Disaster Law as Methodology

Resisting and Transforming the Normal

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The almost-total breakdown of 'offline commerce' during the pandemic reiterated that global value chains (GVCs) are about more than full shelves. It made obvious a certain population's learnt dependency and comfort in relation to immediate consumer gratification, which itself is part of an acquired entitlement to get, do, and enjoy things any time we want. The curse comes dressed up as a blessing, hiding gratification as a mere complement to everyone's complete immersion and implication in an *extractivist* culture: that is, the relentless pursuit of extracting value from people and things. This dynamic is pertinent to an economic-financial culture of 'always-on-call' and 'always-ready'.

A surge in 'modern slavery' and 'global value chain' legislation over the past years is therefore noteworthy. Politically, it signals awareness and commitment to address a problem, that many will admit to as "longstanding", perhaps even grave. Tedious, even relentless lobbying, by business groups and business-friendly politicians notwithstanding, the eventual passage of modern slavery and global value chain legislation norms suggests that majorities can be assembled to back regulations aimed at (slightly) improved transparency and reporting duties regarding prevailing extraction modes, working conditions, and pay. Legally, the gain is more symbolic than real, given the prioritisation in most such laws of disclosure over actual change and the limited scope of hard-fought-over regulations. To be sure, the exhausting efforts required, first, to launch human rights- and environmental protection-geared norms in the context of modern slavery and global value chains and, then, to pursue such aims against intense and well-financed lobbying and political obstruction are reality distorting: they distract from the fact that the alleged normality of 'uninterrupted' value chains and full shelves constitutes a normality we should resist. Not the pandemic 'disruption' is the crisis but the normal and persistent exploitation of workers and communities which is inherent to global value chains. The task for lawyers is to expose law's constitutive role in allowing the actual disaster of value chain violence to be represented as normal.

The normal (as) disaster

The 2019-23 COVID-19 pandemic thrust GVCs into public awareness in an unprecedented way. In responding to the coronavirus, governments around the world shut down borders and locked down most, in some cases all, social and commercial movement. This led to a dramatic reconfiguration of life, where the most mundane activities such as grocery shopping, seeing friends or visiting museums or fitness studios, had been made impossible. Meanwhile, the already achieved level of digital trading platforms facilitated a dramatic expansion of online commerce, notably with much of the grunt work in factories and delivery centres hidden from the consumer's myopic view.

The impact of the pandemic was hardest felt by many of those operating in the shadows and the underbelly of the worlds of retail and commerce, health and elderly care. Underneath and not plainly visible to consumers during the quotidian struggle with isolation and loneliness were the dire and life-threatening conditions under which the most rudimentary maintenance of long-term care for the elderly and weak as well as global food production, distribution of goods, and delivery to millions of households were being guaranteed by vulnerable, often gendered and racialised worker demographics. From the perspective of those performing dangerous production,

service, and care tasks under unhealthy or life-threatening conditions with low pay, there has never been much about supply chains and, now, gig and 'platform' work that was *normal*. The pandemic brought the actual operation and experience of GVCs by those most exposed to the destructive dynamics of a profit-driven just-in-time economy to broader public awareness and wider scrutiny.

The overwhelming response across policy and business circles, however, focused on making every effort to 'put the pandemic behind us' and to rebuild 'resilient' supply chains.

Against that, there is an urgent need to challenge and unpack the tension between the pandemic-induced explosion of public awareness and the nevertheless still dominant view according to which the regular operation of global value chains is the norm (and, in fact, desirable) and the pandemic disruption should be seen as *exception* and *crisis*. A first step in that direction is to reverse the perspective from which the kinds of disruption connected to the COVID-19 pandemic are an extraordinary outlier from a state of things which in itself is considered valuable and, above all, *normal*. It is this normalisation of what are, in fact, unacceptable working conditions which constitutes the exception, not the pandemic-driven shut-down of factories and transport lines. Distinguishing between us and our needs and the labour of those who are exploited to fulfil those needs is a well-known semantic move through which the 'us' is prioritised and valued while the 'other' is distanced and rendered expendable and disposable. Amidst the outrage over the lack of frozen pizzas and missing sanitary paper in 2020, what remained largely invisible to the consumer were the egregious conditions under which the ongoing operation of food- and other essential-items-related factories was and is being maintained. For a moment, the pandemic brought to public awareness the tip of the iceberg of supply chain-related violence, exploitation, and unsustainability. And with that, it shed light on the systemic body of extractivist capitalism, which feeds on humans, animals, and the environment.

Global value chains as quotidian sacrifice zones

As politicians and business managers continue to emphasise the 'exceptional' and 'disruptive' nature of the pandemic and its supply chain-related breakdowns of shipping routes and lock downs of life, the violence and unsustainability inherent to global value chains continue to be normalised. At the heart of this violence are the *'sacrifice zones'* around mining operations, food processing plants, garment factories, and underfunded, corporatised health and long-term care facilities. Sacrifice zones such as the factory floor in Rana Plaza in Bangladesh or the meat processing plants all over the Global North are key sites of quotidian horror, not just during the pandemic. Potentially transformative legal fields such as modern slavery law, value chain law but also climate change law have critical methodological potential, despite the virulent business push-back. Politically, they can disrupt what is presented as normal. Conceptually, they can contribute to critical methodologies through which we can challenge and contest the 'laws of capitalism'. But, this requires the acknowledgement that the normal of a 24/7 economy *is* the disaster, as is its hidden-from-view workforce and the deepening environmental destruction. Law and critical legal theory, in turn, must be refashioned as *disaster law*. This implies thinking of disaster law not as a legal field per se but as a methodological project. An unpacking of prevailing doctrinal treatments of disaster *law* reveals the limitations of a traditional legal framework which assumes an ex-post position from which it, by design, *reacts* and *responds* to events it identifies and legally classifies as 'disasters'. Disaster law, which typically tends to be categorised as being a part and sub-discipline of administrative law, obfuscates law's structural role in first facilitating and then perpetrating and sustaining conditions of exclusion, marginalisation, and inequality. Disaster law as critical methodology is poised to learn from earlier iterations of anti-formalist and law-and-political-economy critique developed already at the start of the twentieth century. Scholars like Morris Cohen or Robert Hale compellingly highlighted the role that formal abstractions of, say, parties to a

