

# Aporias of free trade

## The nature of biodiversity

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Primitive accumulation is not produced just once at the dawn of capitalism, but is continually reproducing itself.

Deleuze and Guattari, *Anti-Oedipus*<sup>1</sup>

In a climate rife with threats of species extinction, we propose a genealogy of the discourse of the late twentieth century in which the meaning of the natural substrate, recoded as 'biodiversity', is called into question. It is a question posed – and apparently answered – in the peculiar zone between capital and sovereignty, the quasi-zone of the International Treaty. While the authority of the accrediting institutions, along with the uptake and erasure of treaty as document (from the UN to GATT to the WTO), remain in dispute, the event of disputation has been suspended. The meaning of the suspension – the protest of a refusal to agree, to come to terms – is itself in a kind of suspension, a stand-off in which all sides, and there are more than just two, stand in waiting, perhaps for the redefinition of the court, perhaps for the catastrophe to come, the disaster that would decide the case by shattering its stage, the *mise en scène* that signs, or refuses to sign, in the name of a common humanity, the utopian fiction of a shared and justifiable future.

We have followed Deleuze and Guattari back to the category of originary accumulation. Like Marx, they read this category ironically, drawing on two simultaneous yet contradictory meanings. One of capitalism's founding fictions ('It appears as "primitive" because it forms the pre-history of capital, and of the mode of production corresponding to capital' (Marx, *Capital* 1, 875) is produced neither once nor for all. Not once at the beginning nor as a fixed and finalized event thereafter, the occasion of originary accumulation is as ongoing as the reterritorializations of capital accumulation itself. This sustaining fiction continues to underwrite narratives of uneven development, where the telos of development is always assumed if nowhere present, while at the same time the mythic origin ('pre-history') of capital has been displaced by a writing of

capitalism that remains inseparable from the history of the post-colonial.

Within this history, the place of originary accumulation – as supplement to capitalism – is increasingly taken over by the trade in pre-history as tradition, indigeneity and the localization of nature. Within a universal logic of capital expansion, resistance to the world of world trade becomes the residue of a pre-capitalist past, the trace of tradition – and traditional knowledge in particular – produced by the present as its own standing exception. The repackaging of tradition for and against free trade is an inescapable effect of the abstraction of nature, locality and knowledge within the hegemony of globalization.

In the founding modes of authorization which hope to expand democracy beyond borders, what becomes of the unequally incurred debts/relations to credit also signed into law, especially in 'the ambiguous zone between judicial order and life?'<sup>2</sup> Another way of putting the question is to ask, how does life figure new kinds of credit in the given? We are concerned specifically with the continuing figuration of nature as the pre-history of capitalism, as that which can be redistributed as a means of reparation and justice in international initiatives for preservation and adjudication, even as the historical production of nature continues to be eclipsed in problematic ways. If one of the things that the 'world' hopes to profit from is the borrowing on the 'given', assumed *crédit*, of a transnational idiom of value, then it must somehow secure the seamless flow of meaning, as well as of capital, between nations, cultures, peoples, languages, idioms, public and private spaces, and indeed borders of all kinds (those with and without formally recognized titles). It is this oblique, yet nonetheless historically and forcibly forged, relationship between the trans-nationalization of capital and the translation of idioms of value we explore. At a moment when the *New York Times* business section reports the supposed imminent obsolescence of the three great post-World War II institutions of universal

calculation, the IMF, the World Bank and the WTO, it may be an opportune moment to revisit the inauguration of the last of these and reflect on the attempts that have been made to amend it.<sup>3</sup>

### Credit signs

The establishment of the WTO offers an example of the performance of what Derrida has called the problem of the 'signature'. The WTO raises the question of 'in what name?' 'by what anterior authority?' and 'on what credit?' do the signatories sign? More than simply the question of representation (i.e. 'for whom do they claim to sign?') we confront here the following questions. Through what aporetic crossings does this act of signing declare itself as global justice? Through what moves does it manage to think itself as a universalization of the justice of capitalism, or capitalism or 'free trade' as justice? In his essay 'Declarations of Independence', Derrida remarks, 'In fact, they sign [here the founding fathers of the US]; by right, they sign for themselves but also "for" others.' In such a signing the question arises whether 'independence is stated or produced by this utterance'.<sup>4</sup> The undecidability is structural and cannot be resolved. Indeed, instead of leading to the hope of resolving the gap between the constative and performative function of the signature, the uncertainty allows us to consider the way a signature invents its own precedent, or the way a signature 's'ouvre un crédit, son propre crédit, d'elle même à elle-même'.<sup>5</sup> In this opening of a credit, its own (*propre*) credit, from itself to itself, the signing draws on a mobility that only now *properly becomes* its precedent.

