

## Introduction: Risk, Justice and Catastrophe

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Since it was first put forward by Ulrich Beck (1986)<sup>1)</sup> the idea that the perception of risk constitutes a central dimension of modern society has been widely accepted in sociology. Risk, as Beck argues, only exists before a catastrophe strikes and it is related to the measures that should be taken in order to avoid it. Risk moreover is not a simple measure of the probability that a hazard happen, for example an earthquake, the measure of risk also takes into account the extent of the damages which the earthquake may cause. Would it, for example, severely damage a nuclear power plant? If the answer is “yes” the risk is greater than if the answer is “no” even when the probability that an earthquake happens remain the same. The “risk society” approach focuses on the role which the prospect and the prevention of catastrophes play in modern society, rather than on the issues which arise in the aftermath of a catastrophe. Similarly, all measure like the precautionary principle which aim at evaluating risk essentially aim at avoiding and preventing catastrophes. From these points of view, the main question of justice which may arise after the catastrophe is if, in view of the known – and perhaps even unknown<sup>2)</sup> – risks that existed adequate precautions were taken in order to avoid the catastrophe.

More recently Jean-Pierre Dupuy in *Pour un catastrophisme éclairé* (2002)<sup>3)</sup> introduced the notion of enlightened doomsaying, which involves a powerful criticism of the precautionary principle. This principle rests on our limited knowledge of the future and seeks to recommend precautions which should be taken in situations of uncertainty. Dupuy’s focus is also on prevention understood in a broad sense, but he sees the issue in a completely different way. In many cases, argues Dupuy, the problem rather than how to avoid an uncertain catastrophe, is how to avoid one that is entirely foreseeable. The difficulty is not that we do not know, but *that we do not believe what we know*, that we fail to take action on the basis of incontrovertible evidence and to protect ourselves from a certain catastrophe. The most flagrant example of this he argues is provided by our dilatory attitude towards global warming. Fundamental as this transformation of outlook is, here again the center of interest is what can be done before the catastrophe strikes in an effort to prevent it from happening. Moreover, a few years later Dupuy in *Petite métaphysique des tsunamis* (2005)<sup>4)</sup> – recently translated in Japanese – proposed a metaphysical analysis of catastrophes which argues that, in excessively disastrous situations the claims of justice and ethics are overridden, suggesting thereby, that the issue of justice only arises before the catastrophe, not

after. There is in fact an ancient philosophical tradition to which this conclusion can be related. It alleges that the urgency and necessity characteristic of major disasters overrule and silence the demands of justice.

If it were true that in the aftermath of a catastrophe justice has to remain silent, or confined to the question of whether or not adequate measures of prevention were taken before, we think that from a moral point of view this silence and limit would properly be *catastrophic*. Before explaining why and in what sense it would be catastrophic, it is important to note that at least as far as social catastrophes are concerned – war, genocide and other crimes against humanity – this dismissal or reduction of the importance of justice has not been the case. Far from remaining silent, justice has become a central issue and actor in the aftermath of social disasters and the questions raised have not been limited to identifying the “guilty” parties – though that has certainly been one of the issues involved. Beyond international criminal courts of justice, the most important aspect of this development has been through institutional innovations – like truth commissions – and conceptual innovations – like restorative and transitional justice – a profound reflection on and transformation of the place and role of justice in reconstruction.<sup>5)</sup> Our own research on justice and catastrophe, in the context of which this conference is taking place, is deeply inspired by these reflections and innovations. We wish to extend beyond social catastrophes, to other kinds of calamities, to natural hazards, to technological accidents, ecological tragedies, public health crises, and also to personal catastrophes, the reflection on the relationship between justice and catastrophe. Furthermore, we think that, not only it is the case in the aftermath of a catastrophe numerous issues of justice arise, but also that catastrophic events are particularly revealing of the nature of justice.

The first difficulties that face any attempt to extend to other types of disasters than social catastrophes reflections on the place and importance of justice, concern the nature of catastrophes. First, what type of events constitutes a catastrophe? Second, in what way are social catastrophes both similar and different from natural disasters, industrial tragedies or ecological accidents? The first question is not simply an issue of vocabulary, but actually constitutes a fundamental conceptual problem. Is there any real significant difference that distinguishes catastrophes from other types of misfortunes? Major natural or personal disasters, like an earthquake or the death of a close and dear person, as well as social calamities like war or financial crises are often given as examples of catastrophe. Yet it is not clear that this everyday use of the term captures a well defined class of events, rather than it simply reflects the importance which the agents concerned attribute to the incident.

