gutted the regime of any site for political engagement and turned it over to the logic of international commerce. But we must be careful. This proves too much and too little.

One difficulty is the nagging feeling that there is nothing unique about the European level at which all this seems to have taken place. Indeed, we are familiar with precisely the same sorts of developments in many national states – even cities. It is only against the implicit comparative background of a ‘sovereign who could really intervene in the market and get things done’ that we blanch at this modern Brussels confection. But this nostalgic image of national political cultures is itself mostly fantasy. It is simply not true that ‘the state’ or the ‘legislator’ exist as formally delimited political instances onto which the law concentrates absolute authority for intervention in civil society. Or that civil society is a depoliticized terrain awaiting state regulation or intervention. In an ironic way, the whole drive for internationalization began where faith in this idea about national politics waned – began, in other words, with an antiformalist critique of public law and sovereignty, and with awareness of the politics of adjudication, the policy choices of private law, the public authority of property holders.

A second difficulty is the feeling that the problem, as stated, might well be quite easily solved – at the European as at the national level – simply by reinvigorating the institutions of public sovereignty. In the European Union context, no one is more emphatic on this point than the Eurocrats themselves – we must, they insist, strengthen local and regional political authorities, increase the breadth of European Union wide regulatory competence and inaugurate at the European level a parliamentary process modeled on the national legislatures, thus curing the ‘democratic deficit’. But we know that this has also not worked at the national level, that it has not been possible to cabin political power in identifiable institutions and forms, that the welfare state as a model for wise or informed public decision making has been called into question.

3.7. Two disciplines; one political vision

And suddenly the whole problem no longer seems one of national and international government, but a problem of government. In some way the idea of politics as a contestation over the spoils, over entitlement, distribution, interest, has been displaced by a more technocratic discourse, attuned only to general directions (in the public interest / for private interest) and fought about sovereign levels or forms (international or national, local or federal). But neither the general direction nor the difference between levels can be given sufficient content to be helpful. It is ultimately only possible to figure out what will be in the needs of ‘commerce’ in a specific and tentative way. Business pulls in different directions and is not simply hostile to state action as a general matter. Neither can we be sure, in a general way, what will be the redistributinal consequences of internationalization.
Our intuition that internationalization strengthens commerce at the expense of public interest – an unhelpful and distracting intuition – must remain rooted in an instinctive, if inaccurate, sense for the formalism of public law and the apolitical nature of private law. Our political intuitions about globalization arise from the relationships among rhetorical positions and sensibilities – which routinely cast either the national or the international as locus for the promises or perils of sovereignty. At the same time, for all their antiformalism, both public international lawyers and international economic lawyers, both the trade regime and the public regulatory regime, leave unacknowledged the politics of the private.

We might therefore locate the politics of this broad international style in its commitment to a doubled idea about sovereignty: public sovereignty as promise and peril, alternatively projected as formal and antiformal, while private law remains outside the politics of sovereignty. Sovereignty as the juridical concentration of power in public hands for intervention in civil society has brought with it a constellation of familiar ideas: politics as public discourse about state intervention in civil society; law as a technical mechanism to focus and enable an interventionist politics; power as a force to be juridically concentrated and allocated; the national state as the primary organ of politics; sovereignty as a juridical absolute. These ideas are commonly associated with a commitment to the separation of public and private, especially in law, with public law the discourse of state action toward a passive civil society, itself structured by the apolitical or consensual rules of private law. This set of ideas has, of course, been universally criticized – both because it is not a good description of how politics actually works in the public realm and because the normative and linguistic framework to sustain this sort of formal division between public and private, or the mechanics of a de-politicized private law machinery, are not available.

But these ideas – with their critiques – remain the animating rhetorics of globalization, and defining disciplinary commitments for metropolitans and cosmopolitans alike. As a result, we might think less of a general transformation of politics, or of a necessary erosion of the national by the international, than of the triumph in international law and policy of one conception, one rhetoric, for politics. When people debate the general politics of globalization, they figure politics as a general site for the management of allocative efficiency, fragmented into debate about governmental structure, rather than as a set of particular sites for struggle over distribution and social policy. This focus is reinforced by background assumptions about the relatively de-politicized character of private law and the relative unavailability of a meaningful politics outside the state apparatus, whether national or international.

In thinking about internationalization, we might shake this rhetorical frame by focusing less on the turn to private interest than on the turn from the politics of private law which seems the common project of both public international law and international economic law. In this vision, the problem would not be a general failure of national governments, still less a necessary erosion of the national by the inter-
national. We would not think of an international institutional regime which remained to be built or reformed, but which already existed, in all the forms of power and sites of choice accompanying the international market. Since the project would be less to build a new public order than to recognize and engage the order which currently structures civil society as if it were public, whether understood as public or private, international, state, local, or familial, sometimes the right thing to do would be to promote the state as a locus of intervention, even to insist on form, and sometimes it would be better to champion an international institution; sometimes a local court, sometimes a private person or corporate player. In this conception there is no general problem and no general solution. Saying that “things are getting more and more international” is a way of not talking about who is getting what. When that question is brought into focus, sometimes what is needed is more formalism, sometimes less; sometimes more state focus, sometimes less. Once we let go of the idea that a natural private realm needing public intervention could survive the rejection of a public sovereignty, we are without a general theory to orient our reform. Neither international nor national, neither public nor private will be sure routes.

As for our two disciplines — public international law and international economic law — we should see them less as opponents than as ideological partners. Both are aware of the limits, ambiguities and illusions of a legal and policy argument which relies on the traditional vocabulary of sovereignty. Both invoke a world of facts outside of law — in anthropology or economics, or politics — which will operate as a check on law’s illusions. For both, this is a largely technical project — deploying the technique of law or ‘managing’ interdependence — which holds out a general political vision of peace or economic security as a distant promise and modest hope.

Together, these disciplines perform a sort of duet, able together to respond to the challenges of globalization — its technocratic excesses and political weakness. The public international lawyer mobilizes governments to multilateralism and internationalism, dreams of building a political process on the international plane. His expectations are modest, but his direction is sure. He sets himself against what he interprets as the economic lawyer’s defeatist attitude toward public order and ideological commitment to private ends and domestic laws. He will renew the international political order: there should be built a great ark for international policy, many cubits in all directions, and there should be assembled all forms of public life for embarkation. Meanwhile, the international economic lawyer sets himself against the public international lawyer’s dreamy idealism and nostalgic romance with international institutions and regulatory regimes. He reinvents the terms of policy debate, placing governments and companies in an idealized and interminable process of market bargaining, developing a cosmopolitan esprit at once vigilant against parochial politics and open to the widest range of policy choices. If only policy managers at all levels could remain true to this spirit, the degradations of an outmoded politics could be avoided.
When the public international lawyer explains the evolutionary urgency of his task, the international economic law specialist can only smile at his naivety. Surely there is a role for a vigorous international public policy machinery, it is just hard to think for the moment what it is. But when the international economic lawyer talks about the end of the regulatory state, the obsolescence of national regulation, and the new interdependence, the public international lawyer looks up from his work and agrees. He knows this all already. That is why he is building an ark.