In the 1994 signing of the 'Agreement Establishing the World Trade Organization', as in the thousands of subsequent documents of agreement and disagreement, the problem of the 'for itself' of the signing looms even larger, as the signatories do not share the apparent transparency of one given language. The problem is not simply one of a plurality of languages, a babel of difference in search of universally shared meaning. Nor is it simply the dominance of English as the standard language of UN documents (beside French). Rather, translation becomes a question of how the signing of who signs, the signatory who adopts and invents free trade as the calculus of global law, might stand in a particular *historical* and *economic* relation to the supposed possibility of this so-called 'freedom', so that – whatever suppleness translations may achieve between national languages – the notion of a 'shared' or equally meaningful collective presents itself as a ruse. The history of colonialism, along with

the differences between national economies' progress in capitalism-as-free-trade, contribute to the inequality among and between signatories; the 'mystical foundation of authority' of documents such as GATT is compounded by the fact that capitalism – as an economy of value, set of historical facts, 'given' definition of justice, language of calculation – cannot be 'freely' entered into, or signed into global law, by all nations in the same way.<sup>6</sup>

While some nations had already incurred massive debts through the post-World War II IMF and World Bank programmes, and subsequently been forced to submit to 'structural adjustment programmes' in the name of debt forgiveness or refinancing (the economy of 'credit' is 'given' but not freely after all – there are riders), other nations do not carry the same prior burden. 'How are we to distinguish between the force of law of a legitimate power and the supposedly originary violence that must have established this authority that could not itself have been authorized by any anterior legitimacy?' asks Derrida in 'Force of Law'.<sup>7</sup> Since the founding moment of GATT draws not only on the abstraction of 'free trade' as a name for given justice, but on a history of colonization legislated through the laws of 'enlightened' nations, one confronts a doubling of the aporia: in addition to the impossibility of an always already present 'anterior legitimacy', GATT crosses over, and thus makes neat use of, the history of legalized exploitation of the South by the North. The 'credit' is redoubled as the provenance of the Northern signature, now legible as Northern capitalism and transnational corporations, while the debt is recast back on the South in the form of neocolonialism, as the extension and erasure of unsettled debts, or, more simply put, the sheer unaccountability of capital to anyone.

In agreeing to the General Agreement on Tariffs and Trade, the 'member' countries perform an agency that is bound up not only with the aporia as crossing over 'from' national idioms to the 'singular universal' of English (the crossing is aporetic because it doesn't entirely arrive, or doesn't arrive without a trace of its violent traversal), but problematized by private, corporate interests, and indeed the privatization of interest itself in the case of creativity, that underwrites and shores up their signatures. Trade-Related Aspects of Intellectual Property Rights (TRIPS) becomes a document of the privatization of the global future rather than the enlightened conjoining of public interest in free trade between nations.

The limit towards which GATT strives is not, then, the freedom of the citizen as abstract, universal-

ized, rational man, but a different calculation of the constituency of legal rights: capital itself, and more correctly privatized capital. Because this privatization is historically already in process by the time of GATT's arrival 'on the scene' of global capitalism (a fractured non-scene, really, which also should be read to include, precisely by excluding, entire populations of people, geographical areas, to which capitalism has not flowed freely for a variety of reasons), the freedom that the WTO protects must be read as an unequally held right to begin with. If the WTO protects global capital in its flow across all borders, then it will give 'rights' of citizenship in the global arena only to those who can sign with capital for itself: through the extraction of natural resources under colonialism, for example; or what has been termed the 'biopiracy' of today's pharmaceuticals corporations.

In Marx's *Grundrisse* the argument for historical determination takes its impetus from a critical *rethinking* of production as an exemplary indicator of social contingency, or, better, the *socius* as contingency. The problematic relationship between the preconditions (*Bedingungen*) and historical products of determinate modes of production positions the labour process on a movable line between nature and history. Do some of the signatories also ride this faultline between modes of conditioning?

At the very beginning these [pre-conditions of production] may appear as spontaneous, natural [*naturwüchsig*]. But by the process of production itself they are transformed from natural into historic determinants [*Bedingungen*], and if they appear to one epoch as natural presuppositions [*Voraussetzung*] of production, they were its historic product [*geschichtliches Resultat*] for another.<sup>8</sup> (*G*, 234)

In further discussions of the capitalist mode of production in Marx, the relation between the specific character of the commodity form and that of the labouring process as conditioned by capital introduces the idea of a 'coming-into-givenness' or 'over-againstness' of appropriable nature in capitalism. As Alfred Schmidt writes, 'The commodity as the embodiment of abstract human labour, expressed in units of socially necessary labour time, is independent of any determination of nature.'<sup>9</sup> Labour, on the other hand, always contains the double presence of nature both as material being and as means of production.

Labour, itself only the manifestation of a natural force, is always dependent on a substratum which cannot be reduced to labour alone. Marx dealt with this natural basis of labour in systematic form in *Capital*, too, precisely in his analysis of the

two-fold character of the commodity and of the labour embodied in it. The commodity is a unity composed of mutually opposed determinations. As the 'cell' of bourgeois society, it reflects the relation between nature and the historical process at an advanced stage of development of the forces of production. It contains nature as 'being-in-itself' and 'being-for-others'.<sup>10</sup>

The 'material substratum' persists, in some way irreducible, though it can only be considered through the commodity form as making up part of the process and result of a historically reflected set of relations. Nature, in Marx, never escapes dialectical, historical determination and is thus fully natural precisely because it cannot be construed as 'self-positing', a possibility which is articulated quite emphatically in the *Economic and Philosophical Manuscripts*: 'A being which does not have its being outside itself is not a *natural* being and does not share in the being of nature.'<sup>11</sup> The categorical conditioning of Marx's concept of 'nature' thus makes it quite relevant to current debates on nature and to the articulation of biodiversity in the frame of capital realization of biotechnology: the various de- and re-territorializations of the constituent body of the 'material substratum'. If this double contingency of the labour process broaches a transitory and mixed form of contingency, can nature sign?