The term “catastrophe” we submit should be reserved to designate an occurrence which inaugurates a period where what constituted before the catastrophe stroke, reasonable expectations on the part of surviving victims, once the event has taken place do not anymore qualify as such. For example: tomorrow I am going to Tokyo; after my class I will go back home; Sunday friends are coming over; during lunch time I will go to the post office, and so on. These are normal ordinary expectations which we form<sup>6)</sup> without paying attention and that organize the

horizon of our action. They give continuity to our lives and thanks to them we can retain some stability while we are carried in the flow of time. An event like what happened in Tohoku on March 11, 2011 invalidates such expectation and fractures the temporal horizon which they define. A catastrophe happens not simply when one or a few reasonable expectations are falsified by future events, for this is regularly the case – John was not at the pub where I expected to meet him – but when it suddenly becomes impossible to distinguish clearly between what is a reasonable and what is not a reasonable expectation, and therefore impossible to make sound expectations about the future. Where will I sleep tomorrow? When will I be able to return to my house? What becomes of employees of factories which have been destroyed? A catastrophe is an event that tears apart the fabric of expectations by which we attempt to give stability to our life.

It is possible to revisit, from this point of view the traditional distinction between natural disasters and man-made catastrophe. This distinction is often criticized, and rightly so, because what transforms a natural hazard into a major disaster is a complex network of causes among which human actions always occupy an important place. If every catastrophe is to some extent man-made, then it seems that there are no such things as really natural disasters<sup>7)</sup> and the distinction, it seems, all but disappears. Nonetheless, the distinction aimed at capturing a difference that is real and important, even if it perhaps did not do such a good job at it. Many social catastrophes, like a genocide, life in a concentration camp, or slavery can only exist to the extent that they are maintained in existence by the continuous actions of numerous individuals. This is not the case of earthquakes or of industrial accidents. A nuclear meltdown may happen because some persons were careless or took the wrong decision, but once it has happened its continuing existence does not require any effort on the part of anyone. The accident has, so to speak, a 'life' of its own, which may be longer or shorter, but which last without our having to make it last. The 'life' of a concentration camp or of slavery cannot exist and persist without the continuous actions of their perpetrators. The fundamental distinction then is not between natural and man-made disasters, but between catastrophes that are events and those whose persistence requires continuous actions on the part of human beings. Given this distinction an isolated terrorist attack would be an event, a catastrophe of the first type, while a policy which continuously terrorizes a population is a catastrophe of the second type.<sup>8)</sup>

Simultaneously a catastrophe, at least a catastrophe of the first type, constitutes a new beginning, a singular point in time, from where different expectations are progressively formed and from which can arise new norms of what can be reasonably expected. We can now make sense of what was said earlier: that it would be properly *catastrophic* if there were no place for justice in the aftermath of a catastrophe. The silence of justice and its unavailability would further add to the devastation of the agents' network of expectations and to some extent transform a catastrophe of the first type into a catastrophe of the second type.<sup>9)</sup> No matter how much help victims may have received, if they have no legitimate claims against society and others in view of what has happened to them, it means that what has happened to them has created between them and others a gap that

cannot be crossed, that the incident of which they have been victim cannot be fitted in a shared fabric of time, or of course as is most often the case has simply reinforced an existing gap.

In view of the above characterization of catastrophes we can identify three ways in which they challenge our current theories of justice and raise fundamental questions. First, catastrophes for the most part constitute emergencies and the immediate response places on institutions important demands that need to be answered rapidly. In consequence they are paradigm examples of situations of choice under uncertainty, where decisions have to be taken without necessarily having sufficient knowledge of what their consequences will be. These are risky decisions in the exact sense of the word, but which nonetheless need to be taken, because failure to decide would have dire consequences. Apart from well known and abundantly studied technical difficulties concerning how to reach appropriate decisions in such situations of uncertainty, responses to emergencies also raise important moral questions. As I have argued in a different context, following Kant, necessity, being forced to decide, not being able to do otherwise does not extinguish all legitimate claims of those who have suffered from your decisions.<sup>10)</sup> Which duties do we have toward those who were harmed by decisions which we could not avoid taking? How can justice be defined in such situations of limited and uncertain knowledge?

Closely related to these issues is the fact that catastrophes create unheard of radically unexpected issues of justice. As illustrated by the Tohoku earthquake and tsunami, as well as the exclusion zone around the Fukushima nuclear station, a catastrophe can raise, for example, questions concerning property rights and financial responsibility which have no place in normal social situations and for which there often are no provisions in either our legal system or moral theories. For example, which obligations remain for the mortgage on a house which either does not exist anymore or that is located in a zone where no one will be allowed to enter for hundreds of years? Catastrophes place upon existing theories of justice demands that go beyond what they can foresee, issues that lie outside what they are designed to address.

