

The Political Economy of Centers and Peripheries¹

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I. International Law and Political Economy

The visible interpenetration of global political and economic life has changed the context for international scholarly inquiry. The central questions today are not political questions – if by that we mean questions to be addressed by governments acting alone or negotiated through conventional diplomatic circuits. Nor, however, are they economic questions – if by that we mean questions to be answered by the operations of markets, guided by the hand of robust competition in the shadow of regulation. They are questions of political economy.

Responding to them has challenged the most robust analytic models in economics and political science to endogenize social, cultural and institutional factors. Economists are reaching out to understand the institutional, social, psychological and political arrangements which undergird global economic life. Scholars in sociology, political science and international relations have renewed their interest in the impact of international economic arrangements on local, national and global politics. Political economic questions demand large scale cross-disciplinary and cross-cultural pictures of the operations of our social, economic and political system in historical time. The cramped analytics and narrow empirical habits of much contemporary political science and comparative politics seem ever more remote from the political economic issues of the day. Technical analytics and careful correlation, however robust, are out. General theory is back in style.

International lawyers face a parallel demand: to understand the role of law in the political economy of the world. In the aftermath of the economic crisis, that means understanding the role of law in the distribution of economic growth and stagnation within and between countries and in the potential for a public hand, at whatever level, to influence that distribution, to link leading and lagging sectors and to respond to social demands for inclusion in a “system” which is, nationally and internationally, at once political, economic and cultural.

Unfortunately, as the international legal order has become more complex, the international legal academy has moved ever further from tackling such large scale questions. We have drifted rather toward technical and specific issues, while substituting an interest in the international dimensions of national law for a global perspective on the world’s legal, political and economic order. A generation ago, the public international lawyer – like the comparative lawyer -- was often a lonely figure in his law faculty. The study of law seemed inexorably linked to national political institutions and cultural traditions. The best international legal scholars were worldly and cosmopolitan, people for whom the details of anyone’s particular

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national law seemed too parochial for engagement. They may have been marginal, but their canvas was large, their optic global, their interdisciplinary appetites voracious.

In the intervening years, two developments have conspired to eliminate the global perspective cultivated by international lawyers for more than a century. First, everyone has become an internationalist. Every national regulatory or private law subject has been touched by international developments. In Europe, scholars in every legal field have become Europeanists, just as American law professors, from family law to intellectual property, have become expert in the impact of their regime on the world and of the world on their regime. National regulatory subjects which particularly seem to implicate global economic life have blossomed as fields of their own --- international banking and finance, international or comparative antitrust, international taxation and the like. Perhaps most strikingly, even American constitutional law, that most isolated of academic cargo cults, has become newly focused on the foreign affairs power, on compliance with international norms, on war powers and the regulation of war, and even on the comparative study of systems thought loosely analogous --- Canada, Australia, South Africa, Israel, or the United Kingdom. In the process, the study of international legal phenomena has become both more technical and more linked to the ups and downs of national legal projects of public order, regulation or private law enforcement. The issues are technical, the perspective pragmatic problem solving. Moreover, when everyone is an internationalist, it is hard to see the relevance of a specifically international legal field. International legal study has become a fragmented mirror image of these national developments, as if becoming an international lawyer meant becoming an internationalized American or European lawyer, rather than someone able to navigate a global legal order infiltrated by the transnational extensions of multiple national legal arrangements.

At the same time, the international law field has responded to the multiplication and dispersion of legal authorities with global reach by repeated splitting – public from private, political from economic, the truly international from the transnational effects of domestic law. The result has been ever more technically oriented subfields, each with its own favorite legal or institutional regime and preferred interdisciplinary interlocutors. The first and most significant disciplinary division --- public international law spawning “international economic law” --- bore witness to a moment in which politics and economics were comfortably separate.

Public international law focused on baseline rules about sources, procedures and substantive matters which had become the topic of multilateral rulemaking. The big ideas of the mid-twentieth century --- transnational law, policy science, functionalism --- framed a sociological inquiry into the operations of law in the world and opened the door to a disaggregated and legalized conception of the “global policy process.” The functional dispersion of “regulatory,” “administrative” and “dispute resolution” capacities spawned a wave of new scholarship seeking the international wherever two are gathered in its name. But these efforts also dulled our experience of the political, rendering it technical, distributed, normative – and delinked from the economic world of markets. The field remained close to the diplomatic worlds of international organizations and adjudication, its interdisciplinary reference points drawn from political science, international relations and diplomatic history, its mission bringing law to the world of interstate power. The field’s image of the world of power drifted ever further from the political choices, trade-offs and distributional consequences of legal decisions.

As public international law embraced the dispersion and fragmentation of international law and the legalization of political decisions, conflict and decision and responsibility were leeched out of our disciplinary images of global legal order. The field promised that law would become the vernacular of legitimacy as legitimacy became the currency of power --- and we got a proliferation of international tribunals focused on Africa, an intensification of public naming and shaming rearticulating the division between civilized and barbaric, and a defense of everything from bombing and regime change to life without parole in the language of human rights. At the same time, a steady focus on “crisis” and “transition” and “intervention” has made it ever more difficult to pose questions about law’s role in the quotidian structures of conflict and distribution embedded in the economic and cultural global order. Rather than people taking responsibility for decisions, we imagine a drifting gauze of judicial networks and diffuse stakeholder conversations among a disembodied “international community” about what it might be legitimate to do about this or that unfolding crisis.

Meanwhile, “international economic law” and a rejuvenated “private international law” split off to become fields of their own. Leaving general inquiry into public order behind, international economic law focused on supporting the integration of a global market through the national and international regimes regulating trade. The interdisciplinary reference point shifted from politics to economics, and specifically to the economics of trade. At the same time, “private international law” focused on the transnational effect of private rights and judgments and the procedures of commercial arbitration. The field assiduously avoided questions of international public policy, whether related to interstate conflict or trade, and shunned interdisciplinary reference to focus on civil procedure, conflicts and, more recently, narrowly technical strands of domestic “law and economics.” The mission was strengthening the sinews of private order, outside or beneath the domain of public order, whether national or international. These divergent legal “fields” were not only concerned with different legal material. Scholars and practitioners within them developed divergent sensibilities and academic styles. As they studied the world on parallel tracks, their worlds diverged, reinforcing the boundaries between public and private, political and economic, even as everyone came to profess, at least in the abstract, that they could not be clearly disentangled.³

An international law responsive to the political economy of the world will need to escape the grip of these divergent professional styles. We will need to cross-train. Public international lawyers will need to learn economics and will need to relearn politics as a quotidian matter of hard decisions rather than an intermittent matter of diffuse conversation. The governance challenge is not to bring political actors into law --- they are already there. Nor is it to establish – and then work to complete – functional equivalents for familiar national governmental institutions. Projects of functional equivalence – an international criminal law, an international administrative law, an international constitutional law, an international judiciary – are notoriously limited in their ability to grasp the global order whole, tending rather toward an

³ See e.g. David Kennedy, “The Disciplines of International Law and Policy,” 12 Leiden Journal of International Law 9 (1999); “New Approaches to Comparative Law: Comparativism and International Governance,” 2 Utah Law Review 545 (1997); “The International Style of Postwar Law and Policy,” 1 Utah Law Review 7 (1994); “The Methods and Politics of Comparative Law,” in Comparative Legal Studies: Traditions and Transitions, edited by Pierre Legrand and Roderick Munday, 345-433 (Cambridge University Press, 2003).

infinite ritual of “progressive development,” their completion an ever receding horizon, their form an abstraction far removed from the national legal and political realities they were established to imitate. Conceived as general global competences, they act in the world as narrow site-specific interventions. None are oriented to the challenge of establishing a public hand capable of taking decisions about the distribution of economic growth. Whether done locally, regionally, nationally or transnationally, this will require new ways of thinking, new modes of professional expertise, and new uses for old institutions.

At the same time, international economic lawyers will need to re-learn the significance of political choice and the dynamic social, political and economic impact of alternative institutional and regulatory arrangements. The economic target is no longer the efficient allocation of existing resources under constraint or the maximization of comparative advantage. The economic challenge is to understand and make the political, institutional and social choices to place the global economy on one rather than another growth trajectory. An institutional interface to accommodate divergent national conceptions of the regulatory background for “normal” market activity is not enough. At stake is less the global gains from trade than the distribution of those gains, the bargaining powers through which those distributions occur and the dynamic social and political consequences of the alternative distributions which come with different economic trajectories. Moreover, the global political-economic regime will need to make policy space for alternative national and local experiments and strategies designed to manage the internal distribution of growth between leading and lagging sectors or regions and improve the national capacity to capture gains from trade and structure its own insertion into the global economy.

The most dramatic shift in thinking necessary to bring the political economy of the world into focus is this: all economies, including the world economy, are developing economies. A fundamental neo-liberal insight was correct: the ideological fault line between the first and second world no longer defines global political struggle and the economic fault line between a “traditional” or “underdeveloped” third world and a “modern industrialized” first world no longer defines global economic relations. Not, however, because liberal democratic politics has become the global default or because the management of routine business cycles in deregulated markets has become the common national economic challenge. Quite the contrary. The diversity of political arrangements has increased. Stable and significant political regimes come in many varieties: more or less authoritarian, more or less religious, more or less decentralized, more and less technocratic, with different blends of public and private economic power. Moreover, the political elites of all nations have been instrumentalized by economic forces, if in different ways, and too often find themselves deadlocked when it comes to addressing issues “in the public interest.” It is not simply that the state has been “unbundled” or political power “networked” across boundaries. Politics has everywhere become a diminished shadow of economics, political institutions, classes and elites both grid-locked and instrumentalized by economic interests.

