their efforts. When we say ‘globalization’ of the ‘market’ has done this or that, or been advanced here or there, we might be referring to a few hundred businessmen or investors who are pursuing some interests and not others, or we might be referring to a particular set of regulatory initiatives, property rules, governmental practices, and institutional projects, which have some distributional effects and not others, which are the projects of some groups and not of others. But we are also suggesting, or promising, that something more intangible, natural, transcendent, is at work.

When international lawyers make arguments in pursuit of their various professional, personal, or political projects, they do so in terms which express this sort of fantasy – that there is an ‘international law’ and an ‘international politics’ which diverge and can, must, should be reconnected, by norms, institutions, etc., or that there is a ‘market’ of modern global rationality which is threatened by the subjective political overreach of local rent seekers, by self-dealing and corrupt managers, by national politicians, etc., and which must be protected through professional fealty to a liberal spirit at all levels of governance to rebuild ‘confidence’. To my mind, it is more accurate to think of international law as a practice of argument among a rather narrow range of people scattered about in the world, often about the relationship between something they posit as ‘international law’ and something they refer to as ‘international society’, than to describe it as ‘the law governing interstate relations’. Likewise, rather than defining international economic law as the ‘law governing international transactions’, we should think of it as a set of opportunities, settings and practices of debate among professionals and intellectuals about the status of forces they imagine between something they call ‘the market’ and something else they refer to as ‘politics’ or ‘protectionism, or ‘corruption’.

But international law is more than a fantasy medium or rhetorical field in which people pursue projects – it is also a polemical field, a domain of desire; a commitment that this fantasy thing, international law or the international market, is basically good and that there should be more of it. The specific projects people pursue are oriented in part to build, develop, sustain, legitimate, improve, international law or the international market. The object of this desire is obscure, a loose mélange of liberal (in the European sense), humanist, and cosmopolitan ideas – that things should be done internationally, that the nation and the state are things of the past, that internationalizing pretty much any endeavour is a good thing, that progress means globalization, that cross-cultural contact will advance understanding, that people should learn foreign languages, that people should trade more, that ‘comparative advantage’ will ensure that everyone ends up better off, and so forth. Although vague, an internationalist orientation, like a general sense of being ‘modern’ or ‘cosmopolitan, or ‘reasonable’ can be extremely powerful in building or cementing social, professional, and political connections.

This internationalist orientation looks different in each of the disciplines I have looked at so far – public international law, international economic law, and comparative law. International public lawyers worry about sovereigns drifting toward
anarchy and know they share the desire to build better international governance. The discipline of international economic law is concerned less with governing than with liberating a set of imaginary buyers and sellers from risk in an international commercial world and with separating economics from politics; protecting transactional space from governmental encroachment. Comparative law is concerned less with governing than with understanding intercultural differences and articulating the functionally common needs of apparently disparate cultures. Taken as a group, this division of sensibility among these three disciplines strengthens our sense that governance is somehow different from both the market and culture; that governance is public while the market is private, that governance is international while culture is local.

A lawyer might pursue a political project in one of these disciplines (more refugees should be admitted to a particular country), but when he or she argues for a looser doctrinal approach to refugees, he or she thinks, probably correctly, that to be most persuasive with disciplinary colleagues he or she should present the proposal so as to induce the fantasy of a more perfect relationship between international law and its subjects – this way of handling refugees will strengthen international law or the international system. Indeed, as the projects pursued by international lawyers unfold, this broader desire, this disciplinary will to power, often surpasses whatever particular objective, pragmatic or political, the specific projects might seem to have had. Sometimes this results from the fact that a proposal is made as a general matter – “it would be a good thing to use national courts to enforce international norms” rather than “this case, if brought here, will be useful to these interests.” Indeed, this generality often seems an independent virtue, more significant than the results of particular cases. We might say that all these internationalist disciplines aspire to generality, to universality, to rationality – to their own scientific perfection and instantiation – which reflects the way individuals pursue more particular projects.

Part of what it means for an international lawyer to eschew politics and ideology, to be professional, is precisely to pitch one’s concerns in this general way – to will for the discipline rather than for oneself, to fuse a personal professional destiny to that of the field, to work that the discipline might achieve its aims in the name of human progress, and to experience its success as a personal triumph. A legal internationalist works to enhance the authority of international norms or the jurisdiction of international institutions. Progress or reform means that the ‘international system’ defeats great power statecraft or national particularism by sanctioning or deterring the aggressor or remaking sovereignty and the state, that the ‘market’ has expanded to embrace ‘societies in transition’ to it, has consolidated its defenses against backtracking by national or local elites. For professionals working in subfields, this disciplinary objective will pull particular projects into the grooves of the discipline’s self image. Comparativists should address problems so as to further intercultural understanding – which means eschewing what seems the governmental. Internationalists should further global governance – which means avoiding or
managing the cultural aspects of a problem and staying clear of private law. International economic lawyers build the market best when they likewise avoid both governance and culture, focusing instead on extending a liberal commercial spirit.

Of course, such general disciplinary desires may be at odds with any number of particular projects, almost by definition. After all, in the disciplinary lexicon, international ‘law’, like the ‘market’ or intercultural ‘understanding’, is general and universal, while politics, illiberality or nationalism are local and specific. For regime building, one must therefore forego the political in this particularist sense in the name of a law which, in some future moment, once strengthened, will return to judge and rule, just as one must forego the temptations of regulation or rent-seeking in the name of a future market which will reward productivity with growth. Concrete proposals – to build an international judiciary, to reshuffle voting rights, to establish new institutions – are seen as expressions of a general intellectual commitment to the possibility that a universal or enlightened rationality will prevail over local political passions or that an institutional pragmatism will get us beyond the formal bureaucratic rationality or balance of power preoccupation of the state system.

It is not just that internationalists make arguments for particular goals in terms which highlight their systemic contributions, or that they sometimes get carried away with their own systemic rhetoric and forget their particularist objectives, but that service of the disciplinary desire carries with it an erasure of particularist projects, sands them down, harnesses them to a universal project. For the internationalist, these general projects come to define what it means to pursue the particular. For such a discipline, a global politics of identity is simply unthinkable – everyone benefits from the governance or the market, or the understanding which will emerge from the disappearance of particularist politics. In this disciplinary imaginary, Russia’s interest or Indonesia’s interest, or Japan’s interest aligns with the interests of the international market – local politics (of protectionism, exchange controls, redistribution, corruption, etc.) are equally detrimental to both the growth of the international market and to the local economy, leading naturally to a loss of confidence, then to autarchy, until ultimately one simply slips back from modernity altogether. Or think of the common sense among public law internationalists that participating in an international non-proliferation regime would, properly understood, be in India or Pakistan’s own best interest. It is in this sense that international law is a project of governance, bringing law in general to bear on politics in particular, in order to bear on anarchy, reason on chaos, the international on the national, etc., even when – especially where – it also presents itself as a set of specific responses to practical problems.

