

# Law, Expertise and Inequality in Global Political Economy

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Good afternoon. How should we – we IGLPers – understand the world situation? How might our work, the fruits of diverse heterodox traditions, illuminate a moment of so much uncertainty, particularly among the elites of the North Atlantic democracies?

There's a lot to digest – whole regions of the world seem to be coming unglued, nowhere more dramatically than across the Middle East. Is it plausible that between Greece and India we will have the same states with the same boundaries a decade or two from now. Or take Brexit --- will it change anything? Will it change everything? Will there be a “United Kingdom” a decade from now? A European Union? What future for political parties of the center left and center right across Europe? Nationalism, populism, Trumpism -- the global commentariat are now asking – as in 2009-2010 --- will the center hold? Is the system “sustainable?”

Russia, China, Africa, Asia, Latin America – their problems, their aspirations, their lives also matter. Some of their problems can be traced to the unintended consequences of the North Atlantic center *managing* to hold --- managing to externalize its pollution, its security needs, its military campaigns, its economic costs.

The center manages, for example, when it turns desperate people on the move into legal statuses -- *either* innocent “refugees” *or* undesirable “migrants.” “Schaffen wir das” – or should we turn them all into existential threats?

But were the North Atlantic center *not* to hold, not to make and manage these distinctions, there's no reason to expect that problems elsewhere would get any easier. That's the conundrum – a center up against it, but seemingly no alternative.

It's here that I think we have things to offer – perhaps that's not the whole story, perhaps there are alternatives, and the puzzle is now we've forgotten them, lost our ability to imagine them.

Inequality, kleptocracy, corruption, intolerance, poverty --- these all have different faces in different places. But the sharp opposition of leading and lagging criss-crosses all national boundaries. New lines of wealth and poverty, of political access and exclusion, of pride and shame, of lives that matter and lives that do not, are every bit as entrenched as the old lines between an industrialized “center” and an underdeveloped “periphery,” or a cultural West and East.

The problems of the industrialized north and west are no longer unique. Everywhere we find elites struggling to hold it together – to *manage* inequality, to *manage* disaffected

populations and conflicts which might unravel their rulership or destabilize their share of economic returns.

This afternoon, I'd like to explore two common ideas about this situation – each has a core of truth, but also, as I see it, miss the mark. I'll try to explain why.

First, the idea that there is – or was – a functioning and laudable “global system,” cobbled together in 1945, stitched up in 1989, and embodied in a network of elite expectations, new institutions, patterns of trade, habits of cultural and linguistic hegemony. And that it is this “system,” by and large a good thing, that is now under threat, contested from below, from outside, from the East and within the West. And that the driver of these ruptures is a new level of visible inequality: a vast difference in outcomes between winners and losers which can no longer be hidden or persuasively assuaged by the promise that a rising tide will, in meaningful human time, lift all boats. The system has bitten off more inequality than it can manage.

Second, the idea that the Achilles heel of this system was and remains its technocratic and managerial core: its reliance on experts and elites, its disconnection from real people, from politics and from democratic control. And that what we hear in the rise of Russian or Chinese intransigence, Trump, Brexit and the collapse of traditional ruling parties are voices from the outside. Alternatives to technocracy – a return of politics. Politics as resistance to the hegemony of Western financial and commercial elites and to their enablers in the political classes of the North Atlantic.

There is a lot to each of these stories. In each case, you can see where I think they go off track in their ideas – fantasies, really – about law and the internal workings of professional expertise.

**First: the idea of a “global system” or “order.”** Now under threat from inequalities and fiscal imbalances. The European analog, of course, is the “Europe” of the EU.

This order has two origin myths.

First, a natural birth. In the beginning was a Hobbesian state of nature or the competitive market of Adam Smith – out of which a well-ordered equilibrium emerged through something like a “balance of power” or “invisible hand.” The order is a work of nature.

In the second story, the origin is hard fought. Global – and European – order is a hard won civilizational achievement: from catastrophic war a hopeful order. That's why dates like 1945 – or 1648 -- are so crucial.

In both accounts, the order is *good*. It promises stability – but more, stability in the interest of all. A Europe for all Europeans, a global order for all the world.

Moreover, in both stories, there is no exit, no going back, no rational or sane alternative. You can't – and shouldn't want to – return to the state of nature, the Second World War, an economy with no invisible guiding hand. Like the Hotel California, the order can always be reformed, but you can never leave.