At the same time, the economic challenges characteristic of the “developing world” have become common across the industrialized world. All economies face strategic choices between different modes of insertion in the global economy, confront challenges of inequality and structural dualism, find their economies riven with market failures, information and public goods

problems for which they lack instruments to respond, and find themselves talking about new strategies for growth rather than the efficient management of a relatively stable business cycle. The crucial point is this: the difference between the first and third worlds has eroded because all nations now face political, social and economic challenges once typical of the third world.

My proposal is that international lawyers develop the analytic habits and perspectives necessary to understand the political economy of this new world. As a step in that direction, I suggest that we revitalize two intellectual traditions: the analysis of relations between “centers” and “peripheries” in socio-economic systems and legal realist analysis of the role of law in the background distribution of bargaining power within such systems. Taken together, these two traditions offer a window on the role of law in the distribution of power and economic opportunity in what otherwise might seem a jumble of diffuse institutional and regulatory structures framing the fluid and chaotic operations of political and economic life after globalization. Reflection on the role of law in the dynamic relationship between centers and peripheries will help to focus our attention on crucial questions of global political economy: the dynamics of inequality, the distributions of growth, the reproduction of hierarchies within and between leading and lagging sectors, regions, nations and cultures. These traditions offer tools for identifying the political arrangements, discourses, institutions and debates that structure or disrupt those dynamics and highlighting the role of expertise in rendering them normal, carrying them out – or enabling their contestation and transformation.

II. Center -Periphery Analytics and Legal Realism: Doorways to Political Economy.

The analysis of “center-periphery dynamics” has served as the portal to a variety of different political and intellectual projects over the last half century. A brief list would include:

- A project in development economics to foreground the potential for national (or international) economic management to staunch the effects of inter-regional or international dependency and the “development of underdevelopment” as we termed it then.
- A project in international politics or international relations to comprehend the dynamics of “neo-colonial” arrangements limiting the self-determination of newly and nominally “independent” nations.
- A political project in cultural psychology to understand the dynamics of assimilation, self-marginalization and rage in the periphery and complacency at the center of what we called the “world system.”
- A project of historical recovery to trace the impact of the colonial legacy in liberal internationalism and to de-center the European and North Atlantic traditions in my own discipline of international law

There were certainly others. “Center-periphery dynamics” opens the way for so many critical projects precisely because so many mainstream frameworks edit out both the periphery and the dynamics. Attention to center-periphery relations opens a window onto the structures of power and hierarchy in a larger system and onto the continuation of war in times of peace through the dynamics of domination and reciprocal influence among unequal actors in such a system.

Before turning to the relationship between political economy and international law, it may be helpful to review in quite general terms what it takes to think about “center-periphery

dynamics” in a field. Most obviously, you need to identify a “center” and a “periphery” – *of something*. There needs to be a field, a topography, a history, or a system *within which* something is the center and something else is the periphery. This field provides the coherence, holds the center and periphery in a relationship. Talking about center/periphery dynamics forces you to say something about how this larger system functions and coheres. Is it an iron cage? A chaotic accident? Something in between?

We are used to thinking of “economies” as systems whose dynamics we can divine and model. We often think of families this way, as social systems with dynamics specific to each family and common to families across the culture. We imagine our internal psychological world in these terms – a dynamic internal economy of desires, reasons, aspirations, pressures, prohibitions and so on.

We used to think this way about international politics and the “international legal order.” But do we still? Hasn’t legal pluralism and fragmentation and the dispersion of politics throughout social and institutional life undone the system? The point of legalizing international relations was precisely to replace a political *system* (say, “balance of power”) with a legal *order* among sovereigns. Fair enough. But getting there required reimagining both international politics and international law, breaking them down into functional pieces, placing them in an ongoing and diffuse process of argument and collective legitimation, dispersing them across myriad actors, stakeholders, participants in an international legal/political process, embracing a comprehensive legal pluralism. The political system was replaced by a legal order only at the expense of both systematicity and orderliness. Or, if you like, it has become auto-poetic system competition all the way down.⁴

This was accompanied by the rise of a technocratic and practical sensibility that has transformed rulership. Ruling is not about grasping the controlling levers of a system or exercising what Weber famously called the vocation of politics. Rulers now occupy functional roles, have delegated competences, deploy technical tools and instruments to address concrete problems. Rulers have become experts, spoken by their expertise. They operate in a *context*, but they need not attend to any larger *system*. Nor are conflict and distribution central to their work --- the point is rather problem solving, whether in small steps or bold gestures. Day by day, they inch toward completion of a model city, a Potempkin village of functional equivalents for ideal-typical national political arrangements. Out there, vaguely surrounding their activity, are various constitutional arrangements, institutional settlements, political expectations, economic forces, cultural fashions – their technocratic world drifts in a haze of system fragments.⁵

Attention to center-periphery dynamics in this fragmented fog is a way of reawakening the idea of system and focusing on conflict, domination, hierarchy. Indeed, the only systematic element we need to begin to make sense of global political economy is a kind of permanently

⁴ See: Andreas Fischer-Lescano and Gunther Teubner, “Regime-Collisions: the Vain Search for Legal Unity in the Fragmentation of Global Law,” 25 University of Michigan Journal of International Law 999 (2003-2004)

⁵ See: Andrew Lang, *World Trade Law After Neoliberalism: Reimagining the Global Economic Order*, (Oxford Press, 2011); David Kennedy, “The Mystery of Global Governance,” 34 Ohio Northern University Law Review 827-860 (2008); David Kennedy, *Challenging Expert Rule: The Politics of Global Governance*, 27 Sydney Journal of International Law 5-28 (2005).

floating center-periphery dynamic which will open the door to a re-imagination of the system *as a system*. Center/periphery analytics constitute a systemic field by assigning positions to things “within” it and tracing the interactions, conflicts and hierarchies among them. Seen this way, the “system” is less a fact in the world, held together by a constitution spelling out actors and structures, than an interpretation. A story about the way things bunch together in uneven patterns and affect one another over time. Our more conventional narratives are also, of course, stories. But they are stories which occlude attention to the dynamics of power and hierarchy. The point of developing a center-periphery narrative is to juxtapose an account that foregrounds those elements, challenging the conventional accounts that somehow metabolise them.

As elements in an interpretive story, the metaphor of “center” and “periphery” can refer to just about anything. Ideas, regions, nations, groups. The point is the relationship --- a relationship that can be spatial, temporal, or just a matter of mental emphasis. The periphery can be “far away” from the center, “more backward or historically prior” to the center, or simply less significant, less a matter of focus and attention than the center. All these are asymmetric relationships, hierarchies.

The center-periphery metaphor implies a model, an ideal-typical picture, of how centers and peripheries interact. We’ve generally used the metaphor to assert relationships at once of difference and hierarchy. Things that are up-to-date, nearby, are *also* more important or privileged or powerful. Centers have more agency. The structure favors them. Centers exercise powers, get stuff, have status that is not available to peripheries. Perhaps the center also does bad things to the periphery. Perhaps it keeps the periphery peripheral – or makes it ever *more* peripheral. That kind of thing, we think, is what centers do.

The danger here is that we’ll exaggerate the clarity and causal determinacy of our model – and our ability to translate generalities about “centers and peripheries” to whatever we saddle with these labels. Do all centers impoverish or oppress peripheries? Well, sometimes. But sometimes they lift them up. And sometimes their relative positions are a function of something else entirely – some other system or interest or force that keeps them in such a relationship. The trick here is to rehabilitate the idea of a system without the baggage of necessity.

Moreover, it is one thing to assert that there is a system and quite another to explain how it works. We will need to begin by spelling out with some specificity just what renders the one thing peripheral to the other – how are they differentiated in social, economic, cultural terms, and how are they then related to one another? On this basis, we can develop an account of how they influence one another, the social and material forces that generate a dynamic between them.

I have long found Gunnar Myrdal’s extremely loose analytic framework for thinking about economic and social dynamics useful here.⁶ If we start with economic dualism – the city and the countryside, the wealthy north and the poorer south, the inner city and the suburbs, the industrial and agricultural sectors – it is hard to know just what will happen. Certainly good things in one can wreck havoc on the other. A wealthy region can draw investment, people and

⁶ See for example, Gunnar Myrdal, *An Approach to the Asian Drama: Methodological and Theoretical Selections from Asian Drama: An Inquiry into the Poverty of Nations, “Appendix 2: The Mechanism of Underdevelopment and Development and a Sketch of an Elementary Theory of Planning for Development”* (Vintage Books, Random House, New York, 1970 at 207-304.)

energy toward it, making it ever more difficult for a poorer region to move ahead. But wealth in one region can also stimulate growth elsewhere. The point is that bad – or good – things in either the center or the periphery can have a positive or a negative effect on the other. It all depends. Depends on all kinds of things – from attitudes and institutions to politics. Myrdal orients us to identifying the linkages, understanding the dynamics of positive and negative effects, vicious and virtuous cycles, relatively stable equilibria and tipping points through which good or bad things in one have an effect in the other. His method is less an analytic than a list: a list of effects that can arise between a center and a periphery.

The dynamic dimension is crucial. Statically, it is easy to imagine that things are stable, in equilibrium. Or that the system moves as a whole – growth lifts the rich and the poor, perhaps unequally, but together. It turns out, however, that when you turn on the switch, all kinds of interactions between the center and the periphery disrupt the equilibrium and threaten the notion of the system moving as one. Inequalities and hierarchies reproduce themselves. Good intentions have unanticipated bad consequences, surprising feedback loops arise, secondary effects set in, and soon we're in a vicious spiral. Virtues spawn vices.

This way of thinking blunts the temptation to hunt for large-scale narratives of necessity either for the economy as a whole or for the relationship between its dual elements. The focus is on mid-level social formations. On the macro side, there is dualism – two sub-systems sufficiently differentiated from one another to operate somewhat independently. And there are linkages – sinews of interaction which can strengthen and weaken. These more micro-processes develop dynamics of their own.