4. **Culture and Global Governance: International and Comparative Law**

In the preceding two essays, I described some differences between the North American and European traditions of international law and contrasted the sensibility of public international law with that of international economic law. One goal was to suggest a way to think about what might be called the 'politics' of international law: as a byproduct of the sensibilities of a discipline rather than as a set of overt ideological commitments. Disciplinary politics of this sort is often harder to identify or change than a more conventional 'bias' in the rules or institutions with which a discipline works. In this essay I take up one particular political question, albeit a very general one – the relationship of global governance to culture and cultural difference. This relationship looks different from different disciplinary vantage points. My project here is to explore the sensibilities of United Statesean legal professionals who participate in two related legal fields – international law and comparative law – both of which address themselves to global governance and cultural difference, although in quite different ways.

We might think of these two sub-disciplines as illuminating contrasting facets in the broader sensibility of the modern legal internationalist who worries about improving global governance while respecting cultural differences. Over the course of a lengthy tradition, comparative law has focused on elaborating differences: between an ‘us’ and a ‘them’, a center and a periphery, an east and a west, a ‘common’ and a ‘civil’ law. Difference is, in a way, their métier. For an internationalist, however, the issue is somewhat different: to empower an international public order above the nation, an international private order below or outside the state, or a complex regime of transnational order. We could overstate this disciplinary difference, of course. Comparativists also participate in a universal project, elaborating a universal legal ideal, a universally applicable comparative method or an aspirationally universal taxonomy of law. And cultural difference troubles the internationalist, threatens to disturb his emerging order (what about women’s rights in Chad or intellectual property in China?), but the internationalist’s optic is less ‘understanding’ than governing.
4.1. Culture and difference: international and comparative style

For international law, global governance means, at least in part, norm generation and enforcement. Relations with something called “culture” are both more fraught and less central than those with sovereigns. Like politics or religion, culture and cultural difference precede the move to law, exist external to it as a constant challenge or threat, or live below it, beneath the veil of the sovereign state. For the internationalist, culture is a natural, local, antiquated, and largely national thing.

The goal of internationalist discourse is to erect a zone or plane, or viewpoint above relations between states, and to build bridges among states by remaining agnostic about culture, by having no culture. The neologism ‘nation-state’ reminds us not simply of the idea that each nation might one day have a state, that the relation between state and nation is somehow natural, but also that the nation and the state are terms in different registers. International law reflects, engages, bridges, governs, states. Nations have cultures. For the internationalist, the problem of culture disappears from view once equated with ‘nation’, while the term ‘culture’ creates difficulties when it wriggles free of the term ‘nation’ – when the nation-state becomes a formal, legal, administrative unit, and culture an alternative pattern of differences and solidarities, a conflicting set of loyalties. If culture can slip the collar of the nation, it might transform a cosmopolitan bridge into a cultural hierarchy.

Culture may break the internationalist frame in two related ways: by generating solidarities which cross the neat boundaries of nation-states or by empowering smaller entities within states to erupt into international consciousness. These may be familiar identities – ethnic, religious, familial, gender, racial, indigenous – or they may be associated with aspects of social life which seem inappropriate for international expression at all because private or personal or primitive. We might think of a wall of family portraits, effacing the interior lives of one stoic figure after another, reconfiguring whatever confusing relations they might have had in life into the familiar patterns of a family tree. Just so the ranks of flags before the United Nations headquarters or the rows of even nameplates within. Or we might think of childhood simulations of international governance – each nation one national costume, one anthem, just as every state in the United States has one bird, one flower. The architecture by which the pull of culture is shaken off is, of course, not a simple thing, nor is it accomplished in the same way by the various strands and traditions of international public and private law.

The interesting point is that comparative law shares this imaginative construction from the other side, seeing itself as precisely not about politics or governance, as existing rather in the realm of history or thought, as an intellectual project of understanding between cultures whose similarities and differences are foregrounded. The comparative enterprise is less internationalist in spirit than intercultural. To the comparativist, matters of intercultural struggle and international rule are matters of history, background to understanding. Imperialism or free trade, the migration of armies or intellectuals or ideas, are facts, not projects.
Although the comparativist’s knowledge might be useful to the internationalist, the comparativist will often feel that after it has left his hands, he cannot be responsible. Where the internationalist who becomes too interested in culture has ‘gone native’, the comparativist who becomes too interested in governance has given in to a messiah complex, or to the insecurity of the intellectual in the world of practical men. For the comparativist, internationalists seem rather vulgar presentists, always wanting lessons and applications and solutions, content that the other has been understood when he has consented to be ruled. For the internationalist, the comparativist seems a snob or dilettante, as if society might be organized through understanding without the taint of control.

In bringing comparative law and internationalist governance together, I want to focus on the frame common to both, which we might put baldly in these terms: there is a problem of order above states and a problem of understanding between cultures. Once posed this way, it doesn’t take Freud to wonder about the internationalist’s relationship to culture or the comparativist’s relationship to governance. At the very least, these terms are reciprocal temptations, positioned by each discipline as an external real, forever threatening to erupt into the disciplinary project. My suggestion is that the internationalist and comparativist share more than they realize, indeed that they have evolved an uncanny partnership to manage relations with these parallel threats and temptations.

4.2. Public international law: governance among states/culture within nations

The effort to link the internal contradictions and pragmatic limitations of international law to its cultural exclusions has generated a number of working hypotheses about international law’s relation to culture which might be stated as:

1. international law has a culture and a politics which is less that of Europe than that of the Cosmopolis or the Enlightenment;
2. treating the local or national or the periphery as the site for something called ‘culture’ or ‘politics’, which must be ‘let in’ to the international, is one of the standard rhetorical gestures of cosmopolitan government itself;
3. scholars have underestimated the extent to which local political sensibilities (whether European national identities or professional cultures of anticolonial struggle) are back formations of engagement with the international order; and
4. specific doctrinal contradictions or philosophical weaknesses uncovered by internal criticism of the internationalist discipline often turn out to have been forged in an effort to imagine an order among those who seemed most culturally different — placing the problem of cultural difference at the center, rather than the periphery, of the discipline.
We might come to these propositions by revisiting the discipline’s history of engagement with the cultural.

For public international law, we might begin with the nineteenth century consolidation of a territorial sovereignty, the international gaining a procedural competence over the boundaries between sovereigns by forswearing substantive scrutiny of the activities of sovereigns within their territories. Cultural differences between sovereigns became internal matters, while relations between sovereigns, to the extent they were matters of law rather than politics, would be based upon a formally imposed similarity — all actors on the international plane would be states, absolute within their territories, equal before the law. This was a passive image of international law — a governance system which did not rule, was precisely not a vertical authority, but a horizontal public order, disconnected from matters of subjective politics or culture which themselves would remain firmly within the reserved domain of sovereign power. This classical order has been variously defined — as primitive, decentralized, horizontal — but for our purposes, the key point is that no state would experience itself submitting to a foreign culture or politics or interest, but rather only to itself, to the entailments of its own absolute sovereignty or the norms to which it had consented. The cosmopolitan international would not be another culture, one culture among many, but would have no cultural content, no subjective or political preferences of its own.

