

GLOBALIZATION AND COMMUNITY: IN SEARCH OF TRANSNATIONAL JUSTICE

INTRODUCTION

There is a kind of gut-level feeling, especially among those most immediately affected, that a plant closing or any other traumatic work-force restructuring must be unjust. But the instincts of corporate decision-makers and their libertarian supporters engender no such feeling. As a result, at least in a capitalist society, anyone who doubts the licity of this literal form of moving and shaking is assumed to have the burden of proof. So be it, then; the question must be asked: under what conditions, if any, is a workforce restructuring unjust?

A deontological answer might be that a workforce restructuring is unjust if the interests of any party involved in the restructuring are seriously undermined. And such an answer might actually prove to be of some polemical use. But its theoretical force is diminished by the fact that these restructurings typically affect a wide range of persons and institutions other than those most immediately and obviously "involved," including some who, at least relatively speaking, benefit more than others are harmed. These beneficiaries of the workforce restructuring might, in turn, be located far from those who are harmed. Moreover, even if they are members of some society, they may not be in any ordinary sense members of the same society. This is especially the case with regard to workers whose employer is a transnational corporation engaged in globalization.

Globalization is the cumulative consequence of corporate plant location decisions made on the basis of an assessment of the most favorable business climates in the world, as determined by such factors as government tax policies and workplace health and safety regulations, infrastructure, the status of unions, the compatibility of available technology and local workplace skills, and local wage levels. In short, it is a global strategy for identifying and exploiting the most owner-advantageous means and relations of production. How, then, against this global background can the justice or injustice of a workforce restructuring be determined?

Among Anglophone social and political philosophers (at least those who think of themselves as liberal) it is widely assumed that questions of justice are best handled by applying some version of a social contract theory, preferably that of John Rawls. And at first glance one might assume that Rawls' conception of justice as fairness is surely applicable; but Rawls discourages a global agenda by blurring (not merely neutralizing) the boundaries of a society with regard to both time and space.

With regard to *time*, Rawls' contractors are expected to arrive at principles of justice without knowing to which generation they belong or to what level of civilization and culture their society has attained. But the history of conquest and enslavement is enough to indicate that the variable of time is relevant to justice with regard to workforce restructuring. With regard to *space*, Rawls simply fails to consider the bearing upon a theory of justice of a society's boundaries and its degree of penetration into or by another society or societies (leaving all of this unquestioningly to international law). But technology transfer in general and plant relocation in particular frequently involve a process the justice of which can be determined only if its impact on two or more geopolitically distinct *places* is taken into account. In order to establish conditions of justice with regard to workforce restructuring, then, one needs to take into account certain spatiotemporal facts, i.e., facts about the geopolitical position in place and time of those involved.

In this regard, a number of philosophers have called attention to the moral irony of espousing universal principles of conduct but confining their practical import within a nation-state.¹ But few have found a consistent or convincingly less noxious way to make the globe the geographical correlate of universality. Especially obstructive for defenders of a global ethic is, as social contractarians regularly note, the manifest inadequacy of global enforcement of standards. This, however, is an instance of what Brian Barry calls the compliance problem - important in its own right but subsidiary to the problem of establishing universal, read: global, norms.² A perhaps even more serious objection is that a global interpretation of justice tends to disregard the moral significance of loyalty to less than global groups, be they families or nation-states or whatever. This disregard is especially suspect (although on occasion justifiable) when it involves intrusive imposition of some exogenous standard of behavior.

The most promising solution to these problems will be found, I believe, in Haskell Fain's carefully wrought task-oriented approach to problems that require cooperation across national borders.³ But his

groundbreaking enterprise deserves full attention in its own right. For the project at hand, namely, finding a way to articulate moral scope, we can get along with Julius Stone's concept of a justice-constituency, which involves "the claimants and beneficiaries of justice in concrete times and places, with their biological endowments and social environments, and their limited and tentative envisionings of the future."⁴ A justice-constituency, he says, is typically coterminous with a nation-state but might just as well be a "postulated justice-constituency of mankind."⁴ I submit, in light of problems regarding work, that it might also involve a social unit less complex than a nation state.

Concerns similar to those about globalizing universal principles obtain also in the case of workforce restructuring. For, to the extent that only global strategy is deemed to be at issue, and the denationalized leaders of a nation-state are compliant, the interests of more localized justice-constituencies will be disregarded. With this in mind, I shall use the term 'community' to mean abstractly just such a geographically localized complex of legitimate interests and concretely the human beings who assign these interests moral priority.

It would, of course, be an oversimplification to say that each and every workforce restructuring involves two communities, e.g., one which experiences a plant closing and the other a plant opening. But this very oversimplification does suggest a device for describing the often conflicting interests at stake in a transnational restructuring, namely, as a kind of voyage. Imagine, if you will, that those harmed are, as it were, at the "point of departure" of a plant relocation and those somehow benefiting are at the "point of arrival." With this imagery in mind, I shall consider first communities at a point of departure of a workplace restructuring (exemplified by situations in the United States) and then those of communities at a point of arrival. My objective is to suggest (1) that community interests constitute a moral and arguably also a legal basis for limiting globalization; and (2) that justice as fairness can be meaningful in the transnational arena only if it requires a community-oriented limit on corporations.