This is where law comes in. Legal rules and institutions are sinews of connection and distribution among sub-systems. As a result, attention to law can clarify how centers and peripheries come to be differentiated as well as the micro-processes that operate to link them. The legal realist insight that legal entitlements constitute actors, allocate rents and establish patterns of bargaining power offers a powerful lever for grasping the mid-level relationships of differentiation and influence.⁷ Shifting our focus to the role of law, legal institutions and legal ideas in the distribution of entitlements, authority and bargaining vulnerabilities among actors within an economic or political system would mean less attention to “the legal order” and more to the role of law in the micro-processes of global political and economic life.

In this sense, center-periphery is not a strong model of *power* or *domination*, if by that we mean a way to identify agency, causation and effect. It is a model of relative *positions* in a field. The point is not that “the center” does this or that *to* the periphery. The actors here are people. The systemic element and the dynamics between center and periphery arise from what they do. Some system of norms, ideas and expectations, enforced in some way by violence or habit, by shame or charisma, permits actual people situated here to do this and there to do that. If we want to pin somebody, we should focus on whoever is keeping the arrangement of norms and expectations going. The *power* that drives the whole thing, if we can speak of power in that way, runs orthogonal to the field and is exercised as people do things in the shadow of those ideas, expectations and authorities. Power rests with the system of entitlements that links people in relationships of relative privilege and vulnerability, with the habits of society, with the ideas, aims and identities of the participants themselves, and with the objectives and enforcement

⁷ See Duncan Kennedy, “The Stakes of Law, or Hale and Foucault!” XV:4 Legal Studies Forum Cites 1991 at 327.

authority of the state. As people act in the shadow of these authorities and constraints, the complex reciprocal relations between centers and peripheries unfold.

The modest mid-level analytics of Myrdal is useful to develop a check-list of perverse links, paradoxical effects, vicious cycles and unhappy dynamics that can then unfold. The legal realist approach to background entitlements in the socio-legal dynamics between actors in an economy or a political order is a useful heuristic. In a legal system, the tradition teaches us, entitlements to rents are, broadly speaking, the glue that distributes. Finding the entitlement – and the expectations unleashed in the shadow of entitlement – identifies the hand of power. Just as finding the distributive hand of the state in the routine operations of private law adjudication highlights the presence of coercion in what may otherwise seem an equitable process of bargaining and exchange. Doctrinal and institutional arrangements encourage the accumulation of gains, reinforcing the asymmetry. Seen this way, tendentious diagnostics do not require an iron cage. Small rules and good intentions can generate entitlements that reproduce social inequalities as they radiate out through a system structured by center-periphery asymmetries.

Although Myrdal developed his method to describe linkages among “economies,” it is easy to see that such an approach may also help us understand asymmetric relations in the worlds we think of as “politics.” We are quite used to thinking of law – public as well as private – as a tool for distributing political authority. Understanding the role of entitlements or legal competences in structuring asymmetric political bargaining and exchange is but a small step. Indeed, such an approach would seem altogether compatible with the disaggregated and distributed understanding of law that has come to dominate the international law field. Myrdal’s mid-level analytics embraced the disorderly pluralism and fragmentation of social, economic and political life. That didn’t eliminate the potential for dualism, for linkages, for spill-overs, for the capture of rents and the reinforcement of bargaining power, for vicious – or virtuous – cycles. Far from it. It just makes them harder to find, the mechanics of their operation harder to isolate. The legal realist tradition gives us a place to look.

It is nevertheless surprising how little attention is given to the distributive impact of local, national and international legal rules in the global economy – and how much to the quixotic effort to explain how it all may one day add up to a coherent, constituted legal order. The explanation, I am convinced, lies in two unfortunate ideas. First, the idea that international lawyers *should not* focus on issues of political economy. Economics is for someone else, politics precisely what we hope to beat into the ploughshares of legal order. And second, the idea that questions of political economy can best be answered *either* by large scale narratives of historical necessity – the nature of capitalism, and so forth – *or* by ethnographies and micro-sociological study of the impact of “globalization” on very particular communities and transactions. The approach I propose differs from both, engaging international lawyers in questions of political economy and focusing on the middle range. The idea is to use the background world of law and legal expertise as a window for interpreting the foreground of world political economy. The hypothesis is that law offers an index of tools and stakes for interaction between centers and peripheries in the world political economic system.

This way of thinking might also help us understand asymmetric relationships among more symbolic “systems” of ideas, disciplinary sensibilities or national traditions. A focus on the ways in which institutional forms migrate between centers and peripheries could harness comparative legal inquiry to questions of political economy. Comparative law now oscillates

between reflection on macro questions of functional equivalence among legal cultures or patterns of influence and transplantation among broad legal traditions or “families,” on the one hand, and micro questions of alternative technical “solutions” to problems common to modern industrial economies found in different national regimes on the other.⁸ The goal of the inquiry is often either to expand the range of plausible national “solutions” or search for a “best practice” that might be generalized. In the wake of Myrdal and legal realism, comparative legal scholars might rather focus on the asymmetric interactions between the legal ideas and institutions of “legal cultures” in centers and peripheries, and on the role of legal similarities, differences and influences in reproducing or contesting relations between political and economic centers and peripheries.

To the extent our world is governed by the ideas and practices of experts, it may also be useful to explore the relative authority and reciprocal influences of ideas, disciplines or fields of expertise which are more or less dominant, prestigious or central. In the development field, for example, there is no question economics has been in the driver’s seat for more than fifty years compared to law or other social sciences. The dynamics of the relationship between economics and law in the expertise of development policy makers has some of the characteristics of a center and a periphery. In repeated waves, an increasingly robust economic model has come to dominate the field, exogenizing law, governance and much else, only to find itself chastened by an inability to translate its analytics successfully into policy. At such points, economics has reached out wildly to law, institutions and governance, endogenizing one after another aspect of social and political life. In both directions, development economics has overshot the mark – exogenizing law and governance in the name of robust analytics to the point of abstract sterility, only to endogenize law and institutions so indiscriminately that a general call for “good law,” “strong entitlements” and “human rights” stifles the ability to make choices and establish priorities.

Such patterns of interaction between disciplines are not only the unfolding of a logic, a pendulum between robust exogenizing models and context specific embrace of institutions. Relations between more or less dominant professional disciplines are also matters of reciprocal influence and competition. It would be interesting to know what norms or entitlements structure the relationship between economic common sense (a disciplinary “center”) and common sense about law, governance and institutions, which has always been more peripheral to development policy? Some of this may be a function of institutional authority, professional resources and prestige and the intellectual path dependence of policy elites. Some may be a matter of ideas. It may be, for example, that a shared commitment to the *instrumental* nature of law might distribute authority asymmetrically between economic ends and legal means. A commitment by both disciplines to avoid seeing legal arrangements as a terrain for political contestation and choice may have kept law peripheral even when economists embrace good governance, formal property entitlements or human rights as the very definition of “development.” Needless to say, these remain hypotheses. The suggestion is that the diverse knowledge practices of experts may also be understood as centers and peripheries in a field, their relations driven by professional ambitions, desires to affiliate and disaffiliate, dominate and

⁸ See, David Kennedy, “New Approaches to Comparative Law: Comparativism and International Governance,” 2 Utah Law Review, 545 (1997), and “The Politics and Methods of Comparative Law” in Comparative Legal Studies: Traditions and Transitions (Pierre Legrand and Roderick Munday eds., Cambridge University Press 2003 at 345.

submit, and structured by status hierarchies, institutional arrangements and habits of reciprocal persuasiveness or impenetrability that function in ways analogous to the role of entitlements shaping bargaining powers in the political and economic life.

It is not only that symbolic systems have centers and peripheries. The “centers” and “peripheries” in economic, political or legal systems may also be symbolic or allegorical. As such, they need to be inhabited or performed, and the effect of such a performance is not certain. Indeed, we might think of domination or hegemony as a performance or assertion of centrality -- or an ascription of peripherality -- which gives rise, in a significant audience, to the effect of centrality or peripherality. In law, we are used to assessing assertions of jurisdiction for their effectiveness. The extraterritorial effect of national jurisdiction is a function of the willingness to assert it and the ability to generate cooperation or acquiescence in its exercise. In international law, we are accustomed to speaking about the authority of norms as a matter of their persuasive effect, the legality of political activity as a function of the legitimacy with which it is viewed by the international community, its legitimacy a function, in turn, of its perceived legality. It is odd that this way of imagining legal powers and obligations has so rarely given rise to analyses of the relative persuasiveness or legitimacy of performances from divergent quarters. And yet it seems undeniable that legitimacy and persuasiveness can be both cause and effect of being “the center.” When the United States makes an assertion to its European allies that the power it wields in one or another disputed context is the exercise of right, what is at stake is not only the one-off legitimacy of the act or persuasiveness of the claim, but also the relative position of European and American authorities in a norm-drenched political system. When we say that international law is a “game of the middle powers,” we mean that European nations more readily find themselves occupying the symbolic center of the global legal order than of the global military or even economic system. Their normative assertions persuade, their action – or inaction – seems legitimate.

III. Center-Periphery Analytics as Critique

Why would this be interesting? For Myrdal the goal was improved policy – what can be done, where are the levers, how can we encourage upward trends and discourage downward spirals? He imagines a site where these things could be understood and encouraged or contravened – the planning agency, the public hand. And indeed, if you *are* a policy planner, this kind of skeptical, middle-level analytic can be particularly useful. No big story, just an orientation to the kinds of things that might play out among social and economic aggregates and suggestions for dynamics to help or hinder.

At the global level, we’ve largely lost faith in that kind of policy hand. This has led international law scholars to deploy center-periphery analytics less to focus policy proposals than to strengthen criticism. The impetus is less reform than diagnosis, to raise the specter of contestation in the warp and woof of the quotidian. Center-periphery analytics are useful in critical endeavors precisely because they reframe disciplines grown comfortable with constitutional stability and modest reform to focus on the reproduction of asymmetric power.

