

Sustainable Development and Postmodern International Law: Greener Globalization?

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Excerpts:

“The second session of the Global Preparatory Committee ("PrepCom") for the **World Summit on Sustainable Development ("WSSD")** opened on January 28, 2002, in New York. Three observations emerge from ten days of plenary meetings and "side events," cacophony and sound bites, visions of a vibrant, pristine world in the dimly lit United Nations ("UN") basement, dingy with cigarette smoke. **First, there was no big picture, no metanarrative of sustainable development.' There is no grand theory, no neat framework to which a coherent set of rules can be applied, and under which subcategories can be organized and responsibilities allocated.**

This was evident in the seating arrangements, or lack of seating arrangements, at the conference. Participants and observers sat wherever there were empty seats in the cavernous conference halls, the permanent State and international organization ("IO") nameplates either ignored or noted with a slight smile. For example, a young Japanese woman sat before the United Arab Emirate nameplate. It didn't matter, of course, because the participants did not "represent" anyone in any political sense, nor were many of them accountable to any particular group or constituency. Even those who made statements on behalf of States at the plenary sessions were doing so more in a public relations capacity than a representative one. (South Africa reiterates its support for the development of a new paradigm: "The German government encourages responsible investment in developing countries..."). Most speakers used microphones and their voices were disembodied snatches of rhetoric, punctuated by cell phones and reverberations of simultaneous translation. It was difficult to imagine anything coherent emerging from this process.²

Second, while there was no big picture there were literally thousands of little ones. Most of the participants seemed to be promoting a particular project or approach, including "green" labeling,⁴ permaculture,⁵ the creation of a global people's assembly,⁶ organic agriculture,⁷ a greater role in environmental policy making for those historically excluded, including women,⁸ minorities,⁹ and regional groups,¹⁰ and endlessly proliferating "pilot projects."¹¹ As the PrepCom progressed, little tables with piles of literature began sprouting up until there were mountains of expert reports, glossy magazines, and fact sheets authored by armies of Ph.D.'s. ² There were probably enough for a home-heating with-UN-pamphlets project; if only there was some zero emissions method of getting them all to deforested areas.

Third, while the United States in its official capacity as a State maintained a very low profile, **the United States as the driving force of global capitalism was ubiquitous**. The contrast was particularly striking after January 31, 2002, when the advance guard for the World Economic Forum began to arrive.³ Coming out on the New York streets in the evening one was to emerge into a barricaded, blocked-off midtown, and groups of watchful police officers on every corner. The city was bracing itself for the Forum, at which the United States was a very public host.” (pp. 139-141)

These three observations correspond to three concepts widely viewed as characteristically postmodern. ⁴ **First, the absence of a big picture** corresponds to Jean-Francois Lyotard's definition of **postmodernism as "incredulity toward metanarratives."** ⁵ **Second, the mad proliferation of projects** reflects what geographer David Harvey describes as "the most startling fact about postmodernism . . . its total acceptance of...ephemerality, fragmentation, discontinuity, and the chaotic."⁶ **Third, the contrast between the United States' key role in globalization, and its marginal role in the WSSD process, exemplifies critic Fredric Jameson's description of postmodernism as "the cultural logic of late capitalism."** ⁷ **These three distinct but related concepts provide a working definition of postmodern international law ("PL")⁸ and show how PIL can be used to define, albeit contingently, and to encourage greener globalization.** ⁹ From a postmodern perspective, to paraphrase Stanley Fish, there is no such thing as global governance, and it is a good thing, too.²⁰ This does not mean that there is no governance,²¹ nor does it mean that additional (or improved)²² mechanisms for governance might not be useful.²³ It does mean, however, that **centralized, unified, global governance is unlikely to further "sustainable development,"**²⁴ especially as understood by the global have-nots.²⁵ It also means that terms like "governance" and "improved" may themselves be problematic and subject to dispute.²⁶ Thus, **it may well be more constructive to deconstruct at this point, and PIL offers an array of tools for deconstruction and even subversion.²⁷ Subversion is necessary, at least in part, because of the recalcitrance of the United States.²⁸ The richest and most powerful country on the planet is unlikely to "do the right thing" as long as it is perceived as political suicide for democratically elected leaders to try to persuade the American people to significantly lower their standard of living.²⁹** (pp. 142-145)