### Given nature

By inaugurating TRIPS, GATT raises questions about the foundations of 'globality' that go beyond the aporias of founding moments described above. TRIPS makes it quite difficult to focus on the 'economy of credit' in merely formal terms, or to read the 'mystical foundation of authority' as a solely linguistic effect – that is to say, in terms of the performative–constative paradox. As free trade has become the standard unit of international law, the measure by which an internationalized justice can be calculated, made legible, and finally also enforced, the law privileges the deterritorializing interests of capital while simultaneously reinscribing registers of territoriality and national belonging (tradition, culture, citizenship). Within this system, what might have appeared as competing and incommensurable idioms of value – corporate profit versus so-called 'capacity building'; copyright protection versus public health; global capitalism versus national sovereignty – are legitimated only in so far as they can be read through the prefix of the trade-related.<sup>12</sup>

While the interpretation of the idiom of free trade has been fought, thus giving the lie to its universality, its legitimacy incorporates rather than topples upon resistance to its present and future hegemony. Thus the

law includes its exceptions and feeds on the challenges to its future viability. The preamble to the TRIPS agreement states that 'intellectual property rights are private rights'. Moreover, Article 27.1 of the TRIPS agreement stipulates that innovation is recognized and protected only in so far as it is 'capable of industrial application' (TRIPS).<sup>13</sup> The often necessary reliance on local knowledge of plants, for example in pharmaceutical research, thus cannot register in a comparable or commensurable way. It is Dupont that can valorize a particular form of knowledge not out of the blue but on the basis of past labour, congealed as fixed capital in the laboratory site. The 'indigenous' or 'local' knowledge used in the location of useful or medicinal plants can only appear under the fraught rubric of 'cultural knowledge' – a knowledge that points more emphatically to paradoxes at the core of intellectual property. In other words, by integrating intellectual property rights into GATT through the addition of the 'trade related' prefix, not only is innovation reduced to the potential for capital accumulation, but it becomes a legally recognized 'right' only in so far as it meets these 'givens' of the WTO-monitored global system. This system includes those cases of compulsory licensing that have invoked the 'national emergency' exception clause of the TRIPS agreement.<sup>14</sup>

In this way, we can see how GATT, especially via TRIPS, foregrounds the 'economy of credit' at work in the 'mystical foundation of authority', or any borrowing from a supposed anterior, transcendental given, as not only an economy of metaphoric exchange (from one figuration of the given to another – from God to justice, from justice to law, from justice to capitalism, from benevolent imperialism to globality, from abstract universal rights to 'trade-related' rights, etc.), but as an economy where the debt incurred by borrowing on a certain understanding of the 'given' – in this case the givenness of capitalism and the credibility of 'free trade' – will be incurred unequally by different borrowers, in this case different nations which have signed on to the treaty. Shiva points to an additional way in which Article 27 of the TRIPS agreement favours the advanced capitalist nations, in particular the USA, through the phrase 'effective *sui generis*' in the following clause:

Members may also exclude from patentability ... plants and animals other than micro-organisms, and

essentially biological process for the production of plants or animals other than non-biological and micro-biological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof. (TRIPS)

While the possibility of a '*sui generis* system' might seem to allow for a country to draft laws that suit idioms of value particular to its citizens, or that are not entirely reduced to the rights of private capital, the term 'effective' has been used by the USA to neutralize this possibility. The TRIPS agreement not only privileges the transnational corporate profits over all other calculations of innovations, but it implies that the



'givenness' of natural resources can be bracketed off such that work done on or to them in Northern corporations can create an entirely 'new' entity, so new that it displaces the local ties to the 'originally occurring' natural entity entirely and elides the labour-value of local innovation as well.<sup>15</sup>

To keep pace with the patenting of particular forms of innovation it becomes necessary for these international apparatuses to distinguish, or build the differential, between the '*in situ*' and the '*ex situ*' because of the specific mode of production of biotechnology and its capacity to both reproduce and consume products and processes – 'components of biodiversity' – away from source. To cite a relevant passage from *The Convention of Biodiversity* on the use of these terms:

'Biological diversity' means the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems

and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.

‘Biological resources’ includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use of value for humanity.

‘Biotechnology’ means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use.<sup>16</sup>

The object constitution of ‘biodiversity’ construes itself as ‘variability’. In this light, the rhetorical ‘inter alia’ which introduces the listed parameters reads two ways: ‘Among other things’ meaning both that not everything will be named and naming the gaps *among other things* – parts otherwise understood as things, things otherwise understood as parts, and infinitesimal terrains – which open up within the variable constitution of diversity. Further, the reference to products and processes demonstrates an appreciation for the labour stored up in ‘things’. Systems, organisms and derivatives can make up part of the production process on strangely equal footing. ‘If it [capital] can make machines do it, or even water, air, so much the better’, writes Marx. Nonetheless, the convention recognizes ‘sovereign rights’ even as it works to fix the legibility of the ‘natural habitat’ as a site of labour and of conservation to be inherited by ‘universal man’.

‘Country providing genetic resources’ means the country supplying genetic resources collected from in-situ sources, including populations of both wild and domesticated species, or taken from ex-situ sources, which may or may not have originated in that country. ...

‘In-situ conservation’ means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties. ...

‘Ex-situ conservation’ means the conservation of components of biological diversity outside their natural habits.<sup>17</sup>

Countries, as signatories, are also understood as habitats: on the one hand, they are posed in relation to such a figure through appeal to sovereign rights; on the other, they are also displaced in the ex situ/in situ differential. The greater density of the definition of ‘in-situ conservation’ in comparison with that of ‘ex-situ conservation’ also discloses the historical contingency of the ‘site’ under consideration: the reserves and reservoirs located disproportionately in the nations of the

global South. The issue of domesticated and cultivated – indeed, inhabited – nature muddies the distinction between sites of origin and sites of expropriation, necessitating the modification, both discursive and genealogical, of ‘distinctive properties’.