I. COMMUNITIES VERSUS CORPORATIONS: THE AMERICAN EXAMPLE

Even the staunchest defenders of American business generally concede that some workforce restructuring over the last several decades may have harmed some communities. They excuse this harm, however, by

appealing to "business necessity." Against this excuse, communities have little recourse, especially when the decision in question is said to be required to meet global competition. Even unions, however reluctantly, tend to be cooperative. Unemployment and social disruption are inevitable side effects. But whether plants are closed or automated, that business necessity is an adequate justification goes largely unchallenged.

Take plant closings, first of all. Many labor-intensive plants have been closed in recent years in the United States, especially in areas that developed industrially at an earlier stage in our history: the so-called "rust belt." Why is this the case? Some blame rising labor costs (hence the emphasis on wage "concessions" in the 1980's). Others, including experts at the International Labor Organization (ILO), prefer to blame "the importance of technological innovation as a means of (meeting) competition."⁵ The pressure of competition may motivate a desire to innovate. But it may just as well inspire companies to favor environments where cheaper labor is available even over those where innovation might most easily be introduced. The consideration that tips the balance may be an opportunity to "get out from under" a union.

Bumper stickers say "Buy American" and (at least until the decline of the dollar) unions had hopes of getting some sort of "domestic content" legislation passed. But what is there "American" to buy? Most of the components of an IBM-PC are manufactured abroad. Ford Motor Company prides itself on its "world car," the multinational manufacture of which is intended to be invulnerable to any local labor unrest. Such practices are duplicated by hundreds of companies. In autos, for example, the U.S. Department of Commerce estimates that by 1988 17% of the cars sold by Detroit will be produced abroad, at the cost of an additional 90,000 lost jobs; and by 1995 29% of the parts in domestically produced cars will be imported, with comparable worker displacement as a consequence. As a result, one domestic auto plant after another is scheduled for closing, and communities ponder the legality of suing for the institutional equivalent of alimony.

This kind of story can be repeated with regard to industry after industry. Where once we had manufacturing strength we now might have what *Business Week* has called "the hollow corporation": a service-oriented company that does everything from designing to distribution, but whose products are manufactured abroad.⁶

What will be the long-term results of this transformation of our economy? Some observers see the shift from manufacturing to service as

compensated as their predecessors, the value of vacated real estate is at risk, and no one is talking about what it cost the community to attract IBM in the first place.¹³

Columbus, Indiana, is the world headquarters of Cummins Engine Company, long renowned as a model of the socially responsible enterprise. While providing more than half of all diesel engines sold for trucks and heavy equipment in North America (but only 2-3% of the global market), Cummins paid a world renowned architect to design each of thirty major buildings in Columbus. Of its 19,500 employees worldwide, as many as 11,000 were on the payroll in the Columbus area as recently as 1980 (including, incidentally, a business ethicist). Then came the worry that a Japanese competitor would be moving into its bailiwick. Management responded by launching a \$1 billion program to expand its product line, just when a worldwide recession dropped its engine sales from 125,000 in 1981 to only 85,000 in 1982. The next three years it sought, and achieved half of, a 30% reduction in costs via greater efficiency from suppliers and employees. In the third quarter of 1986 the company reported a loss of over \$100 million, at which point management announced the closing of two Columbus area facilities to effect a 45% reduction in its local workforce. Most of this has been accomplished by firings and forced early retirements - not of unionized hourly workers, but of union-"exempt" middle management employees. Those fired who agreed to sign a waiver not to sue were given several months' severance pay. A dismissed employee who did sue was stopped short by a summary judgment in favor of Cummins, employment-at-will still being the unqualified rule in Indiana. Those still employed along with the rest of the community continue to find positive things to say about Cummins, but the myth about its singularly benevolent role in their lives is gone forever. Company-community relations will never be the same again.¹⁴

Such top management responses to "business necessity" are not aimed at mere profitability. Plants so targeted may well be profitable without being moved or automated. But the investor-oriented bias of the corporation requires management to seek not just profit but maximum profit. (Cummins Engine, for example, has not lost any of its market share; and now that the dollar has weakened somewhat relative to the yen, the company's recent workforce reduction seems much less inevitable, unless perhaps the company intends to relocate the closed facilities in a cheap labor setting abroad.) It is in its quest for maximum

profit that even the most benign corporations in America routinely interpret the right of private property as a license to use or abuse a community as it sees fit.

License to use or abuse a community extends the old Roman rule that the owner of property has the right to use or abuse (*ius utendi et abutendi*) just that property as the owner sees fit. On the other hand, since the rise of democratic states an owner's control over property has in fact been limited by various social constraints. Imposed at least in principle for the public benefit, these constraints can be detrimental to the interests of an individual property owner. But they seldom interfere with a major corporation, whose use of property is limited only by "business necessity." This can be seen, for example, in a 1987 decision of the U.S. Supreme Court¹⁵ which can be interpreted as saying that government must compensate a private owner for even minimal interference with the owner's use of property. But, as we shall see, other decisions even from the same court have been more attentive to community interests.