Law's job is to constitute the system—it will be a *legal order*. Generated and managed by elites, law provides the sinews of connection and disciplines backsliding.

As the system is benevolent, so also the law. Law expresses our best wisdom – where there are abuses, law calls them out. Where there are global problems, law can be brought to their solution. Where the order has values – free movement, no impunity -- law has rules.

Law is also the future – the order matures as it legalizes. If we are lucky, one day, all will be law, more effective, more uniformly implemented.

This is a very odd picture of law – I'm not sure if it is utopian or dystopian, but it is surely incorrect. The world is awash in legal norms and claims and procedures and institutions. But they are hardly *orderly* – nor can they be said, in all their messy, plural and inconsistent detail to point like iron filings in a magnetic field resolutely forward to a virtuous future.

Actually, they point in all kinds of directions. Some important, some trivial, many inconsistent. Far from no alternative, there are alternatives galore.

The delusion of no alternatives arises from the canonization of *these particular* institutions as order itself – as peace, equilibrium, even justice.

This is why we would be off to a better start understanding our situation as a continual struggle. Struggle in which law is a tool, tactic and technique. In this view, which I associate with much IGLP work, international affairs is what happens when people everywhere engage one another with little backpacks of legal powers, entitlements and vulnerabilities and have at it.

Not that everyone is always fighting. Most struggles have already been won or lost and there is no need to re-engage them. Winners can simply press the outcomes on losers as facts about the status of forces. Nor is cooperation rare: people routinely seek allies and find collaborative opportunities, often to defeat or exclude someone else. Their collaborative opportunities, however, were wrought in prior conflict.

This, in my experience, is how strategic actors – activists, businessmen, military planners – look at the world. A businessman initiating a new production strategy across the world would start with a 360 degree audit of the situation: who has an interest and is in a position to impede my project and who to aid it?

What we call the post-1945 “international system” are institutional arrangements and modes of engagement which reflect victories and losses. The daily operations of this “system,” if we must call it that, are a constant effort by some to entrench their gains and leave others behind.

And as the Brexiteers are now learning, it’s not something you can just leave. But as I hope they will also learn, it has been --- and certainly could be – put together in lots of ways.

A couple of examples it is easy to forget: the international financial institutions started off supporting capital controls and import substitution industrialization before they became the voice of free movement and austerity. Amnesty International started off, as the name implies, favoring *amnesty*, before it embraced criminal justice as the first response to deviation from its purportedly global standards. Although the EU has always been an ordo-liberal affair of free movement, the *how*, the space for local arrangements, the meaning and strategy for social policy has shifted wildly with broader changes in membership and elite ideology.

It is hard to think of the system one inhabits as a victory rather than a virtue. Or as one among many possible equilibria, rather than as historical destiny. This also makes it harder to experience the losers as losers. They seem, rather, somehow to have been left behind, not quite gotten with the program – but soon. In this, they are like nations in 1950 which somehow had “not yet developed” – their underdevelopment had no particular relation to our development.

It was by looking to law that IGLPers – and many others – put the lie to this idea. The dynamics linking centers and peripheries were managed by legal arrangements -- from colonialism to bilateral investment treaties. Legal arrangements map the *relations* of center and periphery.

Many people I know experienced Brexit as a loss, even a tragedy. For their sense of possibility, their cosmopolitan aspirations, their sense of the country and culture they inhabit, the future of a Europe they have embraced. The elites – we – lost something.

It is easy to forget that other people have long borne the costs of those cosmopolitan dreams. The elite press continues to stress how strange, how ironic, it is that people in regions benefitting from EU “cohesion funds” we’re most likely to vote for Brexiteers. As if their poverty, exclusion from everything happening in London, on the Eurostar, and in the commanding heights of European economic and political life was a kind of natural baseline on *top of which* came ‘cohesion’ funds. No sense that their left-behind-ed-ness could in any way be laid at the door of the Eurostar elites. And that the cohesion funds were no where near enough to compensate for all that.

But critical study of the legal institutions of European Union and London financial hegemony tells a different story – of relatedness. Of monetary union as a recipe for debt bondage and instability, of free movement and self-righteous cosmopolitan conviction as engines for relations of honor and shame, relative wealth and stagnation. Brexiteers aren't just people

who've been "left out" --- as if they could, with a stitch here and a policy there, be looped back in.