“... **The dark side of the Enlightenment** was its embodiment of Nietzsche's "will to power," its reification of reason, and its march to universalism. ³⁴ This was all too evident to Adorno in contemporary **Stalinism and fascism.**³⁵ As recent observers have noted, the dangers are not limited to those particular totalizing cultures. The dark side of the Enlightenment **can be seen, for example, in the insistence on "universal" environmental standards promulgated in the North, notwithstanding the prohibitive human costs for less developed countries ("LDC"s).** The Enlightenment made "man," rather than God, the center of the universe. Critics have charged that its "universal," "objective," "rational" subject is in fact a **Western white man,**³⁶ and its promised Utopia is the universalization of Western culture.³ Just as the

Enlightenment masked the will to power of Western culture," and its devastating legacy of imperialism, 9 post-Cold War international law masks the will to power of late capitalism,' which seems to view American access to cheap oil as a right.⁴ **By challenging the Enlightenment metanarrative, PL challenges Western hegemony, culturally and politically.**" 42 (pp. 146-147)

"PIL's "incredulity toward metanarratives" is particularly applicable in the environmental context. As Jonathan Chamey has explained, there are many good reasons for "universal" environmental law since environmentally harmful activities often have transboundary impact.⁴³ As a practical matter, however, master plans have major drawbacks. First, there is the often unsurmountable problem of achieving consensus among countries." Second, there is the risk of large scale harm to the environment, whether through mistake or greed.⁴⁵ Third, even if there are no mistakes, because of the complexity and interdependence of ecosystems, "universal" remedial measures may themselves cause harm imperceptible on a small scale.⁴⁶ Finally, as Professor Chamey points out, such measures may require binding States without their consent. This not only raises serious questions of State sovereignty,⁴⁷ but, from a PIL perspective, it also raises the question of Western domination and the subordination of other interests to a neoliberal agenda.⁴⁸ **Thus the point is not to come up with better metanarratives. 49 Rather, from a PIL perspective, the point is to question the metanarratives which underlie and perpetuate current dilemmas.**" (pp. 148-149)

"A. The Metanarratives of Environmentalism and Development

The metanarrative of environmentalism is a story of a planet on the brink of disaster;⁵ its ecology already compromised and gravely endangered by overpopulation;⁵ over-consumption of nonrenewable resources;⁵² and human pollution that has poisoned the air⁵³ and the water,⁵⁴ and seems well on the way to altering the climate." (p. 149)

"...1. Defining "Sustainable Development"

The phrase "sustainable development" links the metanarratives of "environmentalism" and "economic development" in ongoing dynamic tension. First appearing in Our Common Future, drafted by the World Commission on Environment Development ("Brundtland Report")⁶ "sustainable development" is defined as meeting "the needs of the present without compromising the ability of future generations to meet their own needs."⁶² The Group of Seven endorsed the Brundtland Report's definition of sustainable development at the Toronto Summit in 1988,⁶³ and it was incorporated in Principle 4 of the Rio Declaration,' which states: "In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it."⁶⁵ The substantive content of this definition, as many commentators have observed, remains ambiguous.⁶⁶

2. Deconstructing Sustainable Development

"Sustainable development" is an intentional oxymoron, a paradox.

67 It is a self-contained deconstruction in which one term endlessly undoes the other.⁶ The process of deconstruction begins by identifying the opposition contained in a particular concept. 69 The next step is to invert the hierarchies contained in that opposition.⁷ "Sustainable development" qualifies the privileged conception, the subject of the phrase ("development"), by explicitly linking it with the notion of environmental sustainability. Thus, the term exposes what we have forgotten, the hidden environmental costs of the development of the North. At the same time, taking the North's insistence on "sustainability" as the prior concept, the first word of the phrase, "sustainable development," implacably links it to the "development" necessary for the South.⁷

In deconstruction, the subordinated conception is referred to as the "dangerous supplement. 72 The supplement is dangerous because it adds to our understanding, exposing our original understanding as incomplete.⁷³ Thus, the juxtaposition of the terms here reminds us that environmental sustainability cannot be assured at the expense of Southern development.⁷⁴ The North's campaign to 'save the rainforests,' for example, functions as a kind of expropriation, claiming Southern forests as a global resource after the North has depleted its own.⁷⁵

"Development" similarly, entails environmental costs. The linkage of terms makes these costs explicit.⁷⁶ The supplement is also dangerous because it subverts our confidence in the privileged concept.⁷⁷ Inverting the hierarchy invites us to consider the necessity of development when engaged in environmental projects and the need for sustainability when engaged in development.⁷⁸" (pp. 151-153)