The interests of a community in a corporation can, of course, be understood to include various components. Foremost among these, according to some financiers, are the stockholders, as was emphasized by another 1987 U.S. Supreme Court decision that authorizes a state to legislate a cooling off period before raiders can acquire control of a company.¹⁶ Also to be taken into account, however, is the investment of the workers, as the NLRB argued in *Ozark Trailers, Inc.*,¹⁷ and as is becoming more apparent in the wake of legislation that facilitates worker ownership of companies (ESOP's). Similarly, local taxpayers are investors through whatever "industrial development" arrangements have been made in their name. The interests of these components of the community should not be overlooked as local governmental units concern themselves with accommodating a major corporation.

Attention to community interests may be discerned from emerging law that imposes limits on the owners of private property, (1) by restricting their use of that property and (2) by public preemption of private property. The first involves what is called inverse condemnation; the second, eminent domain. Each involves what is technically known as a taking, because of the relevant language in the Fifth Amendment to the U.S. Constitution: "(N)or shall private property be taken for public use, without just compensation." (Satisfactory resolution of the difficult and controversial question of just compensation will here be assumed.¹⁸)

The Fifth Amendment of the U.S. Constitution requires that the federal government and, via the Fourteenth Amendment, state governments (or subsidiaries thereof) take private property only for "public use." As applied particularly to eminent domain, there was concern from earliest times that public use might be interpreted to mean nothing more than public benefit. There was good reason for such concern: but in retrospect even that standard would be immeasurably superior to what has been the de facto standard, namely, benefit to corporations.

This abdication of public responsibility commonly takes the form of appellate deference to the decisions of local courts. Such deference would be constructive if local courts were a fora in which a community's true interests are deliberated. But these courts are usually under pressure to approve the pet project of one or more corporations cloaked in the mantle of "public use." The programmatic significance of the following analysis, therefore, depends on the extent to which a truly participatory community is able to have its interests impartially adjudicated. For, the letter of the law is fairly straightforward: what is crucial is how "public use" is interpreted.

A concurring opinion in an 1837 New York State case¹⁹ worried about the implications of identifying public use with public benefit because this would diminish the property rights of the individual against whomever the government represents. This equation, however, prevailed both in the East²⁰ and in the West.²¹ But in the Midwest, courts tended to favor a much more conservative approach to taking, limiting public use to what is absolutely necessary.²² (This, as we shall see, has changed.)

In 1936 New York courts found that urban renewal constitutes a public use even if some structures affected are not substandard and some private firms are involved in the project: *New York City Housing Authority v. Muller*.²³ The *Muller* reasoning became a national standard in 1954 when the U.S. Supreme Court endorsed it in *Berman v. Parker*.²⁴ Since then public benefit has, to a considerable extent, become virtually indistinguishable from private, i.e., dominant corporate, benefit. For example, a New York court saw nothing improper in the condemnation of thirteen city blocks and all the businesses, however thriving, on these blocks: *Courtesy Sandwich Shop, Inc. v. Port of New York Authority* (1963);²⁵ and a Michigan court blithely upheld the condemnation of an even more extensive urban neighborhood so that General Motors could allegedly provide jobs and taxes by constructing a new plant: *Poletown Neighborhood Council v. City of Detroit* (1981).²⁶

Happily, not all eminent domain cases follow the path of least resistance to corporate fiat. For example, in *Hawaii Housing Authority v. Midkiff* (1984),²⁷ the United States Supreme Court upheld Hawaii's use of eminent domain to redistribute land that had been monopolized by a small minority of owners, resulting in artificially high prices on what little land was available for purchase.

Deferring as usual to the state government's prerogatives in these matters, the Supreme Court found the Hawaii legislation to be a "comprehensive and rational approach to correcting market failure."²⁸ This was enough, because

where the exercise of the eminent domain power is rationally related to a conceivable public purpose, the Court has never held a compensated taking to be proscribed by the Public Use Clause.²⁹

Decisions such as these are encouraging to one who favors recognition of the interests of the community in law. But they have not dislodged a traditional unwillingness to consider property other than real estate in the same way. This was shown, for example, in the Court's recent denial of certiorari to the "plant closing" case of the (now) Los Angeles Raiders, who moved their franchise but not their stadium from Oakland.³⁰ Some legal scholars, such as Charles Reich, Frank Michelman, and Joseph Sax, have argued that even entitlements, e.g., under Social Security, should be protected as property.³¹ (This strongly communitarian step the Supreme Court has been unwilling to take.)³² In the same vein, the law of public use could provide a basis for a more communitarian assessment of plant closings and new technology. But the precedents are ambiguous at best, especially where corporate priorities are at stake.

II. COMMUNITY VERSUS GLOBALIZATION: THE "OFFSHORE" CASE

If accused of unjustly restructuring a local workforce, a transnational corporation might defend its decision by appealing to a global concept of justice. In the abstract this appeal is at least prima facie persuasive. On utilitarian grounds it might even be beyond challenge if the calculus of benefits shows that harm done to a community at a plant relocation's point of departure represents a comparatively insignificant component of otherwise advantageous consequences. But a moral account might be

less supportive if it considered more carefully the effects on communities at the point of arrival.

