What have we been exploring this week?

A classic intellectual question: how do ideas matter? How do they matter for global social, economic and political life? And a classic question for social theory and sociological inquiry: how does power configure our world? How are we governed?

In asking these questions, we’ve focused on law: what does law have to do with the mattering of ideas and the working of power? How do legal institutions, norms, ideas and professional practices configure our world?

For all the excellent work we have discussed, read and heard here, like many who have inquired into such things, I have been struck by how little we know about the answers. The import of ideas and the operations of power remain extremely mysterious. Indeed, it is remarkable how little we know given how confident so many around us are that they have it figured out. That they know how we are governed, have identified the world’s constitutional structure, and understand what legal tools are appropriate for tackling which problems.

It seem to me the first pre-condition to new thinking is remaining aware of our relative ignorance – the partiality of our accounts – and to be ready to treat finding a puzzle, an ambiguity, a gap, as precisely the beginning of insight.

A second precondition for innovative intellectual work is dissatisfaction with the way things are. You look out the window, here or in your home country, and you see a world of difficulties, injustices --- a world which could be better if we understood its operations more deeply.

The impulse to think deeply, to think innovatively, is different from the more common professional sense that there are problems to be solved and we ought to get to it. There are problems, of course, and I hope someone will get to them. But the intellectual impulse begins with a sense that the problems are more profound, more intractable, their roots deeper, the routines of their reproduction more invisible, than the available professional tools can address.

And perhaps it begins with a suspicion that those tools, along with the impulse to “get to it”, might somehow be part of the problem. If we are thinking about law, we might suspect that legal tools and professional practices may not
only be instruments of wise policy – they may also be part of the structure that creates, reproduces, exacerbates or sustains the problem.

The sensibility I have in mind requires a sense for the urgency and drama of the times: a sense that this is, indeed, 1648. A time when things are being remade in ways it is difficult to understand at first – no one in 1648 knew they were inaugurating a new global order of secular relations among nation states -- if indeed that is what they were did. Or a time when we feel things should be, must be, profoundly remade. A time like 1918, when it seemed obvious the legal order and the pre-war musings of international lawyers had been as much a part of the problem as of the solution. Or the time between the wars when politics and economics seemed up for deep revision. (We might also express this sense in the language of “end times,” remembering at the same time that an apocalyptic language is often precisely what pushes us back to the available policy routines.)

The third precondition to innovative intellectual work is the inclination to remain calm, the patience to think deeply, slowly. Precisely because the situation is urgent, we ought not to rush to embrace the available levers, to default in crisis to the most familiar.

Well, so far I’m just describing an impulse. An intellectual appetite, a critical suspicion. Where does it come from? I’m not sure. In my experience, it’s a very personal question. How did you come to feel things weren’t right, that the solutions on offer were inadequate, and that taking the time to think hard about it might help?

I suspect that as each of us reflects on the source of our intellectual vocation, the animus that fuels our scholarly work, we will find it in a different place. In our position in our family, our position in our nation, our society, our culture. In the position and practices of our country in the world. Perhaps in the teachings of our faith. On in the disenchantments of our professional experience.

But if you have this impulse, you are not alone. And you don’t need to start from scratch. There is a long tradition of intellectual work – usually heterodox work – lying alongside the mainstream routines of your professional or academic discipline on which you can rely. And there is community. Others, scattered around the world, share a similar impulse for innovative intellectual reflection, if probably for quite different reasons. Perhaps you will have met some of them here this week.
This afternoon, I’d like to speak briefly about some of heterodox traditions in the legal field which might be useful in understanding the political economy or current world – and the roles of ideas, power and law within it.

I start with law, although we’ve heard a lot this week that harnesses heterodox traditions in sociology, political theory, economics and in the study of science and technology. Those traditions may all be our allies in the work of understanding the ways of power and ideas in contemporary society. Heterodox thinking in law traces a series of apparent paradoxes. Let me focus on two.

First – law is not as coherent as you may have thought, and yet it is also more significant, and significant in different ways, than you may have thought.