At the same time, however, international law was never fully disengaged from inter-cultural struggles. Many of the substantive doctrines and debates in international law concern issues of cultural identity, in establishing the national identities of sovereigns within and without Europe as well as in managing differences, both among the nation states of Europe and between European and non-European cultures. One might even say that from Westphalia on, the overt point of the enterprise was to develop a way of solidifying nations as cultural entities and managing relations between them. The Westphalian solution embodies a certain systemic agnosticism, or areligiousity, which would only much later be read as a contending cultural tradition in its own right. But in thinking about this engagement with culture, all too often, the scholarly debate gets stuck in a routine conflict between defenses of an acultural posture and assertions of cultural relativism — insistence upon the unassimilable, unrepresentable other of international law.

Indeed, it would be interesting to develop a history and a conceptual geography of ‘cultural relativism’ in the field. It is clear that substantive issues which seem more technical, more closely related to ‘functions’ or ‘tasks’ which themselves seem universal, are less encumbered with talk of cultural relativism. The environment, for example, presents a common technical problem. On the other hand, substantive issues which are thought to involve cross border solidarities or value choices, like human rights, become home to the discourse of cultural relativism. And it is clear that cultural relativism itself appears in different forms at different times. In the 1940s and 50s, it seemed possible to embrace something called ‘cultural relativism’ without disabling a project of universal human rights — perhaps be-
cause culture itself was understood through the anthropological tradition which had invented 'cultural relativism' in the first place, as both compatible with and expressive of universal human functions, social needs, and institutions. Each person, in whatever culture, could be guaranteed the form of freedom which his or her culture expressed. By the 1980s, faith in universal human 'needs' or 'social functions' had eroded and the term 'cultural relativism' seemed much less congenial. It seemed obvious that there was no way of describing what counted as 'freedom', say, except in culturally specific terms.

If we are to go beyond this deadlock of universalism and cultural relativism, we might begin disaggregating international law's difference-managing strategies. Here are four which link international law's internal structure with its relationship to cultural variance:

1. cabining differences within the boundaries of the state;
2. facilitating assimilation to the state form;
3. internalizing differences within the international regime either geographically or substantively; and
4. externalizing differences as beyond civilization's pale.

Of the wide range of methods for managing what are understood to be political or cultural differences developed by the discipline in the years since Westphalia, the most significant remain the two established in the Westphalian period to deal with cultural differences within Europe and with the recently discovered cultures of the 'New World'. First, within Europe, religious differences would be managed by territorial deference, leaving the issue of religious confession to the territorial sovereign. The cost, of course, was disconnection from the local practices of minority assimilation. Second, relations with newly discovered non-European cultures were doctrinally organized to compel assimilation to the territorial sovereign form, through submission to conquest or cession, or autonomy. In this way, alternative cultures could be compelled to internalize their own differences. Once dressed as sovereigns, they could be treated with a sense of equality and deference which continues to be cited as humanitarian, tolerant, and accepting. Less prominent, of course, were the many exceptional doctrines permitting interference in the non-European world all the same. Nevertheless, the broad doctrinal result in both settings was to render cultural differences internal to the sovereign form, outside the arena of international governance, as local matters of politics or culture. Where differences threatened this form, they would be assimilated to it. In this system, most cultural differences simply do not rise to the level of the international. Differences are manageable when they can remain internal matters, below the water line of sovereignty. Sometimes, however, and especially in exceptional situations which might threaten the placidity of the sovereign fabric itself, international law does become directly involved in the domestication of difference – in doctrines about aboriginal cultural practices, in the criteria for effective statehood, in the various inter-
national regimes of trusteeship and tutelage, in systems of minority protection or self-determination, and so on. The goal of this intervention, however, is to stabilize and reassert the structures of sovereignty.

A third difference-managing strategy has been to internalize differences within the international regime either geographically or substantively. Although the internationalist project now firmly rejects the idea that there might be more than one international legal order, insisting since the middle of the nineteenth century on universality, even at great cost to the range of substantive legal norms, this insistence has been tempered by efforts to recognize special situations in which norms, even within a universal system, might be different. In the pre-classical period, this could be done simply by suggesting that some nations might be governed by an alternative international law. Once the classical system extended itself universally, at least in its self-image, this was no longer tenable. Rather, one might carve out a separate geographical terrain of application – for ‘special’ or ‘regional’ customary rules, for example. First Asia, later the Americas (or at least Latin America), and, more recently, Africa, have all been thought to be governed by special regional international law.

The traditional distinctions between the law of peace and the law of war, or between the law of coexistence and the law of cooperation, allow an international order to embrace both peace and war either as different statuses for recognized subjects or as different domains for substantive activity. Through such mechanisms, states with strong differences can be regulated by a different set of rules from states whose views are more harmonious without detracting from the unity and agnosticism of the order as a whole. Similarly, where states differ, they fall within the law of ‘coexistence’, while remaining able to participate in projects of ‘cooperation’.

These are all efforts to moderate the sacrifice of substantive depth to procedural breadth without bringing questions of the substantive relationship between coexistence and cooperation or between war and peace into the analysis. Such situational distinctions may also be coded ideologically or geographically as, for example, in the conventional alignment during the Cold War of ‘coexistence’ for relations between the different social and economic systems in East and West, and ‘cooperation’ for relations between the North/West and the South. The effect was to remove international law during the Cold War from inquiry into the causes and consequences of the bipolar regime, and to promote an alignment of the North/West with the South without taking sides in the Cold War. In the post-Cold War period, this technique has been extended to embrace overtly political differences as well, as in the distinctions between the law among ‘liberal’ and ‘illiberal’ states, or among Western European states and between Western Europe and the ex-socialist states to the East, which treat cultural and political formations agnostically, as inert international facts to be accommodated in a regime of disaggregated sovereignties, while encouraging a deeper and more substantive order within the sphere of ‘cooperation’ or ‘liberalism’.
But sometimes international law is also willing to take a stand – as a general cosmopolitan order, a culture of reasoned governance, as civilization itself – against particular political or cultural formations. In such cases it deploys a fourth difference-managing strategy, the externalization of difference as ‘beyond the pale’ of civilization. Of course this strategy is most evident in doctrines relating to outlaw groups: barbarians, pirates, war criminals, or terrorists. It is also present in the various substantive doctrines which have neither arisen through the consensual apparatus of sources nor been deduced from the nature of sovereignty itself. These doctrines concern situations which ‘shock the conscience’ of mankind as a whole, expressing a normative commitment so fundamental as not to need codification in a treaty or customary rule. There is very little agreement in the discipline about the content of these super-norms, and less experience with their application. Yet they remain central to discussions of numerous fields, as if the internationalist needed to admit that at a certain point (a point too obvious to be partisan, too clear to be subjective), the international too would be a culture, would have a politics. Or perhaps the point is simply to reconfirm that elsewhere, between the permission and the prohibition, there would fall not even the shadow of commitment.

