

# The Forgotten Politics of International Governance

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*This is the first in a series of three essays by Professor David Kennedy which explore the developing international legal order and examine the place of human rights within it. The three essays are: "The Forgotten Politics of International Governance", "The International Human Rights Movement: Part of the Problem?" and "Progressive and Humanitarian International Social Policy: Classic Mistakes"*

*In this first article, the author questions prevailing perceptions that current models of international regulation and the market economy are politically neutral and inevitable. With the erosion of State power has come a perception of a reduction in the political sphere of international government. Increasingly, there is a managerial and technocratic approach to international affairs, which, the author suggests, ignores and conceals real political choices. It is argued that international governance must engage with political and cultural differences and that, rather than seeing politics as isolated within a shrinking social sphere, the potential of apparently technical decisions to entrench or redress inequality should be recognised and debated.*

Since the Cold War, internationalists have come to share a diagnosis of the changed conditions for statecraft. International politics has fragmented, involving more diverse actors in myriad new sites. Military issues have been tempered, if not replaced, by economic considerations, transforming the meaning of international security. A new politics of ethnicity and nationalism is altering the conditions of both co-existence and co-operation. Interpreting these changes has become a matter of deep ideological and political contestation among intellectuals concerned with international law, organisation and security. Unfortunately, a widespread tendency to disregard what seem background conditions and norms has influenced mainstream interpretations for the worse. Common but mistaken ideas—such as the idea that international governance is separate from both the global market and from local culture, or is more a matter of public than of private law—sharply narrow the sense among foreign policy professionals of what is possible and appropriate for foreign policy.

Although we know professional disciplines have blind spots—some emphasise public at the expense of private order, governance at the expense of culture, economy at the expense of society, law at the expense of politics—we hope these run-of-the-mill limitations could be corrected by aggressive interdisciplinarity. Unfortunately, blindness to the background can be maintained, even reinforced, in the face of interdisciplinary work. Specialists in all fields overestimate the impact of globalisation on the capacity for governance because they share a sense that governance means the

politics of public order, while a background private order builds itself naturally through the work of the economic market. As a result, these specialists underestimate the possibilities for political contestation within the domain of private and economic law. Foreign policy intellectuals overestimate the military's power to intervene successfully while remaining neutral or disengaged from background local political and culture struggles. Specialists tend to overestimate the technocratic or apolitical nature of economic concerns, including the independence of economic development from background cultural, political and institutional contexts. A shared sense that cultural background can be disentangled from governance leads specialists to over-emphasise the exoticism of ethnic conflict as well as the cosmopolitan character of global governance. The result is a professional tendency to overlook opportunities for an inclusive global politics of identity—for working constructively on the distributional conflicts among groups and individuals that cross borders.

### Disaggregate Public Policy

No one was "present at the creation" of the post-Cold War world—it happened in too many places at once. The fragmentation of international political life was long underway. Dozens of new states, many with economic and military power surpassing the old great powers, multitudes of splinter groups with access to weapons and the media, and myriad private actors had all begun to play a role in foreign policy making. Within states, the political class splintered as politics became a complex administrative and social process.

These changes have led analysts to reaffirm their most familiar and dogmatic propositions: that sovereignty has eroded, that international law should be understood politically, that the boundary between international and municipal law is porous, that "transnational" law may be the better term, that international law may not be as universal as it pretends, that the international regime is better understood as a process or multilevel game than as government by legal norms. International lawyers embrace politics and political scientists show interest in the legal process. All hope to renew and restate what has been disciplinary common sense for a century: pragmatism, anti-formalism, interdisciplinarity. This methodological self-confidence heralds a familiar political optimism: the end of the Cold War will complete the internationalist project, inaugurating a humanitarian "civil society": an "international community" which will dethrone the State, welcome wider participation and open international law to the political.

