Perceptions of Justice: Walls and Bridges Between Europe and the United States

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Thirty years ago the girl who would become my wife spent a year in the US as an exchange student at a State university college far away from the metropolitan centres of the East and the West coast. As the time came for Tiina to leave back home, her friends expressed a mixture or compassion and astonishment that she actually was going. Of course, many understood that she would have to return after the college year – after all, her family (and boyfriend) lived in Finland. But all of them were sorry that she would have to leave the US and felt that this was, ultimately, a sad turn in her life, an aspect of the tragedy and injustice of the world – the injustice that not all can be Americans.

Tiina's story came to mind as I was watching TV in Helsinki just a few days ago. A lieutenant of the US force in Iraq was being interviewed; an intelligent and sympathetic American, who expressed with great frankness genuine puzzlement about why the Iraqis – these were his words – h a t e d A m e r i c a n s s o. Even as they feared and perhaps respected the occupation force, as they had learned to fear and respect whatever government had been in control in the course of the years, they wanted the Americans gone, the sooner the better.

Somewhat more than two years ago in Göttingen – some of you were there and will remember – a dark breach appeared in our profession. The fact was that we were deeply divided in our assessment of American military actions after September 11. There was more to the antagonism between the Europeans and the Americans than just recent events. Europeans had undoubtedly proclaimed themselves New Yorkers too rapidly, too eagerly, and without full sincerity, as many Americans well knew. In the debates about the Iraqi war, many Europeans have come from the closet articulating an almost visceral Anti-Americanism. It does not usually take more than thirty seconds in a meeting among European lawyers before someone mentions Vietnam, Allende, Texas Cowboys. On the American side, it has not been difficult to ridicule the antics the inhabitants of Europe's postmodern "Paradise" have come up with: among them, perhaps above all, legal formalism.[1] "Come on" – my friends in Massachusetts say, "t h e U N C h a r t e r? Martti, you must be kidding!" And it is no use to shout harder and longer, "Yes, the UN Charter, and the ICC, TBT, Kyoto Protocol!" "What did the Charter ever do to liberate East Europe, to bring the rule of law, good governance, free markets to the Third

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[1] See especially Robert K a g a n, Paradise and Power. America and Europe in the New World Order, London 2003.

World? International law did not stop the Afghanistan war or the Cambodian Massacres. And the final blow: surely everything about Europe is dependent not on law but on American power!"

Well, this is of course a *dialogue des sourds*. It is not going anywhere. But I want to insist that it should be taken seriously, because although it is informed by different, indeed incompatible notions of justice, and of international justice in particular, the dialectic of the positions may contain a deeper insight, even only as a cry by the Owl of Minerva. The two sides live in incommensurable conceptual universes. If my own preferences lie with Europe, I am reminded of the words by Frantz Fanon: "Two centuries ago, a former European colony decided to catch up with Europe. It succeeded so well that the United States of America became a monster, in which the taints, the sickness and the inhumanity of Europe have grown to appalling dimensions".[2] The opposition between the universes should perhaps not be seen so much in terms of Europe and the United States as between ways of relating to what one finds outside oneself; two perspectives from which a country or a continent may see itself in the world, whether it be named "Europe" or "United States".

Because the antagonism is about relations to others, it is also about perceptions of justice. I do not mean trends in philosophy faculties – though these would be pretty good indicators. And I do not mean to say that statesmen or politicians – even less continent-wide populations – are motivated by something as abstract and intangible as justice. But I find no better vocabulary to canvass the apparently dramatic, and certainly awkward, contrast between two types of mindset, evidenced in Tiina's story in 1973, in the American lieutenant's reflections in Iraq today, and in the visceral reactions by Europeans and Americans against each other. By linking these reactions to ideas about justice I wish to politicize the contrast: whatever passion or trauma may be involved, the categories of culture, history or psychology are insufficient to articulate what is focally about the rights and wrongs in one's relations to others.

My starting-point is that both Americans and Europeans are undoubtedly universalists.[3] Each shares the heritage of Christianity, the Enlightenment, and of modernity tout court. Each believes it is in possession of truths or norms wider than their respective continents, and thus applicable everywhere. Today's American universalism is often instrumentalist, and at the service of substantive ideas about the good life while European universalism tends to be formalist, a universalism of the legal form. Let me try to explain:

American universalism is a historic heritage: the ideology of the melting pot. There should be no doubt of the genuineness of Tiina's friends' compassion as they saw her packing her bags to return to old Europe. How many were able to come

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[2] Frantz Fanon, The Wretched of the Earth, London 1986, 313.