Criticism is a rhetorical business. The center and the periphery are positions that must be claimed, denied, asserted or attributed. It is them and us – and we, we are the periphery! (Or, anyway, it is we who affirm their marginality and represent their interests). The danger here is the animus to overstate. A center-periphery analytic seems most effective as criticism when the

center and periphery are hard-wired by history, when the center has all the stuff, exercises all the power, reproduces the hierarchy. The gold standard for criticism, in this sense, is the iron cage. Where the whole arrangement is loose and unstable, or the results just a lucky – or unlucky – coincidence, the critical sting seems less potent.

It might actually be an iron cage, of course. But maybe not. We know things can go poorly even when the periphery captures the spoils, inheriting the moral pleasures of marginality or relief from the burdens of rulership. Indeed, we might say the most interesting hierarchies, the most obdurate dominations, arise where power does not simply flow downhill from center to periphery. Nor do we have a persuasive model or compelling analytic reason for thinking centers will always oppress peripheries, or even for being sure who is the center, who the periphery. There are centers in the periphery, peripheries in the center. More importantly, perhaps, centers can *feel* peripheral, style themselves marginal, bemoan their distance from power. And in every family we can identify the peripheral drama queens around whose instability and weakness the entire family rotates. It no longer seems the “system” has a “logic” anymore than history marches to a dialectic. Much is coincidence. There are unanticipated disturbances, external shocks, puzzling reversals and creative re-inventions, all the time. And much is interpretation. To call out the perpetual drama queen victim on his centrality is at once criticism and intervention, whether the ostensible victim is an adolescent or a nation.

In criticism of an expert field or discipline, moreover, center-periphery analytics are also useful when they articulate a scandal: uncovering what a profession has been motivated to deny. It is not a particularly trenchant critique of colonialism to demonstrate that it spawned hierarchies between centers and peripheries – that was the whole point of the operation. It may have scandalized those who believed it was all done from noblesse oblige – but perhaps not, for they also knew who was central and who wasn't. If people think international law enshrines the principle of sovereign equality, it is no scandal to tell them that actually, states are unequal. They know that. That's what they're against. That's the point of separating the good, if imaginary, world of international law from the bad world of international politics. And for redoubling our efforts to bring about the progressive civilization of those politics by law. Nor is colonialism a scandal for international law so long as the discipline can say “obviously colonialism was terrible, but we got rid of it and are working to undo its legacy.” Similarly, it is no scandal for European law to point out that European states and regions are unequal. They know that. The whole point of extending the four economic freedoms – and of the “cohesion” and “structural” fund transfer payment systems – is to ensure that through integration economic growth is possible throughout the Union.

The hitch comes when an expert profession can be shown to be implicated in producing hierarchies it denies exist or claims to be subverting -- when the field is powerful in a way it does not admit and creates results for which it does not take responsibility. It *would* be a scandal, if the doctrine and history and practice of international law itself somehow reproduces the centrality of a center, perhaps precisely through application of the principle of sovereign equality. If international law turns out to be colonialism by another name – perhaps the name “self-determination” -- then we have scandal, for self-determination is just what international law felt it had to offer as a remedy.⁹ Similarly, if international law saw itself as preoccupied with

⁹ Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge Studies in International and Comparative Law) 2007

extending a universal normative order to ever more sovereign equals, while it was actually preoccupied with managing the dynamics between unequal civilizations or cultures.¹⁰ Center-periphery dynamics are illuminating as criticism when they reveal something about how power and its denial are sustained and reproduced through the normal operations of the field. When it becomes clear that sovereign equality is a cover story for empire, reinforcing the injustice and rendering it invisible. Or when the perversity of treating wildly divergent kleptocratic classes and powerless figureheads as equivalent “states” and “governments” can be laid at the door of the discipline which honors them in this way.

Similarly, for European law, it would be a scandal if it turned out a set of universal legal principles – like “free movement” or “social considerations” for example – mean different things to the center and the periphery and are applied across the EU legal order in ways favorable to the center. The devil here would be in the details – in the precise ways that universal principles take on meanings that contribute to dualism.¹¹ Or in the ways a universal program designed to equalize relations across the EU accentuated distance between the political and economic center and periphery. For example, if general policies adopted in the name of “democratization,” “rule of law,” or “economic development” aiming to bring the periphery into harmony with the center had the effect, at the periphery, of undermining parliamentary democracy, encouraging de-industrialization, strengthening the security state, and the like.¹² Or if the structural and cohesion funds effected a net transfer from a periphery to a center. It could then be said that legal arrangements and policies designed and defended in universal terms *in fact* contributed to the dynamics of economic dualism and political inequality. It would be scandalous if the most articulate theories of the European legal order developed pictures of the order’s constitution that obscured these dynamics; if the pinnacle of the field’s self-conception were committed to denying structures of domination in the name of universal principle and a deferred promise of equality. The villain here is not the “center” – it is the glue of entitlement that sets up an asymmetric and disempowering dynamic and the cloak of self-narration that covers it up. It often turns out that the glue and the cloak are located in the knowledge practices of professionals and experts who interpret and manage in the field: in the expertise and institutional arrangements, for example, of the international or European legal profession.

IV. International Law: from renewal to reinvention

If we step back for a moment, we could say that international law promises to play three quite distinct functions in international society. Doubts about each have become common. Many look to international law for the expression of universal values, most commonly in the human rights canon. But we now know that people disagree about the most fundamental things, that values are not universal, and that even human rights can as often be part of the problem as of the solution. The assertion of power as right is every bit as common as – indeed seems inseparable from --- the assertion of rights against power. As a result, it is increasingly clear that the human rights project was a late twentieth century endeavor that is now, in some sense, over.

¹⁰ See, Antony Anghie, *infra*

¹¹ See, Damjan Kukovec, “Whose Social Europe?” SSRN April 16, 2010.

¹² See, Ermal Frasheri, “Transformation and Social Change: Legal Reform in the Modernization Process,” Nellco Legal Scholarship Repository, 9-5-2008

At the same time, international law promises to identify the legitimate actors and their powers – most formally by enumerating the “rights and duties of states.” This is partly sociological – simply registering the powerful and their capacities. And of course it is also normative – offering a measure of the legitimate uses and misuses of power which may be useful in resolving disputes about who can do what. But international law no longer catalogs the sites of power, nor delimits their authority. Indeed, the field’s universalist descriptions of actors and structures distort our vision of the way power flows through the capillaries and commanding heights of global society. Nor is the discipline’s fantasy-land of institutions and regimes – an international community of stakeholders, a global society of rights bearing individuals, a universal international criminal law, a transparent international administrative law -- a plausible program of action. At best these are the programmatic fashions of a quite specific and narrow transnational elite. As a result, the field is neither describing the world as it is nor imagining a world that could be.

Perhaps most importantly, international law promises a catalog of policy tools and institutional arrangements with which to confront global problems. We have long said that like the European Union, only more so, the international order governs in the key of law rather than that of budgets or a monopoly of force. Yet the tools for addressing the most severe global challenges are not to be found in international law. It would be more accurate to identify the cramped channels of public order entrenched by our legal system as among the root causes of the difficulties we face.

The field’s most coveted projects and proposals seem wildly inadequate to the tasks they purport to address. The International Criminal Court could triple its budget and jurisdiction, the United Nations could redouble its peacekeeping efforts, the international human rights community could perfect its machinery of reporting and shaming – and it would not prevent the outbreak of genocide, the collapse or abuse of state authority. Every American and European corporation could adopt standards of corporate responsibility, every first world consumer could be on the lookout for products which are fairly traded and sustainably produced, and it would not stop the human and environmental ravages of an unsustainable global economic order. America could sign the Kyoto Protocol, could agree with China and India and the Europeans on various measures left on the table at Copenhagen, and it would not be enough to prevent global warming. The United Nations’ Millenium Development Goals could be implemented and it would not heal the rupture between leading and lagging sectors, cultures, classes. The Security Council could be reformed to reflect the great powers of the 21st, rather than the twentieth century, but it would be scarcely more effective as a guarantor of international peace and security. Global administrative action could be everywhere transparent and accountable without rendering it politically responsible.

Each of these efforts might be salutary. Some may be terribly important. At best, however, the implementation of these schemes would kick things down the road, manage expectations, render the problems to which they are purportedly being addressed sustainable and thereby reaffirm the current distribution of powers and the centrality of the center. As a result, completing the program of international law would not renew the political economy of the world – anymore than finally “completing” the European Union would resolve the dynamics of dualism which have rocked the project from Brussels and Frankfurt on down. The project of continuing the project is part of how those dynamics are sustained. In Europe, a permanent transition

toward an ever-receding goal of a “political” union sustains the technocratic separation of economic and political imperatives – and reinforces the divide between leading and lagging regions. Globally, the permanent transition toward a universal legal order of equal sovereigns has sustained one after another project of hegemony.

We will need to push past these disciplinary self-conceptions --- catalog of values, map of actors and powers, tools for policy --- if we are to understand the significance of international law in global political economy or focus on international law’s role in constituting centers and peripheries, channeling their interaction and reproducing the asymmetries between them. To take this route, the debris of the traditional Westphalian narrative and its twentieth century modernizations will need to be hauled away. We will need to remember, for example, that the classic international legal ambition to bring political actors into law is misconceived. They are already there – law is now the language in which governance – even war -- is written and performed. But the result is hardly a legal “order.” Global governance will remain extremely disorderly, plural and uncertain. International legality is less a matter of either validity or persuasion than it is a form of assertion and performance.