contract or the principle of 'freedom of contract' played in invisibilising existing socio-economic conditions marked by stark inequality. Similarly, key to disaster law as here conceived is the reimagination and recapturing of spaces of vulnerability and harm in GVCs of which the general public becomes aware only too occasionally through social media scandalisation of a deathly event such as a storm, flood or earthquake, or during the concrete impact of a pandemic. What determines these spaces is the structural dimension of an *extractivist condition* which rests on the subjection of natural resources and humans to the logics of value extraction towards grossly asymmetric wealth accumulation.

Reflexive globalisation

Imagining critical legal theory as a methodology of *the normal as disaster* shares key concerns with efforts to address the 'winners and losers' of economic globalisation from a postcolonial perspective. Such efforts have taken on new significance as voters elect populist leaders riding on the coat tails of public disappointment, disenfranchisement, and alienation and prompt difficult questions as to how few really benefited from the 'shrinking of the world'. It is no coincidence that heightened awareness of neocolonial usurpation of resources in the Global South for the green transition in the North unfolds in parallel with attempts among progressive Western legal scholars to scrutinise law's constitutive role in fostering – and normalising – a deeply inegalitarian society. *Extractivism* long precedes the present moment. The resurgence in Law and Political Economy (LPE) scholarship over the past decade sheds light on a broadening concern with the *role of law* in fostering, facilitating, and sustaining an extractivist and deeply inegalitarian system of capitalism. The discontent with globalisation today manifests itself in important critiques of the breathtaking expansion of transnational regulatory governance, the absorption of power by private actors, and the disintegration of domestic policy arenas through financialisation. Meanwhile, soul searching, including the reckoning with the rise of populism and fascism, remains mainly a local, navel-gazing affair. Too little real exchange between the South and the North around the lived reality of colonialism and its continuities is taking place. Projects like "global administrative law" and "global constitutional law" had their share in further delaying meaningful, respectful engagement.

A crucial and pressing concern today across law and the humanities, while regrettably not yet for mainstream economics, finance or management scholarship, is the disconnect between decades-long analysis of (Western) state transformation, law and governance, and distinctly different chronologies and epistemic framings of progress, growth and development across scholars in and from the Global South. Western scholars of "globalisation" have long adopted the goldfish's world view of God ("Who ever would change the water?") while remaining deaf to the voices trying to draw attention to the direct interconnectivity of Northern wealth and the neo-colonial continuities which kept the Global South a subpar member of the 'international community'. Today's postcolonial critique of (the West's) 'green transition' highlights this persisting dynamic.

In law, this disconnect translates into a deeply entrenched separation of those studying international law and, selectively, choosing to confront not just the discipline's but the existing legal and political architecture's colonial roots from those who – "nominally not being internationalists" – take a narrow, protected view of their legal doctrinal and conceptual work. The majority of domestically focused lawyers, say in Europe or the U.S., thus tend to operate within an only too-rarely comparative and even less challenged reference framework without recognising the relevance of imperialist globalisation or the critique of it. The typical (Western) lawyer's scale of operation across distinctions of international v. domestic, public v. private, formal v. informal, as well as law v. non-law, well illustrates the rigidity of existing conceptual boundaries within a neatly delineated, inward-oriented universe of meaning.

Meanwhile, the power and violence of this insularity is rarely acknowledged. Critical contributions also by scholars spearheading the Centre for Advanced Studies *RefLex* have begun to meaningfully unsettle

the hitherto prevailing agnosticism. It is important for us to draw on legal anthropological, legal sociological work, and on legal practitioners' experiences in areas from transitional justice, law and development, and commercial arbitration to global value chains, climate change law, feminist legal theory, legal geography, and critical data studies, to advance our understanding of emerging fields of law which correspond neither with established demarcations of legal subfields nor with mystifying distinctions between law and morality. By positing non-traditional legal fields of practice and critical methodological inquiry in relation to unquestioned ordering patterns of law/non-law and hard/soft law, we may be able to challenge existing frameworks for how law is created, defined, and amended. While the engagement with different forms and conceptualisation of legal pluralism remains a constructive methodological route, what is required is a radical interrogation of the epistemic foundations and normative premises which continue to inform Western law. This interrogation cannot take place solely from within but must acknowledge its blindness and deafness to what postcolonial scholars have long been calling "alternative knowledges". Maybe what is needed is more 'humility' when trying to be open and receptive to what has too long been ignored and suppressed. While authors such as Eduardo Escobar, Dipesh Chakrabarty, Ratna Kapur, Silvia Rivera Cusicanqui, Catherine Walsh, James Gathii, Carmen Gonzalez or Daniel Bonilla have done much to rattle the inward-oriented, discursive cages of (self-proclaimed 'progressive') Western scholarship, their and others' work illustrates the immensity of the challenges which remain in developing a critical postcolonial analysis of transnational legal pluralist infrastructures today.

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