In the *Grundrisse* Marx historicizes the ‘raw materials’ of capitalist production precisely in terms of his exposition of the dissolution and negation of earlier modes of production (in the transition from feudalism to capitalism, for example): raw materials appear as the mode of their utilization enters new formations of the capacity to consume (*Konsumptionsfähigkeit*). The capacity to consume biotechnology is one of the materio-conceptual ‘natural’ domains in which neocolonialism is coded. But what does it mean to figure ‘givenness’ in natural and national terms – that is, as what nature has given to those who reside in a particular geographic and nationally defined area?

## Substrata

The category ‘indigenous’ bears the mark of capitalism’s imbrication within the history of European–US imperialism. On the one hand, the term appears to be meaningful only in opposition to a notion of a latterly arrived, structurally foreign, or otherwise non-autochthonous population. We note the Greek derivation: *auto* = self, *khthon* = earth. If indigenous implies an originary relation to place, then the way in which that relation is taken up will depend in part on the figuration of ‘earth’: is it a surface inscribed with geographical writing? If so, the writing of what language? If European imperialism’s notion of fair and legible boundaries posits those boundaries as already preset (in the logic of ‘given’ itineraries of progress) and simultaneously in need of enforcement, then how will (imagined) indigenous figurations of ‘earth’ be used to legitimate Europe’s notion of the ‘earth’ as given-for-capitalism? And yet the implicit suggestion of a people, population, or even body ‘original’ or ‘native’ to a place somehow depends on the idea that an ‘original’ voice can claim territoriality outside of and prior to the contingent formations of colonial expropriation of land and imposition of capitalism as underdevelopment and mode of exploitation; instead of ‘native-as-other’, the native is simply primordially, ontologically native on its own. This double standard of native as self-positing ‘indigenous being’ and indigenous only by way of colonial denial of ‘original claims’ bears itself out when the UN takes up ‘indigenous’ populations. The same decade that witnessed the relocation of the UN committee on TNCs from its own ‘discipline’ to a subdiscipline within UNCTAD<sup>18</sup> also brought the creation of a new

UN subdisciplinary apparatus: the study and celebration of 'indigenous people'. The 1990s made up part of the UN-declared 'International Decade of the World's Indigenous People'; under the aegis of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the UN established the 'Working Group on Indigenous Peoples'.<sup>19</sup> (Oddly, sometimes the UN leaves off the 's' from 'peoples', and it is perhaps this shifting from the plural to the singular that marks the contradictory project of figuring a notion of categorical – rather than historically produced – nativeness.)

In the *Grundrisse* Marx writes that the 'historic conditions and presuppositions' of capitalism 'disappear as real capital arises, capital which itself, on the basis of its own reality, posits the conditions for its realization' (G, 251, Marx's emphasis). Once capital is (has become) dominant as the mode of production, the (pre)conditions that made this dominance possible are posited by capital as its own effect. Labour power, instead of a historically produced and contingent condition, becomes for capital something that spontaneously *is*. Marx satirizes this contradictory displacement of the historical in the structural as amounting to the notion that labour-power comes into being with capital's wish: 'Let there be workers!' (G, 276). The problematic ontologization of the structure of capitalism, where it becomes a cosmos with capital in the place of originary being, too easily allows for a static reading of 'the' condition of 'a' capitalist present, where the past in which it came into being (i.e. came into dominance) is forgotten or set aside, though simultaneously reproduced.

While e.g. the flight of the serfs to the cities is one of *historic* conditions and presuppositions of urbanism, it is not a condition, not a moment of the reality of developed cities, but belongs rather to their past presuppositions, to the presuppositions of their becoming which are suspended in their being. (G, 251)

'Nature' in the form of extracted and valorized raw materials is extremely important in this suspension because the privileging of a structural global relation with no history is one way that the North translates all of 'earth' into *capital's* 'common heritage'.

The Convention of Biological Diversity claims to have recognized, 'for the first time' in history, biodiversity as a 'common concern of humankind'.<sup>20</sup> (Particularly given the boldly epochal symbolization of a newly realized 'common' concern, a vital interest for the singular collective named 'humankind', it is worth noting, deflations of 'predictability' notwithstanding,

that the only signatory nation that refused to ratify the treaty was the United States.) The Convention, of course, hardly brings an end to the matter of locating nature-as-heterogeneity and trading in on 'value added'. In the wake of the 1992 Convention, the issue of biodiversity proliferates in any number of other treaties and conventions, with increasing emphasis on a certain danger, the threat of disappearing nature as species extinction, a threat that again emphasizes the importance of nature held in 'common'. The International Treaty on Plant Genetic Resources for Food and Agriculture (November 2001) makes 'global food security' a priority. The future of the human as species is brought to bear in the face of the diminishing remains: 'In spite of their vital importance for human survival, genetic resources are being lost at an alarming rate.' This treaty attempts to take into account the vanishing history of the present, or the history of so-called uneven development. 'The countries richest in genes are often the poorest in economic terms, FAO said. Most of the world's plant genetic diversity is found in the developing countries.'<sup>21</sup>

Within the figuration of earth as common inheritance comes the task of making natural resources legible to capital: visible, chartable, knowable, ready to be extracted with least unpredictability and 'waste'. Hence the production of a new geological and economic science of writing: the cartography of what we call, following Schmidt, the substratum. We might now think of substratum not only as a materiality transformed and preserved by capital at the same time, but as a chaotic semiotic field waiting for translation into capital's terms. The Committee on Natural Resource's report *Economic and Social Development Needs in the Mineral Sector* distinguishes the 'geoscientific' from the 'geoscientific/economic' as two different approaches to resource assessment, classification, and mapping. Nonetheless, they indicate that the former is and should be always in the service of the latter.