There is a dark side to this decentralisation about which internationalists are more ambivalent. The erosion of the State also transforms the methods and objectives of public policy, eroding the ambitions of public law, expanding private law and private initiative, withering the welfare state under conditions of globalisation, inaugurating a democracy deficit, governance by experts, technocracy. Law fragments political choices, spacing them out in bureaucratic phases structured by proliferating standards and rules. Political interests become factors to be balanced in an apparently endless process. Take trade, for instance: once broken down into hundreds of technical disputes and individual negotiations about specific tariffs and regulations, each on its own timetable in its own institution, commercial interests are hard to aggregate into a "trade war" between two "nations" except rhetorically.

As the spirit of free trade replaces the spirit of multilateralism, more changes than just the site of decision-making. In a technocratic private market, the locus for political choice is less opened up than it is rendered invisible. Take the European Union, whose political decision-making always seems to take place "elsewhere": last year at the summit, across the road in the Council, down below in the Member States, and so on. The idea of a "government" promoting a "programme" has been replaced by the enlightened management of prosperity. This dramatically narrows the participants whose interests are understood to be in contestation internationally—exactly as it celebrates an opening of the policy process to civil society. E.U. policy managers treat the transitional economies of Central and Eastern Europe less as a set of political exclusions and choices than as the site for technical management of different natural stages of development. But the replacement of political choices by technical options, like the emasculation of the public state, empowers some interests and disempowers others.

Mainstream internationalists greet this trend with a tone of tragic resignation. Something called "globalisation" has rendered public intervention in the emerging global market more difficult than it was within the welfare state, whether for the environment, labour standards, consumer protection or redistributive taxation. Although analysts often bemoan the weakening of traditional public policy levers in the face of newly mobile capital, their relative resignation contrasts starkly with their enthusiasm for a newly open international political process, as if enthusiasm about new participants were linked to confidence that they can now do little mischief. The link here is a familiar liberal one between democracy and a disempowered state, between strong markets and weak governments. The common theme is a disempowering of public law and the disappearance of background private and commercial affairs from the jurisdictional domain of politics.

### Reclaiming Politics

In my view we should reject both enthusiasm about the fragmentation of international political life and resignation before the shrinking ambitions of public policy in the face of a growing private sector. My argument is not that we should revivify the State or disestablish the international market. The welfare state often did entrench class, race or gender privilege within its borders while preventing movement of people, ideas and capital—all in ways which buttressed inequitable resource distributions across the globe and shrunk the global imagination. In some cases a more technocratic politics has been a counterweight to the corrupt tendencies of mass politics and the capture of the welfare state by rent seekers of various sorts. And treating the State apparatus as the *sine qua non* of decolonisation has often entrenched gruesome practices in the name of sovereignty.

My argument, rather, is that the resignation about the demobilisation of a vigorous public policy indicates that even as welfare states erode, the notion of public policy they exemplified is alive and well: public policy as territorial intervention by "public" authorities against a background of apolitical private initiative. This resignation refuses to treat as political, as public, as open to contestation, the institutions and norms which structure that background market. If we think of the private domain as political, it is not at all obvious that the current situation is one of fragmentation rather than concentration. Global governance may have simply moved from Washington to New

York, from the East Side to Wall Street, from Geneva or the Hague to Frankfurt, Hong Kong and London. Where factors of production are relatively immobile, a locality or private actor may have more capacity to conduct global public policy than either the welfare state or the institutions of international economic law.

The question, in other words, is not whether politics or where politics, but what politics. Internationalists should care less about whether the State is empowered or eroded than about the distribution of political power and wealth in global society. Because mainstream international analysts accept that the political and economic results which flow from a particular system of private initiative are outside the legitimate bounds of political contestation, they can be enthusiastic about a disaggregation of the State and the empowerment of diverse actors in an international "civil society" without asking who will win and who will lose by such an arrangement. As a consequence, the turn to political science too often illuminates the structure of the regime without adding to our understanding of its substantive choices.