Having argued already that the interests of a community at the point of departure should constitute a limit on globalization, I shall now argue that globalization should also be limited by the interests of a community at the point of arrival. For this purpose one might want to move Rawls' principles of justice out of their unisocietal confines onto the complex matrix of the multisocietal globe.

Rawls' Kantian interpretation of the original contract is unquestionably a monumental accomplishment, and will surely continue to inspire learned progeny for generations to come. But it fails to establish what constitutes a society and assumes (by its acquiescence in the conventions of international law) that a society may be just in relative isolation from the rest of the world. Having so limited the scope of his treatise, Rawls erects two obstacles to the development of a contractarian theory of global justice. First, his ahistorical presentation avoids rather than resolves Hume's contention about the origins of nations-states. "(a)-most all governments . . ." he said,

have been founded originally, either on usurpation or conquest, or both, without any pretence of a fair consent or voluntary subjection of the people.³³

Secondly, he perpetuates Rousseau's indifference to corporate structures and the impact that can have on an agrarian symbiosis between a population of human beings and the land they inhabit. According to Rousseau,

The ideal ratio (between territory and population) is achieved when the land can support its population, and when the population is of a size to absorb all the products of the land.³⁴

Any human ecosystem thus circumscribed is, as Rousseau well realized, seriously threatened by incursions from without; hence, he added, that people is best suited for laws "which is not dependent upon other nations, nor needed by them."³⁵

Such isolated autonomy exists only in the abstract. In the actual world, inter- and trans-societal interaction is ever possible and, in a technologically advanced global village, inevitable. What matters, as far as a theory of justice is concerned, is how the terms and conditions of such interactions are established. I take it as given that justice cannot be assured if not all the interested parties are adequately represented in making this determination. Still less can it be assured by a hypothetical

contract the parties to which are oblivious of their own community's interests. This can be seen by imagining Rawlsian contractors who are asked to arrive at (a) principles of justice and (b) a constitution without knowing the specific space-time coordinates of the society with which they are in fact associated. These preliminaries out of the way, let the social contracting commence.

The contractors meet, not knowing their generation or their place in society; but they do know that they belong to a particular society (a remarkable grant of wisdom to which many people in the actual world attain only with great difficulty if at all). Thus minimally informed about relevant details, they ascend beyond utilitarianism to transcendental rationality and arrive at Rawls' principles of justice as fairness. The veil of ignorance is then partially lifted for a constitutional convention. "They now know the relevant general facts about their society, that is, its natural circumstances and resources, its level of economic advance and political culture, and so on."³⁶ With only this additional knowledge, Rawls assures us, they manage to draft a constitution: whereupon they reenter the society they have wisely ordered.

So much for Rawls. Now for the rest of the story — or, rather, stories, since the variables cover an open range of possibilities, most of which are fraught with ambiguities. Consider for purposes of illustration just a few actual space-time situations to which the wisely devised ordering principles are expected to apply. In none of them, it may be noticed, is there anything approaching consensus among the inhabitants about what constitutes their society, what everyone's place in it is or, what is still more basic, who is or is not included in the society.

1. *Palenque, province of Chiapas, in southern Mexico, 1987.* You are a Mayan. Centuries ago your ancestors were dominant in this part of the world, and relied upon human sacrifice, among other things, to maintain their preeminence in the world. But long ago they were conquered by Zapotecs, then Toltecs, and then definitively by Spanish conquistadores. Impressive ruins outside of town suggest the former greatness of your people. But you yourself live in extreme poverty. You and your people are at the margins of the prevalent society in Mexico, since its values are based on the imported European culture, which attributes no value to anything "Indian" unless it is respectably pre-Colombian. You do not have reliable running water, so you risk dying of some form of intestinal disease. Besides, advancement of the lumber and oil indus-

tries is decimating the rain forest, and thereby destroying the water table itself. Ironically, the resulting desiccation is also destroying the ruins of your ancestral city.³⁷

2. *Cape Breton Island, Nova Scotia, 1976.* You live in the poorest part of Canada, the Maritime Provinces, whose people have for generations felt, with good reason, that they are neglected by the federal government. Like others before you, you and your family have (until now) managed to eke out a living by subsistence farming and fishing. Now you are on the verge of losing your land because you cannot afford the rapidly increasing property tax. The increased value of your land is due to the construction nearby, in the Strait of Canso, of a deep port to accommodate tankers that deliver petroleum from the Middle East to be refined here for direct sale and for use in petrochemicals. The facility itself was built almost entirely by imported labor using materials prefabricated in the United Kingdom.

