

Books: Tools for Navigating Neoliberalism

: 7/27/2021





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Continuing our engagement with Christine Schwöbel Patel's Marketing Global Justice Julia Emtseva explores the role of donors in the global justice 'sector'.

Marketing Global Justice is more than a mere description of how branding strategies are used to advance international criminal law (ILC). The book is an incredible contribution to the discussions on neoliberalism, neocolonialism, political economy. Christine Schwöbel-Patel looks at the understanding and institutionalization of global justice through the prism of marketing, she describes not only how marketing is used in global justice projects but also what it does to them. This last element is particularly intriguing and I will try not to hand the answers on a silver platter but instead encourage everyone to explore the variety of beautifully sophisticated arguments brought in the book. One of the Schwöbel-Patel's main conclusions with regard to what marketing does to justice processes is that it persuades (p. 270). It persuades a myriad of actors involved in the realization of global justice, perhaps most importantly donors and investors, because very often they are the ones who can provide necessary resources for a justice project.

In her book, Schwöbel-Patel approaches donors as objects for attraction and argues that marketing is used by global justice actors mostly to secure financial flows from 'responsible' contributors (p.180). In this short post, I would also like to focus more on the role of donors and funders of global justice but to look at them from a different angle. What about those who do not have to be attracted? Why do so many actors decide to engage in justice processes and, instead of mere financial supporters, become active partners and policy

setters? To add to the discussion on neoliberalism brought in the book, I will narrow my focus only to private funders and assistance providers to global justice. In order to illustrate the phenomenon of engaged private assistance, I will bring a few examples of how private entities show their initiative and become key actors in the global justice sector. I will then frame the discussion using privatization – one of the main pillars of neoliberalism – and discuss how international law relates to this enterprise.

Before taking this new prism to look at private actors of the global justice sector, let me briefly introduce the book's perception of donors on the justice market. Schwöbel-Patel's clear connection of neocolonialism to 'donors' voyeurism' (p. 241) is indeed an original framework to look at the dynamics between those 'justice-dispensing' and 'justice-receiving.' What we now see on the global justice plane, especially in the Global South, is that victims are used as products on the market. "The visibility or invisibility of victims depends on the funders: when attracting investment and businesses, victims tend to be rendered invisible; when attracting atrocity tourism, victims tend to be made visible" (p. 241). States strive to attract capital flow into their budgets by advertising their initiatives to bring about justice, peace, and a bright future to the victims of gross human rights violations. However, the pressing question in this attraction of resources is who profits from the marketization of justice. By being used as selling objects, do victims benefit from this enterprise? This is certainly difficult to tackle because the answer will always be: it depends. But Schwöbel-Patel smartly concludes that the obtained capital should favor "occupants of the home" and not benefit to "wider social values" (p.240).

Apart from relying on neocolonial discourses, Schwöbel-Patel also uses neoliberalism as a context to look at marketing practices in non-market spaces. She argues that the global justice sector is "a crucial part of a mechanism of the neoliberal order" (p.182). The main tenets of neoliberalism are deregulation, privatization, and liberalization, and these tenets are actually those disturbing issues that appear while discussing the marketization of justice. And on this note, I would like to start the discussion on how and why private actors, not attracted by marketing strategies of the public sector, engage in global justice, too.

A few examples (which have not been discussed in the book) come in handy in understanding the problem. Across several international criminal tribunals, like the Extraordinary Chambers in the Courts of Cambodia, the Special Court for Sierra Leone or the Special Criminal Court in the Central African Republic, private donations or other types of assistance are vital resources to rely on when running multi-year prosecutions. Yet, earmarking is not the most popular type of assistance to global justice projects. As mentioned earlier, private actors see themselves as active players and agenda setters. For example, Open Society Foundations (OSF) together with Ford Foundation, MacArthur Foundation, Oak Foundation, and Rockefeller Foundation were supporting the so-called "Special Court Legacy" initiatives in Sierra Leone that aimed at bolstering the rule of law, strengthening the domestic judiciary capacity, and conducting fair trials. While it should be acknowledged that there might be much more positives than negatives in such programs, the risks associated with the neocolonial charge that international criminal justice is promoted in lines with Western ideas of ICL are still present (p. 205). These risks are widely known among global justice actors. In response to the criticism about the ICC's African bias, at a forum sponsored by previously mentioned OSF (a private philanthropy sponsored by George Soros), Fatou Bensouda stated that it is very easy to shift attention from victims of international crimes to "the words and propaganda of a few powerful, influential individuals" (cited

in the book on p. 39). Yet, not much action has been taken so far to question why we still observe this dynamic of the Global South absorbing ideologies coming from the Global North.