Not as coherent as you thought. And as those who inhabit it, who invoke it, call for it, promise it or even chastise it normally claim. Of course, they don’t think that it is completely coherent – they are sophisticated professionals, pragmatic, aware of limitations. And if you share this tradition, you don’t think it is completely incoherent – you are a subtle thinker. But, informed by the heterodox tradition in legal science, you may conclude that the law about this or that it is less coherent than people think – and than it claims for itself, than it seems to need to claim for it to fulfill the functions, make good the promises – or carry the blame -- made in its name.

There are lots of ways to come to this intuition. Perhaps there are more gaps, conflicts and ambiguities in the legal fabric than they realize. More opportunities for choice, for the ethical jeopardy that comes with decision.

Perhaps the categories matter less, are less stable, than conventionally imagined. Civil and common law. Formal and informal law. Public and private law. Private law more sodden with public import, public law more open to reinterpretation as a system of private rent, entitlement and identity. As you reimagine them, public and private “rent-seeking” suddenly seem analogous – and hard to know whether to stigmatize or celebrate. The family a space of regulation, a face of the state – and the state a space of family or market relations.

Perhaps the legal field you are considering misunderstands its boundaries --- defines itself too narrowly. We know the law affecting the distribution of environmental damage – encouraging it here, restraining it there – is far broader than the specialized field we know as “environmental law.” So also for family law. Or for the law of war --- it is hard to think of an area of public or private law which is not implicated in the distribution of armed conflict – and which does not affect the family. Narrowing the field narrows our view of the problem – and of
the tools relevant to its solution. Perhaps it defines itself too broadly – the way a very specific historical catalog of “human rights” can assert itself as a definition of justice for all time and all people.

And, of course, perhaps the law you consider misunderstands its social impact – considers itself more powerful, more able to affect the world, channel the forces of economic, social and political life than sociological inquiry substantiates. Or considers itself weaker, gentler, less central to the operations of social and political life --- and less responsible – than is actually the case.

In all these ways – and many others – one might intuit – and then make out a claim, that what law thinks about its own coherence, parameters and impact is misguided. And yet, for all these misunderstandings and elisions, or perhaps precisely because of them, law turns out to be more central to the structure of social, political and economic life than we thought. Environmental law may offer little to save the environment – but law is not innocent of its destruction. Financial regulation may not prevent crisis – but the elements of financial life – money, credit, debt, property – are all legal institutions. The city turns out to be a set of legal arrangements and entitlements – even where, perhaps particularly where, local government seems weak, the legal instruments for policy anemic. Poverty, violence, colonialism – all legal regimes. Law constitutive of identity, of agency – and of context, structure.

A second seeming paradox is this: law’s promises are less credible than we thought – its emancipatory promises, its promise to constitute our politics, to regulate our markets, to offer pragmatic technical tools for policy – all less plausible than conventionally thought. And at the same time, law’s potential as a strategic resource, as the terrain and stakes for political struggle seems larger than we considered.

In field after field, law’s promise to substitute its reason for political or ethical choice fails us. Rather, we find law eliding, legitimating, apologizing for political choices made elsewhere. And yet, the stakes of law remain high – the impact of legal arrangements on the constellation of ideological and social forces in society, from the city to the globe, far larger than law’s claim.

We might take comparative law as an example --- the field claims innocence: it aims only for understanding. It simply identifies cultural and technical similarities and differences between legal systems, and offers its expertise. But what could be more central to political identity and authority than the mobilization of identify and difference? Or more central to the structure of
politics than the construction of the grid of similarities and differences upon which it operates?

Comparative law will be and has been used by rulers – but more crucially perhaps, it will have done its work long before by establishing the vernacular of cultural and technical differentiation and the site – the “national legal system” – for their expression. A map of the world is a tool for power – but before that it is something more. It is a map of the world, rendering visible what turn out to be the agents, structures and terrain for power.

Or take my own field, international law.

Many look to international law for the expression of universal values, most commonly in the human rights canon. But people in our world disagree about the most fundamental things, and values are not universal. And yet human rights law still makes the claim. The result is a gap, a slippage, ripe for strategic interpretation and for the emergence of a techno-strategic profession to manage its engagement. And it turns out the proliferation of rights is not only a way to speak truth to power. Power also routinely asserts itself as right --- perhaps particularly as the expression of human rights. There is motive for strategy.