Even, in fact, when the particular projects misfire and solution to the practical problems remains out of reach. So long as the field remains oriented towards ‘governing’, particular failures of government will be comprehensible simply as warnings to do more, to intensify one’s efforts to build the system as a whole. Similarly for an orientation to building a ‘market’ or advancing intercultural understanding.
International law, in this sense, lives in an interminable procedural or constitutional present, polishing its tools, embroidering its technique, strengthening itself, that it might one day tackle particular substantive problems. It would perhaps be more accurate to say that solutions to particular problems emerge as a by-product of this system building agenda. Or that solutions to particular problems are cash payments on a dramatically leveraged legitimacy account — every now and then you must actually produce a resettled refugee or drained swamp, or defused border crisis to render the broader project of regime building rhetorically plausible.

These general desires also blunt the sense that the internationalist disciplines I have been exploring are ideological or biased. The professional within each is oriented rather to building the system, within which others, later, elsewhere, may pursue ideological or political projects of various sorts. Of course this is not the whole story. These disciplines also have blind spots and biases. Even if by default, they have developed a substantive program — this regime of doctrines and institutions, this market, these interests and not those — as the instantiation of enlightenment, rationality, and modernization. We have seen the articulation and defense of this program in the collaboration among the disciplines of public international law, international economic law, and comparative law. Although these disciplines understand themselves to be separate from one another, to work with different methods on different problems, in a broad sense we should see them as collaborators — to equate politics with public governance rather than private law, to insulate private law from political contestation, to differentiate global governance and local culture, to define and limit the political aspirations and avenues of the international regime.

Sometimes these projects, obscurely present in the background assumptions of international law, international economic law, and comparative law are presented more directly and forcefully as orientations for foreign policy. In the United States, the discipline of international relations has been remarkably consistent in expressing the broad desires animating these other legal disciplines as the background conditions and objectives for United States foreign policy. This work has continued in the post-Cold War period. In the next essay, I explore the interpretations of the post-Cold War international terrain offered by the mainstream international relations discipline in the United States, which turn out to be altogether consistent with the background projects pursued by the disciplines I have examined thus far. I end with a polemic for an alternative interpretation and an alternative vision.

It is sometimes difficult, however, to imagine the ways in which a discipline which sees itself as outside ideology, which develops precisely by purging itself of particularist bias, could nevertheless be engaged in a polemic for a particular political vision. Two of the most characteristic ways in which this happens are through the sense of geography and history which the discipline develops for its members. In this essay, I examine the role of history in the field of international law in this sense — as a tool with which the discipline pursues its desire. As it turns out, historical narratives are central expressions of fantasy, buttresses for desire, and disciplinary tools deployed by international lawyers pursuing projects.
Mainstream international lawyers use history in what seem two broadly different types of argument. First, history figures in arguments about the provenance and power of particular rules, principles, and procedural arrangements, operating as a mnemonic to remember the discipline’s favourite argument bytes and institutional techniques. Second, broad historical stories about the discipline’s origins and development figure prominently in polemics for and about international law, offered as models for the field’s progress and renewal. As it turns out, however, arguments about doctrinal provenance are tinged with stories of progress, and the progress narrative is more than it seems – at once a program and a geography. It is worth looking at these types of historical story in turn.

5.2. History as provenance

Absent a code or legislature, international lawyers have long read their rules in history, culling famous texts, diplomatic incidents, and judicial pronouncements for insight about what ‘the international community’, as we would now call it, treated as a binding rule. This effort has been more or less systematic at various moments – before the nineteenth century the citation practice was too haphazard to be called ‘history’ in a modern sense – and has been pursued with quite different senses of rigour or completeness in different national traditions. Nevertheless, an argument about a rule or principle, or institutional technique in international law is almost always also an argument about history – that the particular norm proffered has a provenance as law rather than politics, has become general rather than specific, has come through history to stand outside history. Alongside these everyday assertions of normative provenance has arisen a more general historical scholarship aimed at doctrinal restatement – what was ‘the law’ about this or that in a particular period? This style of scholarship has been more popular in Europe, and particularly in England, than it has been in the United States. Innumerable doctoral dissertations have been produced tracing the ‘history’ of the right to conquest, or the binding force of treaties, or the meaning of sovereign immunity. Even when enriched by interdisciplinary work in international relations or diplomatic history, the project remains one of doctrinal restatement: what was/is the law?

A United Statesean international lawyer typically asks the question somewhat differently. Of course there is a practice of assaying history to ascertain the pedigree of customary norms. But in United Statesean post-war international law, one is more used to asking questions about the machinery through which what might (or might not) be described as norms have made themselves felt than questions about the origins, sources, history, or precise content of norms. The United Statesean international lawyer – whether influenced by the relatively legalist process jurisprudence of the 1950s or by the policy orientation of the Yale school – is likely to think a rule’s provenance at best a make-weight argument for its applicability. We are used to agnosticism about a rule’s origin or precise content, seeing international law as a domain in which various claims are made about rules and principles which
sometimes do in fact persuade. Provenance is only a weak explanation for persuasion and only the weakest provenance is required before a rule can be asserted – the claim must simply be plausible. After that, one must wait to see how nations in fact behave. For United Statesan lawyers, history offers rather a lexicon of plausible arguments and a storehouse of possible institutional arrangements, rather than a mode for judging the force or precise content of a rule or principle.

Although United Statesan preoccupations with state behaviour and process, like our embrace of relative normativity, soft law, and an unstable boundary between legal and political argument, will often seem ahistorical and squishy to continental colleagues (just as European historical work confidently stating what the law ‘is’ can seem formalist to our ears), these two traditions in fact deploy history in broadly similar ways. Both write history to generate a holding. Ultimately, the reduction of one historical event after another to an instance of norm generation is no less forced and presentist than the effort to draw from one case study after another comparative insight into how norms are applied. Both inquiries compress the historical record into a list of factors and a holding. In both traditions, it is often hard to withhold a smile when reading accounts of both sorts which narrate a conflict only to conclude with a statement of its ‘significance’ which could only startle the participants – e.g. ‘and so it turns out there is an exception to the doctrine of...’, or ‘the UN does have jurisdiction over ...’, or ‘international rules can influence policy, even in a crisis’ – that sort of thing.

Of course, history-as-provenance is always threatened by the differences among actors over time. The rhetorical gestures and motives of scholars and statesmen are extremely hard to compare across time as applications of similar ideas or contributions to a single institutional project. Moreover, it is unlikely that historical actors were primarily concerned, or even noticed, the relationship between their actions and a transcendent historical development of something which would later come to be summarized as ‘international law’. The complexity of the historical record – different ideas about what ‘law’ was, different attitudes about ‘sovereignty’ and ‘war’ and ‘right’ – tend to disappear when one looks at historical events for evidence of what ‘the law’ about some transhistorical phenomenon like ‘conquest’ or ‘sovereign immunity’ has been. A similar flattening occurs when one canvasses historical events to see whether the norm held, was applied, influenced behaviour.

One result of this instability is that individual accounts of what the law ‘is’ are open to challenge. And the discipline has developed a rich practice of argument, of challenge, and response and restatement – in scholarship, in the great projects of codification, and in the day to day argument of lawyers and statesmen – about what the law which enables their action or binds their opponent actually ‘is’. The point of history as provenance is less to establish or clarify, or even to ‘progressively develop’ the law, than it is to open a terrain of professional dialogue, a ‘discourse’ if

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you like, about what the law is. When practicing this discourse, although professionals may disagree sharply about the content or existence of norms, about the history which binds, about the players whose views should count, and so on, they share the fantasy that there is a law out there. For the discipline this is a strategic fantasy: in arguing for their interests and pursuing their projects, professionals imagine the preexistence of the law which the discipline is intent on building. The practice of history-as-provenance situates professionals as instruments, interpreters of a law which precedes them, which is always already out there to be read.