Sponsoring tribunals or programs related to them is not the only scheme utilized by private actors in espousing justice projects. Private companies can establish grievance mechanisms (under the UN Global Compact), which would to a certain extent replace the public sector in administering justice, as it was done by a [mining company in Papua New Guinea](#), which established its own 'private ad-hoc tribunal' to deal with the widespread sexual violence on the territory of the mine. Besides mere financing, private actors can provide their human and technical resources to assist states or international organizations (IOs) in justice initiatives. For instance, they proved to be very active in investigations of mass atrocities. The Commission of International Justice and Accountability (CIJA), a private non-profit organization (partly sponsored by OSF) registered in the Netherlands, devotes itself to establishing the individual criminal responsibility of perpetrators in conflict and post-conflict areas. The CIJA is well known for its work in Syria, from where the Commission smuggled nearly a million pages of documents that later served as a basis for several universal jurisdiction cases. As in many examples brought by the author in the book, some [CIJA employees also stressed](#) that it is crucial for the organization to build its brand and to pose it as the unique body acting in the field of private investigations of mass atrocities because they need to sustain on the 'justice market' and continue receiving money from their donors. An immediate reaction to these examples could be whether the neoliberal order created this favorable environment for this intense involvement of the private sector in justice initiatives and even privatization of the global justice sector. In my view, that is exactly the case.

Wendy Brown, a prominent political theorist, once said that "part of the entire moral project of neoliberalism is to privatize everything including the nation" (cited in the book on p. 240). This project has been relatively successful so far. Although seemingly remote from international crimes and justice, privatization became one of the most used tools in global justice administration. Factors like the policies of international donors and organizations as well as economic problems of different degrees espoused the trend towards more active engagement of the private sector in areas with implications for human rights. Furthermore, privatization in areas of human rights and justice has also been encouraged by the UN 2030 Agenda for Sustainable Development, where public-private partnerships are key actors in the realization of these goals. However, it is not always clear whether a state agreed to have the private sector as a regulator and administrator of justice. Is international law vocal with regard to such situations? Do states bear responsibility after such 'implicit' privatization to provide protection against abuses by private actors and secure themselves from undue influence?

[The Committee on Economic Social and Cultural Rights has the view](#) that "States [...] retain at all times the obligation to regulate private actors to ensure that the services they provide are accessible to all, are adequate, are regularly assessed in order to meet the changing needs of the public and are adapted to those needs." The Committee also refers to a state's accountability for the acts of a private entity when such an entity "is empowered under the State Party's legislation to exercise elements of governmental authority." The CESCR made clear at the outset of its general comments that privatization is neither in violation, nor in compliance with the international legal framework of economic, social, and cultural rights. The vague approach taken by the Committee towards defining responsibility can also imply that a state is always

responsible for actions of private actors, in both cases – when it directly outsourced some functions or just allowed (actively or inactively) a private entity to engage in public services. That is to say, *de lege ferenda* international law cannot do more than attributing responsibility to states for the actions of private actors. It cannot prohibit or limit a state to enter into public-private agreements with private actors even in the administration and design of justice mechanisms.

The absence of clear rules governing privatization and private involvement does not mean that these phenomena should not be of concern to international lawyers and international law. Privatization is often promoted on supranational levels as part of the development and economic reforms by states and international organizations. Moreover, privatization and the private sector's involvement are not merely questions of domestic governance. They have substantial effects on the perception of a state as a subject of international law with its own obligations, responsibilities, and functions. If public actors are not capable of or willing to provide certain public services themselves, their sovereignty is left without any shields of protection from undue influence.

In her book, Schwöbel-Patel examines how NGOs, IOs, and states use marketing strategies in the context of global justice to secure capital growth. This post intends to add to this analysis by discussing how private actors exploit global justice for similar purposes and that privatization poses risks of “receding of social values in favour of market values” – a distortion inherent to the neoliberal order as a whole (p.4). Through privatization or other tenets of neoliberalism, various actors of the global justice sector compete over the meaning of global justice and therefore, compete for resources (p.6). One might ask: what is the danger posed by this neoliberal order to the delivery of justice? Schwöbel-Patel argues that “instruments of market growth are themselves benign, that they are misunderstood or have simply been in the wrong hands” (p.13). But how to regulate these instruments in cases when justice administration slipped through the public hands into private ones? Justice regulations were not initially designed for private actors and thus, with the current legal norms and the absence of adequate regulations of ‘privatized justice,’ we still observe the damaging consequences of the utilization of business strategies in the global justice sector. Even the International Monetary Fund acknowledged that neoliberal policies, especially privatization and deregulation, contribute to inequality (p.13).

Marketization and privatization of global justice have been present in the international legal sphere, especially in discussions on the importance of the material world and new objects of international law (p.16). ‘Marketing Global Justice’ is definitely an important and valuable contribution to this under-researched and under-theorized area. With all the criticism of marketing, it is worth remembering that without the support of third parties, many justice initiatives would not have the chance to be established. Therefore, states, IOs, NGOs, and private entities committed to global good have to achieve their aims utilizing various financial schemes to secure funding for their projects. These projects allow victims to seek the truth, reparation, reconciliation, and even vindication. Therefore, Schwöbel-Patel's innovative work can be a guide for global justice actors to avoid socially unjust and destructive methods of securing capital flow, be it used for the financing of justice projects or the attraction of investment in a state. This post shall be a reminder that in our globalized world, the need to ensure a common basis in international norms and standards for private actors to mobilize the necessary resources for sustainable investment in justice is urgent as ever. The book is the

first step to challenge what can be allowed in the marketization of global justice and show when business strategies can endanger justice processes and silence or harm victims, who should stay at the center of all justice endeavors. Christine Schwöbel-Patel's contribution opens up a whole new niche for further exploration of business strategies used in the international legal sphere, which can contribute to easing-off the tensions between law, politics, economy, colonial legacies, and finally justice.

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