Others look to international law to identify the legitimate actors in the international system and their powers – most formally by enumerating the “rights and duties of states.” This is at once a sociological and normative promise – this is how the world is, and were powers cabined by these entitlements, the world would be a better place. But international law’s universalist descriptions of actors and authorities is neither an accurate map of the sites of authority and power in the world nor a plausible program of action. Another opportunity for the emergence of a professional vernacular to manage our strategic engagement with an imaginary world that purports to be our world.

Perhaps most importantly, international law promises a catalog of policy tools to confront global problems. Yet in one after another area, international law’s most coveted projects are wildly inadequate to the tasks they purport to address. The international criminal court could triple its budget and jurisdiction, the UN could redouble its peacekeeping efforts, the human rights community could perfect its machinery of naming and shaming, and it would not prevent the outbreak of genocide, the collapse or abuse of state authority. Every world consumer could be on the lookout for products which are fairly traded and sustainably produced, and it would not stop the human and environmental ravages of an unsustainable global economic order. The Security Council could be reformed to reflect the great powers of the 21st century rather than the twentieth,
but it would scarcely be a more effective guarantor of international peace and security. And so on. The strategic function of such recipes for reform in an unreformed world calls out for investigation.

Only after pushing past international law’s classic self-conception: as the highest expression of universal values, the best map of the world’s political actors, the toolkit of global policy solutions – will international lawyers be able to use our expertise to illuminate and engage the global political and economic process as it is. To understand the ways in which political and economic struggle continues in and through the regimes and vernaculars of the field. And to participate creatively in the reconstitution of global society.

If we take these traditions of legal inquiry and turn to the contemporary global situation, what can we see? How can we open the door to rethinking law as a terrain for political engagement rather than as a normative or technical substitute for political choice?

We might begin with the observation that the visible interpenetration of global political and economic life has changed the context for international scholarly inquiry. The central questions today are not political questions – if by that we mean questions to be addressed by governments acting alone or negotiated through conventional diplomatic circuits. They are not economic questions – if by that we mean questions to be answered by the operations of markets, guided by the hand of robust competition in the shadow of regulation. Nor are they questions about the appropriate relationship between politics and economics as we usually frame them, such as how public power might harness the economy through regulation, or how economic activity might best be supported by and freed from the public hand.

The central questions today are questions political economy which emerge and are engaged where a political and an economic order intersect as partners in the reproduction of things we don’t like: inequality, conflict, injustice.

The distribution of growth has displaced ideological hegemony and great power competition as the framework for global political struggle. The global distribution of opportunities to generate and retain rents from economic activity has replaced the question whether private competition will be liberated from or defeated by the interstate competition in the global economy.

Politics and economics have become close collaborators in the distribution of political authority and economic reward, igniting a rapid global process of factor
price equalization and technological assimilation among what once seemed the center and the periphery of the world system.

The relative hegemony of a North Atlantic political and economic center has abruptly eroded as the scientific technologies, management institutions and governance arrangements which enabled the dramatic rise of the North Atlantic have become widespread and people everywhere have become able to aspire to a refrigerator, an air conditioner, a car and the government necessary to realize those ambitions.

But economic and political change on this scale is profoundly destructive and relative income equalization is an extremely uneven business. It certainly does not mean the elimination of income differentials. On the contrary, inequality is everywhere. A global economy is not a uniform economy. Things turn at different speeds. People are left out. People are dragged down. When people turn to their sovereigns for help, the results are terribly uneven. Some are too big to fail – others too small to count. Indeed, the public hand everywhere has become a force multiplier for leading sectors, nations, regions --- as it was between nations in the colonial era.