[3] See further Martti Koskenniemi, Legal Universalism: Between Morality and Power in a World of States, in Sinkwan Cheng (ed.), Law, Justice and Power: Between Reason and Will, forthcoming in 2004.

over and stay! Americans may not always have been successful universalists in foreign policy. Taking the Philippines was in the end traumatic, as were Wilson's effort towards world peace through the League of Nations. But shifts between engagement and isolation have not undermined the universalist faith, expressed by President Bush on the anniversary of the attack on the WTC in 2002 as follows:

> "Be confident. Our country is strong. And our cause is even larger than our country. Ours is the cause of human dignity; freedom gained by conscience and guarded by peace. The ideal of America is the hope of all mankind."[4]

Now this sounds like French revolutionary rhetoric – *l'Idée de France*: the national as the universal.[5] With the twist that today, no European, not even Frenchmen, can use this kind of language without irony, or listen to it without cynicism. Whoever says humanity wants to cheat. But America's history has created a special type of universalism, illustrated by Tiina's experience and the American soldier's remarks with which I began: in every human being, more or less deep, lives an American. Freedom is to liberate that little figure. A serious universalism has consequences. If one possesses a truth that is larger than oneself, how could one keep it to oneself? If it really is a universal truth, how could one live with the tremendous push to making others see it as well: after all, if it is universal, then it is not my truth, really, but everyone's. The law, too, is only a second best, only a pointer to the truth which, if the truth is known, should not stand in the way of realising it. Here is Professor Michael Glennon defending the new interventionism in the journal Foreign Affairs:

> "The new interventionists should not be daunted by fears of destroying some lofty, imagined temple of law enshrined in the UN Charter's anti-interventionist prescriptions. The higher, grander goal that has eluded humanity for centuries – the ideal of justice backed by power – should not be abandoned so easily ... If power is used to do justice, law will follow."[6]

This is instrumentalism. Law only has value as an instrument to good purposes. If the law fails to bring about those purposes, or worse, prohibits you from realising them, then surely it is all the worse for law. "Legalization" is a policy-choice, not an *a priori* moral commitment.[7] Once you opt for international law, what you receive are treaties made by more or less democratic governments acting so as to advance the interests of their peoples or, perhaps more often, the elites of individual states. A recent contribution in a Stanford symposium on "American exceptional-

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[4] President's remarks to the Nation, Ellis Island, September 11, 2002, <http://www.whitehouse.gov/news/releases/2002/09/print/20020911-3.html>.

[5] On the universalist construction of French identity, see also Martti Koskenniemi, The Gentle Civilizer of Nations. The Rise and Fall of International law 1870-1960, Cambridge 2001, 270-274 and passim.

[6] Michael J. Glennon, The New Interventionism, Foreign Affairs, 1999, 7.

[7] "Europeans and others have an ideological stance towards law and legal institutions that is quite different from the ideological stance many academics, governmental actors, and others in the United States bring to discussions about law in the context of international legal institutions", Richard Pildes, Conflicts Between American and European Views of Law. The Dark Side of Legalism, 44 Virginia Journal of International Law (2003), 145-168, 146.

ism" brushed aside three and half centuries of European international law scholarship on the "basis of the binding force of international law" by concluding that:

> "[t]here is little reason to believe that the resulting system as a whole is just – though particular regimes or arrangements within the international system may be – and that individuals throughout the world, or their governments, owe any duty to it".[8]

A true instrumentalist does not honour the law simply because it is there. Why should one? Because of the sacred aura of its text or the halo over the heads of its drafters? It was not given to us on Mount Sinai but made by human beings to lead them into good purposes.[9]

And what are "good purposes"? Well, this the law itself does not tell you, not even if you decided to take it as seriously as a formalist would. For it comes to you as a text that is merely an expression of the criss-crossing political purposes that once brought it about. Hence its irreducible open-endedness. The UN Charter, for instance, is both pacifist and belligerent; is for sovereignty and human rights, intervention and non-intervention, and acceptable because of what the people at Yale long ago recognised as its normative-ambiguity. But no worry. For the instrumentalist in fact knows the authentic, true purpose of the law – the universal value which is the same as the American value, the little figure inside all of us.[10]

And so, Empire is America's fate, as it was the fate of 19th century liberal Europeans.[11] This is something both conservatives such as Glennon or the political theorist Jean Bethke Elshtain know. The latter's recent book "Just War against Terror", subtitled "The Burden of American Power in a Violent World", brands

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[8] Eric A. Posner, Do States Have a Moral Obligation to Obey International Law?, 55 Stanford Law Review (2003), 1916.