3. *East Timor, 1976.* You are one of the more advantaged mountain people who are being systematically slaughtered by Indonesian troops, armed and supplied by the United States, that have invaded this country (once under Portuguese control) to preserve it as an enclave for Western democracy. Your life expectancy is minimal because someone has told the soldiers that a member of your family favored the opposition party. Your interest in this territory is deemed expendable in view of its strategic importance to the oil industry, both because tankers pass nearby and because there are believed to be significant deposits of oil offshore.³⁸

4. *Republic of Korea, (South Korea), 1980.* You are a thirteen-year-old female: In dutiful obedience to your father, who exercises patriarchal authority over all members of his family, you are working in a foreign TNC-controlled electronics assembly plant in the Masaan Export Processing Zone (EPZ). Ninety percent of your fellow workers are young females like yourself. You work eighteen hours a day, seven days a week, for less than \$18/month. Throughout your working day you peer through a microscope as you work to meet your quota. Although you wear gloves, you routinely suffer acid burns on your fingers. Within a year of your initial employment you had suffered permanent vision damage. Soon you will no longer be able to do this work, which has

provided you with no skills that are transferable to other kinds of work in your country.³⁹

5. *Taipei, Taiwan, 1987.* You used to work on an assembly line in a converted upstairs apartment with dim light and no air conditioning; but now you are a bank employee. Your husband is a quality-control manager at a textile company. Together you earn \$1,500 a month and, after paying all expenses, have \$500 left. But your extra money is a problem for you, because consumer goods are expensive, credit is not readily available, ordinary interest is very low and the domestic stock market is highly speculative. Your country's economy is already almost totally dependent on foreign-based, especially American, transnational companies. These companies typically exploit cheap labor in Taiwan to manufacture products for export back to their domestic market. As a result, America's trade deficit with Taiwan (\$15.7 billion in 1986) is due largely to products made in Taiwan for such companies as Sears, K-Mart, J.C. Penney, Wilson Sporting Goods, Mattel, Schwinn, Hewlett-Packard, IBM, Texas Instruments, Digital Equipment, and - Taiwan's biggest exporter - General Electric.

The American government is pressuring Taiwan to be more accommodating to American imports, but each Taiwanese would have to spend an average of \$7,500 (twice the average per capita income) on American goods to overcome the trade deficit. Partly because of the protectionist policies of the Taiwanese government, your country's cash reserve (\$35 billion in early 1987) will soon be the largest in the world. If the Taiwan currency is not significantly devalued, foreign companies may begin placing their orders elsewhere. Meanwhile, the political autonomy of your country viz-a-viz mainland China remains unresolved.

Under the circumstances, you and your husband agree with others of your generation that you might as well spend your money while it is still worth something.⁴⁰

6. *The West Bank of the Jordan River, 1987.* You are a Sephardic Jew. You came to Israel from a nearby country, where you were oppressed, with the understanding that Israel is your "promised land." You have gone to live on the West Bank. This territory is claimed both by Israelis and by Arabs. You have no skills that are marketable in this economy and have been unemployed since your arrival here. Meanwhile, more

than 100,000 Arabs come into Israel every day to perform menial jobs. Being a Sephardic Jew, you are of marginal interest to the European Jews who control Israel and to your Arab neighbors. Within another generation the majority of the population of Israel will be Arabs. But only Israeli Jews are granted citizenship. Meanwhile, comparatively few Israelis are yet willing to grant separate political status to this territory. Just as Arab nations refuse to acknowledge the existence of Israel as a state. This volatile mixture called Israel is supported by \$3 billion/year in aid from the United States.⁴¹

7. *Dominican Republic, 1980.* You are an employee of a United States-based transnational corporation which operates a plant in the La Romana Economic Free Zone (EFZ), which is essentially a regime of exception from regulation by the national government. You are paid 50 cents an hour, with capital raised locally in support of the enterprise. Soldiers and barbed wire fences around the plant prevent potential union organizers from entering.⁴²

8. *Tupecamaru, outside of Lima, Peru, 1987.* You are a direct descendant of the once powerful Incas, about whose language and customs you know little (unlike your relatives in the high country). You are a poor entrepreneur. Under existing law you cannot incorporate, obtain credit or title to the land on which you operate your business. Your home was built illegally on land to which you cannot get legal title. The "informal sector" of the economy, of which your endeavors are a part, accounts for 60% of the total economy and owes nothing, whereas the "formal sector" accounts for only 40% and owes \$11 billion. In fact, illegals are responsible for a total of \$8.7 billion worth of housing, including more than half of the homes built in Lima. Not being recognized by the government as a community of human beings, however, the illegals are not provided with water or electricity. But they have themselves erected a water tank and now the government has run an electric line to operate a pump – thus, arguably, officially recognizing the existence of the illegals. But half a million laws and regulations, devised mostly by unelected bureaucrats, continue to protect the vested interests of the country's old families.⁴³

9. *Northern Mexico, 1987.* You are in any one of eight cities bordering on the United States – Tijuana, Mexicali, Nogales, Piedras Negras,

Ciudad Juarez, Nuevo Laredo, Reynosa or Matamoros. Officially, your town is part of the United States of Mexico. But your town is for all practical purposes controlled by the *maquiladoras*, i.e., border factories built by American-based companies to process raw materials for exportation into the United States as finished products. The factories have come here to take advantage of cheap labor. If you are a very young Mexican female, you may be employed in one of the "in bond" factories (since 90% of their employees are so characterized). If you are a Mexican male, you are probably unemployed; but if you are married you may console yourself with your traditional patriarchal perquisites. You may also be involved in a secondary occupation, such as prostitution or smuggling workers, drugs, oil or cattle to the north or consumer goods or military equipment to the south, e.g., to bolster some revolutionary movement. If you are in any of these groups, you were at best poorly represented behind the veil of ignorance, since you have little freedom and less equality of opportunity. In fact, considering the likely consequences, you are probably worse off if you are employed in a factory than if you were not.