Although historical argument of this sort will generally present itself as evoking the motives, fantasies, and projects of various historical players – may even require that they had a certain subjectivity, an opinio iuris – the project also has a quite different effect: to reinforce the fantasy that some thing called ‘international law’ has had a continuous presence across differences in time and place. In this project, the international lawyer reads history to map an evolving line between something imagined as ‘law’ and something imagined to have been ‘politics’, the ebbs and flows in the long term project of building an international law against the threat of politics.

The work which emerges offers a polemic for, as much as a restatement of, the discipline’s commitment to an evolving relationship between international law and political power. We might say there is a retrospective fantasy at work here – a fantasy that there really is an international law which can be and has been comprehended similarly across time and space, and that its restatement will clarify for some group of interested players some aspect of our current situation, some regularity in our political and legal culture we might not otherwise have noticed. In this sense, the development of history as provenance is also a story about history as progress, about the achievements of our hero, international law, over time. It is in this sense that history-as-provenance is also history-as-progress.

A history which paid attention to counter principles and counter rules, to the differences between historical contexts, the breaks and gaps in the historical record, the fantastic quality of notions like an ‘international community’ which might ‘agree’, which foregrounded the stories of projects pursued by particular people in an intelligentsia, would both recapture different aspects of the historical record and pursue a different contemporary agenda. If we think of Nathaniel Berman’s work recovering the astonishingly omnipresent ambivalence of modern international law, for example, we can see an entirely different disciplinary polemic – for a situated profession, confronting human possibilities and choices, pursuing political projects which distribute power among groups and interests in one way or another, rather than a college of cosmopolitan professionals working out among themselves the entailments of a rational humanist order.30

30. See Berman, supra note 17.
5.3. **History as progress**

Accounts of international law’s progressive history do not emerge solely from efforts to establish the provenance of norms – there is also an elaborate disciplinary practice retelling international law’s progressive development which serves as a common intellectual background for professionals in the field. This story is a grand narrative of the slow and unsteady progress of law against power, reason against ideology, international against national, order against chaos in international affairs over 350 years. When the history of the field is told in broad sweeps, two dates stand out – 1648 and 1914. The year 1648 is thought significant because the Treaty of Westphalia closed the religious wars in Europe in that year with a system of territorial authority over religious questions which came to be remembered as the legal inauguration of the ‘state system’ and the beginning of international law. Before, we remember precursors (even in the ancient world), and famous publicists who foresaw one or another doctrinal element of what was to come, but we mostly recall a pre-legal international world of politics, war, religion, empire, and ideology. The broad period from 1648 to 1914 is remembered primarily for developments in legal philosophy – a move from ‘naturalism’ to ‘positivism’ – which refined this state system until culminating in the ‘traditional law’ of the late nineteenth century. The modern era, in turn, is seen as the period of pragmatism, of reaction against the theoretical preoccupations of the 1648-1900 period and the ‘formalism’ of the traditional late nineteenth century synthesis.

We might capture this tale in the following little picture:

<table>
<thead>
<tr>
<th>Politics</th>
<th>1648</th>
<th>Philosophy</th>
<th>1914</th>
<th>Pragmatism</th>
</tr>
</thead>
<tbody>
<tr>
<td>Religion</td>
<td>Naturalism → Positivism</td>
<td>Institutions</td>
<td>Interdisciplinarity</td>
<td></td>
</tr>
<tr>
<td>Ideology</td>
<td>“Formalism”</td>
<td>Law &amp; Policy</td>
<td></td>
<td></td>
</tr>
<tr>
<td>War</td>
<td>Traditional</td>
<td>Modern</td>
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</table>

That this broad story is not ‘historically accurate’ hardly needs mention. Obviously there were elements of law before 1648, and of politics, war, diplomacy, and so forth thereafter. It is more than odd that ‘diplomatic history’ and the ‘history of international law’ should be thought different subjects in the 1648-1914 period, but related stories both before and after. In temporal terms, the years 1648-1914, while conventionally treated as one long ‘traditional’ period, saw a range of extremely diverse ideas about the universality of international law, the status of the sovereignty, the relationship between law and rights, between law and morality, the status of violence. The players, whether scholars or statesmen, whose behaviour and writings are now cataloged to produce conclusions about the state of the law
had quite different conceptions of their own prerogatives, as of the status of law or statecraft.

What we now call the ‘traditional’ system of international law emerged only as the fragile fantasy of a few lawyers and scholars in the late nineteenth and early twentieth century. And even they were far more aware of its contradictions and ambiguities than is visible in the best retrospective restatement. We call them ‘formalist’ more to establish a progressive baseline in arguments between legalist and policy orientations within modern international law than as a description of their actual consciousness. To say there was no ‘state system’ before 1648 and a ‘state system’ thereafter is to forget the complex stories of nation building and the consolidation of a unified idea about ‘sovereignty’ which took place not only in the nineteenth century, but, more crucially, in our own century of decolonization, Keynesianism, the welfare state, the industrialization of war, and so forth.

The story is important for another reason, however. It is a simple narrative: once there was politics, war, religion. Into this darkness came the state system, with international law as its philosophical lady in waiting. For 250 years scholars worked to develop its doctrines, both perfecting sovereignty and answering the riddle how sovereigns so strong could be bound by law. But there was a problem – international law had drifted too far from diplomacy and statehood and politics, had flown too near the sun of philosophy. In the modern period we have redeemed international law by re-integrating it with political science, embroidering it into practical institutions. Reduced to bare bones: politics was displaced by philosophy; philosophy was displaced by pragmatism.

As a disciplinary fable, this history instructs us: international law has progressed by turning its back first on politics and then on philosophy. It grows by rejecting both the politics of ideology and the law of forms for a pragmatic profession of purposive rules and policy. The discipline remembers its origins as moments of escape and renewal – escape from the world of religion and nation and power, and politics into the domain of reason and philosophy, guaranteed by the formalities of the ‘state system’. And then, in this century, a hundred year effort at renewal – rejecting the traditional synthesis as ‘formalism’, rejecting sovereignty and the state in favour of a chastened pragmatism of technique and management, flexibility, and practical reason. The conventional tale of international legal history is a progress narrative, a fable about how the discipline grew and who its enemies are – above all, this history teaches, turn your back on politics and ideology, and then also on philosophy, theory, and form.

Like many disciplinary progress narratives, this very general fable is repeated in the histories of numerous specific doctrines which arose as imperfect responses to political chaos, were clarified into a classic or traditional approach, and which have now been modernized. Stories like this are reassuring at a general level – we’ve come a long way, have a long way to go, that sort of thing. They read various ruptures and transformations – wars in particular – as opportunities, moments of diversion, challenges, to a longer central narrative. This continuity, the stability of the
disciplinary project over time, itself contributes to the broad sense that there is such a thing as international law, a system or point of view with a history. In this sense, of course, progressive history also provides provenance.