We will need to see international law as a terrain for political engagement rather than as a normative or technical substitute for political choice. And politics is no more dominated by statesmen and politicians than the economy is directed by “investors” and “multinationals” pulling the strings from some Davos inspired aerie. Both are far more diffuse and dynamic systems, held together by belief and assertion. The world’s elites have long learned to inhabit a fluid policy process in which they as often make as follow the law. We must now draw the consequences of that knowledge, remembering that things we don’t like are also legal institutions and structures of governance. As we abandon the comforting idea that “international environmental law” concerns only environmental protection and remember that law also comforts those who would cut down the forest, we can explore the role of law and policy in the reproduction of poverty or the continuity of war in times of peace. One need only look out at the world to see that law often continues the politics of war and institutionalizes as universal the ideology of a particular time and place. We can make vivid what it means to say that compliance with international law legitimates, whether on the battlefield or off. It means, of course, that grinding poverty, terrible inequality, environmental destruction, and the premeditated destruction and death of war have become acceptable.

And we must recognize that although the discipline’s insistence that international law has domesticated the pre-Westphalian world of empire, religious strife and war -- by rendering religious confession and ideological conviction matters of domestic concern and harnessing violence to the enforcement of right--- is comforting, it is not accurate. Global governance remains as much a matter of religion, ideology and war, as of persuasive interaction among the elites we call the “international community” about what is legitimate. In fact, the informal and clandestine, the sacred, the violent and the spectacular are part of how the world is governed. We will want to resist the disciplinary urge to push them off-screen, either back in history or below the waterline of sovereignty.

We can see the significance of ideas to global political economy both in the centrality of law – the proliferation of legal institutions, rules and modes of argument across what remains a dispersed and ad hoc terrain for the exercise of public authority --- and in the role played by expertise in global order -- the striking transnational effects of shared expert vernaculars for

thinking about everything from economic life to war. After all, if for a generation everyone thinks an economy is a national input/output system to be managed, and then suddenly they all become convinced that an economy is a global market for the allocation of resources to their most productive use through the efficiency of exchange in the shadow of a price system, lots has changed. That is also governance. Indeed, to the extent expertise has become the global currency of rulership, understanding the political economy of the policy expertise system has become a crucial part of understanding how we are governed. A better map of the intellectual and institutional system of rulership-by-expertise may open up new opportunities for innovative policy and political contestation.

We rarely have a good picture of the blind spots and biases of expertise or the ways in which they construct relations between centers and peripheries. We too often focus on the authority of agents we can see to act within structures we understand. We have paid too little attention to the myriad ways power flows through common sense, affiliation, or the experience of victimization, pride and shame. All these things move like a virus or a fad, but our epidemiology is weak, our sociology of status, convention and emulation at the global level rudimentary. Indeed, to trace the contours of global governance is to follow the hand of knowledge in arrangements of power. Doing so would help to reframe international law less as a box of tools, a catalog of actors, a catalog of universal values than as the articulation of a shared world.

Although we imagine international law and global governance arriving in a world already made, the world to be governed must also be identified and thereby made in the minds and practices of its constituents. Forty years ago it was common to say that the most significant product of the space race was a distant photo of planet earth – and there was something profound in the observation. Such things constitute our world before we begin to identify actors or structures, assert rulership or solve problems. Of course, such ideas arise from somewhere. Without a space program, perhaps without a Cold War, without Life magazine, we might not have had those photos at that moment in that way, and the idea may have arisen differently, at a different moment, or have seemed less compelling. The disciplinary practices of experts are part of the technology through which the world to be governed --- a world of centers and peripheries --- is assembled.

The role of knowledge in global power is also easy to see because global governance is so often an assertion, an argument, a program of action or a call to resistance. Indeed, when it comes to global governance, saying it is so can make it so. Or, perhaps better, saying it is so is often all there is to it. This is always true of public authority – it comes into being and functions as an assertion. In other contexts we have gotten used to this. We forget, other than in moments of revolutionary turmoil, that the sovereign is just a person who says he is King. The institutionalization of public power makes authority seem “real,” the distinction between “public” and “private” natural.

In global governance, the saying and performing are right on the surface. Global governance must be *claimed*, through an assertion that this or that military deployment or human rights denunciation is the act of the global public hand --- the “international community” in action. The rhetorical dimension of global power is equally significant for those who would resist. Saying it is *not* so is rarely enough to unravel the world’s structure. Nevertheless, identifying the global hand in local unpleasantness is also an assertion – and an allegation of

responsibility. Whether one aspires to bring global governance into being or fears its power, one must name it, assert it, and identify it, before it becomes something to build or destroy. Indeed, we might say that what we mean by “global governance” is simply the sum of what those who wish to manage and to resist globally have jointly drawn to our attention as governance. The product, in other words, of a rhetorical battle between a center and a periphery.

This may explain why international law is so often performed as an argument about international law itself – its limits and its potential. Modest differences between policy proposals are routinely debated as if the very possibility of legality were at stake. This tendency is common in discussions about global governance. The “international community” discusses intervention – whether in Libya or Syria or Sudan – as focused on its own credibility and authority as on the local consequences of one or another course of action. At stake in debates about economic stimulus or austerity plans is not only or even primarily who gets what, but rather the “credibility” and “stability” of the regime itself – the Euro, the EU, the market. As we have learned, this kind of association can be self-fulfilling. If everyone thinks the stability of the Euro is at stake – well, the stability of the Euro *is* at stake. In this sense, the constitution of a world is ongoing, a technical and institutional practice as well as a communicative and performative work of the imagination.

V. International Law, Centers and Peripheries

Understanding the world-making effects of the knowledge practices of rulership is an enormous program for thought. It would be enhanced were we also to situate international law in the larger global political and economic system, interpreting its role as the glue linking leading and lagging ideas, regions, or economic sectors, or as the cloak hiding asymmetric dynamics of power in political economy of the world. Conventionally, the field articulates a universal and homogenous world from which it stands somewhat apart. There are inequalities, of course, but the world it sees – and it would make – is a far more equal one. To reframe the world international law conjures into being as a system of centers and peripheries would already begin to articulate a quite different place into being.

To re-interpret international law as the language constituting center and periphery would certainly transform the discipline’s self-image. As it sees itself, international law is the handmaiden, the gentle civilizer, the voice crying out in the wilderness, articulating valid norms, naming and shaming from the sidelines. Its’ kingdom lies in the future, present now only as a promise. International lawyers can find it absurd to be treated as “the center” of anything. Don’t we see how hard they are struggling just to stay in the game at all? Why stigmatize *them*, for crying out loud, when there are so many bigger fish to fry.

To critique the rulership of international law, you must *establish* it. Implicate this field in this order – constituting actors, channeling interactions, validating or emboldening reciprocal claims. Nail down the role of international legal doctrine, legal professionals, legal institutions and structures in governance. Who navigates by their maps? For whom is international law the language of social or political enforcement? What bureaucracies have been spawned in their image? Who is thrust aside, who canonized as the apex of the international community? There has always been something paradoxical here – the discipline also insists (if in a different voice) that its norms are effective, enforced, important. The odd thing is that establishing the rulership of international law can nevertheless be a scandal.

The critical point is that the field governs differently – and for different interests – than it imagines. International law feels it governs from the *periphery* – that states make the norms and enforce them. That power lies with politics. Those working in a more critical vein have proposed something different – first, that international law is a center which exercises power in the old fashioned hierarchical sense: human rights as governance, governance feminism, international law forged in and facilitating the colonial encounter.¹³ Second, that international law has been the stage on which projects of centrality and marginality have been staged. We can trace this theater, for example, in the efforts of intellectuals from the semi-periphery to build international law in the center as they simultaneously pursued political projects of the periphery in what they took to be the center of the world’s cultural, political and economic order.¹⁴ We can see international law framing a hub and spoke world between the developed North Atlantic industrial democracies and everyone else by consigning the second to the law of “co-existence” or the cold winds of free trade, while embracing the latter as an advanced space for regional integration and industrial policy, for the law of “co-operation” and the dense fabric of collaboration characteristic of relations among liberal democracies.¹⁵ Taken together, we could say that international law offers a normative vocabulary of entitlements that constitutes and structures relations among actors, interests, ideas in ways which leave some at the periphery and honors others as central. It is the glue.

This is also what we mean when we stress that international law sees itself as an *artificial* construct atop the *real* world of politics among nation-states, or what we mean when we say that international law exiled religion to the pre-Westphalian past, pushing confession below the waterline of sovereignty, or exiled women into the private, the local, the cultural, or placed private commercial activity outside the domain of international politics and governance. We mean that it generates narratives and institutions and expectations which shift the powers and status of people inhabiting these identities to the periphery. And all the while international law spoke the language of universals, embraced and arrogated to itself the universal ethics of human rights, the criminal power to tell right from wrong, the savvy political calculation by which necessity and proportionality are measured out in war. In doing so, it also became the cloak.

We could do more to understand how this generates asymmetries – between religious and secular, or between the reality of politics and the artificialities of law. Does this have some bearing on the way relations between “real” states like Israel and artificial “entities” like the Palestinian National Authority become asymmetric? As we find asymmetrical relations between secular ethics and religious confession, or the diplomatic world of international relations and the economic world of private markets, it is not quite right to say that international law is “center” to these peripheries.¹⁶ International law is part of the field, the terrain, the language, the structure, through which these asymmetries arise and are reinforced. It provides the normative fabric, the marker of status, the purveyor of *entitlement* through which the routine

¹³ See Antony Anghie, *infra*

¹⁴ See, Arnulf Becker, *Mestizo International Law: A Global Intellectual History, 1850-1950*, (Forthcoming, Cambridge University Press, 2012)

¹⁵ See, for example, Wolfgang Friedmann, *The Changing Structure of International Law*, (Columbia University Press, New York 1964, Anne Marie Slaughter, “A Liberal Theory of International Law” in *Proceedings of the 94th Annual Meeting of the American Society of International Law* 2000. David Kennedy, “Turning to Market Democracy: A Tale of Two Architectures” 32 *Harvard International Law Journal* 373 (1992)

¹⁶ See Karen Engle, “Views from the Margins” 1994 *Utah Law Review* 105.

operations of people pursuing politics and economics, ethics and religion, generate asymmetry and hierarchy. The point is less that international law exercises power as the center than that it makes itself available as a lexicon of entitlement in a field characterized by dynamic asymmetry.