On the other hand, you may be a North American plant manager, in which case your life style is very atypical. You do not speak Spanish, so you require your employees to learn English, in U.S. border towns. You are obviously benefitting from these arrangements, as is your company and its investors. But it is difficult to identify a society in whose founding social contract you might have been represented. Still less would Japanese companies have been represented, yet they are apparently on the verge of imitating and perhaps surpassing your company's exploitation of this advantageous labor market.⁴⁴

10. *Los Angeles, California, 1987.* In the interest of closing the circle (and thereby modifying the rigidity of the oneway-trip model), imagine finally that you are an undocumented worker – from Mexico or, possibly, the Philippines – employed as a seamstress in a single-owner textile "sweatshop." In return for a 10-hour day of sewing in minimally tolerable surroundings you are paid, maybe, \$2-3.00. To supplement your meagre pay you might take home a bag of additional cloth on which you work well into the night – because you need the money. Obviously you would like to earn more, but you really have no other viable option. This piece-work industry is able to compete with automated textile plants only by keeping wages to a minimum. Besides, you

are in a double bind with respect to your residence in the United States. In your home country you and your dependents were impoverished. In the United States, under recently enacted legislation, the Immigration and Naturalization Service is authorized to fine your employer and deport you just for being where you are; secondly, under a law passed to preclude exploitation, you are subject to penalty for sewing in your home; and, thirdly, you are subject to the animosity of unionized textile garment workers who resent your willingness to work for less than minimum wage. So it is as much in your interest as it is in that of your employer that you call as little attention to yourself as possible. Needless to say, the choices you have made had little to do with your or anybody else's sense of what is just.

What these actual space-time situations illustrate is that the traditional concept of property rights allows for the most unbridled injustice in the world if it is not somehow circumscribed. This circumscription might utilize in a global context Rawls' requirement that a societal system must be so arranged that no other would be more advantageous to the least advantaged group. For, on a global scale, the least advantaged group is made up of disenfranchised (potential) workers. But the results of such an approach would need to be compared with the more demanding collectivization of property that Marxist global justice would presumably require.

In both its domestic and its foreign manifestations, then, corporate enterprise still remains essentially free of the kinds of social responsibility that some jurists, philosophers and political scientists espouse.⁴⁵ The ontological rationale for this corporate autonomy requires at least the assumption that a corporation exists in a dimension of the universe that is totally isolated from any community where it happens to have located a facility. Although widely accepted without question, this assumption is manifestly self-serving. It is undercut, however, by each of four conflicting claims regarding ownership and control of property.

The earliest conflict was that between management and labor. In our own times, some recognition is being given to worker ownership, e.g., by means of ESOP's in the United States. But as is often noted, mere ownership does not necessarily include control.

The second conflict is that between stockholders and management. Received doctrine has it, of course, that the stockholders are the true owners of the companies whose stock they own. But until recently management has exercised effective control over most companies, at

least those that are publicly held, except, for example, when a takeover bid proves successful. The growing influence of institutional, including foreign, investors may eventually diminish the power of management.⁴⁶

The third conflict is that between a corporation and a host government. Here again, as leaders in developing countries have learned, merely owning a controlling interest in a business is of little value if one does not also control the political and economic environment, often global, in which that business is conducted.⁴⁷ But this problem is not in principle any more insoluble than was, say, that of emancipation when slavery was widely presumed to be an appropriate application of the received doctrine regarding ownership of property.⁴⁸

The fourth conflict, on which I have focused here, is that between company and community. As one long trusted company after another resorts to "downsizing" and corporate flight, the loyalty of their employees, even those on the management level, is being severely undermined.⁴⁹ Equally disillusioned are communities that had come to think of these enterprises as permanent fixtures in their midst. But why should communities have been so trusting in the first place? For, it is often they that have been controlled by the corporations, and not the other way around. The Pullman Company, for example, literally owned the town of Pullman, Illinois, and ruled it like a feudal lord; and, in a somewhat more subtle way, the rubber companies controlled Akron, Ohio, just as the steel mills controlled Gary, Indiana; and transnational corporations, like colonizers of old, often control the communities where they locate a plant.⁵⁰

Such unilateral corporation/community relationships are common; the relationship characterized by truly cooperative attention to mutual interests is still rare. But social justice surely requires no less. In particular, the right of a corporation to operate globally should be strictly conditioned on its consistently demonstrated recognition of the interests of communities no less than those of stockholders; and this is especially the case when the community in question is, or is on the verge of becoming, a representative of the globally least advantaged.