Resource assessment pertains to the estimation and evaluation of minerals in the ground, both discovered and undiscovered. Attention centres on the form, concentration, and location of the minerals in order to determine whether they might be extractable under foreseeable economic and technological conditions.<sup>22</sup>

Capital's project of ordering of the global substratum recalls Heidegger's notions of ordering and standing reserve:

Everywhere everything is ordered to stand by, to be immediately at hand, indeed to stand there just so that it may be on call for a further ordering.

Whatever is ordered about in this way has its own standing. We call it the standing-reserve [*Bestand*].<sup>23</sup>

Through technology, 'what we call the real is revealed as standing reserve.'<sup>24</sup> Nature is 'enframed' as standing-reserve in the projects of vertical cartography: the ordering of nature so that it is revealed to capital as lying in wait. The Committee on Natural Resources reads the 'standing reserve' of the substratum as an ever-penetrable *economic* limit:



Some of the technological improvements that would extend the economic limit of resources are techniques for locating deposits at greater depths and methods for better extraction of ores and recovery of the mineral commodities from them. These represent changes in the technology of raw material production.<sup>25</sup>

It is as if natural resources call to capital for its specific form of unconcealment; without the latter, the former has no place on the map of 'nature'.

If the ever-deeper substratum is a kind of standing reserve, the South becomes its custodian – because it is there that nature will present itself to capital with least resistance (regulations etc.). Similarly, the eating-up of indigenous practices as primordially close to nature, or indigenous 'peoples' as metonyms for nature, become ways in which 'indigenous' is used to supplement the North's growing fatigue with its own overindustrialization. Late capitalism, having irreversibly depleted or contaminated the resources of nature at home, reinvents and appropriates the natural elsewhere. Recoding spatio-temporal fictions of the 'raw' (from raw materials to prehistoric resources, unmapped terrains, genetic

inheritance, new life forms, unknown species, etc.), capital expands its horizon and attempts to control the future of nature as knowledge.

It is clear that the 'new' entities will in turn uproot and render obsolete the form of life preceding them. This dislocation forced by pressures of market and enforcement of patenting law gambles with the potential of future needs, uses and knowledges. The 'futurity' here need not exclude the knowledge systems received in traditional medicines and agricultural practices. These practices themselves must be understood as inaccessible to full self-disclosure, therefore when supplanted a general loss incurs. In a discussion about the appropriation of biodiversity, 'nature' can be a catechistic name for radical alterity. Its preferencing of the procedural of the organic, or organicity, its coupling with the silence of the feminine and its role in the politics of reproduction should, to the furthest extent, be kept at bay. In new forms of coalition between religious leadership and environmental activists, one too often notes the heavy paleonymic sedimentation of the word 'nature' much at work and little under erasure. To this extent, the move to protect life forms from patenting is conjoined to the parlance of pro-life on the religious right. Another of 'nature's' dangers as a platform intensifies where a misuse of 'universal right' recognizes nature and the environment as a habitat for a 'public good' orchestrated by the North. Under this same rubrication, the genetic patenting endeavour could recast itself as a museumification process that would again underwrite an attack on local use and authority. Further, the 'technological' cannot be unequivocally identified with the industrial. The technicity of the pre-technology, if claimed, could form the articulation of a counter-argument in the patent debates. Defences for the 'original' of nature must thereby resist the lure of wholeness-talk in favour of the productivity of the limit in the practice of naming.

### Taxonomies of the universal

like all names in general, these designate at once a limit, a negative limit and a chance. For perhaps responsibility consists in making of the name recalled, of the memory of the name, of the idiomatic limit, a chance, that is, an opening of identity to its future.<sup>26</sup>

The Convention on Biodiversity is a self-identified 'framework for action'. The working groups established through the Convention on Biodiversity, signed by 150 governments in 1992, has subsequently identified a 'taxonomical impediment' to protection of biodiversity. Thus, in 1998, the 'Global Taxonomy Initiative' was adopted:

The GTI has been established by the Conference of the Parties (COP) to address the lack of taxonomic information and expertise available in many parts of the world, and thereby to improve decision-making in conservation, sustainable use and equitable sharing of the benefits derived from genetic resources. This is the first time in history that taxonomy has had recognition at such a high level in international policy.<sup>27</sup>

The inequities inscribed at the foundational moment of the GATT and TRIPS agreements have been explicitly addressed in the meetings of the COP since 1995. Here the lack of symmetry refers specifically to the development of taxonomy, including advanced technology necessary to the identification of differences affecting taxonomy, as well as the preponderance of botanical holdings in the developed nations.

Simple-to-use identification guides for the non-taxonomist are rare and available for relatively few taxonomic groups and geographic areas. Taxonomic information is often in formats and languages that are not suitable or accessible in countries of origin, as specimens from developing countries are often studied in industrialized nations. There are millions of species still undescribed and there are far too few taxonomists to do the job, especially in biodiversity-rich but economically poorer countries. Most taxonomists work in industrialized countries, which typically have less diverse biota than in more tropical developing countries. Collection institutions in industrialized countries also hold most specimens from these developing countries, as well as associated taxonomic information.<sup>28</sup>

The eighth COP also recognizes productive knowledge sources among indigenous populations as well as the need to create taxonomy to help in the identification of 'living modified organisms' and the risks they pose to the protection of biodiversity. The goal is to work for maximum parity in the pressing effort to identify the life forms and parts in need of protection.