The potential of center-periphery analytics for international legal analysis will only be realized if we can relax the iron-cage top/down pre-Foucaultian model of power we associate with center-periphery dynamics and learn from international law's own insistence that the world's legal and political order are far more mixed up and fluid than that. Twentieth century international law was on to something when it refigured world order as an open and shifting process whose "governance" was more a functional reinterpretation of things dispersed across the institutional and political life of the planet than the work of agents empowered by structures. Even in its own imaginary, international law no longer sits "on top," governing the relations between states. It prides itself on having become diffused through the global political process as a vernacular of legitimacy, as a horizontal theater of argument, performance, claims and assertions. Antiformalism, anti-foundationalism, and embrace of the dispersed theatrics of global power has been a hard won in our field. We needn't turn back – but we will need to develop a center-periphery analytics every bit as anti-formal, anti-foundational and attuned to the dispersed powers of social performance and expectation.

How, for example, does the commercial arbitration regime reinforce the centrality of the north, the private, the economic vis a vis a periphery of the south, the public, the political? It is hard to say. The regime looks evenly balanced. States – like companies – sign up. The regime itself could hardly be more dispersed or ad hoc. The developed world is learning that its own regulatory regimes may yet come to be as vulnerable to attack by trading partners as those of the emerging markets whose policy space was meant to be constrained by the discipline of bilateral investment treaties. And yet, somehow commercial arbitration has metastasized to become an adjudicator of last resort for reviewing the legislative, administrative and even judicial decisions of the developing world. Just how do commercial and financial imbalances translate into political restraint? Could we actually imagine third world investors using arbitration to contest – and successfully stay – the implementation of a US Supreme Court decision as recently happened to Ecuador in the ongoing Chevron case? If not, what are the legal, professional, ideological, commercial or political sinews that reproduce this imbalance? As commercial arbitration, in Garth and Dezalay's compelling phrase, goes about "dealing in virtue," how are hierarchies left in its wake?¹⁷ The answer will be fine-grain, even if the outcomes are stark.

Center-periphery analytics might also help us understand the *internal* economy of a profession for which rulership is both scandal and dream. There is asymmetry and dualism within the self on the terrain where the field's will to power and to marginality are managed, a center and a periphery in phases of the international legal professional's sensibility and self-image. For example, we know that international lawyers working in the humanitarian field oscillate between situational pragmatism and a more ethically self-confident universalism. Perhaps they are pragmatic in the field and ethically self-confident in headquarters, savvy over lunch and sanctimonious in their pitch to donors. Both are part of their professional style. Relations between them are fluid and differ over time and in different institutional settings.

¹⁷ Bryant Garth and Yves Dezalay, *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order* (University of Chicago Press, 1996); See also, Amr Shalakany, *Arbitration and the Third World: Bias under the Scepter of Neo-Liberalism*, 41 *Harvard International Law Journal* 419 (2000)

It is difficult to understand how these postures fit together in a professional style. Often, however, we find asymmetry, pragmatism the central professional sensibility at the International Committee of the Red Cross, ethical self-confidence at the center for human rights organizations addressing the same battlefield activity. Relations between these institutions, between the doctrines and priorities embedded in each, in part may be a function of the dynamic between these different professional sensibilities. A further avenue for research: in the shadow of what psycho-social or professional rules do these sensibilities relate to one another? Do these asymmetries arise?

Such an analysis may not be politically satisfying. If you are occupying Wall Street or, for that matter, Tahir Square, the center-periphery dynamics in international law seem an astonishingly elite preoccupation. What about *real politics!* As an Egyptian friend of mine put it -- “excuse me, but we have a revolution going on.” And revolutions call out for bolder center-periphery narratives. Whom ought we to favor and where ought we to oppose? The difficulty is that even revolutionaries sometimes lack a strong theory – or even a good sociological picture – of how things hold together. It can be tempting to turn back from a twentieth century embrace of power as performance and argument and identity to the firmer stuff of interests, structures, classes. Real centers and real peripheries.

This kind of political demand makes it hard to remember what we know about the international legal and political order. The idea that the world is *constituted* has real political appeal, even if we know, at least in my country, that the constitution is a very poor map of politics and power relations in Washington, let alone the broader society. And that “constitutional reform” has a particularly hard time addressing the complex interconnections among economic and political power. It has been painful to learn that stories about the UN charter, the WTO, the human rights corpus as world “constitutions” were fairy tales. Just as it is hard to learn that center-periphery relations may be a matter of interpretation. Every international lawyer has been tempted to opine on what international law “requires” or “forbids” – when we know the matter is far more complex. Like the idea that international legal science really could tell right from wrong, center-periphery stories in politics also harbor a desire not to give up on the Santa Claus of agency, structure and systemic necessity.

VI. Perspective: the world look different from outside.

In matters of interpretation, perspective matters. Talking about centers and peripheries sounds different at the periphery. Stories about difference and domination which make powerful politics in the center can also offend -- identifying the excluded subjects, the unrepresented stakeholders, pinning victims to their subjugation. How does it sound at the periphery to hear it said that sovereignty is just a “bundle of rights,” or, in the words of the 1949 ICJ, “an institution, an international social function of a psychological character.”¹⁸ Thanks, but we just got here – we’ll stick with sovereignty as exclusive political power within a territory. When the EU tells “new members” how privileged they are to have joined a club of equals, it speaks to their hopes, their dignity. Why should they want to hear from us that they are still “the periphery?” A lot depends on how angry the audience is to begin with. Those of us who talked about center-periphery relations in the Euro-zone seemed like spoiled sports as the 1992 “internal market” program took off. Less so now.

¹⁸ Cite Corfu Channel / Alvarez opinion

I routinely ask my students how they see their generation's project. Is 2012, I ask, like 1648 or 1919 when it seemed everything needed to be rethought? Or is it like 1945, when the international order seemed to need reforming – but not remaking. Tweak the League Covenant and you have the UN. Replace European empire with self-determination under American hegemony and continue. Or is this like 1989, when the demand was not reform but implementation – finally, with communism defeated we could implement the solutions put forward a generation before.

As we might expect, many go for the middle position. Reform, add Brazil to the Security Council, sort out the democracy deficit and currency travails in Europe with another round of treaty drafting. But an ever increasing number say 2012 is their 1648. As we talk it through, it often seems the division reflects, as we say, “where the students are coming from.” Not necessarily their nationality – but their sensibility. In this sense, the political appetite for criticism has a center-periphery dynamic of its own. Those who hope to inherit the commanding heights split between 1945 and 1989. Those who feel their interests, politics, national projects, have been stymied by forces beyond their control opt for 1648. The conviction that the preoccupations of the international legal field pale before the injustice of the world is not a recipe for reform or renewal. It is a recipe for disenchantment, for a withdrawal of confidence, affiliation, interest, from the machinery we know as “governance.”

Indeed, the plausibility of center-periphery stories depends on where you stand. At the center, the system seems far too squishy for there to be a center-periphery dynamic. At the periphery, the dynamic seems far too obvious for the center to be squishy. Discussion between these positions is unlikely to be productive – indeed, the difference between them is likely to be exacerbated by dialog, for each is denying what the other finds most true. Moreover, we can see that both sides err. Just because the order is plastic, the center squishy, doesn't mean there is no center and no periphery. But just because there is does not mean there's an iron cage – or an iron will. It can be unfair and hierarchical and still not be a conspiracy, diabolically difficult to change and still not be necessity.

For the last few years, I have been participating in discussions at Davos on global policy, risks and governance. Just after the crisis, much seemed up for grabs – the World Economic Forum launched a “Global Redesign Initiative” to support what they called a “fundamental reboot” of the “global architecture.” They were clear, however, this was not 1945 – let alone 1648. No large institutional reorganization seemed possible – or wise. What was necessary was a new spirit at all levels, and a new willingness to use the tools at hand to respond to urgent issues in new configurations. From this “center,” global governance was something already constituted global elites could and should undertake – if only they had the will. Will was hard to generate, however, with governance so fragmented, so disparate, so powerless in any particular site.

It looks more like 1648 if you feel the world is *already* governed but you are not part of it. The global economic forces that shake our economy, our society or our family are facilitated by *some* institutional or legal arrangements. From this perspective, economic instability or poverty are not problems which *escape* governance. They are the byproducts – or even the intended consequences – of our current governance arrangements. It is easy to conclude the people at Davos must want it to turn out this way and have gotten what they want. There is

little direct dialog between these positions. At Davos there were demonstrators and lots of barbed wire – one friend came back through security to the conference hall proud to have collected a couple of rubber bullets. But these perspectives do interact.

In recent years, a new vernacular has arisen in governance circles to discuss the interaction between these perspectives. We have come to think of the relationship between a center that realizes it is too squishy to do more than play for time and a periphery outside demanding more, as a matter of social-political risk management and “sustainability,” a term detached from its origins in environmental science. The basic question: how much time do we have? How long can we actually kick the can down the road, trying to get things right, before the problem swamps us through the machinery of political or social unrest? Global fiscal imbalances are “unsustainable,” in this sense, for example, if they will lead to political rupture before we can turn them around. Although most social institutions are all too sustainable – poverty, inequality, ill health – relations between the center and the periphery often do seem to implicate the system’s own sustainability.

We might think about “sustainability” analysis as a governance vernacular for understanding center-periphery dynamics. It is not demonstrations facing off against bullets, rubber or otherwise. Everyone is also calculating, interpreting, imagining their situation relative to the other and communicating. It is not clear, ultimately, who is “the center.” Perhaps it will turn out to be the street. We do know that at the center, knowing how little you control, it is easy to overestimate the potential for everything to slip out of hand. Moreover, the willingness of the periphery to stand it is itself a moving target, shifting, in part, as belief in the plausibility of the narratives of the center waxes and wanes.