Technocratic governance, a displacement of public by private, of political alignments by economic rivalries, the unbundling of sovereignty into myriad rights and obligations scattered across a global civil society—all this has transformed international affairs. That it has often meant an opening of international affairs to new actors and concerns, a democratisation and proceduralisation of international relations, may well be positive. But this transformation has also shrivelled the range of the politically contestable, confirming as natural the geographic and economic distributions thought to be the inevitable consequences of "the market". Underestimating the political nature of private institutions and initiatives, many mainstream internationalists have accepted the demobilisation of policy-making as they have lauded increasing access to its machinery. The result is an intellectual class unable to develop viable political strategies for the world it has applauded into existence, ratifying the political choices that result from the arrangements of private power to which the State has handed its authority, while still celebrating the expansion of participation in an emasculated public policy process.

### Economic Security

Since the Cold War, national security has been increasingly understood in economic, rather than military terms. Of course, the question of who can project force abroad remains important, undergirding patterns of trade, prosperity and emiseration. But we have a new security vocabulary of budget surpluses or deficits and hard or soft currencies rather than throw weights and silos. We re-imagine missiles as missives, their deployment determined less by Clausewitz than Keynes, their military function shaped more by CNN than the Pentagon. Like the disestablishment of the State, the economisation of security has largely been welcomed by our foreign policy mavens. If the liberal peace hypothesis proves correct, the disaggregation of the State into a global market has left the world more secure and free to worry about prosperity. At the same time, economic security seems achievable through technocratic means, sound management and trade deals, and a smorgasbord of alternative dispute resolution mechanisms. Trade wars promise to be friendlier than real wars: they cost less and can be won by lawyers.

In the meantime, we can think of all sorts of new uses for military machinery. During the Cold War, military interventions and proxy wars were hard wired to the central problem of global security. Now they float more freely, drifting into limited police actions, humanitarian gestures, and stabilisation at the periphery.

The military has emerged from the collapse of the welfare state as the only bureaucracy broadly thought capable of acting successfully, so long as the mission does not bleed back into economic or political matters. Seen this way, the military is available for a wide variety of technocratic tasks, but should be protected from the quagmire of political or social engagement. The military will stabilise borders and prop up States precisely as globalisation renders State institutions marginal sites for public policy. Analysts assert that our national interest now coincides with the stability of global governance for a global market. Consequently, the military should become a national contribution to that international order, for which we should be thanked and probably reimbursed. At the same time, nothing is very urgent—we could do it or not, it is a moral question, a technical question, maybe we should send the Red Cross instead, or hold a plebiscite, or enforce an embargo. We expect a police action, an air strike, force by permission, with limited objectives and clear avenues of retreat back to the cosmopolis.

The problem is this: we expect a technocratic cosmopolitan governance to have no stakes in local disputes beyond stability, and therefore to deploy force in an unrealistically sanitary way, without political entanglement. But cosmopolitan governance does have stakes in local disputes. Although we should focus on securing prosperity, these new security concerns cannot be engaged blind to the social and distributional context within which they occur, any more than by military force detached from economic cost and political risk. Economic security need not mean deference to the largest market actors; there are, after all, a number of possible markets, structured by different background values and distributive choices. Defending the stability of a political order necessary for investor confidence requires a set of political choices both among States and among groups or classes within nations, as among the transnational interests of labour or capital or women or men. Moreover, it calls for choices among economic sectors with stakes in different patterns of modernisation, among investors with stakes in different patterns of production, trade and consumption. It is commonly said, for example, that a global market "requires" an emerging market to enforce the "rule of law" to permit "transparency" and "predictability" in market transactions. It sounds very clean, egalitarian, procedural, just like a political background rules. But the alternative is neither arbitrary nor chaotic allocations, but a different, and often equally predictable allocation of resources, perhaps to local rather than foreign investors, to domestic oligarchs rather than foreign shareholders or vice versa.

Such choices can only be engaged, can only be seen beneath the blanket insistence on technical "transparency" once the mainstream tendency to efface background cultural, institutional or political structures has been overcome. In the Banana War between the United States and the European Union, there is a well established institutional machinery to weigh the technical impact of one or another result on the balance between free trade and protectionism, to assess costs between American producers and European consumers, but there is no mechanism to examine distributional costs between African, Caribbean and Central American labour.