If we take the public international law discipline in broad strokes, then, we find a general effort to step back from issues of culture – to cabin them locally or generalize them to a global civilization – coupled with a wide range of efforts to engage, embrace, and assimilate divergent political and cultural ideas. And yet public international law itself has a culture, is a culture – both a professional culture, and part of a broader Enlightenment or cosmopolitan culture. The point is not that international law is somehow the instrument or reflection, or product of European culture. Like the claim that law reflects or enforces the interests of a particular class, the more conventional claim that international law is a European product continues the aspiration that international law shake off this bias, be purged of the taint of colonialism, live up to its agnostic, acultural promise. The project I have in mind is exploration of the culture of precisely that promise. The more conventional effort to condemn international law as a colonial instrument has led to numerous studies trying (with very little success) to identify and then alter particular rules which served the colonial project. The difficulty is that the colonial project expressed itself through a wide range of contradictory rules, including many favoured today by anti-colonial interests. The alternative project I have in mind explores international law’s role in generating the frame within which cultures, colonial and anticolonial, could share an aspiration for and belief in an international law outside of culture itself.

The same effort to isolate the cultural imagination of governance can also be pursued by focusing attention on the range of practices and identities the international order regards as external, unable to be transformed into a manageable difference within. We can learn a great deal about the internationalist sensibility by attending to areas and individuals which fall outside its ken or can be seen to threaten its universality – terrorists, pirates, and territories which may no longer be res nullius, but must be either internationalized or organized into a sovereignty. As a first
hypothesis, we might say that from the perspective of international governance, when differences within cannot be managed, the potential for differences between must be opposed. We might also focus on the traditions through which forces which are understood to be ‘cultural’ and ‘external’ to the project of international governance are arranged for engagement or assimilation, seeing international law as one cultural form among others. Seen this way, the notion of ‘culture’ itself comes under pressure as an alternative to governance. Once we imagine a number of intellectuals with projects, some imagining themselves to be inside and some outside the governance project, it is easier to see these positions of marginality and centrality as strategic or accidental matters of choice or assignation.

4.3. Comparative law and governance

This effort to map the encounter between governance and cultural difference so as to frame governance as a project of culture and the establishment of cultural difference as a project of governance suggests a parallel project in comparative law, to read the comparativist’s sense of disengagement from government in strategic terms. We should probably begin reading comparative law’s engagement with governance alongside its overt concern with intercultural understanding by noting comparative law’s links and stylistic affinities with the broad tradition of private international law. For those working in the tradition of private international law, the most salient law seems less a ‘regime’ than a helter-skelter affair, the product of numerous professional jurists or legal scientists in many countries struggling to work out the requirements of a rational, objective legal science and the requirements for reliable market transactions. Private international lawyers tend to see themselves in relationship to the projects of private parties in a sphere outside government, regulated only exceptionally.

Comparativists share much of this private law sensibility. Many of the leading comparativists have focused on private law and the most central stories of comparative law – the difference between civil and common law, the reception of Roman law – are largely private law stories. Comparativists more often attribute the adoption of particular rules to accidental borrowings or autonomous expertise or to the extension of broad legal cultural families than to political choice or struggle. Like private international lawyers, the comparativist is more likely to focus on nongovernmental ordering, or on the judiciary, than on the parliament or administration. This is true despite the fact that comparativism had an important early connection to the project of informed regulation, comparing regulatory initiatives of nascent welfare states in the late nineteenth century.

Where comparativism shows a technocratic bent, in developing universal private law rules or facilitating wise resolution of potential conflicts, the job presents itself as one for experts, trusted for their erudition and neutrality, only able to be undertaken with the most careful study and a detached scientific rigour achievable by the true scholar. On visiting the legal office of a typical United Nations special-
ized agency and then UNIDROIT or the International Chamber of Commerce in quick succession, one cannot help but be struck by the fact that in the United Nations, staff lawyers have nationalities which are often politically coded, at least in the broadest terms, while at UNIDROIT or the International Chamber of Commerce, the lawyers one meets are introduced rather by linguistic expertise and disciplinary specialty.

One consequence of this stylistic difference is that in the American legal academy, the common collegial alliance between internationalists and comparativists remains thin, an alliance of convenience against the parochialism of colleagues or a sharing of boondoggles. From the comparativist perspective, the public internationalist seems philistine, crassly preoccupied with enlisting participation in newfangled governance structures built on the flimsiest base of cross-cultural understanding. To the internationalist, the comparativist can seem quaint, elitist, irrelevant. At the same time, however, their rather different methodological self-denials, the comparativist of easy solutions or political ambition, the internationalist of cultural commitment, can lead to a similar tone of cautious anxiety, a combination of modesty and self-confidence, of methodological obsession and reticence to talk about oneself, the conviction that one is both marginal and part of a larger and ultimately more significant community, characteristic of the pragmatic cosmopolitan in both fields. The rethinking of comparative law I am proposing would begin by uncovering connections to governance which may underlie this outer pattern of denial. Comparative law work, at least in the North American tradition, can be rather easily divided into three broad geographic categories and two broad methodological styles. Geographically, we find work predominantly concerned with the Western tradition and differences within it (say between civil and common or capitalist and socialist law), work focused on non-Western cultures (typically studied in their specificity rather than in explicit relation to the civil/common or capitalist/socialist traditions of Western law) and work which styles itself universal or global in its reach. Comparative work focused on the Western tradition distances itself from issues of governance somewhat differently than work concerned primarily with understanding non-Western cultures, or work that positions itself geographically in more universal terms. The issues of governance from which it is most concerned to keep distant are also somewhat different.

At the same time, for all the discipline's internal divisions among historicists, idealists, functionalists, and so forth, at the broadest level of intellectual style we can differentiate two types, which I think of as 'technocrats' and 'culture vultures'. The technocrat is more overtly concerned with ongoing projects of harmonization or modernization which require comparativist expertise. The culture vulture is more likely to stress history and cultural specificity, and to think of him or herself less as an expert than as an intellectual. In the broadest terms, technocrats distance themselves from governance in the language of autonomous expertise, culture vultures in that of erudition.
International economic law – the bundle of institutions and legal doctrines structuring international trade and finance, from the GATT through national antidumping regimes – is home to a range of comparativist projects. Much of international economic law – the definition of ‘dumping’ or ‘subsidy’, the equation of regulatory non-tariff barriers during negotiations over tariff concessions, the identification of departures from agreed tariff levels – depends upon defining a distinction between a base line of free market trade and governmental intervention. Difficulties arise because this distinction looks quite different in various legal cultures – for example, is governmental licensing of retail outlets part of the background market structure or an intervention? Answering such questions requires comparative analysis of various sorts – to establish a constructed market price against which dumping can be measured, to mesh, or ‘interface’ different regulatory regimes in application of WTO and GATT commitments, etc. Although a great deal of this work relates the national frameworks of OECD countries to one another, international economic law is meant as a universal project – the standards deployed to measure dumping in Indonesia no different from those applied to Canada.

The perception that economic interdependence is growing, coupled with the new mobility of capital relative to other productive factors, has fueled interest in regulatory harmonization. If national environmental or consumer protection, or labour regimes seem to be undercut by increased foreign trade, one response has been to search for common standards across markets. This work also employs comparativists who can work out differences and identify similarities among different national schemes for, say, protecting intellectual property, and who can then participate in formulating possible common approaches. This sort of comparative work has been actively pursued within the European comparativist academy through the regulatory initiatives of the European Union, but exists in North America as well, particularly among those specializing in international aspects of various national regulatory regimes, like taxation or labour law.

