only with the judgment of or justification for the exercise of rights-in-general (this or that humanity or Right more generally).

Thus, for instance, “the politics of law” is classically conceived in modernity as an abstract field of action for the contestation of an ontological limit (“what is” and “what should be” as in/separable; and yet silencing the fact that they are both always made to relate to an outside, an anomy or lawlessness of the

apolis). Such an alleged state of anomy has both a discursive locality and a historical construction of the time of its/for its narration: a genealogy. The destitute exist not only as the abstracted part of an as yet unrepresented, unemancipated humanity offered by juridical and political grace, but also, in the *favela*, the camp, the prison, as the present space of those that have no space or nothing left to re-present. It is inescapable today that the abstract unity (general economy) of universal capitalism and the ever-expanding control-mechanisms of law and governance need to be re-thought *together* with the so-called “end of history.” Those that still deny this, really, do not know what they are talking about. The message-in-a-bottle “of the left” was perhaps this: that classlessness, humanity or any other such general abstraction (fetish, sacred factum) entail, after all, “reality.” The message was emphatically not the one that their fetishization considers as lacking. In this traversed reality, instead, the destitute exist and *occupy* the fetish abstract space of the truly classless (the alleged absolute). This is not to claim *for* the real (those that do in one instance through psychoanalysis, deserve the reality that they get). Truth could be left alone. Abstraction sets limits most of us pass through everyday. What remains is the ethos or way of being, of passing, each time. The point, perhaps, is neither to interpret, nor to change the world; the point is rather to think that the world *is* otherwise than it is. *Human* being (and right) entails potentiality rather than an essential determination of the possible in the real.

II.

GENERAL ECONOMY AS THE ECONOMY THAT IS LEFT

Let's turn to another move from a restricted to a general economy. The politics which confined the *oikos* (the household or private realm) in ancient times, found its end in a long process of unbounding and expansive politicization (or, rather, of de-politicization). Accordingly it has been observed that the modern economy has “become spatially boundless and temporally endless: it is impossible to make the distinction between working time and free time, it is difficult to say where or when the actual act of production is being carried out, what creates value and what not.”¹³ In this general form where everything creates value or has value and so nothing really has what can be called concrete value. Everything is instead mediated through value as such (value-in-general). But is there such a thing?

Politics in the original Aristotelian sense entails an understanding of beings through the difference between the fact of mere living (in the *oikos*, household) and the qualified life or gifted life (life in the polis, city). Yet what Aristotle

13. Akseli Virtanen, *General Economy: The Entrance of Multitude into Production*, 4 EPHEMERA 209, 209 (2004). Virtanen's account inspired this analysis and deserves a more detailed analysis in its own. Michel Foucault's distinction as to the idea of general economy is also here in mind. See generally MICHEL FOUCAULT, *THE ORDER OF THINGS: AN ARCHAEOLOGY OF THE HUMAN SCIENCES* (Vintage Books 1994) (1971).

never conceived as a form of life was an abstract or universal form of life as such. This becomes a crucial difference to remember as today it is life as such, "bare life," that has become the centre of political ordering and control.¹⁴ "General economy" is the name that describes the manner in which what is called "restricted economy" (the economy of the *oikos* in Greek), is transformed into a general form. We can apparently understand "life" as a general economy of humanity; and in economic terms, in a parallel move, material and immaterial labour collapse into general human capital. The *oikonomia* originally corresponded to the life of the household and the life of the living being as the management of everydayness and of families; in contrast, politics, as a form of being, referred to the government of the *polis*. As *oikonomia* is introduced to politics and political economy, its original sense, the management of a family and its prosperity, becomes the governance of the state in general. Politics in this sense, as well as law, collapse into something that an unsuspecting Jean-Jacques Rousseau called "*économie générale*" (evoking the state as a great family or *oikos*).¹⁵ Household laws (*oiko-nomos*) and politics (government, policing) integrate to a degree that they are no longer decipherable as separate, and their relationship becomes anything but simpler. In short, *oikonomia* (law) and politics (governance) became indistinguishable when their object-in-abstraction became the government of a very peculiar thing (life as such, or civility as such, humanity as such, security as such, and so forth).