In consequence catastrophes, second, bring us to question some of the basic concepts of our theories. For example, what is the role of the concept of reciprocity in issues of justice following a catastrophe? Most catastrophes, earthquakes, tornadoes or industrial accidents are events that directly affect only some members of society and which have quite limited indirect effects on most others. However reciprocity, in modern theories of social justice is usually construed as an assumption of symmetry between individuals according to which anyone can in principle occupy the "place" of anyone else. That is to say, the basis of reciprocity is viewed as the fact that there are no differences between individuals that cannot be accounted for by social positions, which in principle are open to all. Catastrophes often introduce between their victims and other members of society a radical asymmetry which falsifies that assumption. It is not always the case that the victims of a catastrophe, who have been coerced by events into the status of recipients of help, will in the future be able to become donors. Depending on the nature of the catastrophe, it is sometime quite certain that they will never be able to do so. Catastrophes thus question our conceptions of

justice. They challenge what we normally believe justice requires of agents for them to qualify or be entitled to certain rights and benefits.

Thirdly, especially large scale catastrophes because of the disruption of the social order which they cause bring us closer to the origin of justice. In normal times the existence of a (more or less) just social order is taken for granted. Of course this order is open to criticism and improvements, but we assume that basic rules of justice are enforced and that exist normal, that is to say just, means of transforming this order. As suggested above, a catastrophe challenges both the completeness and the relevance of the existing order of justice. It thrusts individuals into a situation where existing rules of justice provide insufficient guidance and it raises difficulties about which these rules may have little to say. Catastrophes therefore force us to re-invent justice, to create new rules of our living together.<sup>11)</sup> Catastrophes reenact to some extent the original position of justice, but without any veil of ignorance, and in conditions of radically limited knowledge. They can therefore provide important insights into the nature of justice.

Catastrophes therefore neither abrogate nor silence justice, to the opposite they constitute extraordinary situations which can be occasions to renew our conception of justice and to expand the domain of claims which can be received as legitimate. For the two organizers of this conference this research topic constitutes a natural continuation of their previous common researches. In *Against Injustice* (2009) we argued, following Amartya Sen, that injustices can be directly recognized in the absence of a theory of justice.<sup>12)</sup> Catastrophes precisely gives rise to novel claims that cannot be framed into existing theories of justice, but which nonetheless need to be addressed and evaluated. In consequence they both illustrate and challenge Sen's intuition by putting to the test our ability to recognize and to respond to radically new issues which could not be predicted beforehand. Unlike the question of risk which is about our (limited) ability to predict the future and to foresee what could happen and which, once the catastrophe has struck, gives rise to *retrospective* inquiries seeking to discover what went wrong, the question of justice and catastrophe as it is understood here is *prospective*, it is turned towards the future. It is concerned with what is now, after the catastrophe, once it has happened, and with how to respond with justice to a new situation that was unforeseeable.

## Notes

- 1) U. Beck, *Risk Society Towards a New Modernity* (London: Sage Publications, 1992) originally published as *Risikogesellschaft*, 1986.
- 2) See K.R. Foster, Bernstein D.E. & Huber P.W (eds.) *Phantom Risk Scientific Inference and the Law* (MIT Press, 1999, p. 447).
- 3) J-P. Dupuy, *Pour un catastrophisme éclairé*, (Paris : Seuil, 2002).
- 4) J-P. Dupuy, *petite métaphysique des tsunamis* (Paris : Seuil, 2005).
- 5) See for example, R. Shaw & Waldorf, L. (eds) *Localizing Transitional Justice* (Stanford University Press, 2010); K. Smith, *Genocide and the Europeans* (Cambridge University Press, 2010); E. Stover & Weinstein H. (eds.) *My Neighbor, My Enemy, Justice and Community in the Aftermath of Mass Atrocity*, (Cambridge

University Press, 2004).

- 6) In fact, we do not actually properly 'form' many of these expectations; we simply take for granted that the situation which they describe will be the case. For example, that when I stand up the ground will be solid under me.
- 7) Barring I suppose a direct hit of the planet by a medium size comet or asteroid.
- 8) Stanford International Human Rights and Conflict Resolution Clinic & Global Justice Clinic at NYU School of Law, *Living Under Drones*, September 2012 at <http://livingunderdrones.org>
- 9) On the idea that failure of justice after a catastrophic incident constitutes a second different catastrophe see : R. Solnit, *A Paradise Built in Hell* (London : Penguin Books, 2009) especially pp. 233-266.
- 10) P. Dumouchel, « Malheur moral, *jus in bello* et responsabilité morale » in *Raisons Politiques* 19 :161-171 (2005); see also E. Kant, *Métaphysique des mœurs première partie Doctrine du Droit* (trd. A. Philonenko) (Paris : Vrin, 1979), p. 109, « le droit de nécessité ».
- 11) Even if it often is to a very limited extent that catastrophes incite communities to change. See, D. Alexander, *Confronting Catastrophe* (Hertfordshire: Terra Publishing, 2000) concerning the inertia in response to catastrophes which is characteristic of most cultures.
- 12) R. Gotoh & Dumouchel, P. (eds.) *Against Injustice The New Economics of Amartya Sen* (Cambridge University Press, 2009).