This kind of symbolic system seems ripe for analysis in Myrdalian terms. There is a loose dualism – those outside, those inside; those near and far from some “center.” Their relative positions are themselves part of what is at stake in their interactions, each by turn claiming the modesty of the periphery and authority of the center. The interaction is structured. The positions are constituted by “entitlements” which rest in law and social expectation. There are avenues of reciprocal influence, tendencies to spiral, whether viciously or virtuously.

I have looked at a number of international doctrinal worlds over the years – most recently the complex duet between humanitarians and military strategists over the legitimacy of war.¹⁹ They all have something of this structure. A loose vernacular between an “outside” and “inside” that seems amenable to interpretation in dualist terms, avenues of interaction, patterns of persuasion, all nested in a set of what we might think of as entitlements. The difficulty is to figure out how it will work when you turn it on. Will human rights and humanitarian law civilize the military or be co-opted by them? Can we say anything about how the relative persuasiveness of their positions will develop over time. Increasingly, I believe that we can.

VII. Remaking the political economy of the world

¹⁹ David Kennedy, “Lawfare and Warfare,” in *Cambridge Companion to International Law*, edited by James Crawford and Martti Koskenniemi, Cambridge, 2012; and David Kennedy, *Of War and Law*, Princeton University Press, 2006

The intellectual foundations for the return of political economy have already been laid. Heterogenous traditions in social theory, economic and legal scholarship have opened a window on the politics embedded in the basic operations of economic life, the nature of political economy in a world of global markets and local rules, and the mechanisms by which inequalities between leading and lagging sectors, nations and regions are reproduced. Heterogenous traditions in law have uncovered the institutional roots of the economy in local and private rules with transnational effect, in informal networks and professional practice, and in the dispersed regulatory and administrative regimes of many nations. We have begun to understand private law – or corporate governance -- as global governance.²⁰ Think of the network of obligations which tied our global financial system in knots – collateralized debt obligations, credit default swaps and securitization so complex and markets so rapid no regulatory authority can unravel them. Or corporate governance so fluid and inscrutable one rarely knows who calls the shots. All these stand in a long line of private arrangements – including slavery – made in one place that restrict public policy alternatives elsewhere.

We know, moreover, that the elements of economic life – capital, labor, credit, money, liquidity – are creatures of law. The same can be said for the elements of political life – power and right. Law not only *regulates* these things, it creates them. The history of political and economic life is therefore also a history of institutions and laws. Economies configured differently will operate differently, just as different allocations of legal capacities and authority will generate divergent polities. We may discover choices among different political and economic trajectories – among alternative, even equally efficient, modes of economic life with diverging patterns of inequality, or alternative forms of politics offering more or less space for alternatives, for experimentation, for contestation and engagement. The presence of law in the foundations of economic and political life allows us to map the legal forms through which politics and economics are constructed and understand how they have come to be both different and related. This opens the door to understanding the dynamics of dualism between our political and economic lives.

For more than a generation, two mutually supportive grand projects have dominated the arrangement of global economic and political life. On the one hand, the disentanglement of economics from politics, the dis-embedding of economic life from political contestation, and on the other, the increasingly technical integration or consolidation of both economics and politics, whether within or across national boundaries. Both projects reflected the broad ideological commitments of the policy class. They were carried out as legal and institutional undertakings, supported by the knowledge practices of dedicated professionals.

The separation of economic activity from political contestation has its roots in the effort to pursue economics and politics on different scales. The economy has become global while political order remains lashed to local and territorial government structures. The result is a rupture between a local and national politics on the one hand, and a global economy and society on the other. It is the relative mobility of economics and territorial rigidity of politics that has

²⁰ Dan Danielsen, "How Corporations Govern: Taking Corporate Power Seriously in Transnational Regulation and Governance," 42 *Harvard International Law Journal* 411 (2005); Dan Danielsen, "Local Rules in a Global Economy: An Economic Policy Perspective," 1 *Transnational Legal Theory* 49 (2010)

rendered each unstable. Political and economic leadership have drifted apart. Political leadership has everywhere become a periphery to economic management. A spiral has begun --- as the winners lock in an ever weaker territorial politics, an ever more dominant economic order.

The machinery for a territorial politics and a de-territorialized economics is technical and legal. Economic activity can only happen on a global scale if the institutional arrangements are in place to support it, just as political activity can only be concentrated territorially if the institutions responsible for political life have distinct jurisdictions. At a most primitive level, private rights, understood to lie outside or before politics, travel easily – if you own something here, you own it when you get off the plane somewhere else. Public policies, the stuff of politics, do not travel, except as necessary to support the broader market. Political institutions have the legal authority to enforce private agreements and private rights established elsewhere. But they cannot regulate beyond their borders. Although your labor law may affect the economy of your neighbor, your writ does not run there. The technical distinction between exercises of public authority which *support* the market and those which *regulate* or distort the market is crucial – the one travels more easily than the other. As this distinction is interpreted and implemented across dozens of institutional settings, a professional sensibility or common sense emerges about the limits of public power and the naturalness of economic flows.

As a political ruler operating in the shadow of this consensus you are a spectator as the waves set in motion by your local actions ripple across the global economy. Your authority is defined by a series of distinctions managed and enforced by expert votaries. As a result, the *global* nature of “problems” and the *local* nature of “government,” whether linked to a city, a state or to the international order itself, is not only a troubling fact to be overcome. It is the product of a very particular political economy written into a historically specific set of legal and institutional arrangements.

The rift between politics and economics, like that between political jurisdictions or competences, is not marked by a sharp boundary. They are not powers absolute within delimited spheres. Indeed, the striking thing about our situation is that even the experts have lost faith in the distinctions that have become fault lines built into the world between politics and economics, public and private, national and international, family and market. The explanation lies in the extent to which these differences have been transformed into a series of technical distinctions which can be experienced by the experts who interpret them as indistinct matters of “more or less.” We understand that public law and private law can blur into one another, just as we know that policies which “support” the market can be hard to distinguish from those that “distort.” Nevertheless, experts can repeatedly find workable and professionally satisfying ways to draw the line between them in specific situations.

As they do so, divergent professional traditions emerge devoted to each domain. International private law experts think differently than those focused on transnational regulation. The professions responsible for the management of public and of private law, or of market making and market regulating have grown apart, coming to occupy different institutional sites and to speak about the world in divergent vernaculars. The same can be said on a larger scale of the difference between economics and politics. As politics and economics were rendered increasingly technical, they came to be served by distinct professions operating on different scales and with different perspectives. We know the relationship between politics and economics is, in some sense, simply a matter of interpretation and perspective. The smallest

market transaction – a Tshirt sells in Ghana – can be interpreted to illuminate the politics or the economics of the planet. Yet alternative disciplines and institutional arrangements have sprung up to reflect divergent interpretations of this same transaction. Economists and politicians understand the scale and “logic” of the transaction differently, embed it in a different social, institutional and intellectual context. In this way, an intellectually unsatisfying distinction has developed into a startling mismatch between institutional, intellectual, social and professional domains managed on different scales and with different perspectives.

The second grand project --- the integration or consolidation of both economics and politics – has also been accomplished as a series of legal, institutional and professional projects undertaken in the shadow of a broad ideological consensus within the global policy class. The idea was simple – the economy should link things together as efficiently as possible at the national, regional and global levels. Ever more people, products, resources and ideas ought to be able to find their markets in the shadow of a common price system across ever greater distances. This idea had dozens of practical corollaries. A system of “world prices” requires all kinds of institutional arrangements and limitations. Exchange rates must either be stable --- effectively a single currency – or so fluid as to ensure they are pushed to parity by market forces. Supply chains, information channels, labor markets, investment patterns would all need to be rendered global through institutional and legal integration. Private actors – investors, employees, managers, corporations – need to understand themselves as capacitated to operate across an ever larger terrain. They need to be dis-embedded from the kinds of local regulatory or customary arrangements that once made employers feel they must hire from among the members of a particular union, corporations feel they must respond to the public interest of specific locations or constituencies. Economic entities would themselves need to be unbundled, rendered capable of being re-organized, reframed, parceled out for sale and redeployment. Where regulation or contract imposed artificial obstacles to the vertiginous destruction and creative reinvention of economic relations, they would need to be unwound. Most importantly, transnational private legal arrangements and informal standards need to be protected from the regulatory interference of local political authorities. Territorially enforced public policy needs either to be eliminated or harmonized as part of a stable background for global market transactions. The integration of economic life was pursued less as an overtly political project than as a technical one of defining the institutional conditions for economic efficiency and interpreting the natural limits of territorial government and public law regulation. The result was the emergence of a kind of global common sense about what governments and private actors *are* and *do*, which in turn redefined the space of politics.

In one sense, the political world was built in precisely the opposite fashion – by division, separating national territories into autonomous states, separating branches of government with different competences and constituencies and different levels of government with degrees of relative autonomy. In the process, however, there emerged a remarkably homogenous global political order of divided politics linked to a territory or domain, operating against the background of an economy that was not so shackled. Across the world, the emergence of a national monopoly on the construction of political life progressively demobilized intermediate institutional arrangements, linking individuals as citizens with the state. This required a wide variety of familiar institutional projects. A popular and professional vernacular of rights defined social justice as an appropriate relationship between an individual and the state. The demands of linguistic and other minorities were accommodated either by recognizing their demands for

political autonomy through secession or, more commonly, assimilating them into a national polity as citizens with enforceable individual and minority rights. Smaller territorial units – cities, neighborhoods, states --- were placed in a hierarchical relationship to larger national units, relations between them managed by professional interpretation of doctrines like “subsidiarity,” “states rights,” “home rule” and the like. Intermediate civic institutions that might once have played a political role – professional guilds, unions, tribes – were either assimilated to national political parties or transformed into cultural and economic rather than political institutions, their members unleashed to engage with the national political world as individuals. At the same time, the emergence of a national media created a national political conversation.