The political responses everywhere aim to protect and promote local winners – if only rarely effectively -- sometimes with a vague promise of transfer payments to compensate losers. But the political challenge is not to find resources to pour on “our” winners in the hopes they will render our “nation” competitive. Nations are no longer competing – and winners can usually take care of themselves. In a global economy, it is simply not plausible for everyone to be a highest tech, greenest, innovation driven knowledge economy, any more than everyone can be the lowest wage manufacturer. These are niche market dreams that function as justifications for mobilizing resources behind the successful. They serve to defer rather than underwrite the promise to compensate. The wild horse to be ridden now is the dynamic of dualism between sectors, regions, industries – and nations. The political and economic objective ought to be productively linking those who lead with those who lag in reciprocal and virtuous cycles, rather than encouraging growth here to impoverish there in the hopes that one day the losers may be made whole.

But this seems impossible to place on the register of the available political elites. Or, rather, no political site is available where these arrangements could be contested.

How did we get here?
Let us look back for a moment at the enormous human undertaking required to construct the economic and political worlds we inhabit – and the role of law in those projects. The separation of economic activity from political contestation has its roots in the effort to pursue economics and politics on different scales, and, if you like, in altogether different metaphorical “spaces.”

To put it succinctly, the economy has become global, organized as an infinitely scalable horizontal structure of mobile products and factors of production, while political order remains lashed to local and territorial government structures, organized as a vertical structure of authority and accountability between a people, a territory, and a ruler. The result is a rupture between a vertically oriented local and national politics on the one hand, and a horizontally arrangement of global economy and society on the other.

Moreover, this world political economy – if we might call it that --- has been constructed through a series of legal, institutional and professional projects. Projects undertaken in the shadow of a loose consensus within the global policy class about the natural teleologies for economic and political life.

The economic idea is simple. Although it is common to think of an “economy” as something nations have – the German economy, the Japanese economy – at least for those who aspire to manage it through policy --- to the extent people have also come to think of an economy as a “market,” it is difficult not also to think of it as something that can be scaled up or down. And to think that scaling up is generally good. Ever more people, products, resources and ideas ought to be able to find their markets in the shadow of a common price system across ever greater distances. As a result, when putting an economy together, it is a good idea to try to link as many things together as efficiently as possible at the national, regional and global levels.

This has always been more idea than reality. Despite the prevalence of local and sectoral specificities, informal networks, oligopolies, barter, intra-enterprise trade, market failures, bottlenecks and other anomalies, it is part of the background consciousness of ruling classes everywhere that fundamentally, the economy is naturally becoming an ever more undifferentiated global market in which “flows” of goods and services follow prices to more productive uses.

This idea has had dozens of practical and technical corollaries, which find their expressions in law. After all, the elements of economic life – capital, labor, credit, money, liquidity – are creatures of law. The same can be said for the elements of political life – power and right. Law not only regulates these things,
it creates them. The history of political and economic life is therefore also a history of institutions and laws. Law constitutes the actors, places them in structures, and helps set the terms for their interaction. It often provides the language – and the stakes – for economic and political struggle. As a result, legal arrangements offer a privileged window onto political economic dynamics. And, as we rethink law’s coherence, promises and potential, a door to remaking those dynamics.

An economic system of “world prices” requires all kinds of institutional arrangements and limitations. Exchange rates must either be stable --- effectively a single currency – or so fluid as to ensure they are pushed to parity by market forces. Supply chains, information channels, labor markets, investment patterns ought all to be rendered global through institutional and legal integration. Private actors – investors, employees, managers, corporations – need to understand themselves as capacitated to operate across an ever larger terrain. To do so, they need to be legally dis-embedded from the kinds of local customary or regulatory arrangements that once made employers feel they must hire from among the members of a particular union, or corporations feel they must respond to the public interest of specific locations or constituencies. Economic entities themselves need to be reconstituted and unbundled, rendered capable of being re-organized, reframed, parceled out for sale and redeployment. Where regulation or contract impose artificial obstacles to the vertiginous destruction and creative reinvention of economic relations, they need to be unwound. Transnational private legal arrangements and informal standards need to be protected from the regulatory interference of local political and judicial authorities. Territorially enforced public policy which distorts rather than supports market prices needs to be either eliminated or harmonized as part of a stable background for global market transactions.