The study of non-Western legal cultures also hosts a range of technocratic comparativist projects, most of which are concerned with identifying the legal prerequisites to economic development. The traditions of ‘law and development’ or ‘modernization’ in the 1960s and 1970s have been followed by initiatives aimed at facilitating the emergence of so-called ‘transitional societies’ into the international market. Each of these projects has had a comparative dimension – in identifying the legal structures which have been or remain present in various developed or post-transition economies, comparing these to the legal structures available in the developing or transitional world, and identifying the most viable first world legal implants for export. Comparativists work at identifying the best regulatory regime for emerging securities markets, the importance of judicial review for modernization, the most viable constitutional court procedures, and so on.

There is no question that technocratic comparative law, whatever its geographic orientation, seems more closely associated with the issues and institutions of governance than culture vulture comparativism. Nevertheless, even the technocratic
comparativist stands somewhat aloof and apart from government itself, primarily by figuring him or herself as an expert or staffer. For the lawyer as technical expert, there are a number of well trodden ways to explain one’s independence from the political machinations of government. Perhaps the political questions have been resolved elsewhere – in parliament, or diplomatic negotiation. The expert may seem to work only within the confines of bargains others have struck, implementing a commitment to tariff reduction or market viability. For some technocrats, the point of expertise is that it is directed solely at illuminating the conditions under which uniformly sought goals can be achieved – development or efficiency, or growth. For others, the key point is that expertise as a whole is oriented against corporatist local politics and entrenched interests in the name of a rational general will.

Each of these technocratic stances is familiar from comparative work associated with international economic law, projects of harmonization, and development. The comparativist who identifies a non-tariff barrier or constructs a market price for Indonesian lumber is implementing a broader multilateral deal struck by politicians, embodied in the GATT and ratified by the legislature. In this sense, he is not governing. The comparativist who prepares the background papers for an effort to harmonize intellectual property law in Europe is searching for the ‘best practice’, the most efficient, most administrable regime. The comparativist developing model securities codes for Eastern Europe is less governing than facilitating the disestablishment of locally entrenched ex-nomenklatura in favour of a more rational scheme of capital accumulation from which everyone will benefit.

The governance with which the technocratic comparativist wishes to be disassociated is the messy politics of intersovereign negotiation, national parliamentary ideological conflict, and questions of distribution, involving winners and losers rather than a more efficient pie. And this is the governance associated with public law internationalism. It is easy to get a sense for this difference by considering how a particular question, say global environmental protection, would look to the public law internationalist and the technocratic comparativist embarked on a project of harmonization – that point at which the internationalist and the technocratic comparativist might seem to have the most in common. For the internationalist, the issues would be boldly political – bargains between North and South, regimes to structure bargaining and enforce results, the emergence of global norms and commitments. The comparativist participating in a harmonization project would more likely be concerned with finding out exactly who was doing what, comparing technical solutions, implementing a framework agreement.

Of course, the comparativist who participates in these technocratic projects might forswear even the role of expert, claiming simply to be providing information about cultural differences, best practice and the history of inter-cultural legal influence. This stance, however, is far more familiar among culture vultures, whose distance from governance is marked in the language of erudition rather than expertise. We find culture vulture comparativists of global orientation pursuing a variety of projects, from elaborating the doctrines of a potentially universal private law
order to developing taxonomic criteria for identifying and studying ‘law’ across all cultures. Both of these inquiries lead toward the philosophy of law: either by identifying the core doctrines necessary for order outside the state, or defining the social phenomena which can properly be termed law. Culture vulture comparativists write about these exercises as intellectual projects and tend to explain cultural differences as local variations on universal human or market needs. This general stance seems to have been developed by the tradition of classic comparative law, which focused on relations among Western legal cultures (particularly common and civil law), the history of Roman law’s reception, or the reception of common law pragmatism and American style adjudication or legal practice in civil law settings. Some culture vulture classicists pursue historical study of the origins and structure of the West’s legal specificity. Others are more concerned with contemporary practices and institutions, again primarily of private law. All are concerned with what is unique in the Western legal tradition, and with understanding which differences within that tradition can be sustained without threatening what makes the West special.

For this whole group of comparativists, nothing could be farther from their mind than governance. They might be making an argument about what is necessary to sustain the West against the rest, or about what is universally human, but it is an intellectual argument for an intelligentsia, a matter of philosophy or knowledge, not politics or power. These comparativists present themselves as academics obeying only the dictates of scientific rigour, objective analysis, and so forth. To polemicize would vulgarize. The governance from which they distinguish themselves is not merely the institutional will to power, the committed world of subjective politics and ideology, the normative impulse to control or punish, but also the quotidian profession of practical management and technical expertise. For these comparativists, even their technocratic cousins may have gone too far.

We can see this difference most profoundly in the difference between culture vulture and technocratic comparativists whose geographical orientation is to the world outside the West. For the comparativist interested in area studies, by which is meant the study of legal systems other than European civil and Anglophone common law, the project is one of sustained cross-cultural inquiry – listening and reading carefully, noting and explaining differences in historical, local, contextual terms, etc. Area studies comparativists tend to be the most modest about their enterprise. At stake is not comprehension of the universal in law, but simply empathetic understanding of a different society. Culture vulture comparativists interested in exotica are much more likely to see their project as inevitably unfinished, a continual process of trying to understand. Here also is a distance from governance, although now the governance to be avoided is colonialism or imperialism, reinterpreted less as political or institutional projects than as the quite personal sins of arrogance or undue ambition.

Viewed from the culture vulture’s vantage point of an infinitely extending project of incomplete knowledge, governance always requires premature closure. There is always the danger that any well conceived universalist project, even an intellec-
tual one, may turn out to be insufficiently sensitive to exotic cultural differences, just as there is always the danger that local cultural expressions in the periphery will verge toward the nationalist, themselves insensitive to the particularity of Western values. The culture vulture can only try to warn, caution, and inform.

Nothing could be farther from the sensibility of the technocratic comparativist pursuing development, modernization, or the transition to democratic market capitalism. Where the technocratic comparativist distances himself from governance in the name of universal projects and the specialized role of the expert with technical knowledge, the culture vulture distances himself from governance precisely by forswearing the universalizability of governance projects in the name of a deeper understanding of difference. His is the distance of the intellectual, not the technocrat.

The governance projects which the culture vulture comparativist avoids in the periphery are precisely those taken up by the public law internationalist. A good example would be the quite different responses comparativists and public international lawyers have to an issue like female genital mutilation (FGM). For the public law internationalist, FGM presents a basic challenge to the structure of public law. FGM is often practiced consensually by individuals within a private domain, and yet seems to conflict with universal human rights norms which have been agreed by states. For public international lawyers, FGM raises a basic governance problem—does cultural variation place a limit on the aspiration to global normative order? The project is to figure out how the normative fabric can be sustained and extended in the face of this cultural challenge. For some the answer is simply to respect (and seal off within the state) the domain of cultural difference, for others the answer is to strengthen the enforcement of human rights norms, for still others, a middle way seems best, perhaps sneaking up on local cultural practices through redefinition of the problem as a health issue, by providing support for local feminists struggling against the practice through the mechanisms of international ‘civil society’, etc. For public international lawyers confronting FGM, the basic question is “what are we going to do about it?” Quite different the voice of the area studies comparativist, for whom FGM needs to be addressed not because it presents a conflict between local and global order, between culture and governance, but because it has become an issue in the governance community. Rather than wondering “what shall we do”, the comparativist will write to answer the question “how can I make them understand?” A comparativist article on FGM will not likely end with a policy proposal—the point is far more likely to be “it’s much more complicated than you thought”.