[9] There are both traditionalist and a revisionist versions of instrumentalism. For an overview, see Tom J. Farer, Humanitarian Intervention before and after 9/11: Legality and Legitimacy, in: J. C. Holzgrefe/Robert O. Keohane (eds.), Humanitarian Intervention. Ethical, Legal and Political Dilemmas, Cambridge 2002, 61-74. One example of a typically instrumentalist critique of "legal absolutism" appears e.g. in Allen Buchanan, Reforming the Law of Humanitarian Intervention, ibid. 141-154.

[10] It is astonishing to what extent American academics agree on the ethical-political desirability of military intervention, with reservations expressed through equally instrumentalist concerns about its effects on the "system". The intervenor is always the West and the problem that intervention is neither frequent nor consistent enough. None of the authors in Holzgrefe/Keohane (*supra* note 9), for example, is willing to entertain the idea that military intervention by the United States might be wrong. Pushed to defend Western (US) intervention against the accusation that it is based on intolerant, subjective "values", Buchanan, for instance, responds by the liberal (Dworkinian-Rawlsian) argument that American values – even if few people might actually share them – are also "embedded" values of the "system", Buchanan, *supra* note 9, 154-158.

[11] The inevitability of an imperial disposition in 19th century liberalism followed from a combination of an idea about the universality of humankind, the view of history as "stages of development", and the moral obligation for reform. See especially Uday Singh Mehta, Liberalism and Empire. A Study in Nineteenth-Century British Liberal Thought, Chicago 1999. The point about the structural homology between 19th century imperial thought and today's democratic evangelism is usefully developed in Emmanuelle Jouannet, Strucure intellectuelle de la pensée internationale classique et colonialisme européen. Notes de lecture des manuels européens du droit des gens entre 1850 et 1914, Paper presented at the Inaugural Conference of the European Society of International Law, Florence May 2004, to be published, on file with author.

the ICC and the UN as parts of an irresponsible liberal internationalism and contains this statement:

> "true international justice is defined as an equal claim of all persons, whatever their political location of condition, to have coercive force deployed on their behalf".[12]

But even liberals such as Michael Ignatieff celebrate this union of justice and power: America's problem has been in not being determinate enough. An apologetic imperialism is no longer sufficient: America must move from "Empire lite" to a robust defence of universal values.[13] As John Rawls saw it in his remarkable "The Law of Peoples", this requires casting some people as outlaws and treating them accordingly. Velvet words such as reasonableness, decency, fairness, overlapping consensus separate the terrain of those who can still be saved from the field of those who cannot.[14]

And what about Europe's perception of justice in the world? Well, we Europeans do not really want to talk about that. We are only default universalists, and formalists, with most of our attention focused on what went wrong in the Inter-Governmental Conference and how finally to have a constitution for ourselves. I remember when I went to study in Oxford long time ago. I came to the town by train at night, took up residence in college and woke up the next morning already fatigued by the prospect that I would soon have to leave the room and enter the corridor where I would have to address all the alien students emerging from the adjoining rooms. But I need not have worried. Nobody could have cared less. The other students avoided eye contact with me just as much as I avoided contact with them. How relieved I was. I, the European.

The Europeans do not have a plan for world, it is hard enough to have a plan for ourselves. This, too, is in part historical. There used to be a time when Europe did possess a *mission civilicatrice* – and look at where it led us. At one particularly dark point in our history it seemed possible to read Goethe and work in concentration camps simultaneously: If that is your heritage, then your only hope lies in there not residing a small European in everyone. The sole forms of universalism open to Europeans are talk about universal human rights and the specialist discourse of international lawyers. Nervous about "fragmentation" and "empire", European internationalists have increasingly employed a constitutional imagery borrowed from home. This is legalism, of course, and its force may seem increasingly doubtful in a novel constellation of political forces. Last spring Jürgen Habermas commented on the American mission in Iraq by taking an impeccably European position: "The crucial issue of dissent is whether justification through international law can, and should, be replaced by the unilateral, world-ordering politics of a self-appointed hegemon."[15]

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[12] Jean Bethke Elshtain, Just War Against Terror. The Burden of American Power in a Violent World, New York 2003, 168.

[13] Michael Ignatieff, Empire Light. Nation-Building in Bosnia, Kosovo and Afghanistan, London 2003.