None of these things needs to happen absolutely – all may be a matter of more or less. But this background idea forms the context for discussion of how much more and how much less. Although there is much media discussion of national economic policy, most of the work of economic management in fact consists of small scale projects to fine-tune the institutional conditions for market efficiency on a far wider scale. These are carried out by experts working in myriad settings: national and international, public and private. So long as management is carried out in this common spirit, the locus of discussion matters little. Over time, a kind of global common sense has emerged about what governments and private actors are and do or at least the bandwidth within which we can debate what they are and can do. And global economic life on a large scale has been consolidated in
ways which set what have come to seem the natural limits of territorial government and public law regulation.

On the political side, the dominant idea is also pretty simple. Politics is all about a “polity” – usually a community of people associated in some way with a territory. As a result, politics do not scale the way markets do. Where economies scale horizontally, politics can more easily be deepened and rendered responsive along a vertical axis of authority, representation and accountability. The vertical activity of rulership has become the work of a profession linked to the institutional arrangements we call government. Politics has come to mean the special domain of work performed by government, itself a collection of specialized competences. As politics matures, the work of these people becomes ever more divided along functional lines. Specialists in transport policy and industrial policy and health policy, as well as political consultants, media commentators, policy advocates and the very specific set of people we call “politicians.”

Good governance requires that these specialists strengthen the link between policy and the public interest both by strengthening the horizontal specification of mandates or separation of powers and by intensifying the vertical mechanics of rulership through accountability, transparency, citizen empowerment and ruler responsiveness. The perfection of the polity requires and produces a parallel transformation of both rulers and ruled through one or another form of responsive democracy and the “rule of law.” This is also more idea than reality, but it provides an orienting frame for the work of political specialists. They should aim to perfect their special technical expertise or competence and intensify their representational links to local constituencies through mechanisms of accountability and transparency.

All this has very little to do with establishing a site, a vernacular, an elite, which could address pressing questions of political economy.

Unsurprisingly, politics built in the shadow of these ideas is characterized by both technical consolidation and division: separating national territories into autonomous states, separating branches of government with different competences and constituencies and separating different levels of government with degrees of relative autonomy. In each setting, political competence is about the management of divided competences, specialized knowledge and local constituencies. At different moments, policy elites seem to become enthusiasts for a similar machinery of “responsiveness” across the spectrum of special competences, divergent constituencies and levels of accountability. At one moment elections
and constituent service, at another, stakeholder engagement and negotiation or transparency.

The result is a remarkably homogenous global political order of fragmented government and local politics, operating against the background of an economy organized to link things together by detaching them from the very spatial and communal identifications with which government struggles to intensify its connection.

These ideas have spawned a series of technical and institutional projects which have consolidated a government monopoly on political life in one after another location, empowering some and disempowering others while demobilizing alternative institutional arrangements and affiliations. At the national level, for example, as the polity came to mean the state, people were reconstituted as individual citizens of specific states – a process requiring a range of technical innovations in identification from passports to voting privileges. A popular and professional vernacular of civil and human "rights" redefined justice as an appropriate relationship between an individual and a state. The demands of linguistic and other minorities were accommodated either by recognizing their demands for political autonomy through secession or, more commonly, assimilating them into a national polity as citizens with enforceable individual and minority rights. Smaller territorial units – cities, neighborhoods, states --- were placed in a hierarchical relationship to larger national units, relations between them managed by professional interpretation of doctrines like “subsidiarity,” “states rights,” “home rule” and the like. Intermediate civic institutions that might once have played a political role – professional guilds, unions, tribes – were either assimilated to national political parties or transformed into cultural and economic rather than political institutions, their members unleashed to engage with the national political world as individuals. At the same time, the emergence of a national media created a national political conversation, reflecting the activity of government back as the privileged site of politics as political parties arose to serve as gatekeepers for the apparatus and personnel of political life. In the end, politics everywhere came to be defined as the activity of specialized people who have or aspire to have government power in states.