Although global political life could not be institutionally consolidated in precisely the same way, it could be knit into a common conversation in a common vernacular among entities which imagined themselves to be parallel, even “equal” sovereigns. The emergence of a transnational political class, rooted in loosely analogous local institutional conditions and facilitated by a common media and a transnational constituency of non-governmental stakeholders, reinforced the common limits of political discourse and action.

These grand projects have had a very practical result. The problems calling out for public attention are ever more rooted in global economic movements and ever less amenable to solution on the scale of our political life. We might say that politics has everywhere become peripheral to economics, the dualism between them enforced by these institutional arrangements and professional practices. The legalization of politics and economics makes law and professional practice the glue that constitutes each domain and allocates powers between them. It remains only to ask how this system functions dynamically.

We can see that government everywhere is buffeted by economic forces, captured by economic interests, engaged in economic pursuits – that politics and economics are locked in a series of perverse feedback loops and vicious spirals. Think of Europe. Politics responds to the local demand for growth by ceding ever more territory to a distant economic technocracy which in turn demands ever further demobilization of local policy space in the name of austerity until the local political arrangements begin to implode. In global terms, at the top and bottom of the world economy, we have deracinated ourselves, moving ever more often across ever greater distances. In relative terms, the middle classes are the ones who have become locked to their territory. They – for so long the national center everywhere -- have become a global periphery. Once this begins, law progressively locks in the gains, for it is the stakes as well as the conduit for interactions between centers and peripheries. We can trace how this happens in the stock of social and legal entitlements each group has been allocated to participate in global economic life.

As a result, governments everywhere operate in the shadow of disenfranchised and disillusioned publics who have lost faith in the public hand – in its commitment to the “public interest,” in its sovereignty, its relevance, its capacity to grasp the levers that affect the conditions of social justice or economic possibility. In the face of integrated supply chains, global markets, financial uncertainty, workers, corporations, banks – all turn to the nation state for redress, bailout, support – only to find there is often little their sovereign will do. Just as the global economy has no “commanding heights,” so the political system has no sovereign center. The institutional structure for each has been broken up. Political life has drifted into neighborhood and transnational networks, been diffused into the capillaries of professional

management, and condensed in the laser beam of media fashion, transformed into a unifying, if impotent, spectacle. From the inside looking out, one finds oneself buffeted by one thing after another --- professional common sense chastens the most robust party platform and only the wholesale replacement of politicians by “technocrats,” seems capable of appeasing economic forces. From the outside looking in, however, the center seems captured, craven, conspiratorial.

Although legal norms, institutions and professional practices of interpretation are central to the political economy of the world, our traditions for thinking about global governance, remain surprisingly uninterested in global political economy. The redistribution of political authority and economic growth is not on their agenda. Instead, the national, local and transnational institutions that structure these difficulties remain totemic focal points, objects of a cult-like veneration. No sensible discussion of global governance can begin with the premise that “independent central banks” or the “demands of the market” or “the European project” will need to be swept away or substantially transformed. They simply *must be* defended. In the United States, an enormous majority can view the government as a dysfunctional part of the problem without anyone seriously proposing to alter anything about it. The government is crazy – the constitution is sacred.

If we *were* to turn our attention to the political economy of the world, we might begin by situating the institutional disequilibrium between politics and economics in a story about the relationship between the centers and peripheries of the world system. The arrangement of centers, peripheries and semi-peripheries is not what it was in the age of colonialism. The globalization of economics and the nationalization of a weakened politics has unleashed enormously forces which have redefined the vulnerabilities of politics everywhere to economics. At the same time, we are witnessing a rapid economic process of factor price equalization and technological assimilation facilitated by the global political class but beyond the power of politics. In this view, the last two centuries have been an aberration – characterized, in the wake of the industrial revolution, by one nation, and then a small group of nations, rising to unprecedented levels of prosperity relative to everyone else. It was only a matter of time before the scientific and human technologies which enabled the dramatic rise of the North Atlantic --- including the governance arrangements --- would become more widespread. Until everyone aspired to a refrigerator, an air conditioner, a car – and until their societies began to provide the means to realize those ambitions.

But relative income equalization, like growth, is an extremely uneven business. It certainly does not mean the elimination of income differentials. On the contrary. Inequality is everywhere. Nor is a global economy a uniform economy. Things turn at different speeds. People are left out. People are dragged down. Economic change is profoundly destructive. When people turn to their sovereigns for help the results are terribly uneven. Some are too big to fail – others too small to count. Indeed, the public hand everywhere has become a force multiplier for leading sectors, nations, regions. As it was between nations in the colonial era. As a result, our modern global economy rests on an accelerating social and economic dualism between leading and lagging sectors, economies, nations and populations. It is not surprising that we face a revolution of rising frustrations among the hundreds of millions who can see in, but for whom there seems no route through the screen except rebellion and spectacle. Or that we face the restive demoralization of all those whose incomes, economic opportunities and expectations have fallen – and will likely continue to fall.

Indeed, the fundamental organizing framework for global political struggle today is neither ideological hegemony nor great power competition. It is the political economic question of the distribution of growth. How will economic opportunity be distributed between those who lead and those who lag? The wild horse to be ridden now is precisely this dynamic of dualism, the tendency for growth here to impoverish there. We know that not everyone can be a highest tech, greenest technology leader – any more than everyone can be the lowest wage manufacturer. These are niche market dreams. They function as justifications for mobilizing resources behind the successful. The political challenge is not to find resources we might pour on the winners in the hopes they will render our “nation” competitive. Nations are no longer competing – and winners can usually take care of themselves.

This interpretation suggests a thought experiment. Perhaps also a program: to *reconnect the political and the economic* by revising the sinews of legal, institutional and intellectual life through which they have been separated, and to *fragment and delink global economic and political life*. These two broad orientations might be linked. Intermediate institutional forms which could dis-integrate or delink political and economic life may also open spaces for a reconnection of politics with economics.

Such a program would be familiar to the world’s leading risk managers. They have seen the dangers of over-integration in economic life. Financial risk management requires the reintroduction of stop-gaps and go-slow provisions against the damage of contagion and the volatility of speculative flows. Supply chain risk management required the reintroduction of inventories to guard against the disruptions of a tsunami here, a nuclear accident there. We could imagine continuing on this path, reintroducing institutional forms for economic life linked to territory and to the constituencies whose economic and political possibilities rise and fall with their location --- public unions, publically owned enterprises, corporate forms responsive to public policy as well as shareholder profit, banking and credit reoriented to local economic development. Large scale regional institutions – central banks, development banks -- might be reorganized to be more responsive to diverse local economic and political imperatives, their investments delinked from world market benchmarks. And at the same time to strengthen the potential of local politics to pursue their own path. The forms today would be different, but if we think back to the political economy of today’s advanced industrial economies a generation or two ago, the intermediary organizations that came to look like pure economic irrationality – professional monopolies, corporations linked to local stakeholders, unions forcing negotiations over the forms and costs of public goods -- were often also spaces of political engagement. Reinventing such arrangements would require that we re-imagine law not as a common language of economic and political integration, but as a shield for alternative paths and powers.

Politics and economics will not be brought together like great powers negotiating a new treaty. Nor will they be brought together by theories of their inseparability. They will be reunited by reconfiguring the doctrines, institutions, professional practices and simply common sense through which they have become separate. This is the point of cross-training: to disestablish the parallel professional cadres what service the public and the private, the political and the economic. This the goal of unraveling the distinctions whose interpretation confirms the separation – the distinction between public law and private law, between market supporting and

market distorting public policy, and so forth. In a parallel fashion, if our citizenry and political class are to “think and act globally,” we will need to find institutional channels to integrate transnational interests and levers to contest faraway decisions which affect our lives

Effective governance is no longer a matter of eliminating the corruption or capture of public authorities – difficult as that is. Nor is it a matter of sound corporate governance, corporate social responsibility and effective regulatory supervision – difficult as those are. Effective governance requires that the public and private actors become adept at something none are now well organized – or well disposed – to attempt: managing the distribution of growth, linking leading and lagging, managing the political economy of dualism. And they must do this not only in their backyard, in their territory, in their sector, but in a new world of shifting relations and linkages. Where small things have large effects, where local rules govern global transactions, and where very little is transparent or predictable. Only by considering economic and political objectives at the same time and on a parallel scale will it be possible to respond to the global challenge of linking experimental, leading edge economic dynamism wherever it occurs with everyone else. Across cities, within and between nations, in regions, across the world.

I am convinced international lawyers could have much to contribute to such a project, particularly if we begin by grasping the depth of injustice in the world today, the urgency of change, and the significance of our professional routines in the reproduction of political incapacity. Legal scholars have generated new economic and political ideas before – not all of them sensible. We can do so again. Indeed, the presence of law in the foundations and ongoing practices of both economics and politics makes it surprising that we do not. Nevertheless, a great deal of intellectual work remains to be done.

As we proceed, we will want to recall how long it took to disentangle politics and economics. To invent a national politics and organize the world in nation states – and then to build a global economy. For all the agony that has come with success, building a national public politics across the planet had a strong emancipatory dimension – slaves, women, workers, peasants, colonial dominions obtained citizenship in relationship to the new institutional machinery of a national politics. It will not yield easily. It was equally difficult to build a global economy atop that political order. For all the vulnerability, instability and inequality wrought by the effort, the global economy has also lifted hundreds of millions from poverty. It will not be unbuilt in a day. Building a new political economy for a global society will be equally difficult. The promise is equally large. The spirit of new approaches is to begin.