We should worry, moreover, about optimism that military deployment can be disentangled from ongoing local political judgement and risk. Humanitarian intervention and international community policing also require engagement with the distribution of power among groups, along with a political vocabulary for addressing social and economic justice. It is as if the old coexistence mentality which left Cold War internationalists agnostic between liberal and totalitarian regimes had paradoxically reasserted itself as agnosticism between wealth and poverty, between this and that warlord, this dictator and those victims. But long-term economic security cannot be "managed" without attention to distribution, any more than long-term humanitarianism can be enforced without political choices. Humanitarian aid is one thing—humanitarian intervention is another. We can see the difficulty in Kosovo—in our odd oscillation between hands-off negotiation and pious criminalisation. Both aspire to clean hands—but governance is a messy business, globally as locally.

### Cultural Politics

Culture takes centre stage in foreign policy debates today, and rightly so. Cold War ideological conflict obscured other differences and accentuated traditional modes of interstate politics. The medium for international affairs has become increasingly cultural: Coca-Cola has become more important than the Voice of America or the military establishment; CNN has replaced the embassy cable. Governance is less about norms or sanctions than communication and persuasion. Like the economisation of security and the disaggregation of the State, this cultural turn suggests a model of international affairs more amenable to expertise, a matter of texts and images rather than either guns or butter. Within the cosmopolis, at least, "culture" is about persuasion and communication, governance a matter of deposits and withdrawals from a legitimacy stockpile in an "international community" where everyone speaks the language of missiles and messages, sanctions and sanctimony. Outside the cosmopolis, however, culture means local and particularist commitments, altogether different from the secular, rational and pragmatic communicative methods of cosmopolitan governance. Out there, religion and ethnic identity are back, not simply the Protestant handmaiden to market rationality and reasoned patriotism, but a range of more primitive, mystical and irrational creeds.

Internationalists take this two ways. Sometimes they reaffirm their cosmopolitan sensibility as a historic liberation from particularism. International economic law defends the liberal spirit of free trade against outbreaks of economic nationalism in the form of subsidies or protectionism. As nationalism "breaks out" or ethnic hatreds "re-emerge," internationalists struggle to keep the super ego in charge. This cosmopolitanism is tolerant of (if disengaged from) cultural differences, particularly those involving commercial preferences (Germans like beer) or "private" and "consensual" family practices (female genital mutilation). Sometimes the internationalist takes the opposite tack, affirming cultural specificity and insisting on a defence of the West against the rest or speaking for international civilisation itself against all that "shocks the conscience of mankind".

Either way, there is a problem. As international affairs come to be pursued in cultural terms, both a culturally demobilised international and an artificially unified "West" will find it difficult to govern, for "governance" means participating in the struggle

among cultural groups. Cultural identities are at once more than preferences and less than iconoclastic alternatives to modern civilisation. They require more than tolerance or exclusion, they must be engaged with more than the promise of participation in an eroding public life through minority rights and self-determination. Thinking about culture this way leaves the local and global groups and institutions which structure distributions of power and wealth outside the field of vision.

Internationalists overstate both the contrast between local cultures and the global cosmopolis and the equation of cosmopolitanism with "civilisation" and the "West." Internationalists are neither outside culture, nor simply "Western". Cultures are not this solid or coherent. In fact, the most interesting issues arise within cultures, including within the culture of internationalism, often between groups presenting themselves as cosmopolitan or secular and a variety of new gender, race, national or religious identities. Of course, people do pursue political projects in broad cultural terms, promoting "North" or "South", "Asian" or "Western", the "Islamic" or the "secular" and conflicts are likely to break out along imaginary boundaries of this type. But patterns of communication, migration, and economic development have also produced a Third World in the First and a First World in the Third, have proliferated "Western" sensibilities as well as nationalist resistances of various sorts in a wide variety of places. In short, our foreign policy establishment is fixated on differences between, just when differences within have become far more important.