The fantasy arrangement of the political world into “states” also equated world politics with the diplomatic and military conversations among people linked to governments, reimagined from this perspective as parallel “sovereigns.” The development of a horizontal conversation among them, whether carried on by word or deed, led to the emergence of a transnational political class of diplomats and
“non-governmental” representatives of “civil society” whose members understand their local and global situations to be somehow analogous. Their interaction has encouraged and has been encouraged by the emergence of a common global media conversation in which all these people may imagine themselves participating. The emergence of a transnational diplomatic class – including the transnational community of international lawyers – has reinforced a shared vernacular for international political discourse and action, fine-tuning its limits, possibilities and directions. Indeed, the most striking thing about “world politics” today is the extent to which it is understood to be about the relations among national institutions as they unfold among specialized professionals --- diplomats, soldiers and national political leaders. All the other social activity that occurs around the world is something else – commercial activity or cultural activity perhaps, but not “politics.”

In short, the machinery for a territorial politics and a de-territorialized economics is technical, legal and quite narrow. Economic activity can only happen on a global scale if the institutional arrangements are in place to support it, just as political activity can only be concentrated territorially if the institutions responsible for political life have distinct jurisdictions. At a most primitive level, private rights, understood to lie outside or before politics, travel easily – if you own something here, you own it when you get off the plane somewhere else. Public policies, the stuff of politics, do not travel, except as necessary to support the broader market. Political institutions have the legal authority to enforce private agreements and private rights established elsewhere. But they cannot regulate beyond their borders. Although your labor law may affect the economy of your neighbor, your writ does not run there.

Over time, as government has become technical through the division of competences, authorities and mandates, and economics has grown technical by consolidation in ever more rapidly interlinked and speculative markets, the relationship between them has come to be managed in professional vernaculars of their own.

The technical distinction between exercises of public authority which support the market and those which regulate or otherwise distort the market is crucial – the one travels more easily than the other. As this distinction is interpreted and implemented across dozens of institutional settings, a professional sensibility or common sense emerges about the substantive and territorial limits of public power and about the scale and naturalness of economic flows.
It matters little that there is no known analytic for distinguishing market supporting from market distorting – or that this apparently technical distinction turns out to rest on cultural and political mores which may are different in different societies. It is enough that these differences can be transformed into a technical vernacular of argument and professional management.

As a result, the *global* nature of “problems” and the *local* nature of “government,” whether linked to a city, a state or to the international order itself, is not only a troubling fact to be overcome. It is the product of a very particular political economy written into a historically specific set of legal and institutional arrangements and maintained by professional practices we can identify.

Together, these generate modes of political and economic life which pull away from one another – a self-confident and technical form of global economic management detached from the locations or modes of production, and a media centered form of political discussion disconnected from the technical management of government, pursued in part as gladiatorial spectacle and in part as an allegorical morality tale.

The role of professional creativity and invention in the maintenance of the existing order is critical. In some sense, the relationship between politics and economics is simply a matter of interpretation and perspective. The smallest market transaction – a T-shirt sells in Ghana – can be interpreted to illuminate the politics or the economics of the planet. Yet alternative disciplines and institutional arrangements have sprung up to reflect divergent interpretations of this same transaction. As politics and economics have become increasingly technical, they have come to be served by distinct professions operating on different scales and with different perspectives. Economists and politicians understand the scale and “logic” of the transaction differently and embed it in a different social, institutional and intellectual context. Their differences emerge as different styles of analysis, different default interpretations and background assumptions. As they pursue their routine work, an intellectually unsatisfying distinction develops into a startling mismatch between institutional, intellectual, social and professional domains.

As a consequence, the fault line between politics and economics cannot be undone by legal fiat any more than by ideological reversal. The trick is to understand the rift between politics and economics as a project undertaken everywhere at once by professionals and experts who are simply doing their job, interpreting their competences, pursuing their interests. Only by bending the arc of their routine work will the political economy of the world be transformed.
It is often said that in the first half of the twentieth century the struggle between a national politics and a global economy was “won” by national politics, with catastrophic economic consequences, just as it is now sometimes said that the global economy has defeated the potential for meaningful national politics. There is something to both claims, certainly. But more interesting, I believe, are the consequences of their often unequal relationship as it has been sustained over time.