And Europe, like America, also imposes the costs of their arrangements on the world. It's not just toxic assets and fickle capital flows. The point of free trade, after all, is not only to generate global gains, but to do all in one's power to get and keep those gains for oneself, for our city, our country, my family, my company, my industry.

This is not new. When US Treasury Secretary John Connally advised Nixon to decouple the dollar from gold he is reported to have said: "my philosophy is that all foreigners are out to screw us and it's our job to screw them first." It is not only Americans who talk this way.

The "refugee crisis" is a *European* crisis because it threatens the political and economic stability of Europe, of the EU. Millions of people are displaced worldwide. If enough of them are visibly starving, it might be a humanitarian crisis. It becomes a system crisis when it destabilizes Europe – and America's – war on the world: the legal and institutional arrangements through which we garner and protect our political and economic gains from people everywhere. From people who are just as deserving – whose lives and aspirations also matter.

In the United States, it seems self-evident to many that "black lives matter." And ought to matter to the country and to the system, which presents itself as *universal*. But like the global "system," our system is not universal – not all lives matter, and certainly do not matter equally. Some are sacrificed, nationally, locally, just as they are globally.

The truly astonishing thing is that this continues to come as a surprise, to seem like a deviation from the norm rather than the norm itself. The norm of some people being *entitled* to more, others being compelled to work harder, learn less and live shorter healthier lives.

Law is the metric of those entitlements. Of citizenship, of property, of freedom to contract, of debt and obligation and exclusion, credit and membership. Law is how we wage war in the filigree of peace.

Some of the best work by folks in the IGLP network has helped us see how this happens – in all kinds of places, in different times. Has shown that poverty and inequality, environmental destruction and war itself are also legal regimes, put together and managed by people who think they are doing the best they can, for themselves, certainly, but also for the world.

To see law this way, we need to set aside the fantasy that up there somewhere is some kind of public interest aggregator, a magical father whose will law expresses. And that law is therefore a problem solving ethical thing, oriented to the public interest, rather than a tool, tactic and terrain of struggle. It turns out that the idea of a magically universal and benevolent legal order simply adorns past victories with garlands of necessity, legitimacy and virtue.

Inequality is not a new fact to which law should respond but the ongoing and completely normal outcome of routine legal arrangements..

Law's *distributive role* is obvious. Legal rules, arguments and institutions make it possible for some people to capture and retain the gains from economic activity and exclude others. Legal arrangements consolidate the relative powers of some groups, industries or regions, generating "centers" and "peripheries."

Although we are all prone to imagine that "gains from trade" are distributed by social, political or economic *facts* – like "bargaining power," the relative "productivity" of factors or the "competitiveness" of actors, what we call "bargaining power" or "competitiveness" depends on the legal and institutional arrangements that affect things like costs of production and barriers to entry, the structure of traded industries, the relative power of labor and capital invested in them, the monopoly power of producers and so on. That's why people struggle over these things so insistently.

"Rentier economies" are appropriately named: their development path is rooted in the access their elites have to value arising in their territory. It is not the "indestructible power" of oil or natural gas that pours money into the sovereign wealth fund. It is the authority of legal arrangements. The division of gains among the Qatari government, Chevron, and the immigrant workers in Doha is the product of innumerable local and international, public and private legal arrangements from sovereignty over natural resources to tax and licensing schemes, citizenship rules and tolerated corruption practices. Were those arrangements to change, we might not expect the particular people who happen to live on top of an oil reserve to end up so rich.

### **Why can't they be changed? How does struggle keep reproducing injustice?**

**This brings us to the second idea: maybe it is the experts, the elites – a common project of the one percent and the professional managerial classes against which the primitive forces of political populism and nationalism have begun to react.**

Again, there is a lot of truth to this. Ours is a technocratic world. Elites everywhere share expert vocabularies, institutional and cultural practices. It is not only that every so-called "state" has a flower and a bird and a flag – they also have a set of loosely parallel institutions and analogous administrative actors who inhabit a legal, institutional – and fantasy – world of "sovereignty." Just as they have commercial actors who inhabit the mytho/real private space we call "the economy." Indeed, the legalization of all these relations may be the most significant aspect of "globalization."