At the same time, such progress narratives reinforce the field’s identity — we are those who have stood against politics, against religion, and who have turned our back on formalism, who have modernized our techniques by rejecting the abstractions of traditional international law. Of course this sort of identity reads some people out of the field — those who are not secular, cosmopolitan, pragmatic, who are interested in philosophy or enthusiastic about the traditional forms. But more importantly, perhaps, it models what it means to progress, establishes a tradition of renewal by which individual doctrinal innovations can be judged. The progress narrative is also a catalog of progressivism. To the extent international law has a project, offers a polemic for the international over the national, this desire is defined, to a large extent, by its sense of the forms progress has taken up to now.

5.4. History as progress is also history as program

Put most simply, we could say that international lawyers share a naive starting point in thinking about doctrinal or institutional reform. The template might be expressed as two principles gleaned from 1648 and 1914. First, if faced with a choice between reason and belief, law and politics, the secular and the sacred, to choose the first term is to build the international, to choose the second is to reinforce the national. Second, as between the formal and the material in law, the doctrinal and the institutional, rules and principles, the first term sets back the project of internationalism, the second promotes it. We might illustrate these tendencies in the following two pictures:

<table>
<thead>
<tr>
<th>Year</th>
<th>Means That</th>
<th>As</th>
<th>Is To</th>
</tr>
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<tbody>
<tr>
<td>1648</td>
<td>politics/religion</td>
<td>chaos</td>
<td>law</td>
</tr>
<tr>
<td>1914</td>
<td>form/rule/abstraction</td>
<td>Positivism/Traditionalism</td>
<td>the state system</td>
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Modernism/Policy Science |

international community

These historical lessons reinforce the sense that what we might think of as a problem in the domain of society — is the ‘international system’ disaggregated or unified, oriented towards local autonomy or international community? — has a corollary and can be addressed within the domain of law — by purging law of ideology and politics, and then reforming it to abolish formalism. The idea is less that the development of a pragmatic law causes the system to integrate, although you hear arguments of this sort, than that a pragmatic law is the very definition, the indicia, of an integrated or cooperative international system. Wherever two are gathered in the name of law, there is the system a cooperative one. The disciplinary will to modernize and expand is the will to social integration. It is surprising how fervently
international lawyers seem to believe that a reformed international legal process is sign and substance of a more cosmopolitan, internationalist world. It is surprising how many international legal arguments read as arguments for international law, for international lawyers, as if insistence on the generality of law, and then on the method of legal antiformalism, were more important than, or simply substitutes for, efforts to address particular international conflicts or social problems.

This simple progress narrative gives the international lawyer a domain of engagement internal to his discipline which is more general, universal, modern, than particular solutions to problems. And anyway, where there is a regime, cooperation, good governance, specific problems will be taken care of, or will take care of themselves. International lawyers should certainly care about human rights or alleviating the AIDS crisis, or reducing the violence of warfare – but when one reforms the human rights machinery, purges the World Health Organization of its attachment to sovereign forms, relativizes the law of war to erase its formal commitments to a distinction between war and peace, neutral and belligerent, there is progress – a progress more important, more general, more historically enduring and reliable, than the quotidian matter of actually helping any particular person avoid AIDS or landmines, or torture.

Consequently, in evaluating professional projects, what counts is the contribution to the status of forces between law and politics, between the international and the national, the general and the particular, and between form and policy, not the distributional consequences among groups in society. The progress narrative provides the international lawyer with a domain of engagement as broad as his fantasy of international law itself, both defining the disciplinary will to power as progressive and providing a blueprint for action, reinforcing the importance of reform work which remains at this systemic level rather than tarring its objectivity with the distributional details of particular political projects. The serious reformer moves from politics to law to pragmatism, from form to policy, as the measure of the rational, the universal, the modern, against the primitive politics of particularism.

5.5. Pursuing the program: a century of renewal

The double movement of this most general narrative of international legal progress – law replaces politics, pragmatism replaces form – has oriented a century of efforts to renew, rebuild, or modernize international law. The history of international institutions from 1914 through the end of the Cold War, for example, saw three waves of disciplinary enthusiasm and renewal: after World War I (establishing the League), after World War II (establishing the United Nations system), and after the Vietnam War and decolonization process (inaugurated by the drafting of the 1982 Convention on the Law of the Sea and the project for a New International Eco-
nomic Order). There are those who claim that we are now in the midst of a fourth wave, spurred by the end of the Cold War, the expansion of international economic contacts known as ‘globalization’, and symbolized by the move away from global institutions to decentralized bargaining (as in the WTO and GATT) and the regime building activities of institutions in ‘civil society’, including private actors, non-governmental organizations, and the like.

In each period, international lawyers and scholars launched a general critique of the field in very similar terms. International law had gotten out of touch with power, had become too formal and abstract, too fixated on the state, too wedded to an old fashioned idea about sovereignty. In each generation renewalists called for interdisciplinary work, embrace of political science or international relations, and an opening to new voices – from America, from the post-colonial world, from women, indigenous peoples, the unrepresented. In general terms, each wave presented an explicit critique of its disciplinary forbears for being too theoretical and abstract, calling upon the discipline to renew itself by turning to pragmatism, practice, and case by case solutions. Reform in each phase was to be guided by real politics, by sociological conditions, by functional considerations, by embrace of ‘political science’. In each generation it seemed that new theoretical insights, often from neighbouring disciplines, allowed international lawyers to see, perhaps for the first time, that sovereignty and the state are illusions, linguistic misunderstandings, inconvenient superstitions, or religious fantasies the secular pragmatist best sets to one side. Something called ‘positivism’ and ‘formalism’ seemed in each era to have dominated the discipline until just moments before. And it is not surprising that almost all histories of the field are written as progress narratives away from positivism, formalism, and a focus on states. Great figures of the field are overwhelmingly remembered and studied as old-fashioned positivists or formalists whose occasional good idea was almost accidental. And yet the most cursory look at the actual arguments of most all the leading figures in this century in the fields of international public law or international institutions reveals an extremely self-conscious modernism and realism.

At the very least, there is some forgetting going on. Perhaps these are simply good ideas which bear repeating. But if we look back on a century of institutional innovation, it is striking how insistently this narrative has shaped what people in the discipline thought it made sense to do at each stage. Specific reform projects – constitutional reform proposals addressed to the particular failures of the League or disappointments of the United Nations – were designed as applications of the discipline’s own broader narrative of progress; a story about how a fantasy called ‘international law’ wrought order from chaos and practicality from philosophical speculation.

The story of institutional renewalism across three generational moments is remarkably parallel whichever of the three conventional branches of government we choose as a focal point. In the League, the action was all in the design and implementation of the plenary, for the United Nations it was the proliferation of administrative agencies, and for the Law of the Sea, WTO, and so forth, it has been the dispute resolution mechanisms.