Common to all these comparativisms, of both expertise and erudition, is a stance which we might term ‘cosmopolitanism’, always complexly distanced from what it pictures as governance. Governance is the domain of ideology and political choice, the work of national elites jockeying for position, all dirty stuff for a cosmopolitan. Those who govern are ambitious men, subjective in their political commitments, seeking illegitimate rents and dominion in an unseemly struggle to distribute yesterday’s pie rather than working together to bake a larger pie tomorrow. For the cosmopolitan, values are universal and humanist, projects rational and
pragmatic, knowledge – of the self as of the other – good for its own sake. The cosmopolitan knows he lives in a world which others rule, but has carved out a niche and made it virtuous. His objective is to expand options rather than offer solutions. We see this broad humanist tradition in both the technocrat only trying to get things right and in the culture vulture straining to hear the murmurs of cultural difference. This is cosmopolitanism in the sense of the ‘family of man’, of universal pragmatics, and of the de-politicized world of market finance and trade. What we see in differences between technocrats and culture vultures or across comparatists’ different geographic orientations are differences within a common sensibility – different ways of picturing the governance to be elided and different images of the virtuous cosmopolitan self.

It might appear that we could begin to get beneath these various distancing strategies, to explore the governance dimension of comparatist projects, by asking about the politics of comparative law. For example, if we think of public law internationalists in the United States largely as liberals, should we think of comparatists in the United States as conservative? The focus on private ordering and the distance from government might suggest this, but it turns out that each of these comparatist projects has been pursued in a range of political orientations, with, for example, greater and lesser enthusiasm for the separation of private law from politics, or greater and lesser enthusiasm for centralized public law regulation. These projects have been pursued with attitudes towards the culturally different easily recognizable in the national political lexicon as both liberal and conservative. Although most comparatists in the United States see themselves as part of the intelligentsia’s center-left political consensus, we find a layering of positions broadly recognizable as ‘left’ and ‘right’ in the broader legal academy.

These political positions do not translate smoothly into differing modes of participation in governance. Although coded in political terms, these academic postures or styles are far more significant relative to one another, as auxiliary means to differentiate one comparatist from another, and comparativism as a whole from public law internationalism. In that, they track quite closely the various styles by which comparatists distance themselves from governance. For culture vultures, not to be a technocrat – to forswear the quotidian and compromised world of the expert for the rigours of science or the compassions of intellection – is a political experience. Technocratic comparatists can experience their insistence on the perquisites and immunities of expertise against the public law internationalist, or their determination to make the musings of the culture vulture practical, as personal political commitments.

Let me propose three starting points for a broader exploration of participation by comparatists, both culture vultures and technocrats, in what we might broadly call the project of international governance. These common starting points cut across attitudes toward public regulation, the state or centralization, and toward cultural diversity. First, in relation to other internationalist fields and projects, comparatists act as the diversity department, reassuring either that cultural differences
can be accommodated or that they may remain safely (even pleasurably) exotic. Second, comparativists play a role, both practical and ideological, in the construction and defense of an apparently de-politicized private law. Third, comparativists participate in the broader legal academic project of explaining, apologizing for and stabilizing elite understanding of the ‘quasi-autonomous’ role of law in society, as a force at once effective in society yet safely removed from political or ideological manipulation. Each of these projects is made easier precisely by comparativism’s trademark posture of distance from power and broad ranging political sympathies.

In a very general way, the presence within the intelligentsia of a special culturally attuned discipline might help reassure that, although problems of cultural difference are not directly within the internationalist’s domain, they are certainly important. Comparativists generally make two sorts of arguments, explicitly or implicitly, about cultural differences between nations: first, that cultural differences are not that big a deal and one might safely assume that they will either stay below the water line of sovereignty, perhaps within the realm of personal preferences, or will yield softly to the pressures of assimilative globalization; and second, that they are a big deal and may well limit the ambit of universal or internationalist governance. To a certain extent, of course, these two arguments (as we might expect) vary with geography – it is often said that human rights simply run into the wall of cultural relativism in Chad, Beijing, or Rangoon, but that differences, say, between civil and common law traditions, are more fanciful than real. But it is not always this way. One often finds area studies explaining that Chinese ways of protecting property, properly understood, will fit into the GATT scheme very nicely, that African and Asian empires invented the Universal Declaration of Human Rights centuries before the West thought to draft it up, and, on the other hand, that German and British administrative or French and American judicial styles are simply too different to be readily compared, let alone harmonized.

The calm sense throughout comparativist work that one can distinguish the familiar or neighborly from the exotic greatly simplifies the governance endeavour and might easily be reinterpreted by an internationalist to mark the borders of the assimilable, the civilized, or the liberal. The internationalist can leave culture alone, can remain agnostic about whether Rwanda is run by Hutus or Tutsis or some multiethnic combination, whether the state formerly known as Yugoslavia remains intact, so long as the result, one way or the other, can be read. At the same time, comparativists play a role in constructing perceptions of cultural difference – in identifying for themselves and for the public internationalists what is the ‘same’ and thus generates no anxiety about ‘culture’, and what is ‘different’ and needs either to be assimilated or excluded. The definition of what is, and is not, ‘comparable’ is a fundamental and continuing operation of all comparative work. The idea here is not that the comparativist serves the internationalist directly, as a native informant ferreting out elements in the foreign culture which might yield to internationalist pressure, or warning the public international lawyer to steer clear of local hot spots. Jorge Esquirol suggests that comparative law has played a role, both in
Latin America and in Europe, and North America, in settling an image of Latin American legal consciousness as European-in-exile, a liberal sensibility stranded in an illiberal society. This common understanding provides the basis for a set of common political projects to protect the European sensibilities of Latin American jurists as a basis both for cross cultural cosmopolitan governance and defense of what is unique in the Latin American legal tradition. Here the comparativist facilitates governance by calming the threat that internationalist cosmopolitanism will itself be seen as a culture in struggle with what it would prefer to see as the terrain for engagement.

From a social point of view, the comparativist intellectual can be thought to pursue an ideological project, developing lenses through which the center will interpret the periphery, the law will interpret society, the global will interpret the local, as well as roles through which the periphery, the social, the local, can express its identity. The impact of this work might be felt in the self confidence of the internationalist, or in the strategy of the culturally remote. In this, the comparativist assists the internationalist by developing the alternatives of assimilation and exclusion for particular cultures while solidifying an ideological picture of international governance ‘above’ cultural differences, either absorbing or avoiding them. Some of the ideological work is done simply by defining what culture is – slipping between images of culture as a set of harmless residual differences after assimilation and as a set of exotic unassimilable local commitments.