"... "Sustainable development" incorporates the metaphor of "trace" by making opposite concepts explicit and inseparable. Thus, it becomes impossible to conceptualize either "development" or "sustainability" without considering the other.⁸⁰ **"Sustainable development" is already postmodern.**⁸" (p. 154)

"B. The Metanarrative of Scientism

... Science plays an indispensable role in identifying global environmental threats, in analyzing those threats, and in developing solutions."⁸⁵ **Science** promises a language beyond politics, and an objective perspective.⁸ 5 While these **claims have been challenged by postmodernists on a number of fronts,**⁸⁶ they retain considerable appeal. Indeed, "[o]ne of the keys to building consensus..., is developing a critical mass of scientific authority to show that an environmental problem is emerging, and also to determine what corrective action is appropriate. ⁸⁷ **From a PIL perspective, however, "scientific authority" must be regarded with some skepticism. Research may well be driven by politics; 88 data can be manipulated;89 and scientific "certainty" may be more ambiguous than it first appears.**^{9°}

This skepticism has been incorporated in the precautionary principle.

Principle 15 of the Rio Declaration provides that "where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.⁹² **While the precautionary principle may be customary international law,⁹³ the United States has consistently rejected it.**⁹⁴ In doing so, the United States gives important leverage to those who can pay for as many studies as it takes to generate "uncertainty" regarding claims of serious or irreversible damage," even if they are unable to actually refute such claims.⁹⁶" (pp. 155-157)

"C. The Metanarrative of American Greed

There are many metanarratives of the United States.⁹⁷ From a Southern perspective, however, we are widely regarded as global gluttons, consuming a vastly disproportionate share of the world's goods⁹⁸ and responsible for a vastly disproportionate share of its pollution." While only five percent of the world's population live in the United States, we consume almost twenty-five percent of the world's energy."⁹⁹ In addition, we are considered hypocrites... Although we tell LDCs that free markets will bring them prosperity, similarly, we maintain firm barriers against their goods.

We maintain these barriers to safeguard our standard of living. **"[T]he American standard of living is not up for negotiation,"** said the first Bush Administration at the Rio conference in 1992.¹⁰³ **Ten years ago, it wasn't. But it is now,** as those thinking about the next election have already noted. ¹⁰⁴ As many commentators pointed out after September 11th, the American fantasy of the open road has run out of gas. ¹⁰⁵" (pp. 157-159)

"...IV. FROM SUSTAINABLE DEVELOPMENT TO GREENER GLOBALIZATION

A. *"PIL of Resistance"*

Where untouched wilderness remains, it is probably "greenest" to leave it alone, or to buy it and put it in trust ²¹⁹ In contrast, when new development is contemplated, it is probably cheapest (at least in the short term) to develop without considering the environmental consequences. ²²⁰ If nothing else, "sustainable development" provides opponents with enough rhetorical ammunition to challenge either course of action.²²¹" (p. 182)

"...From a PIL perspective, "sustainable development" is a floating bottom line; that is, an unstable bottom line that may vary over time from place to place, reflecting shifting consensus and ongoing dialogue. PIL is grounded in what Katherine Bartlett has called "standpoint epistemology," that is critical assessment based on ongoing experience and critical reflection informed by that experience. ²²⁷ Thus, PIL accepts as a workable premise the notion that globalization and its promise of development can be greener, but it does so contingently, always insisting that the premise be recognized as "tentative, relational, and unstable." ²² The premise is not that development can be "green," or even "green enough," but that the trajectory

of development can itself be made "greener" 229 than it would be without the rhetoric of sustainable development and those who make it their own." (p. 184)

"...1. Green "Sustainability"

In each of the local battles where environmental law becomes concrete, 230 the questions must be asked: What is "greener?" How should the quality of water, air, and soil be measured? How should the environmental impact on ecosystems, habitats, and aesthetics be ascertained? By whom? How are these questions informed by a PIL perspective? For example, **the notion of "deep ecology;" that is, that an ecosystem should be protected regardless of any potential benefits to humans, is difficult to justify under the Enlightenment metanarrative, which makes man the center of the universe.**²³¹ Once "man" is decentered, however, the deference to deep ecology urged by some indigenous groups (and some environmentalists ²³²) becomes more intelligible.²³³" (pp. 184-185)

"...PIL is consistent with, even conducive toward, a growing sense of active engagement with the long-term process of sustainable development. It demands, however, that such engagement remain incredulous toward metanarratives, alert to the cultural logic of late capitalism, and responsive to the inevitable flux and fragmentation of a postmodern world." (p. 192)