We might illustrate this development with the following little picture:

In each phase, professionals and intellectuals in the discipline of international organizations understood progress less in terms of peace kept, hungry people fed, wealth created or more equitably distributed, than in terms of either the movement from one branch to another or the movement within one branch from politics to law and then to pragmatism. At the most general level, generational progress was measured by a rotation among governmental branches from the politics of the plenary to the bureaucratic formalism of the administration to a free-wheeling smorgasbord of dispute resolution mechanisms. Why was the United Nations better than the League? – in part because its broad administrative apparatus could do things which the gridlocked politics of the League plenary could not. What have we learned from the weaknesses of the entrenched United Nations bureaucracies? – to focus on flexible dispute resolution among the disaggregated governmental agencies of interested states, as in the 1982 Law of the Sea Convention or the World Trade Organization. Law displaces policies, pragmatism displaces formalism, no matter that in each moment the institution offered an elaborate balance of all these elements.

Individual branches of the evolving international government are also understood to have ‘progressed’. We say that the plenary of the United Nations improves on that of the League in several ways: unanimity voting gave way to a more complex system of weighted and majority voting (an elaboration of specific legal rights
displacing respect for the political autonomy of each member), the veto has been introduced (a respect for real politics replacing the formalism of unanimity voting). By the 1980s, the proliferation of legal voting rules had given way to a more flexible ‘consensus’ style – perhaps similar to unanimity, but only if one failed to recognize the maturation of the community (from formal rules to fluid pragmatic arrangements) which made consensus possible. In the League, moreover, membership was a political problem (would the United States join, how would Russia and Germany be dealt with); for the United Nations, membership became a matter of legal entitlement (remember the International Court of Justice case about ‘package deals’). But we have now gone further still, replacing an entitlements approach with a more ‘functional’ attitude, allowing all the ‘entities’ which are relevant to the solution of a problem to ‘participate’, rather than insisting upon a right to ‘membership’ only for ‘states’. Politics displaced by law, law displaced by pragmatic arrangements.

The judiciary has also matured. In the League period, the Permanent Court was established as a legal alternative to the political institutions of the League. By 1945, the International Court could be established as an integrated ‘organ’ of the United Nations system. By 1980, the focus had gone off adjudication altogether, in favour of a more flexible, ad hoc range of alternative dispute resolution mechanisms. And the administration progressed as well, by giving up the political contestations of the League period between the ‘activism’ of the ILO and the more formal civil service style of the League secretariat in favour of the wise and modest leadership first asserted by Dag Hammarskjöld. At the same time, the independence of the international civil service was protected after 1945 by an increasingly dense body of administrative law, until the bureaucracy began to choke on its own conflicting regulations and needed to be reformed in the direction of a smaller and more flexible administration, borrowing from non-governmental organizations and the private sector. Or perhaps the better move is to an international organization without a formal administration. In the WTO, the objective is less to administer agreed rules than to facilitate a continual process of bargaining among members on a wide range of topics, so disaggregated from one another that it would be extremely unlikely that differences between artificial entities like ‘states’ would ever be able to congeal sharply enough in polarization to need international intervention. Less, in this sense, really is more.

Each of these developments may well have marked a real advance. Perhaps it is generally better to resolve disputes through alternative dispute resolution techniques than through adjudication, to decide by consensus rather than to vote by unanimity, and so on. In evaluating these changes, however, professionals in the

disciplinary are removed from a strategic calculation about the winners and losers in particular disputes, and tend to equate development of the system as a whole with the interests of all parties equally. In the United States, this emerges most dramatically in the passionate articles, books, editorials, and television appearances by committed legal internationalists arguing that the interests of the United States are, in fact, identical with the development of the international legal order – and so, coincidentally enough, are the interests of everyone else. This is exactly the sort of presentation, however, which has placed the legal internationalist off-sides the foreign policy establishment for a century. At the international level, we can see the result in the remarkable uniformity of international organizations designed to tackle the widest range of particular problems. In each period, all sorts of institutions would suddenly find themselves working with weighted voting, or deciding by consensus, or offering to resolve disputes with a buffet of different schemes. The conclusion is inescapable that at least part of the constitutional effort of renewal has not been a pragmatic response to historical conditions, but has rather been wearing the groove of the broad progress narrative ‘politics-law-pragmatism’ ever deeper into the fabric of the discipline. In this sense, the progress narrative provides a template for disciplinary action as much as a record of the discipline’s achievements.

5.6. Who’s on the bus: the progress narrative as geography

These disciplinary progress narratives also mark a number of spatial boundaries. First, the story of international law’s progress differentiates the domain of internationalism, of cosmopolitan rational universalism, from the domain of old fashioned formal boundaries and specific political commitments. To the internationalist, odd as it sounds to most United Statesian ears outside the discipline, international governance is a more advanced form of politics than one generally finds at the national level – precisely because it is more universal, rational, pragmatic, and expert than what goes on nationally or locally. Brussels is better than Bonn and Bonn is better than Bremen. The International Monetary Fund is better than the Russian Central Bank as that Bank is better than the government budgetary process in Uzbekistan. Of course, as a procedural regime, the international is agnostic about how one conducts oneself at home – international law bridges between states by providing a space above cultural differences. But the progress narratives of the field reinforce the feeling that this sort of deracinated bridge is, ultimately, better than the politics of interest and identity which occupy governments below the water line of sovereignty.

The boundary between the political and formal, on the one hand, and the rational and pragmatic on the other, also differentiates the ins and outs, the old fashioned and the up-to-date. In this sense, these disciplinary progress narratives distinguish a center and a periphery – even as they insist upon their agnostic universalism. At the imperial center, and most particularly in North America, the move to antiformalism has progressed the furthest – our international law is far more agnos-
tic about governmental and legal form, open to a range of shifting entities, to the soft law of business practice, the normative demands of private investors, the legitimate participation of myriad actors in civil society. We have, we say, disaggregated the state, purged the field of its fetish for the state and sovereign, eradicated the last vestiges of what Justice Bedjaoui has termed "legal paganism". And because we speak the language of antiformalism, we also speak the language of international community.

Contrast Saddam Hussein, insisting on his sovereignty, his autonomy, on a narrow and formal reading of the Security Council's various resolutions. Or contrast the Third World at any recent United Nations conference, on the environment or women, or intellectual property, insisting on their sovereignty, their autonomy, their rights. Of course they are entitled to do so, just as the Europeans are certainly entitled to worship the International Court of Justice — but it is behind the times. To be for international law is to go beyond forms, as we have gone beyond politics. Think of the doctrine of *uti posseditis*. We can understand post-colonial societies returning to a formalism about boundaries, insisting that the open and flexible rules of occupation, functional control, self determination, and economic viability be set aside in favour of the administrative boundaries of the colonial powers. It makes sense that they should rely on the priority of law over possession — but why? Because they are primitive states, corrupt, passionate, who cannot trust themselves to make the turn to a more pragmatic order.

There is a paradox here. Even as it tells the story of an advancing international order, universal precisely because it eschews political commitment and formalism about boundaries, international law's broad progress narrative restates the distinction between an advanced center and a primitive periphery. In the advanced center we are beyond rights, beyond statehood, beyond sovereignty. We live in the international, the global, for the spirit of our own law is also the spirit of international law. At the periphery, one must make do with an earlier form, a form at odds not with the interests of the center, but with the project of internationalism itself.