NOTES

¹ See Anthony Ellis, ed., *Ethics and International Relations*, Manchester: Manchester Univ. Press, 1986, especially James Fishkin, "Theories of Justice and International

- Relations," pp. 1-23; Brian Baxter, "The Self, Morality, and the Nation-State," pp. 113-26. See also Charles Beitz, "Cosmopolitan Ideals and National Sentiment," *J. of Philosophy* 80 (1983) 591-600; and Edmund F. Byrne, "The Depersonalization of Violence," *J. of Value Inquiry* 7 (Fall 1973) 161-72.
- 2 "Can States Be Moral? International Morality and the Compliance Problem," in Ellis, *op. cit.*, pp. 61-84.
- 3 See Haskell Fain, *Normative Politics and the Community of Nations*, Philadelphia: Temple Univ. Press, 1987.
- 4 "Approaches to the Notion of International Justice," in Richard A. Falk and Cyril E. Black, eds., *The Future of the International Legal Order*, Vol. 1, *Trends and Patterns*, Princeton, NJ: Princeton Univ. Press, 1969. See also Thomas Scanlon, "Contractualism and Utilitarianism," in *Utilitarianism and Beyond*, eds. Amartya Sen and Bernard Williams, Cambridge: Univ. Press, 1982, pp. 103-28.
- 5 Gus Edgren, "Employment Adjustment to Trade under Conditions of Stagnating Growth," in D.H. Freedman, ed., *Employment Outlook and Insights*, Geneva: International Labour Office, 1979.
- 6 *Business Week*, March 3, 1986, p. 58. Regarding semiconductor manufacturers in particular, see "Is It Too Late to Save the U.S. Semiconductor Industry?" *Business Week*, Aug. 18, 1986, pp. 62-7; Thomas G. Donlan, "Can This Be Silicon Valley?" *Barron's*, March 30, 1987, p. 8 ff.
- 7 See, for example, Stephen S. Cohen and John Zysman, *Manufacturing Matters: The Myth of the Post-Industrial Economy*, New York: Basic Books, 1987.
- 8 See Adolf A. Berle and Gardiner C. Means, *The Modern Corporation and Private Property*, rev. ed., New York: Harcourt, Brace & World, 1968 (first published New York: Macmillan, 1932).
- 9 A pertinent illustration of this attitude is the paternalistic rationale for secrecy in *General Motors Corp., (GMC Truck & Coach Division)*, 191 N.L.R.B. 951, 952 (1971). Included in the Omnibus Trade and Competitiveness Act of 1987, currently pending before the U.S. Congress, is a requirement that employers give employees 60-day notice of any planned closing or layoffs.
- 10 *Business Week*, March 3, 1986, p. 72.
- 11 *Business Week*, June 16, 1986, p. 101. Ure's expression will be found in his *The Philosophy of Manufactures*, London: C. Knight, 1835, p. 20.
- 12 See Edmund F. Byrne, "The Laborsaving Device: Evidence of Responsibility?" forthcoming in *Philosophy and Technology* IV, ed. Paul T. Durbin, Dordrecht/Boston: Reidel.
- 13 Indianapolis Star, *passim*, July-Dec., 1986.
- 14 Indianapolis Star, July 5-8, 1987.
- 15 First English Evangelical Lutheran Church of Glendale (Calif.) v. County of Los Angeles, U.S. Supreme Court, 85-1199, June 1987. See "Court Tilts Scales towards Property Owners," *National Law J.* 6/22/87, p. 5 ff. See also Noel Peirce, "Placing Constraints on Property Rights," *Indianapolis Star*, 6/21/87, p. F7.
- 16 CTS Corp. v. Dynamics Corp. of America, U.S. Supreme Court, 86-71, April 1987. See "Takeover Artists Take a Direct Hit," *Business Week* 5/4/87, p. 35; Stephen Labaton, "For the States, a Starring Role in the Takeover Game," *NY Times* 5/3/87, p. F8; Kirk Victor, "States Flex Muscles on Takeovers," *National Law J.*, 6/1/87, p. 1 ff. See also