[14] John Rawls, The Law of Peoples. With the "Idea of Public Reason Revisited", Cambridge 1999.

Now legalism surely comes from many sources but one of the most important among these is what could, paraphrasing the European-American political philosopher Judith Shklar called, a "positivism of fear": avoid cruelty, never mind the big picture.[16] For this view, or mindset, the world's dangers by far outweigh its opportunities. The road to hell is paved by good intentions. Such minimal legalism is suspicious of blueprints and moral rhetoric. It is modest, often dull and bureaucratic, not the stuff of great declarations and sometimes frankly embarrassing trying to co-opt such. To show it in its latter mode one could not do better than quote Professor Christian Tomuschat speaking at the Hague Academy a few years ago in his general course titled with some hyperbole, but significantly, "International Law: Ensuring the Survival of Mankind on the Eve of New Century".

> "Like a modern constitution, the international legal order comprises not only principles and rules but also basic values which permeate its entire texture, capable of indicating the right direction when new answers have to be sought for new problems. Positivism represents the consensus-based structure of international law ... it avoids replacing the existing normative system by subjective judgements which reflect little else that the personal opinion of their author."[17]

Every significant aspect of legalism is here: the constitutional viewpoint, law as an autonomous repository of just principles – and the directive not to look inside ourselves, the figures of small Americans, Germans, Frenchmen or Finns – those little devils that constantly push against the underside of our polished Euro-politan surfaces. Unable to save ourselves; only the law can save. And so it is no wonder that Pierre-Marie Dupuy's General Course in the Hague Academy, published only a few months ago, takes up the theme of international law's unity, and its hierarchical and constitutional character.[18] And for those who think, well, this is only positivism, let me note that in a recent interview on the issue of terrorism, Jacques Derrida thought it appropriate to highlight the role of Europe and of international law as the dialectical unity that only provides hope for what he called "*justice-à-venir*", justice to come.[19]

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[15] Jürgen Habermas, Interpreting the Fall of a Monument, 4 German Law Journal (2003), 706.

[16] Judith Shklar, Political Thought and Political Thinkers, Stanley Hoffmann (ed.), Foreword by George Kateb, Chicago 1998.

[17] Christian Tomuschat, International Law: Ensuring the Survival of Mankind on the Eve of a New Century. General Course of Public International Law, 281 Recueil des Cours (1999), 28.

[18] Pierre Marie Dupuy, L'unité de l'ordre international. Cours général de droit international public, 297 Recueil des Cours (2002). It is useful to note, however, that although we tend to think of constitutionalism as a "European" position against American unilateralism, the stakes may sometimes – perhaps often – be reversed. Thus, American lawyers have argued that the duty to hand over third party nationals to the ICC "violates the global constitution" that provides for both sovereign independence and equality. See Lee A. Casey/David B. Rivkin, The Limits of Legitimacy: The Rome Statute's Unlawful Application to Non-State Parties, 44 Virginia Journal of International Law (2003), 64, 66-68. The antagonism is not fully grasped merely in terms of between Europe as "law" against the United States as "politics". Both sides plead in the name of "law" while each tries to project the adversary's position as "politics".

[19] Jacques Derrida, in: Giovanna Borradori, Philosophy in a Time of Terror. Dialogues with Jürgen Habermas and Jacques Derrida, Chicago 2003, 114-116.

Instrumentalism and legalism, then, what is that opposition? Both come with a bias.[20] Instrumentalism is the position of the powerful actor with many policy options from which to choose and resources to carry out its objectives. It is the position of one that is not only sure of itself but also solipsistically enclosed within a well-bounded identity, pre-existing preferences and a fixed world-view. The Stanford Law Review Symposium to which I referred earlier, like many other recent American writings in international law, evinces this: a thoroughly self-reliant, self-centred identity, less imperial than aloof, fearful of corruption by contact with the outside – an alien customary international law, a foreign language book or article, or indeed any non-American piece of legal text.[21]

For the instrumentalist, law is a monologue in which I deliver norms and preferences to a hostile outside world to which I myself remain closed. "Watch out, here I come", the instrumentalist cries out – with a rational choice calculus in hand[22] – and the others can only adjust. If law and what I know to be good do not meet, all the worse for law. This is not of course only an American attitude: it is an imperial attitude. "In the discussion of human affairs the question of justice only enters where there is equal power to enforce it, and ... the powerful exact what they can, and the weak grant what they must."[23] The conservative nobleman from another empire – Baron von Stengel, Germany's representative at the First Hague Peace Conference in 1899 – articulated the same ethos in his 1909 tract, Weltstaat und Friedensproblem: pacifism was foreign imperialism in disguise and binding agreements on arbitration or arms reduction a mortal danger for a State surrounded by hostile neighbours.[24] Law may be, as the Hegelian Adolf Lasson had written a few years earlier, useful for attaining sovereign preferences through co-ordination. But under no circumstances should it obstruct them. As true instrumentalists – and like the defenders of the Kosovo intervention today – both assumed that war may sometimes be necessary as a purifier and an importer of a better period.[25]