In this sense, it is not surprising that international legal histories have given short shrift to the colonial encounter. Even the most politically correct writing in Europe and the United States, giving equal treatment to doctrines and developments outside the North Atlantic theater, assimilates the colonial situation to the generic project of law building. Thus, in European style histories, the colonial theater will serve as a more exotic origin for doctrinal holdings, or as the terrain for the evolution of doctrinal mutants. In the United Statesian version, the non-European world offers a domain of special problems on which international law can be deployed and terrain of special attitudes which might inflect the application or interpretation of norms. In both sides of the genre, the role of international law in the ongoing production of a distinction between the West and the rest, and the role

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34. See Towards a New International Economic Order (UNESCO) 98 (1979).
of that distinction in the generation of doctrines, institutions, and state behaviour is underplayed.

And this role has by and large not been challenged by Third World international legal scholars. A tradition of criticizing international law for its ‘roots’ in colonialism is by now a familiar part of the mainstream literature. But criticism of the origin of international legal rules can take one only so far. Perhaps the doctrine had a bad birth, an illegitimate parentage, but, we should ask, what is wrong with it now? Are we not evenhanded in its application? If not, let us be. Is it not consented to by the post-colonial world? If not, let us put it to the vote. Is the Third World still excluded from participation in its institutional application? If so, let us invite them in. Initiatives of this sort do not meet their mark because the relationship between center and periphery is not written in the content of legal rules — indeed, the international regime has progressed precisely by emptying itself of substantive content which might display a bias.

If we suspect bias, we must look elsewhere. Either the doctrine’s origin must have given it a structure, a virus of some sort, which continues to differentiate the center and the periphery however the doctrine mutates. Or there must be in the project of international law’s universalism some differential interpretation of center and periphery. It is here that historical narratives are suggestive. To unsettle the relationship between center and periphery would take a historical recovery of the heterodoxy at both the center and the periphery. A history which questioned the easy relations between antiformalism and communitarianism would also unsettle the sense of a center/periphery distinguished as modern and primitive. One could imagine a historical project to uncover the formalisms in modern international law, the antiformalisms in the nineteenth century system, the moments of political discretion in both methodological moments, which would be parallel to scholarly efforts to uncover the interpenetration of the center and the periphery — the First World in the Third, the Third World in the First. Both projects — one spatial, one temporal — would unsettle the way in which the discipline’s normal narrative of progress reinforces its sense of a steady boundary between an advanced center and a primitive periphery.

Indeed, the field’s most basic historical narratives offer a window on the structure of international law’s own desires and on the field’s broader governance agenda which can be recovered by focusing on the ambiguities, contradictions, and ambivalences of various moments of doctrinal or institutional development. If we unsettle the idea, for example, that methodological antiformalism is an automatic mark of international cooperative progress, it will be easier to ask whose interests are advanced by particular doctrinal and institutional arrangements. We could do this by demonstrating that the traditional period of the nineteenth century was not ‘formal’, but rather a mélange of formal and antiformal positions, or that the movement to renew international law in the early modern period sought to do so precisely by blending abstract forms with outreach to political movements, or that most policy choices offered a choice between two different interventions rather
than between an old system of formal restraint and a modern regime of cooperative internationalism. It would be interesting to map the geography of claims about the progressiveness of anti-formalism. I have been struck, for example, by the extent to which internationalists thrill to the pragmatic flexibility of modern environmentalist regimes, in contrast to the formalism of Third World assertions of sovereignty over natural resources, while also arguing in economic matters that a market can only be achieved once flexible inter-governmental bargaining and discretion has been replaced by a formal system of transparent respect for property rights. In both cases, the internationalist is expressing the interests of a particular group or class, but this interest is submerged in a more general rhetoric of modernization and progress. Internationalists often claim, for example, in a standard Weberian progress narrative, that economic development requires a move from feudal governmental discretion to a predictable system of rights. Indonesia must break up its family monopolies and open the way for a market in productive assets. They should do this because ‘the market’ will only work if rules are predictable and rational. It may well be that more economic growth will come to Indonesia if the interests of the international private investors who wish to purchase these family monopolies are respected, because the current distribution of rights and entitlements gives them the power to make or break a regime, but this is a somewhat different articulation of the point.

An exploration of the discipline’s historical tools – the practice of argument from provenance or progress – may open a rethinking of international law’s geographic sensibility, and of the identity politics inherent in a regime which eschews identity politics of all sorts. It might be possible to recover something of international law’s ongoing relationship to colonialism if we can set aside the sense that the colonial encounter was relevant only to provenance and could easily be corrected by proper attention to international law’s agnostic generality and pragmatic flexibility. Whether recovering the ambivalence of doctrinal origins or the discontinuities in the discipline’s progress narratives, the idea is to use historical study to recapture a sense for international law as a terrain open to the free play of politics and passion by individual people – to loosen the field from its own fantasies of transcendence, its own inbuilt recipes for progress, its own insistence on setting the local, the quotidian, to one side in the name of a broader universal fantasy of transcendence. The proposal is that we see international legal history is a terrain on which to read the development of ideas about identity, geography, and entitlement.

6. INTERNATIONAL RELATIONS TODAY: WHAT FOREIGN POLICY SHOULD BECOME

6.1. Foreign policy from both sides now

Among the internationalist disciplines in the United States, the field of ‘international relations’ stands out both for its self-consciousness about politics and its
willingness to articulate goals and ends for United States foreign policy. International relations specialists often seem more at home in the foreign policy establishment than do professionals from the other internationalist fields I have considered: international law, comparative law, and international economic law. Their disciplinary viewpoint seems less cosmopolitan, while their connection to politics and nation — and their corollary aversion to both law and deracination — often sets them apart from other internationalists. Despite these differences, however, an odd partnership between international law and international relations has reinforced a broad consensus on the frame for contemporary foreign policy. As the disciplines have converged over the last decade, this consensus has become both narrower and more visible. In my view, the narrowness of this shared vision can be traced to a series of typical disciplinary blind spots and biases which parallel those endemic to other related internationalist fields.

International relations developed as a specialization within the discipline of political science by combining the ostensibly realist or fact-oriented sensibility of diplomatic history with an effort to think about relations among the great powers in more systematic, even scientific, terms. Since its origins in Britain during the interwar period, the field has blended these two elements in various ways, always in an effort to understand and wisely steer the statecraft of the great powers. For these professionals and intellectuals, it is realism about power and a willingness to speak about the interests of particular powers (particularly, in the post war period, the interests of the superpowers) which sets the field apart from legal internationalists in public international law, international economic law, and comparative law. Unlike international lawyers (including comparativists and international economic law professionals) who fantasize themselves part of a cosmopolitan college of like-minded intellectuals which spans the globe, international relations experts are quite sanguine about the fact that the field is composed almost exclusively of United Statesians, alongside various scholars in Britain and the white Commonwealth. For foreign policy professionals in the field, the only real counterparts abroad have been specialists in international politics and military affairs in the old Soviet Union.