The technical management of the tensions between these grand projects has accelerated the distance between politics and the public interest while liberating economic life from the social and political context necessary for its successful stabilization and management in a kind of vicious spiral.

Across the world, the problems calling out for public policy attention are ever more rooted in global economic movements and ever less amenable to solution on the scale of our political life. Government everywhere is buffeted by economic forces, captured by economic interests, engaged in economic pursuits.

The inability of politics to offer public interest solutions to policy challenges has encouraged political cultures ever less interested in doing so. Politics has come to be about other things --- symbolic and allegorical displays, on the one hand, and the feathering of nests on the other.

The resulting instability of contemporary political and economic life has manifested itself in a variety of ways since the economic crisis. At the top and bottom of the world economy, people have deracinated themselves, moving ever more often across ever greater distances. In relative terms, the middle classes are the ones who have become locked to their territory. For so long the national center of political gravity, the middle classes of the advanced industrial democracies have become a global periphery, their new political and economic impotence expressing itself in ways which further destabilize political life and economic life. Governments now operate in the shadow of disenfranchised and disillusioned publics who have lost faith in the public hand – in its commitment to the “public interest,” in its sovereignty, its relevance, its capacity to grasp the levers that affect the conditions of social justice or economic possibility.

Only rarely can a good solution be reverse engineered from identification of the problem. Nevertheless, this interpretation of the current political economic dilemma suggests a thought experiment. What would happen were the governance professions suddenly re-oriented to reversing these two large scale projects? Imagine the daily management of political and economic life aimed in broad terms
to reconnect the political and the economic by revising the sinews of legal, institutional and intellectual life through which they have been separated. Imagine the ruling elites also aimed to reverse the technical consolidation of global economic and political life by fragmenting the space of economic activity and multiplying the modes through which politics is undertaken. These broad projects might also be mutually reinforcing. For example, the intermediate institutional forms which could fragment economic space and disrupt the consolidation of national political life may also open spaces for a reconnection of politics with economics.

Such a program would be familiar to the world’s leading risk managers who have seen the dangers of over-integration in economic life. Financial risk management requires the reintroduction of stop-gaps and go-slow provisions against the damage of contagion and the volatility of speculative flows. Supply chain risk management required the reintroduction of inventories to guard against the disruptions of a tsunami here, a nuclear accident there.

Imagine continuing on this path, reintroducing institutional forms for economic life linked to territory and to the constituencies whose economic and political possibilities rise and fall with their location --- public unions, publically owned enterprises, corporate forms responsive to public policy as well as shareholder profit, banking and credit reoriented to local economic development. Large scale regional institutions – central banks, development banks -- might be reorganized to be more responsive to diverse local economic and political imperatives, their investments delinked from world market benchmarks.

At the same time the experts and professionals who adjust the terms of global political and economic life might aim to strengthen the potential of local politics to pursue their own path. It is not impossible to imagine how this could be done. After all, in the political economy of today’s advanced industrial economies a generation or two ago, the intermediary organizations that recently came to look like pure economic irrationality – professional monopolies, corporations linked to local stakeholders, unions forcing negotiations over the forms and costs of public goods -- were often also spaces of political engagement. Reinventing such arrangements would require that we re-imagine law less as a common language of economic and political integration than as a shield for alternative paths and powers.

This is simply a thought experiment – a utopian heuristic. People can imagine doing it – indeed, in some areas it is already being done – although it would radically alter the background assumptions which inform the routine
professional practices of both economics and politics. Thought experiments like this are important precisely because they focus attention on the large scale background ideas experts carry around in their heads about what politics or economics are about, where they are heading, and how law fits in. If rulership professionals, including international lawyers, are to develop the analytic habits and perspectives necessary to understand and remap the political economy of the world, they will need to break free of the technical agendas which orient the work of the professions.

It is important to try. When the world’s managers focus only on the technical issues of institutional form or regulatory policy which their professional disciplines mark out for attention, they are not simply rearranging the deck chairs on a vulnerable world – they are part of the process by which the world unravels.