One means of addressing this impediment has been the implementation of what is known as the 'clearing-house mechanism.' The mission of this mechanism is to 'ensure access to information and technology needed for work on biodiversity'. As the website explains,

The term 'clearing-house' originally referred to a financial establishment where checks and bills are exchanged among member banks so that only the net balances need to be settled in cash. Today, its meaning has been extended to include any agency that brings together seekers and providers of goods, services or information, thus matching demand with supply.<sup>29</sup>

The clearing-house idea, in its reference to banking, works to produce commensurability prior to the ultimate settling of accounts, though in this context the 'accounting' relates specifically to the reaching of target goals in the campaign for protecting biodiversity. Thus, the question of how to value environmental conditions forms an important topic in the conventions (particularly COP 8, 2006: 'annexes'). Moreover, the conventions make explicit reference to treaties regulating intellectual property from the standpoint of the ongoing effort in identifying, protecting and overseeing protection of indigenous species. This commensuration of taxonomical information could be said to ride on the tails of the forms of flow and exchange in plant and animal life in industrial activity that precede treaties aiming to regulate the flow of 'goods, services and information' across borders. To this extent, the convention operates within a utopian retrospective that registers and responds to a universality already effectuated: hoping to institute a universality of ends in the place of the ends of capital.



In his essay 'Ambiguous Universality', Étienne Balibar works to expose the 'equivocity' of the concept of the universal, pointing out that 'no discussion about universality (and, consequently, no discussion about its contraries or opposites: particularity, difference, singularity) can usefully proceed with a "univocal" concept of the "universal"'.<sup>30</sup> In service of this position, he enumerates three distinct forms of universality, which he does not attempt to schematize in a temporal order,

but considers in their simultaneity. The first mode of the concept, 'universality as reality', would address in our terms the circumstances that precede the signing of the Convention on Biodiversity in Rio de Janeiro in 1992. This universality refers to

an actual interdependency between various 'units' which, together, build what we call the world: institutions, groups, individuals, but also, more profoundly, the various processes which involve institutions, groups and individuals: the circulation of commodities and people, the political negotiations, the juridical contracts, the communication of news and cultural patterns, and so on.<sup>31</sup>

To this we would have to add the peculiar attempt to designate the part systems of biological life, which the Convention on Biodiversity strains to name.

Nonetheless, to the 'world Leviathan' of the commodification of natural process, which is the precondition of the convention, the Convention proposes a good: 'the intrinsic value of biodiversity' as a 'common concern of humankind' corollary to a recognition of 'sovereign rights'. This call is accompanied by the invocation of the relation of indigenous tradition to biological resource – 'traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources' – recognition of 'the vital role played by women', reference to the priority of the struggle with poverty in developing nations, and finally friendly and peaceable relations between nations. This good rearticulates a moral or humanistic value as evident in an 'intrinsic value' in biodiversity. As such, it also informs the emendation of the WTO's mission in Doha to include the 'protection of human, animal or plant life or health'.

We recognize that under WTO rules no country should be prevented from taking measures for the protection of human, animal or plant life or health, or of the environment at the levels it considers appropriate, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, and are otherwise in accordance with the provisions of the WTO Agreements. (Doha)<sup>32</sup>

The life form has attained the status of a 'real universality' through the industrial forms of biotechnology and in so doing triggered the effort to seek the 'symbolic universality' that the Convention constitutes. With this in mind, we could hope that the Convention does constitute a 'symbolic' rather than a 'fictive' universality in Balibar's terms; that is, that it declares

a 'right to politics' or a 'right to rights' including rights not yet declared but possibly emerging through future conditioning of the negative dialectic of equaliberty ('if no equality can be achieved without liberty, then the reverse is also true: no liberty can be achieved without equality'). As such, though it technically comprises a declaration of consciousness, its affirmation of biodiversity as a common concern declares a right to politics in the form of environmental dignity as a recognition of the irreplaceability of the earth and not as a return to moral utopianism. This interpretation of the Convention would prevent it from falling under the category of a 'fictive universality' whereby the call to a universal cause would redound to the ruse of national membership as described by Balibar:

Nation-states adopt various means ... to make peace among religions, regional identities or ethnic memberships, and class loyalties. Usually these means have nothing to do with real or strict equality; they are permeated with relations of force, but they are successful inasmuch as they allow particular communities, and networks not only to become integrated in the 'total community' (national citizenship), but, much more, to work as its mediations. Recognized differences, or otherness-within-the-limits of citizenship, become the essential mediation of national membership.<sup>33</sup>

As an affirmation of the 'common good of humankind' the Convention explicitly transcends the requirements of national membership, but does it in so doing hope to reaffirm an ideological identification that mediates for new forms of international sovereignty in the face of the 'real universality' which is its occasion? If it did, it might run the risk of attempting to found its jurisdiction on a new kind of universal membership built on particular concerns blind to their effective constitution in a new hegemony.