However forthright about a politics of national interest, international relations experts have also sought to elaborate the 'system' or 'regime', or 'structure' within which power and interest are expressed. This might be the balance of power 'system' of diplomatic history, amended for bipolarity or trilateralism, or post-hegemony developments. It might be the more scientific game theory systems of strategic studies — it is hard to think of an academic theory which has been more aggressively implemented at greater expense than the deterrence model, adopted by all the nuclear powers during the Cold War. It might be the implicitly universal and humanist system of comparative politics, in which one imagines that societies develop and interact in accordance with evolutionary rules which can be discerned by empirical or sociological study. Or it might be the softer regimes of transnational cooperation which have brought international relations back into contact with international law in the last 15 to 20 years.
The goal of all these systemic efforts has been to clarify the conditions, limitations, and possibilities for foreign policy. International relations specialists imagine themselves less as part of a cosmopolitan class of experts or intellectuals or managers of an international order, looking down upon states from an international plane, than as part of the rulership cadre of states, promoting wise and effective statecraft on the basis of their study of the system within which states live. It is not surprising that international relations professionals have played a more salient role in the exercise of state power in the United States than professionals and intellectuals in other internationalist fields.

The interesting point, however, is that international relations experts have only sometimes seen themselves implementing a national interest determined elsewhere – by historical necessity or popular will, or political choice. More often, they have seen themselves speaking for or in the name of the national interest, discovering the rules by which a hegemon should want to live, the objectives a hegemon should want to achieve, through careful, objective, and scientific study of the way states relate to one another, the nature of hegemony, the situation of this hegemon in the system. The goal here is to understand the actual conditions within which the state will need to act – the structure of the current international system – and then figure out what a state ‘like this one’ should/will want. It is, in other words, a distinctly internationalist understanding of the national interest.

This effort to speak for the state by understanding ever more clearly what such a state in such a system should want parallels efforts by legal internationalists to speak for the international order by articulating the systemic entailments of sovereignty. Here we have all the makings of a partnership: the international lawyer speaks for the international legal regime, on behalf of the professional disciplines which man its institutions, by imagining what a sovereign would want. At the same time, international relations specialists speak for the national interest, on behalf of the professionals who man the machinery by which it develops a place for itself in the world, by imagining how states would act in an international system. For both disciplines the exercise has an element of imagination about the relationship between types of states in a type of system. Although the imaginations of the two disciplines might be quite different, they might also run parallel to one another.

Indeed, however much each discipline might stigmatize the other for misinterpreting the situation in characteristic ways (lawyers are idealists, political scientists are barbarians), since each is actually performing a similar act of imagination which embraces both states and systems, it would not be surprising if an outside observer felt their visions were roughly similar. It is not surprising, for example, that as variants of game theory made their way through the academy, some participants in both disciplines found it helpful to compare their imaginary states to imaginary prisoners in an imaginary dilemma. If both disciplines were to agree about what such a prisoner would do, the apparent difference between looking at things from a national perspective and from the point of view of the international system would disappear.
In fact, during the post-Cold War period the discipline of international relations has drawn ever closer to international law, international economic law, and comparative law. The pretense that the law fields were insensitive to ‘policy’, like the idea that international relations was unaware of governmental regularities (which might be termed ‘norms’), patterns of legitimacy or persuasion (which might be enhanced or produced by ‘law’), or the elaborate procedures and institutions which both knit states together and structure their difference, has been dropped. As we might expect, international law experts approach this convergence from a more cosmopolitan point of view and stress the role of law, while international relations specialists come to convergence more through articulation of a vision for United States foreign policy in a changing world system. But together these fields have developed a broadly convergent interpretation both of the current international order and of the opportunities and risks for United States foreign policy.

In this essay, I explore this shared interpretation to assess the impact of disciplinary blind spots and biases on the development of foreign policy. I look at three broad developments in the terrain of statecraft which have been identified in all these disciplines: ‘globalization’ (or the disaggregation of sites for public policy), the displacement of military security by economic security, and the emergence of a central tension between cosmopolitan and ethnic or national sentiment which has displaced the ideological rivalries of the Cold War period. These three transitions have been interpreted by commentators in all these fields as the backdrop for conclusions about what foreign policy should become.

Unfortunately, international policy specialists have developed this common vision under the influence of bad ideas they bring with them from their disciplinary specialties – like the idea that international governance is somehow separate from the market and from culture, is more a matter of public than private law, or the idea that governance is international while culture is local. Within each of the disciplines I have explored, common ideas about what is foreground and what is background have sharply reduced the sense professionals have about what is possible and appropriate for foreign policy. Some emphasize 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. The same can be said for international relations which has typically foregrounded national interest in a political system over the interests of a cosmopolitan international regime in a world of sovereigns. As a result, each of these transitions has been understood by specialists in each discipline in light of characteristic disciplinary tendencies to underestimate what are seen to be background conditions or norms.

We are all familiar with the idea that disciplines would have different blind spots, which are often almost inverse to one another. We expect economic law specialists to overemphasize economic problems and fashion solutions which are narrowly economic, just as we expect international relations experts to stress the political, lawyers the legal, and so forth. I have met many public international lawyers who are proud to know nothing about economic matters and vice versa. These run
of the mill disciplinary limitations could be corrected by an aggressive interdisciplinarity. If we had political scientists, economists, and international lawyers all working together, they would compensate for their respective blind spots and bias.

The most interesting point to emerge from the exploration of internationalist disciplines side by side, however, is that this sort of blindness to the 'background' can be maintained in the face of interdisciplinary work. Indeed, the disciplinary blind spots we have encountered so far have been reinforced rather than ameliorated by relations between the disciplines. This has been true even where neighbouring disciplines have exactly opposite images of what is foreground and what is background; where comparative law foregrounded culture and international law governance, or international law foregrounded public order and international economic order foregrounded private order.

Sometimes disciplines reinforce one another's blind spots through a sort of tacit division of labour (comparative law is responsible for cultural understanding while international law takes care of governance or international law builds a public order while international economic law responds to global market imperatives) which reinforces the sense of difference between the two types of activities. Sometimes, as in the case of international law and international relations, the blind spots are reinforced, surprisingly enough, through a self-conscious effort at interdisciplinary understanding directed precisely at correcting for this sort of disciplinary myopia. The result, which I explore in this essay, is a shared interpretation of the post-Cold War international situation and a program of action for United States foreign policy which is blinded by the very disciplinary biases which a newly self-conscious interdisciplinarity has been designed to eliminate.

As we have seen, for example, specialists in all fields overestimate the impact of globalization on the capacity for public governance because they share a sense that public order must be made as a matter of politics, while private order builds itself through the work of the economic market. As a result they underestimate the possibilities for political contestation within the domain of private and economic law. This sense is shared by public internationalists who foreground public order, and by international economic law specialists who foreground private commercial relations. Indeed, the division of labour between public international law and international economic law reinforces rather than softens this tendency. In a similar way, foreign policy intellectuals overestimate the degree to which military intervention can stabilize or cauterize a local situation while remaining neutral or disengaged from local political and culture struggle. As security has come to seem more a matter of economics, specialists share a tendency to overestimate the technocratic or apolitical nature of economic security concerns, including the independence of recipes for economic development from cultural, political, and institutional contexts. Similarly, a shared sense that culture can be disentangled from governance leads specialists to misinterpret the emergence of ethnic conflict in the post-Cold War era by overemphasizing the exoticism of national or ethnic claims as well as the cosmopolitan character of global governance. This sense is shared by both pub-
lic internationalists who foreground governance and comparativists who foreground culture. Again, the division of labour between these fields reinforces rather than softens the conviction that governance can be pursued autonomously from culture. The result is a professional tendency to overlook opportunities for an inclusive global politics of identity, for working constructively on the distributitional conflicts among groups and among individuals which cross borders.