The legalization of both politics and economics makes legal institutions and professional practice the glue that constitutes these domains, allocates powers and incapacities between them, and carves the channels through which their separation accelerates. Once this begins, law progressively locks in the gains, for it is the stakes as well as the conduit for interactions between centers and peripheries. How this happens can be traced in the stock of social and legal entitlements each group has been allocated to participate in global economic life.

It is clear that the shared vernaculars of professional experts can influence what individual and institutional actors believe they ought and ought not to be doing. After all, if for a generation everyone thinks an economy is a national input/output system to be managed, and then suddenly they all become convinced that an economy is a global market for the allocation of resources to their most productive use through the efficiency of exchange in the shadow of a price system, lots has changed. That is also governance. Indeed, to the extent expertise has become the global currency of rulership, understanding the political economy of the policy expertise system has become a crucial part of understanding how we are governed. A better map of the intellectual and institutional system of rulership-by-expertise may open up new opportunities for innovative policy and political contestation.

For example, it is important to recognize that the profession’s insistence that international law has domesticated the pre-Westphalian world of empire, religious strife and war by rendering religious confession and ideological conviction matters of domestic concern and harnessing violence to the enforcement of right, while comforting, is not accurate. Global governance remains as much a matter of religion, ideology and war as of persuasive interaction among the elites we call the
“international community” about what is legitimate. In fact, the informal and clandestine, the sacred, the violent and the spectacular are part of how the world is governed. The disciplinary urge to push them off-screen, either back in history or below the waterline of sovereignty, nevertheless has a powerful impact. People who see themselves as religious actors on the global stage have a hard time seeing themselves reflected in the vernaculars of authority through which that stage is built. People who work in institutions which pride themselves on their centrality to global political and economic order have a correspondingly hard time figuring out how to think about religion other than as a matter of personal belief or local culture. It would not be surprising to find that these ideas about religiosity helped distribute the experience of authority to act in the political economy of the world in various ways.

International legal scholars could do more to understand how this generates asymmetries – between religious and secular, or between the reality of politics and the artificialities of law. Does this have some bearing on the way relations between “real” states like Israel and artificial “entities” like the Palestinian National Authority become asymmetric? International law is part of the field, the terrain, the language, the structure, through which asymmetries between secular ethics and religious confession, or the diplomatic world of international relations and the economic world of private markets, arise and are reinforced. It provides the normative fabric, the marker of status, the purveyor of entitlement through which the routine operations of people pursuing politics and economics, ethics and religion, generate asymmetry and hierarchy. The point is less that international law exercises power as the center than that it makes itself available as a lexicon of entitlement in a field characterized by dynamic asymmetry.

As a result, I am convinced that legal scholars have much to contribute to understanding how the political economy of the world has come undone and what might be done in response.

For the professional political class to remake the world’s political economy, they will need to find new institutional channels to integrate transnational interests and new levers to contest faraway decisions which affect their interests. Effective governance is no longer a matter of eliminating the corruption or capture of public authorities – difficult as that is. Nor is it a matter of sound corporate governance, corporate social responsibility and effective regulatory supervision – difficult as those are.

Effective governance requires that the public and private actors become adept at something none are now well organized – or well disposed – to attempt: managing the distribution of growth, linking leading and lagging, managing the
political economy of dualism. And they must do this not only in their backyard, in their territory, in their sector, but in a new world of shifting relations and linkages. Where small things have large effects, where local rules govern global transactions, and where very little is transparent or predictable. Only by considering economic and political objectives at the same time and on a parallel scale will it be possible to respond to the global challenge of linking experimental, leading edge economic dynamism wherever it occurs with everyone else. Across cities, within and between nations, in regions, across the world.

International lawyers have much to contribute to such a project, particularly if they grasp the depth of injustice in the world today, the urgency of change and the significance of their professional routines in the reproduction of political incapacity. Legal scholars have generated new economic and political ideas before – not all of them sensible. They could do so again. Nevertheless, a great deal of intellectual work remains to be done.

Work that will demand patience as well as urgency, an awareness of how little we know – and of the intellectual resources we have to draw upon.

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