We might also think of the comparativist’s role in psychological terms. In such a conception, the comparativist plays a role in the libidinal economy of the internationalist, assisting in the management of his desire by rendering the other either available or exotic. In this image, comparativist work might be read as a symptom of the global intellectual’s strategy of identity formation and stabilization. Fear and desire at the heart of governance can be made compatible with the internationalist’s autonomy by projection onto an other who can then be dealt with either by routinization (they are just like us, this difference is like all others, don’t worry, I know them well, you too can know them without losing control) or exclusion (they really are different, understanding and engagement are almost impossible, available only to the intrepid, the exceptional, the libertine, the comparativist, whose reports can be read as pornography from the frontier).

Comparativists play their most direct role in international governance when they help build the regime of international private law. It is here that the comparativist project blends most easily into a concrete legal practice in ways which involve both culture vultures and technocrats, elaborating rules, manning institutions devoted to the restatement and reform of private law rules, developing a scholarly consensus on the most reasonable or workable rules, resolving disputes through arbitration or the provision of legal opinions, advising legislators in the periphery on

how such matters are handled in the most advanced economies or advising at the center on the applicability of common commercial rules in peripheral settings.

The private law elaborated by comparativists in these ways constitutes an international regime of sorts, outside the realm of sovereignty. Unlike the public international law scheme, it is built not on sovereign consent or the expression of sovereign political will, but outside the realm of sovereignty, disconnected from government, in the realm of private actors and commercial transactions. This work proceeds both as harmonization among industrialized economies and export of private law machinery to the periphery. We find many technocratically inclined comparativists at the forefront of efforts to build an interoperable private law system in post-socialist societies and developing nations seeking to participate in the neoliberal international market.

The fact that this regime differs from the traditional public law regime in this way, standing outside the project of sovereignty rather than among or above sovereigns, allows the comparativist the sense that all this regime building activity can remain compatible with a distance from the messy business of government, if for no other reason than that private law is thought to be less political than public law. In a way, the whole point of constructing an international commercial legal system removed from particular national legal cultures is to reduce the risks posed for those who trade by the intrusion of politics, policy, and the whims of national government into the law governing their contracts. If an international commercial transaction can be legally constructed in a regime detached from local legal cultures, in a place without public policy, the risks from prejudiced national public policy, intercultural misunderstandings, national elite rent seeking, or biased judiciaries can be diminished.

This distance from government would be threatened were the same thing to be attempted through the sovereignty based regimes of public international law. In this vision, the liberation of commercial energy from politics and national cultural prejudice can only succeed in a government-free space, governed only by the wills of the parties, made comprehensible to one another through a set of standardized terms and education in a common commercial spirit. There is both institutional and ideological work here for the comparativist. On the one hand, the development of a system of rules which can be communicated and administered by commercial actors without the engagement of governments is an elaborate governance project. On the other, it takes continual work to define the allocative consequences of such a scheme of rules as in some sense not political.

For all this apparent distance from the regimes of public international law, as it turns out, the international private law regime elaborated by comparativists has come to resemble quite closely the overtly governmental structures developed by public law internationalists. Public international law governance is also a relatively dispassionate affair, in part because so much of international public law, its horizontal, contractual sensibility, has been developed by analogy to private law. In the last decades, moreover, public international law has become less preoccupied with
deference to the political wishes of actual sovereigns and more attuned to broader interpretation of the rules idealized sovereigns or 'the state system' requires. International law has become ever more procedural, ever less committed to particular substantive outcomes while pursuing construction of one or another general international regime, and more willing to embrace the disaggregated institutions of a fragmented state in a broad terrain of international, or transnational 'civil society'.

All this has taken the public international lawyer ever further towards a cosmopolitan disengagement from the overtly political as a self-conscious strategy of regime building. The interesting point is that the same rather technocratic structures and professional styles which seem savvy strategies of international governance in the hands of the most advanced public international lawyer continue to present as escapes from the political in the hands of comparativists and private international law scholars.

This ideological role is reassuring not only to the comparativist extending the ambit of international private law. It also reassures about the capacity of more public internationalist regulation by setting a limit on the ambit of the private sphere. Across many cultures, private law rules have developed according to their own logic, in the face of numerous interventionist initiatives and divergent public styles. One need not worry that the ecology partisans or the human rights fanatics will screw up your culture or disable your participation in the global market. Private order can be built outside all that, and culture is more resilient than that – take heart in the gap between law in the books and law in action.

The third significant way in which comparative law scholars participate in governance, across a range of political positions, is by engaging in a broad polemic about the nature of law and its relationship to society. In particular, much American legal scholarship makes an argument for one or another version of the claim that law is an autonomous social institution and value system, and at the same time is able to reflect and affect other cultural or political values and institutions. It is easy to see that such an argument might play an ideological role in particular instances, persuading the reader that this or that rule or social fact, or political initiative is or is not part of the law, that this or that governmental initiative is or is not political rather than legal. It is also possible to imagine academic work of this sort having a more general political effect, both ideologically and psychologically. To the extent we are able to credit this scholarly activity with a broader social or political role, reassuring an elite about the strengths and docility of law, legitimating the work of judges or legal scholars, justifying or obscuring or apologizing for aspects of social life which seem determined by legal rules, making aspects of law seem more or less integrated with or entailed by one another, making one or another aspect of law or social life seem easier or harder to change, this is governance work in which comparativists also participate. Study of foreign legal cultures is frequently deployed to substantiate arguments concerning the ability of judges to fill gaps in legislation without themselves legislating, or the ability of harmonizers to have reference to a body of rules which have developed accidentally, have been exported
and borrowed by experts without reference to their political redistributive consequences across radically different social situations, or the extent to which law can retain its integrity in the face of social repudiation or export to more primitive social situations.

4.4. A disciplinary partnership for understanding and governance

Putting it all together, we are left with an odd difference between scholars of international law and comparative law. Internationalists seem comfortable with power and uncomfortable with culture, while comparativists are eager for cultural understanding and wary of involvement with governance. Thus, as the internationalist Wolfgang Friedman states:

[It]o confuse policies born of changing positions of interest with religious, cultural, or other values inherent in the national character or the culture pattern of a people, can only lead to a grave distortion of the real problems of contemporary international politics and law. Just as in the Western world, the relative positions of Britain, France and the United States, and other countries have changed, with the change in their political and economic status, so the positions of the presently underdeveloped countries will be affected by their development.25

This view was picked up by scholars from the periphery as well. Take Anand, who comments:

[i]n fact the attitudes of the Western countries, as well as those of the Asian and African nations, whether toward the traditional principles of customary law, international organizations, or newly developing areas of international law are determined, as always, by their views of their interests. It is this conflict of interests of the newly independent States and the Western Powers, rather than differences in their cultures and religions, which has affected the course of international law at the present juncture.26

In comparative law, it is striking how firmly scholars introduce their work by disclaiming any but an accidental use value – their goal is understanding or contributing to a broadly humanist understanding of a universal phenomenon called ‘law’. Glendon, Gordon, and Osakwe describe the ‘aims and uses of comparative law’ in the introduction to their casebook this way:

[i]n a world where national and cultural “difference” is often seen as posing a formidable challenge, comparatists hold up a view of diversity as an invitation, an opportunity, and a crucible of creativity [...]. Comparatists are witnesses to the joys and discoveries awaiting those who make the effort to enter imaginatively into another mental framework [...].