6.2. Convergence: international relations and legal internationalism

The disciplines of international law and international relations share an ambivalence about the autonomy of international law from international political life. As we might expect, one discipline foregrounds law, the other politics. We might well anticipate that each discipline would overestimate the contribution its own object of study could make to understanding foreign policy, and we might try to correct for these disciplinary biases by merging the two fields. And indeed, as they have periodically through the last century over the past decade international relations and international law have pursued precisely this sort of interdisciplinary partnership to overcome bias and compensate for blind spots of this sort. Unfortunately, this partnership has intensified rather than softened the blind spots and biases of professionals in both fields, sharply narrowing their sense for possible and appropriate foreign policy initiatives. Indeed, professionals from each field experience their interdisciplinary work as broadening only by remembering an unduly cramped version of their own field, just as they had once separated their fields by seeing an unrealistically narrow version of their counterparts across the disciplinary divide.

When I studied international relations and political science in the 1970s, law was distinctly out of fashion. International law seemed a marginal and utopian wish to the hard-headed realists of international relations with their strategic models and multilevel games. At the risk of stating this tendentiously, we thought law was just a hypothesis — while we thought we knew what a prisoner would do in a dilemma. Relations between the disciplines are quite different now. The study of ‘regimes’ and ‘institutions’, and now ‘governance’ has taken political scientists interested in the international on a great looping trek towards law. Their journey coincides with a post-Cold War outbreak of enthusiasm for international law in the foreign policy establishment — the law of a ‘New World Order’, the law of liberal democracies, the law of a global market. This transformation has programmatic consequences. Although numbers are hard to find, it appears spending on ‘rule of law’ injection projects around the world now rivals food aid, refugee assistance, humanitarian aid of all sorts. Military assistance has itself turned increasingly to providing legal assistance, the need for good discipline and clear rules of engagement merging, in a post-CNN world, into compliance with international humanitarian norms. Indeed, the United States military may now provide more training in
international law and human rights than all the world’s non-governmental organizations put together.

At the same time, when I studied international law, the point was to demonstrate our savvy about power. There was nothing abstract or utopian about the field. Even as we insisted that international law ‘was law’, we were interested only in how nations behaved, in the regularities of coexistence and the modalities of cooperation. International law presented itself as technical and hard-boiled, neither overtly political nor subjectively ethical. We were told only communists thought law was politics and even they supported the manifestly technical, procedural, rational rules of the international legal order. At the same time, the rational, pragmatic, cosmopolitan sensibility of the field reduced concern about ethics and community and value to the periodic lamentations of crackpots and Catholics. All this has also changed. The study of human rights and democracy and the commonplaces of ‘liberal’ societies has taken international law on a goose chase after the ethical. At the same time, the collapse of a communist alternative has left international lawyers more sanguine about acknowledging the politics of law.

Intellectuals concerned about international law and policy have consequently developed a new sensibility about both political science and law. Political science has taken a shine to law just as international law has embraced the worlds of both ethics and politics. For both disciplines, the convergence seems oddly thrilling, this new sensibility carrying an emotional tone of bravura and risk. In some way both disciplines seem suddenly to feel it is no longer suspect to stand for something, even if it still feels scary — to go ahead and admit it, we are liberals. Perhaps once loosed from the constraints of Cold War coexistence it is thrilling for international lawyers to stand tall for democracy and the peaceful tendencies of liberal states, just as it can be thrilling for political scientists to return to law as an ethical mooring, an identity, a culture, after years in the wilderness of empirical models.

I think part of the pleasure and relief for both sides in this new disciplinary convergence may also result from some internal sense that the disciplines were never as separate as they seemed. The lawyer’s denial that law is political or ethical, apology or utopia, the political scientist’s denial that politics is legal, all were equivocal denials at best. However prone legal internationalists have been to deny the politics of law, they also developed a range of admissions to go with their denial, places for politics, exceptions, constitutional moments perhaps, or moments of private cynicism. However sure political science has been that only utopians (and lawyers) dreamt of the normative, there were also regimes and stable expectations and feedback cycles of legitimation and compliance. International law and international politics have been disciplinarily divided by a smokey mirror, the lawyer claiming to see in politics only subjective arbitrariness and ideology, the political scientist in international law only hapless dreaming.

In such a situation of willful blindness, it is a relief finally to let it out, to violate the prohibition on admitting what one has known all along. The difficulty, of course, is that when one finally does embrace the other discipline in this way, one
finds there only what one has already been – a modest liberal realism, at once hard-boiled and hopeful – and one loses thereby a repository of fantasy and imagination. Moreover, one remembers one’s earlier self with all the limitations once projected onto it by the other discipline. International lawyers who have embraced political science remember their legal colleagues as either moralists or as formalists who fetishize an absolutist conception of sovereignty. International relations specialists who have embraced the domain of law remember their political science colleagues as unsophisticated about regimes, procedures, and norms. It is hard not to think of these things in psychological and cultural terms – perhaps international law plays Mrs Robinson for the political scientist, himself all wet behind the ears with new fangled college talk about regimes and compliance loops, a delicious Dustin Hoffman for jaded international lawyers, at once fresh and formidable. One can fantasize about the other, seduce it, pursue it, but what happens when one gets it?

The thrill for the political scientist lies in finally enunciating the pluralist commitments which have hitherto dared not speak their name. For a generation, it seemed that coming out as legal might disarm the liberal hegemon, just as coming out for the ethical would throw the game of cosmopolitan scientific neutrality – would make one just one more Cold Warrior. Only a studied ethical neutrality could steel the will of democratic hegemons to do what was necessary, could sustain the science of strategic studies, for 50 years the bulwark political science offered the West against the East. To speak of norms would have been to wash out the rocks of agnostic reason upon which the edifice of policy pragmatism had been built. And now, if all the subtle communications of one hegemon to another across an ideological divide were normative all along, each assured about what the other prisoner would do in a dilemma, all that past could be redeemed as the work of a liberal spirit, which, we now know, makes commerce, not war. We were not playing with destroying the world, fiddling while Rome armed, we were hammering a new covenant, modeling a new language, enunciating a new law, the science of strategy redeemed as a subtle ethical discourse.

Meanwhile, an obverse story for law. For a generation international lawyers began their training by learning a thousand and one explanations why their discipline was ‘legal’, why international law was ‘law’, rather than politics or ethics. To have come out as politics or ethics would have both thrown the game to the totalitarians and sullied one’s neutral posture, sacrificing the cosmopolitanism of coexistence and the agnosticism which was humanitarianism’s best advocate. But how tiresome to insist on one’s legality, integrity, rectitude. For international lawyers, the thrill in walking the wild side of politics lies in escaping the censors of this apparent pragmatism and doing so by confessing faith in comfortably safe liberal pieties. It would not be too simple to observe that international lawyers feel comfortable saying law is politics now that politics has come out everywhere for the ethical, the normative, the liberal. After 1989, flush with victory over an ideological foe onto whom all challenges to law’s legality had been projected, we find in-