What then would be the status of 'taxonomic universality'? Certainly in its work to establish the framework of a mechanism of oversight it also contributes to the homogenization of knowledges, or in the terms of COP 8:

Collect and disseminate information on the availability of taxonomic resources with a view to maximising the use of relevant existing resources for the effective implementation of the Global Taxonomy Initiative. (COP 8, no. 10)

and

Offer assistance to Parties and other Governments with the use of the controlled vocabulary for the Convention, subject to analytical cataloguing and authority control...<sup>34</sup>

Even as the Global Taxonomy Initiative works on this maximization, it clearly appeals to a form of 'particularism', when in the COP 8, the exigency of particularized care is acknowledged in the statement on technology transfer and cooperation.

Underlining the importance of developing specific approaches to technology transfer and technological and scientific cooperation to address the prioritized needs of countries based on National Biodiversity Strategy and Action Plans' priorities and to link technology needs assessments to National Biodiversity Strategy and Action Plans' priorities, while avoiding non-specific, global approaches to this issue.<sup>35</sup>

The category of *in-situ* maintenance requires specificity at the same time that that specificity is the only way to accede to the universal. Similarly, the latest reiterations of the goals of the 1992 Convention, which specifically name women and the indigenous as valuable custodians of biodiversity, here again emphasize the need for protections:

Aware in particular of the impacts of these issues on the conservation and customary use of biodiversity by local and indigenous communities, and the consequences for their well-being, emphasizes the need for dialogue with such communities.<sup>36</sup>

The mechanism of the clearing-house explicitly or at least rhetorically makes a nod to capital as universal justice through its metaphor of supply and demand. Commensuration would ideally safeguard the biologically diverse as well as track genetic mutations which jump species between cultivars and local populations. The prescription attends to inequities in the infrastructure for generating taxonomy and unequal holdings – the mechanism also intends to address pressing questions of repatriation – and yet the question of translation seems all but excluded.

## Suspension

As often happens, the call of or for the question, and the request that echoes through it, takes us further than the response. (Derrida, *Gift of Death*)

The crossing that catches up the singular in the universal can be figured in different ways. The memory of the name holds the demand for and necessary failure of translation practice, even as the experience of that impossibility counsels a persistent discretion between sites and origins of responsible conduct. In *The Other Heading*, Derrida claims that 'what is proper to a culture is not to be identical to itself.'<sup>37</sup> The proper, then, when discharged of self-identity can hold in reserve a kind of

futurity. Shiva has spoken of the attack on futurity as a mark of differentiation between neocolonialism and the old methods of wealth extraction under colonialism. 'New colonialism colonizes the future.'<sup>38</sup> This future can be heard in double resonance between common future and the future of the self non-similar proper. In the context of the peculiar hybrid of property and right at work in TRIPS, the subject of the articulation of right becomes property itself: the right of property to claim itself in a colonization of micro-regionality and in the invisible joints and cogs of organic process. In the financialization of the globe, the standard-bearer of the cultural politics of globalization, democracy, is thus left, in its very transparency, to obsolescence. GATT and WTO apply a restricted understanding of the economic to short-circuit the functioning of the very contractual legality they pretend to promulgate. A defunct idea of democracy and its project of liberalization and 'education' arrive in the South as used goods, no longer bearing value in the economy of 'universal discourse' which only hears (takes the testimony of) the witnessing born out in the 'trade-related'.

In the proposed emendations of the GATT at Doha, the community of signatories has crossed the language of commonality with a common recognition of the possible incommensuration of the languages and calculations of life. The signing parties, coalesced and fractured in an unresolved suspension of agreement, recognize the demand for 'special and differential treatment for developing countries', while deferring any decision of the form of that treatment for another round.

The World Trade Organization, established in 1995 as the successor to the General Agreement on Tariffs and Trade, is struggling mightily to salvage the current round of talks that started five years ago at Doha, Qatar.

Many trade experts fear that if the talks fail, it could lead to a reversal of 60 years of opening the trading system to more goods and services.

The Doha talks are at an impasse because the United States and Europe are refusing to lower barriers on farm goods, and both are demanding that India and other exporting countries lower barriers of their own.

The fear is that the World Trade Organization, which is supposed to promote trade, will become a vehicle for lawsuits and protectionist actions threatening higher barriers, leading to a slowdown in the global economy.<sup>39</sup>

Thus reports the *New York Times* on the occasion of the forced removal of Paul Wolfowitz as head of the World Bank. The very emendations that might open 'real universality' to a persistent 'symbolic universality

– that is, to the future of a right to politics – stands immediately under threat of the implied slowing of trade. The impasses clustered under the heading of Doha represent the promise and failure of an ideal under siege.