The instrumentalist knows that adversaries should be treated politely, even kindly. But no equality can exist with them. This is so because the instrumentalists' positions are not really theirs at all but, being universal, also those of the adversary – who may of course have been misguided due to environmental causes or the evil manipulations of an obscure Mullah.[26] For the same reason, the different-hinking adversary will appear not only as a private opponent, engaged in a contest to

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[20] See further Koskenniemi (note 5), 474-509.

[21] Much of this writing is by more or less right-wing constitutional lawyers arguing against the use of international sources in US courts. For the debate (with an internationalist bias), see the Agora in 98 AJIL (2004), 42-108.

[22] See e.g. Jack L. Goldsmith/Eric A. Posner, International Agreements: A Rational Choice Approach, 44 Virginia Journal of International Law (2003), 113-143.

[23] The Athenians to the Melians, According to Thucydides.

[24] Karl von Stengel, Weltstaat und Friedensproblem, Berlin 1909.

[25] See Adolf Lasson, Princip und Zukunft des Völkerrechts, Berlin 1871.

[26] "The irrationality of treating States as equals was brought to bear as never before when it emerged that the will of the United Nations would be determined by Angola, Guinea or Cameroon – whose representatives sat side by side, and exercised an equal voice and vote, with those of Spain,

which the rules of a contest might apply. The adversary is an enemy of humanity because he fails to accept what I know is true of all humanity.[27] Therefore, there can be no rules, no common framework between the instrumentalist and the adversary.[28] Therefore, as John Rawls wrote, the non-liberal, non-decent State is also the outlaw State.[29] Bomb it!

Legalism is the position of the weaker party, the one for whom law is not about fulfilling policy-objectives but for protection: for whom normative-ambiguity is not an opportunity but a threat. Legalists fear change, subjective opinions, general ideas and bombs falling over their heads. Where the instrumentalist wants to make the world better – if necessary by breaking some eggs, the legalist is not too concerned of the world but rather feels like an egg himself. This is why the legalist projects on law the virtues that justice traditionally possessed. The French-Bulgarian philosopher Tzvetan Todorov expressed this by juxtaposing in the title of his recent book the two overwhelming experiences of the 20th century history: the memory of evil that grew from the wish to do good.[30]

The legalist is rather unconcerned about the opinions of the adversary, and this absence of concern makes debate often insincere and – well – dull. Instead, the legalist is obsessively interested in – rules. As long as the rules work reasonably, there is no need to fix anything. This is rather complaisant, even elitist attitude, underwriting sometimes what Norman Geras has called the "contract of mutual indifference" – the social contract under which "you not need care about me as long as I am entitled not to give a damn about you".[31] Yet it need not necessarily be like this. As a political doctrine – and yes, legalism is a political doctrine[32] – legalism may also be associated with republican activism: democracy and human rights. This is precisely what Habermas suggests: an exit from the solipsism of the Empire – "decentralization of one's own perspective". For as he (following Kant) believes, taking the perspectives of the rules is to open the boundaries of one's identity, to imagine oneself as a potential other. This is why if rules govern, the formalist assumes, then I am not at the mercy of others – their policy-objectives, their traumas and fears, often difficult to disentangle as the news from Iraq has taught us, from their constraints of time and money.

Pakistan, and Germany." Michael Glennon, The UN Security Council in a Unipolar World, 44 Virginia Journal of International Law (2003), 110.

[27] This is of course the famous friend/enemy–opposition as portrayed by Carl Schmitt. My own reading of Schmitt is now recorded in "International Law as Political Theology: How to Read the Nomos der Erde", 11 Constellations: An International Journal for Critical and Democratic Theory, 2004:4, forthcoming.

[28] For the argument about the "absurdity" of applying the laws of war to conflicts with "lawless combatants", see Jeremy Rabkin, The Politics of the Geneva Conventions : Disturbing Background to the ICC Debate, 44 Virginia Journal of International Law (2003), 189, 195.