For a general economy, used here in a general theoretical sense, to manage to control its ever-expansive, contingency-laden and virtually-all-encompassing form as a zone of indistinction (between matter and value or labour and value) it must be instituted as the vanishing source of all value, that must never be shown as such. Labour and action, politics and life, speaking and communicating, know today no borderlines, and form, it seems, an eternal crisis whereby (and that is the purpose of it) modern economy's conception of time and value can no longer grasp "that" which produces value or time as such. Karl Marx conceived this crucially when he analysed the birth of the concept money as such in his work *Grundrisse*.¹⁶ What is it that enables the conception of money as a concept, above and beyond its materiality as an object? Nothing else but a zone of indistinction that presupposes that labour enters production through the means of an object (money) whose material and immaterial being cannot be separated. In this way the desire for the labour required for the creation of a particular object requires its simultaneous mediation through general value (desire in general). This means, as a matter of necessity, that a general economy of labour

14. For a challenging analysis of how the conception of "bare life" lies at the core and is a product of the western conception of politics and law, see generally GIORGIO AGAMBEN, *HOMO SACER: SOVEREIGN POWER AND BARE LIFE* 6 (Daniel Heller-Roazen trans., 1998) (1995).

15. For a discussion of this transformation, see the analysis in Virtanen, *supra* note 13.

16. KARL MARX, *THE GRUNDRISSE* 59–64 (Dvaid McLellan ed. & trans., 1971) (1925).

(where labour and play are confused) provides a system of immediation for such undecidability.

The late modern phase of capitalism requires the ever-expansive perfectibility of its self-regulation or immanence (while increasingly acknowledging that it cannot regulate everything. Absolute immanence being impossible, capitalism falls constantly into the need to repeat that there is no outside anymore to it, but also to hide that there is only an outside *of* it. It is perhaps banal to state here that capitalism as sovereign and sovereignty as capitalism perhaps produces its own crises. But that is more complex than a be-moaning of catastrophe or utter depoliticization. There is no place that the sovereign-capitalist exception (its decidability over the factum of things) could occupy and turn into a non-place (a place of non-value or less value). The only “non-place” that always remains for capitalist sovereignty (or what has been called Empire) to occupy through the logic of the presupposed exception that institutes it as a system of economy is its own existence in language as such (its ontological being as so-called). In late modernity language too became autonomous in itself, in order to be governed better (and “morality,” “critique,” “politics” dominates the expression or positing of desire). Thus, the old logic of exceptionalism collapses: when the economy becomes general, the relationship that used to be necessary between restriction (rule) and its other side (general economic or political crisis, for instance) dissolves also. The system then produces and regulates order as much as disorder. Today, as is easily observed, it is no longer possible to speak of good economic times or the opposite, as the two are made indifferent to each other and give way to speculation, risk management and insurance.¹⁷ These are, by now, as artificial as the stability pacts promoted by the European Central Bank, the International Monetary Fund and the World Bank. Hence there rises the implosive tension between nation-state (from restricted economy to exceptionalism) and capital (from free economy to indifference) which requires careful thinking and research that cannot be offered in this work.

Today the exception that the sovereign exercises has become the general rule, or at least is instituted as a form of governance in general.¹⁸ The exception as general rule does not anymore require a “nation-state” as a presupposition for its exercise (states of course do not dissolve but they do lose their strength or sovereignty): a presupposed “moral” alliance suffices as well as a “world” that requires control and salvation (a world understood as an indifferent object-in-general). Law, in the sense of a general economy, no longer requires a uniform society to control, but multiple zones of indifference between those controlled

17. On this, see generally Alain Desrosières, *How to Make Things Which Hold Together: Social Science, Statistics and the State*, in DISCOURSES ON SOCIETY 195 (Peter Wagner, Björn Wittrock & Richard Whitley eds., 1991).