## Notes

- For Gayatri Chakravorty Spivak, with friendship and gratitude.
1. Gilles Deleuze and Félix Guattari, *Anti-Oedipus*, trans. Robert Hurley et al., Minnesota University Press, Minneapolis, 1983, p. 231.
  2. Giorgio Agamben, *State of Exception*, trans. Kevin Attell, Chicago University Press, Chicago, 2005, p. 60.
  3. 'Cracks in the Foundations of the Global Economy', *New York Times*, 23 May 2007.
  4. Jacques Derrida, 'Declarations of Independence', in Elizabeth Rottenberg, ed., *Negotiations*, Stanford University Press, Stanford, 2002, pp. 48–9.
  5. Jacques Derrida, 'Déclarations d'Indépendance', in *Otobiographies: L'enseignement de Nietzsche et la politique du nom propre*, Galilée, Paris, 1984, p. 23.
  6. Jacques Derrida, 'Force of Law: The Mystical Foundation of Authority', trans. Mary Quaintance, in Drucilla Cornell et al., eds, *Deconstruction and the Possibility of Justice*, Routledge, New York, 1992, p. 14.
  7. *Ibid.*, p. 6.
  8. Karl Marx, *Grundrisse*, selections in English in Robert C. Tucker, ed. *The Marx Reader*, Norton, New York, 1972, pp. 221–93; Karl Marx, *Grundrisse der Kritik der politischen Ökonomie*, Europäische Verlaganstalt, 1968. All references to the *Grundrisse* are made in the body of the essay with abbreviation 'G'; references to the German are made in brackets where necessary and possible.
  9. Alfred Schmidt, *The Concept of Nature in Marx*, trans. Ben Fowkes, NLB, London, 1971, p. 15.
  10. *Ibid.*, p. 65.
  11. Cited in Schmidt, *The Concept of Nature in Marx*, p. 64.
  12. Within the rhetoric of the WTO and its surrounding discourses, the term 'capacity building' is used to designate one of many forms of special assistance to be given, in the indeterminate future, 'to support domestic efforts for mainstreaming trade into national plans for economic development and strategies for poverty reduction. The delivery of WTO technical assistance shall be designed to assist developing and least-developed countries and low-income countries in transition to adjust to WTO rules and disciplines, implementation obligations and exercise the rights of membership, including drawing on the benefits of an open, rules-based multilateral trading system' (DOHA WTO Ministerial Declaration, November 2001; [www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm)).
  13. TRIPS, Preamble and Article 27.2, at [www.wto.org/english/tratop\\_e/TRIPS\\_e/t\\_agm0\\_e.htm](http://www.wto.org/english/tratop_e/TRIPS_e/t_agm0_e.htm).
  14. TRIPS, Article 31b. Such cases are best known for challenging the priority of patent protection in regard to HIV/AIDS and the pharmaceuticals industry. What should be clear, however, is that these cases uphold the authority of TRIPS precisely as they negotiate the status of the exception.
  15. See Vandana Shiva, *Captive Minds, Captive Lives: Ethics, Ecology and Patents*, Research Foundation for Science Technology and Natural Resource Policy, Dehra Dun, 1995, ch. 5. See also 'Tradition in India vs. a Patent in the U.S.', *New York Times*, 15 September 1995; and 'Grace's Patent on a Pesticide Enrages Indians', *Wall Street Journal*, 13 September 1995.
  16. Convention on Biological Diversity, Rio de Janeiro, 5 June 1992, Preamble.
  17. *Ibid.*, 'Article 2. Use of Terms'.
  18. From 1972 to 1992, the UN Programme on Transnational Corporations was organized by the UN Centre on Transnational Corporations, and from 1992 to 1993, it was administered by the Transnational Corporations and Management Division of the UN Department of Economic and Social Development. Beginning in 1993, the Programme was transferred to the UN Conference on Trade and Development (UNCTAD). Though the UN hierarchy of disciplinary organization is clearly complex, and has indeed always involved imbricated and perhaps arbitrary subordination of committees, we want to note here that the transfer of the programme on TNCs to 'trade and development' studies seems to fit nicely in the current logic of transnational corporate trade as the vehicle of development par excellence.
  19. 'Report of the Working Group on Indigenous Populations', Session 13, Geneva, 24–28 July 1995. UN Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Session 47, Agenda item 14.
  20. Convention on Biological Diversity, Rio de Janeiro, 5 June 1992, [http://untreaty.un.org/English/TreatyEvent2007/book\\_english.pdf](http://untreaty.un.org/English/TreatyEvent2007/book_english.pdf).
  21. [www.fao.org/english/newsroom/news/2002/5657-en.html](http://www.fao.org/english/newsroom/news/2002/5657-en.html).
  22. Committee on Natural Resources, 1994.
  23. Martin Heidegger, *The Question Concerning Technology and Other Essays*, trans. William Lovitt, Garland, New York, 1977, p. 18.
  24. *Ibid.*, p. 20.
  25. Committee on Natural Resources, 1994, ¶12.
  26. Jacques Derrida, *The Other Heading: Reflections on Today's Europe*, trans. Pascale-Anne Brault and Michael B. Nass, Indiana University Press, Bloomington, 1992.
  27. Introductory information from the Convention on Biological Diversity website, [www.cbd.int/gti/default.shtml](http://www.cbd.int/gti/default.shtml).
  28. *Ibid.*
  29. *Ibid.*, 'What is the Clearing House Mechanism?' [www.cbd.int/chm/introduction.shtml](http://www.cbd.int/chm/introduction.shtml).
  30. Étienne Balibar, *Politics and the Other Scene*, trans. Christine Jones, Verso, New York, 2002, p. 146.
  31. *Ibid.*, p. 147.
  32. DOHA WTO Ministerial Declaration', November 2001; [www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm).
  33. Balibar, *Politics and the Other Scene*, p. 159.
  34. [www.cbd.int/gti/default.shtml](http://www.cbd.int/gti/default.shtml).
  35. COP 8 [VIII/12], [www.cbd.int/decisions/default.aspx?m=COP-08&id=11015&lg=0](http://www.cbd.int/decisions/default.aspx?m=COP-08&id=11015&lg=0).
  36. *Ibid.*, no. 14.
  37. Derrida, *The Other Heading*, p. 9.
  38. Lecture at Riverside Church, New York, 10 November 1995.
  39. 'Cracks in the Foundations of the Global Economy', *New York Times*, 23 May 2007.