[29] Rawls, *supra* note 14, 90.

[30] Tzvetan Todorov, Memoire du mal, tentation du bien. Enquête sur la siècle, Paris 1999.

[31] Norman Geras, The Contract of Mutual Indifference, London 1999.

[32] As usefully reminded in Jochen von Bernstorff, Der Glaube an das universelle Recht. Zur Voelkerrechtstheorie Hans Kelsens und seiner Schueler, Baden-Baden 2001.

But why should the rules do all this? The formalist would probably respond as follows. Appeal to the pure form of the rule not only constructs oneself as a potential other but also the other as equal, even similar to oneself. The rule, in legislation, universalises the single case, just like, in application, it particularises the universal.[33] To invoke the rule is to invoke something that is beyond one's opinion, even one's knowledge. A claim of right is more than a claim of charity in that it involves the public accountability of the institution whose authority is invoked. Where instrumentalism looks to the law's purpose – getting the job done as efficiently as possible – the formalist is fixed at the pure form of the rule. The policy-science reduction of the latter to the former is as pointless as the naive idealist's opposite reduction – both moves degenerate too easily into propaganda. The point of instrumentalism is to override rules just as certainly as it is the point of rules to prevent impunity. This is not to say that a community of instrumentalists might not be a place worth visiting. But there, everybody had better carry a rifle, as both Hobbes and Michael Moore have shown. A community of legalists may not be quite as dynamic, and certainly not immune to oppression. But while the instrumentalist's social ideals are known, and embedded in what the community is seen as an instrument for, the formalist's values reach beyond such individual preferences and back to the community itself. Hence the stepping back from one's own opinions – or as Habermas puts it in the slightly suspect language of "values" but making a key point about formalism "'Values' – including those that have the chance of winning global recognition – don't come out of thin air. They win their binding force only within normative orders and practices of particular forms of cultural life."[34]

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So how should one summarize the difference and similarity of the American instrumentalist and the European legalist? At first, I thought of the familiar notion of law as both a bridge and a wall. For the Americans, law seemed to be above all a bridge that would assist them to pass whatever obstacle lay on the way, enabling them to go where they wanted to go. Law as the bridge seemed as a workable metaphor for something that one conceived as an instrument for ones purposes. For the Europeans, I then assumed, the law might be a wall inasmuch as it protected you from the empire: wall as a safeguard of right, a city of walled gardens as the paradigm of legalism. But then this started to seem altogether too simple. Surely the instrumentalist and the formalist both think of law as both a bridge and a wall, and that each was seeking the realisation of what oneself thought was good as well as protection from other peoples' ideas of the good. What differed were not these positions but the images and expectations that the protagonists projected on both bridges and walls, and which seemed to reflect their own self-positioning in the world.

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[33] Philip Allott, The Health of Nations. Society and Law beyond the State, Cambridge 2002, 134.

[34] Habermas, *supra* note 15, 707.

The instrumentalist bridge takes you over: you with everything that belongs to you. Where yesterday you were on one side of the river, you will tomorrow be on the other side. You and yours. The legalist, too, thinks of law as a bridge, though differently. For the legalist perceives, at the other end, another person, a legal subject, possibly intending to cross in the opposite direction. The bridge separates the two but also embodies the possibility of joining them: you may end up with that other person, or that other person will end up on your side. Or maybe you will meet in the middle.

What bridges do I have in mind? Well, the instrumentalist bridge must surely be an impressive structure of modern engineering; steel and aluminium wires crossing between suspension poles darting high into the sky. I cannot resist a professional reference and a personal vignette. The instrumentalist bridge is surely the Great Belt bridge: a massive monument to Danish industrial design and to the relentless pursuit of economic and industrial progress in the North. And the legalist bridge? This is the old stone bridge of Mostar. And of course, it is broken.

But instrumentalists and legalists undoubtedly imagine the laws as walls, too, for protection. Which walls? To me the answer is evident. I look in the papers and I see the instrumentalist wall as the wall of Ariel S h a r o n: a straight-forward technological resolution to separate m e and those that share m y identity from that which threatens us. And the legalist wall? Well, perhaps this is the Wailing Wall over which the legalist, but also e v e r y o n e else, can open their hearts and save their prayers. That this is a somewhat mystical ceremony, is a matter of course. Many people might find it silly, or incomprehensible. Clearly, the form needs to be strictly followed. But if it is followed, then the Wailing Wall – and I have experienced this myself – does not separate, but unites, and does this without erasing the singularity of each prayer.