18. See generally GIORGIO AGAMBEN, STATE OF EXCEPTION 2 (Kevin Attell trans., 2005) (2003).

and life “as such” (when quite simply there is no such thing). It was once said that the organization of living within the domain of economic value or qualified life was “an indispensable element in the development of capitalism.”¹⁹ Now, “general organization” as one name for the globalization of this general economy requires a moralized universality, be it a renewed call for humanity (ironically for the neo-right) or for multitude (ironically for the neo-left).²⁰ Both have turned their backs to the older and positive understanding of organization that is known as institution. To teach with the latter in mind would require an archaeology of power-knowledge (a jurisprudence) rather than a leap of faith (to the “as suchness” of humanity, of society, of sovereignty, of globality, of multitude and so forth).²¹

III.

HUMANITY “AS SUCH” IS DEPOLITICIZATION (DE-DIFFERENTIATION)

For capitalism to be self-sufficient as a systemic organ, surplus profit must be presupposed and produced at the same time. This was made possible through the emptying of the content of “human” being (in the indistinction of merely living being and political or qualified being), and through the abstraction of the materiality of objects (through the universal and real abstraction of money and value). In politics and law there had to be, in a similar sense, an infra-power, an extra-ordinary power, a *relationship* with an exception, if both politics and law were to be seen as universalistic. In addition, the juridico-political had to presuppose the existence of an empty and, for this reason, powerful entity like the concept of humanity or globality to justify this nullification in the formation process of (de)politicization. It is in this sense true that one demystifies (as in Protestantism) in order to mystify better.²² Crucially, Marx would then argue that capitalism is the religion that is deduced from the religion of its members. The same could perhaps be said, risking a mere slogan, of international law (that from its inception has been conceived as law as well as governance, law as well as politics or ethics in the distinctive peculiarity of degrees of indistinction). Indeed, Werner Hamacher argues:

[E]ven when the *res publica* is no longer *res aliena*, but has become *res publica christiana*, now brought to virtual universality in the form of political democracy. This distinction, however, and more painfully the rift, still remains between political state and human society, since

19. MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY: VOLUME 1: AN INTRODUCTION* 140–41 (Robert Hurley trans., 1990) (1978).

20. On the recent political neo-left use of the notion multitude, see MICHAEL HARDT & ANTONIO NEGRI, *MULTITUDE: WAR AND DEMOCRACY IN THE AGE OF EMPIRE* (2004).

21. Cf. *generally* GIORGIO AGAMBEN, *MEANS WITHOUT END: NOTES ON POLITICS* 132–33 (Vincenzo Binetti & Cesare Casarino trans., 2000) (1996).

22. David Ricardo determined the essence of the nature of wealth no longer as an objective nature, but as an abstract and undetermined subjective essence. See *generally* DAVID RICARDO, *ON THE PRINCIPLES OF POLITICAL ECONOMY AND TAXATION* (Georg Olms Verlag 1977) (1917).

democracy knows the human only as the citizen “estranged” and “alienated” from the human, as the *political* being who is separated from himself as a *social* being, as the human who stands in opposition to every other human—and thus democracy, although dedicated to the idea of an undivided, universal humanity, knows the human only as “the human in opposition to the human,” and knows man only as anti-man.²³