The differences between men and women within both international and national cultures are more significant—also for foreign policy—than the difference between the international and national treatment of women or men, just as differences among men and among women are often more significant than those between them. We need not set these commonplace observations aside when we think internationally. Differences among possible "market" economies or among transnational groups in a global market are more significant than an imaginary line between the market and public life or between North and South. Differences among groups within developing economies are more significant than relations between developed and underdeveloped economies, or between global and national markets.

Internationalists are used to thinking that we have a robust international political order with only the thinnest layer of law. But the reverse is more accurate—we have a robust process of global law and "governance" without a global politics. Real government is about the political contestation of distribution and justice. Governing an international order means making choices among groups—between finance and production, between capital and labour, between these and those distributors, these and those consumers, between male and female workers. Some of these choices will be national, of course—between Thai and Malaysian producers—but most will not. Development policy means preferring these investors to those, these public officials to those, not the technocratic extension of a neutral "best practice". To make these choices we need a world which is open to a politics of identity, to struggles over affiliation and distribution among the conflicting and intersecting patterns of group identity in the newly opened international regime.

### Policy Background Out Front

The post-Cold War transformations of international affairs are hard to interpret. Foreign policy professionals err when they sharply differentiate national culture and

global governance or global economics and global politics. They err when they isolate politics within a shrinking public sphere, when they assume governance must be built while markets grow naturally, when they treat security as a technical matter, disengaged from social and political context. Our foreign policy professionals have systematically underestimated the opportunities for engagement with the background worlds of private law, market institutions, cultural differences.

From the fragmentation of international politics, specialists have too readily drawn an optimistic conclusion about global democratisation and a pessimistic conclusion about the horizons for public policy. As military issues have been tempered by economic considerations, analysts have become unduly sanguine about projecting military force abroad without local political engagement, while simultaneously overestimating the amenability of economic security issues to technocratic measures. Our foreign policy establishment increasingly sees military force both as an expression of a national interest unwilling to place a single soldier in harm's way and as a technical tool for cosmopolitan governance, able to be extended abroad on the unrealistic condition that the cosmopolis lives up to its promise to govern without political, economic, or cultural entanglement. Whether specialists are thinking about economic stability among the wealthier powers or development at the periphery, they think of the global economy in strangely de-politicised and technical terms. These misinterpretations often reinforce one another. Only after accepting the attenuation of public policy capacity in the face of globalisation does it make sense to reinterpret security in economic terms turned over to technocrats indifferent to distributive concerns. The result is a decontextualised, deracinated and depoliticised foreign policy.

By reinforcing the invisibility of background norms and private arrangements, mainstream commentators have taken important areas of political contestation out of the internationalist's vision precisely as the disaggregation of the State makes these norms and institutions the most significant sites for international policy-making. They stress the naturalness of current distributions of global wealth and poverty, focusing our attention on participation in public structures precisely when questions of economic justice decided elsewhere become most salient. And they reinforce the stability of cultural identity at precisely the moment diasporic and hybrid experiences make contestation among and within cultural groups the central context for both politics and economics.

We could rethink the locus of international political contestation and public policy by invigorating debate about what have seemed to be the background rules and structuring institutions of private law, economic life and local culture. The fragmentation of the State and the geographical expansion of the economy place local and global groups in complex and intersecting new relations. They invite a new global politics of identity. We should judge the global market, like the global political order, by the distribution it effects among today's overlapping cultural, political and economic groups. The issue is not how to repress or manage national, ethnic, economic, race, gender or religious claims, containing them within the private or the national domain, but how we can engage them internationally. We are challenged to embrace the post-Cold War transition without transforming political, economic or military questions into technical matters which narrow our political options and naturalise inequalities.

We might yet embrace the disaggregation of international affairs and the economisation of security without resignation about global poverty, embrace the displacement of ideology by culture without sharpening the distinctions between cultures or the cosmopolitan conceit of living beyond the cultural. We might yet develop a vibrant global politics on the shifting sand of diverse economic and cultural claims about the distribution of resources and the conditions of social life.