Among the aims of comparative law, we would put first the pursuit of knowledge as an end in itself: comparative law responds to that characteristic of the human species which is curious about the world and wants to understand it.\textsuperscript{27}

The knowledge thereby gained may turn out to be useful, but for Glendon et al. the various possible ‘practical applications’ of comparative law are byproducts, not goals. For the comparativist, practical matters are significant as facts against which to test evolving knowledge.

The only harm comes if one forgets that the practical aims just mentioned are furthered by serious pursuit of scholarly objectives, and that scholarly exercises are apt to prove sterile if they are carried on without close attention to the way law operates in the rough and tumble of daily life. The fact is that, in law as elsewhere, theory and practice are like the two blades of a scissors, complementary and indispensable to one another. The best practical work is grounded in theoretical understanding; the soundest theory emerges from constant testing against practical know-how and experience.\textsuperscript{28}

At the same time, international lawyers have a quite complex and engaged relationship with matters of culture. Unpacking that relationship has been helpful in illuminating their governance strategies. It is precisely by eschewing involvement with matters of culture, which can be kept below the line of sovereignty, and forswearing any particular culture of their own, that international lawyers have sought to persuade sovereigns to submit to their rule. The international legal order presents itself as nothing more than the normative restatement of the wills, claims, and commitments of sovereigns, confirming, enshrining, recognizing sovereigns as sovereign and registering their prerogatives.

But the internationalist is not simply content to wait and see whether anyone seeks his services – he aspires to build the international order, to induce sovereign participation, thereby assisting the hand of evolution in advancing international society. He can do this in only two ways: patiently waiting for sovereigns who might take up his offer to formalize their intentions or by advertising the perfection with which he mirrors the sovereign’s will and facilitates the sovereign’s desire. The international lawyer governs by flattery of the king, in an endless process of seduction and transcription. And it is here that the internationalist begins to play a role not simply in governance, but in culture, stabilizing the innocence of his transcription by strengthening the sovereign as a veil between the culture and politics within society and the acts, demands and forms of interest in international law. The internationalist persuades sovereigns to come to his studio to be recorded, to see themselves in his mirror, and then constructs a regime consonant with his promises, for which his scholarly texts work less as polemics or proposals or ads than as works of justification, legitimization, or apology. By describing what he wishes to make true, by treating contestable matters as settled fact, by remembering his history as prog-

\textsuperscript{27} M.A. Glendon et al., Comparative Legal Traditions: Text, Materials, and Cases 8 (1994).
\textsuperscript{28} Id., at 9.
ress, the internationalist contributes not only to governance but also to culture, re-making culture as local and governance as global, rearranging the international public space, at least in the legal imagination, as distanced from messy matters of value or dispute, a technical terrain of objective procedures and consensual rules. For whatever reasons, moreover, the internationalist has been astoundingly successful, as a matter of both culture and governance – we all live, to some extent, in the international as a legal concept.

The comparativist’s focus on culture at first suggests a distance from such ideological and institutional projects of governance. But the comparativist’s modest posture as expert or erudite facilitates a remarkably parallel set of ideological and psychological relations to problems of power, reinforcing ideas about culture, about the posture of rulership and about the role of law which are familiar from internationalism. In the legal academy, if international law is the department of global governance, comparatists serve as a department of diversity. In differentiating themselves from governance by engaging with culture while asserting that culture can be understood without being ruled, comparatists reinforce the internationalist’s claim to govern from a space beyond culture. By dividing the assimilable from the exotic, the comparativist stabilizes the boundaries between center and periphery while reinforcing the claim that those boundaries are matters of culture and history rather than political products of an ongoing international regime. At the same time, comparatists construct and defend a cosmopolitan private law regime which presents itself as detached from both cultural and governmental pressures, facilitative of commerce and wrought by a combination of technocratic consensus, historical accident and deracinated expertise. Comparatists participate in the academy’s broad ideological project to defend the integrity, autonomy, and pragmatic capacity of the international legal order to remain above the specifics of political dispute, and precisely thereby to provide a rational and pragmatic machinery for practical government.

By rendering plausible a project of understanding divorced from management, the comparativist contributes, in his small way, to a regime which separates problems of order among sovereigns from problems of understanding between cultures, a separation of government and culture as useful to the internationalist as to the local politician consolidating a domain of resistance to foreign rule. The comparativist, in this sense, works as ideologist for the global system of government, reinforcing the legitimacy of local potentates and cosmopolitan technocrats alike. By foregrounding legal cultures in historical, even familial relations with one another, the comparativist reinforces the artificiality and deracinated character of the international legal regime, both public and private. In short, the comparativist and internationalist form a partnership to imagine and then create a geography of global governance and local culture. We might begin to unravel their work by reading global governance as a local culture, and the localization of culture as a governance project common to international and comparative law.
5. **ILLUSIONS OF A HISTORY: PROVENANCE AND PROGRESS**

### 5.1. What is international law?

So far, I have proposed that we think of international law not as a set of rules or institutions, but as a group of professional disciplines in which people pursue projects in various quite different institutional, political, and national settings. Their projects may be personal, or professional, or political, may be pursued alone or collaboratively. Sometimes they are self-consciously ‘ideological’ in the narrow political sense that people pursue conservative or centrist or liberal agendas within their disciplines. More often, professionals in these fields think of their disciplinary projects as not being ideological in this sense and criticize fellow professionals whom they think have introduced an element of ‘subjective’ political bias into their professional activities. People typically present their projects as ‘balanced’ or simply ‘professional’, sometimes as the quotidian management of the international system and sometimes as part of a very general human struggle for better global governance or intercultural understanding or economic growth.

At the same time, legal internationalism, in each of its disciplinary incarnations, is also a fantasy that there is or might be or should be something more going on than simply the pursuit of individual professional projects. Perhaps a fantasy that all this activity will or has added up to a ‘regime’ or ‘system’ or ‘market’ or a framework, or set of rules or principles. Perhaps a fantasy that there is something called an ‘international community’ which, in a disembodied way, has ‘agreed’ to some things and foregone agreement on others. And whose agreement might be elaborated as a set of rules and standards of conduct. Or a fantasy that an ‘international market’ is expanding to link buyers and sellers, swooping down to reward the productive and punish the corrupt.

Fantasies of this type provide an orienting context and direction for professionals and intellectuals working in these disciplines about what to do next. They tell legal internationalists, as they debate with one another about what rule to adopt or what institution to build, that they are working on the international plane, managing ‘the international system’ or ‘the global market’. They also provide a measure for progress: one should improve, expand, build, strengthen international governance or the global market or intercultural understanding.

By focusing on the fantasy element in more conventional descriptions of the field, I want to emphasize my sense that international law is not a stable thing which relates in some complicated way to society or political economy or class structure. Neither is the ‘market’ or the ‘regime’, or the ‘system’ a place or thing which can be built or advanced in this sense. These are all terms in a debate, arguments, images, ideals. When people say ‘the international community’, for example, it is both a way of referring to a particular group of people – perhaps the few hundred people active on a particular issue in the governmental bureaus of significant states – and a way of suggesting that this ‘community’ is more than the sum of