The authority for such hyper-normative structures is given only at the cost of establishing a law that is internationally a bottle empty of messages. While multilateralism and law as concepts and institutions are not empty of significance, the current structure of their formation empties out their potential in the general economy of humanness or civility or security, etc. Now, a certain understanding of law has classically provided that in order to re-produce contingency (in order to be able to foresee it and constrain it in this or that case), that is, to decide upon the case or simply say right, law must have the generative capacity of fiction or abstraction, of fetish or factum but at the same time sterilize its eroticism, its poetic manner. Thus, the institution of the juridico-political in “the State” preconceives the people as unpolitical in order to create a peculiar dyad between the destitute people, which it proclaims to save, and the politicized people, which it assumes to protect. Further, this is also the danger of (political) movements that suggest a new role for the so-called political, as they fail to recognize that the political is a product first of all of a depoliticization of the already existent manner (way, *ethos*) of beings or of whatever they draw from “the people” (race, sexuality etc.) each time. Hence, the suspicion is cast upon “movements” when they reinitiate something that is yet another “liberatory dogma.” This applies also to the “Critical Legal Studies movements” and their futures. Thus, a new political movement returns to the so-called pre-political “people as such” in order to draw from it, once again, for its own saviour political purposes. However, in doing so, there is a fear of reproduction of the process of depoliticization or reinitiation of the generative capacity of so-called opposite forces. In this antagonistic distribution or restless generativity, what produces the triumphant new people or biopolitical body and laws that “can now save us” also must hide the production, destitution, and often killing of its depoliticized people.

Yet, if international law expresses the potentiality of what can be called more generally multilateralism, then the latter can be re-recognized in a positive sense, not as some essential determination, but as the social activity and plurality of those that have nothing in common, that is, as a special kind of *real abstraction*, since it is the paradoxical manner of human being to not have a nature or destiny. This means that international law must become more self-reflective or at least its study needs to be so. It is in this sense that if a human

23. Werner Hamacher, *The Right to Have Rights (Four-and-a-Half Remarks)*, 103 S. ATLANTIC Q. 343, 345–46 (2004).

being has the capacity to surpass its own limits, to create surplus value not as extra-ordinary but indeed as its very form-of-life—a life that cannot be separated from its form of surplus value (to use the economic idiom), or its form of potentiality (to use the philosophical idiom), then international *oikonomia* needs to cognize the widespread anger that lies against it world-wide. The ontological categories (like right, sovereignty, globality, freedom, justice, economy, politics, etc.) with which we are accustomed to think, teach and work require then rethinking if the reality of their abstraction is to be re-cognized and studied in any meaningful way. What is, perhaps, to be re-conceived is, with more modesty, that concepts are at least intimate to their problems and vice versa. Perhaps then let's suggest not to propose yet another manifesto or declaration with regard to what "teaching from the left" may mean (if it means something meaningful any longer), but to modestly retract to showing the potential of law's cognition each time. In doing so, perhaps it ought to be said that it is not necessary to either attempt to reconcile the irreconcilable or believe the hype for this or that liberatory dogma (including those of neo-left making). This does not lead to nihilism or mere cynicism but to self-reflection as to the ways in which politics is used, and its complicity with governance and atrocities around the world on an everyday basis. After all the answer may not lie in politics but in the use of things (as means without ends) which after all is the most difficult, but intimate, human way of being (its ethos). And this means that, to one extent or another, the thinking-through needed for the conception of a non-therapeutic proposition in "international law as such"²⁴ requires also some reconsideration of the way in which the alleged ontological presupposition of international law as such in its ideal sense as the ground of what takes place is experienced in action. This also necessitates a questioning of the necessity of such a normative relation as well as an increased awareness of the destitute spaces and bodies that it produces (or at least that are produced in its name) and that it negatively fetishizes while silencing its un-erotic intimacy to those that it kills without sacrificing.

The self-evident is indeed a very heavy, but intimate, burden.

24. To give only two examples among others, such as the one aspired to, at times, by David Kennedy throughout his work, see DAVID KENNEDY, *THE DARK SIDES OF VIRTUE: REASSESSING INTERNATIONAL HUMANITARIANISM* (2004). Another crucial attempt is laboured by Anthony Carty. See ANTHONY CARTY, *THE DECAY OF INTERNATIONAL LAW? A REAPPRAISAL OF THE LIMITS OF LEGAL IMAGINATION IN INTERNATIONAL AFFAIRS* (1986).