- Paula Dwyer, "Merger Mania: the courts finally start looking out for shareholders," *Business Week* 11/11/85, p. 35.
- 17 161 N.L.R.B. 561, 566 (1966).
- 18 See William Michael Treanor, "Amendment," 94 *Yale L.J.* 694-716 (Jan. 1985).
- 19 Bloodgood v. Mohawk Hudson RR Co. (N.Y. 1837), 18 Wend. 9.
- 20 Scudder v. Trenton Delaware Falls Co., 1 N.J. Eq. 694 (1832).
- 21 See, e.g., Fallbrook Irrigation District v. Bradley, 164 U.S. 112 (1896).
- 22 See, e.g., Ryerson v. Brown, 35 Mich. 332 (1877).
- 23 270 NY 333, 1 N.E.2d 153.
- 24 348 U.S. 28.
- 25 12 NY2d 379, 190 NE2d 402.
- 26 410 Mich. 616, 304 NW2d 455. See "Pushing the Boundaries of Eminent Domain," *Business Week* 5/4/81, p. 174.
- 27 104 S.Ct. 2321.
- 28 104 S.Ct. at 2330.
- 29 *Id.* at 2329-30.
- 30 City of Oakland v. Oakland Raiders, 32 Cal. 3d 60, 646 P.2d 835, 183 Cal. Rptr. 673 (1982), *cert. den.*, 30 June 1986. See Susan Crabtree, "Public Use in Eminent Domain: Are There Limits after *Oakland Raiders* and *Poletown*?" 20 *Calif. Western L. Rev.* 82, 88-90 (Spring 1984).
- 31 See Gregory S. Alexander, "The Concept of Property in Private and Constitutional Law: The Ideology of the Scientific Turn in Legal Analysis," 82 *Columbia L. Rev.* 1545-99 (Dec. 1982). See also Margaret Jane Radin, "Property and Personhood," 34 *Stanford L. Rev.* 957-1015.
- 32 See *Fleming v. Nestor*, 363 U.S. 603 (1960); *Board of Regents v. Roth*, 408 U.S. 564 (1972). Compare *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922).
- 33 Hume, "Of the Original Social Contract," in *Social Contract*, ed. Ernest Barker. New York & London: Oxford Univ., 1960, p. 151; Locke, "An Essay concerning the True Original, Extent and End of Civil Government," in *Social Contract*, *op. cit.*, pp. 103-15.
- 34 Rousseau, "The Social Contract," in *Social Contract*, *op. cit.*, p. 214.
- 35 *Ibid.*, p. 216.
- 36 *A Theory of Justice*, *op. cit.*, p. 197.
- 37 Alan Riding, *Distant Neighbors: A Portrait of the Mexicans*, New York: Vintage, 1986, 1984, pp. 32-3, 51-2, 262, 420-1; Linda Schele and Mary Ellen Miller, *The Blood of Kings*, New York: Braziller, 1986. Special thanks to Sandy Hall, resident of Palenque.
- 38 Noam Chomsky and Edward S. Herman, *The Washington Connection and Third World Fascism*, Boston: South End, 1979, pp. 129-204. See also *ibid.*, pp. 205-17.
- 39 Armand Mattelart, *Transnationals and the Third World: The Struggle for Culture*, tr. D. Buxton, South Hadley, MA: Bergin & Garvey, 1983, pp. 107-8.
- 40 Maria Shao, "Why Taiwan's Doors Should Swing Open," *Business Week*, Aug. 3, 1987, p. 41; Douglas R. Sears, "Taiwan's Export Boom to U.S. Owes Much to American Firms," *Wall Street J.*, May 27, 1987, pp. 1, 12; "America's New-Wave Chip Firms," *ibid.*, p. 30; "Taiwan's Wealth Crisis: It's \$53 Billion Cash Hoard is Economic Poison," *Business Week*, April 13, 1987, pp. 46-7.
- 41 Frontline, PBS, June 2, 1987.
- 42 Mattelart, *op. cit.*, p. 106.

- ⁴³ See, for example, Michael Novack, "Two Views on Helping Latin American Poor," *Indianapolis Star*, June 14, 1987.
- ⁴⁴ Mattelart, *op. cit.*, p. 111; Rüdiger, *op. cit.*, pp. 417-20; "Mexico Looks Better and Better to Japan," *Business Week*, June 8, 1987. See also "U.S. Runaway Shops on the Mexican Border," *Nacla's Latin American and Empire Report* (New York) 9 no. 5 (July-Aug. 1975).
- ⁴⁵ Illustrative of current philosophical discussion of corporate responsibility are the following three works all published in Englewood Cliffs, NJ, by Prentice-Hall: Thomas Donaldson, *Corporation and Morality* (1982); Clarence Walton, ed., *The Ethics of Corporate Conduct* (1977); Patricia H. Werhane, *Persons, Rights and Corporations* (1985). See also Brent Fisse and Peter A. French, eds., *Corrigible Corporations and Unruly Law*, San Antonio: Trinity University, 1985.
- ⁴⁶ See "Shareholders Aren't Just Rolling Over Anymore," *Business Week*, April 27, 1987, p. 32; "The Battle for Corporate Control," *Business Week*, May 18, 1987, pp. 102-109.
- ⁴⁷ See Dinham and Hines, *op. cit.*; Richard J. Barnett and Ronald E. Muller, *Global Reach: The Power of the Multinational Corporations*, New York: Simon & Schuster, 1974, pp. 254-302.
- ⁴⁸ See, for example, the Marxist analysis in Elizabeth Fox Genovese and Eugene D. Genovese, *Fruits of Merchant Capital*, New York and Oxford: Oxford Univ., 1983; and the religious analysis in David Brion Davis, *The Problem of Slavery in Western Culture*, Ithaca: Cornell Univ., 1966.
- ⁴⁹ See "The End of Corporate Loyalty?" *Business Week*, Aug. 4, 1986, pp. 42-9.
- ⁵⁰ See John Gibbons, *Tenure and Toil*, Philadelphia: Lippincott, 1888, pp. 148-9, 183-91; Stanley Buder, *Pullman: An Experiment in Industrial Order and Community Planning, 1830-1930*, New York et al.: Oxford, 1967; Alfred Winslow Jones, *Life, Liberty, and Prosperity*, New York/London: Lippincott, 1941; Barbara Dinham and Colin Hines, *Agribusiness in Africa*, Trenton, NJ: Africa World Press, 1984.