Law is central to all of them. Who they are, what they can do – and do to one another – is a matter of law. Lots of terrific IGLP research has sought to bring this to the surface – how are money, credit, labor and capital – like political power and right -- legally constructed and, crucially, *how might they be put together differently?*

We need to notice, as we do this work, that if you are not a lawyer or policy professional or part of the ruling elite – the order around you will be hatched, managed and justified by people who have access to things and know things that you don't. You might demand that rulers follow – even honor – the law, because you think the rules at least constrain the rulers as they constrain you – you will also know from bitter experience that this is not how it is. That for the elites, those rules are more plastic, less clear, more open to strategic engagement, even strategic violation. So when your boss, the teacher at your kid's school or telephone company explains "because that's our policy," you can't avoid the suspicion that you are being disciplined by whim.

And often you're right. The law of global and European order is malleable and contradictory. That's why elites struggle amongst themselves about its meaning.

When they do, they are engaging in *politics*. Their battles and the managerial arrangements that result are not the *displacement* of politics by (legal) expertise, but its continuation. This is what we mean by the slogan "law is politics."

Nor has the managerial world replaced violence with argument. People in struggle neither talk one another into things nor simply bash one another on the head. They bring "leverage" to bear: a complex amalgam of assertions backed up by more or less tacit threats.

The work of "power/knowledge" is not mysterious. It is an everyday experience: someone comes to you, asserts their authority, exercises their entitlements, and you feel the effects, yield to their assertion, find yourself put out of business by the way they deploy their rights and privileges.

But if you wander the corridors of power looking for leaders, people who inhabit politics, as Weber would say, "as a vocation" – as determined and responsible decision in an uncertain, even irrational, world – they are hard to find. When you do find a "decide" in our elite institutions, they will explain how their decision was compelled – by reason, by prior agreement, by the facts, by the interests pressing upon them. They were compelled, in short, by their expertise.

But their expert vocabulary as evasive and indecisive as it is inescapable: more loose argot than tight analytic. Sophisticated global elites inhabit their own expertise with a strange blend of confidence and disenchantment, a kind of pragmatic disbelief in all the details anchored by faith in the universal virtue, objectivity and public interestedness of the ultimate outcome.

At the same time, there are things one cannot say in polite company. In places like Davos or Washington or Brussels people also tell lots of stories about the world -- stories about what an economy is, what politics can accomplish, about the limits and potential of law. Stories about "good governance" and "efficient markets" and "national interests." These stories make some problems visible, some actors central – and others invisible. Make some lives matter and

the sacrifice of many others an unfortunate matter of fact rather than choice. Make some arguments plausible, others not. You cannot say God has authorized your victory – nor can you simply take things by brute force. You need reasons of principle, appeals to the universal, and professionally forged justifications for your coercion.

**Which takes us to the idea that** what we are hearing in Brexit, in Podemos, in Putin, in Isis, is the voice of the outside, a wail of political opposition to managerial elites, managing to say what cannot otherwise be said.

Again, my sense is yes....but also no. No for reasons familiar to IGLPers who've shown the many ways outside voices are also a kind of expertise whose positions and possibilities are in a tragic relationship to our own. A *pas de deux* of no alternatives – when there are alternatives all around us.

If you thought “expertise” was fundamentally different from “politics,” the problem of technocracy would be a constitutional one: keeping each in its box so that we could enjoy the benefits of both technical knowledge and political decision.

But today, we have *neither* analytic expertise to which we might usefully defer *nor* responsible political interest aggregation and decision. Technical experts are everywhere divisible by ideological propensity, while in politics, everyone has embraced the reassuring comfort of thinking we “know,” rather than face the anxiety of having to choose.

Expert knowledge turns out to be human knowledge: a blend of conscious, semiconscious and wholly unconscious ideas, full of tensions and contradictions, inhabited by people who think, speak and act strategically. All of us -- politicians, entrepreneurs, activists -- speak a version of languages once owned more exclusively by “experts.” Technocracy is not them – it is us.

*But isn't there an outside?* At the very minimum, the power of no – or of violation. The voice of religion in a secular world. Of irrational violence in a world whose coercion is wrapped in reason. Or of nationalism, tribalism, racism? Surely Trump and Brexit and Syriza and Podemos and Le Pen can't be “in.” No, not in – but “outside” is a relational position, a kind of impoverished back formation of elite practice..

Even the terrorist must learn his trade – just what kind of violence says “I am not the universal – I am other to it.” When gang members test one another's mettle by criminal violation --- or nationalists demand sovereignty – they are treading lines drawn by law.

Part of the tragedy of modern managerialism is the impoverished language of alternatives left those who would contest its hegemony. It is not surprising the British “leave” campaign had no program – how could they have? A firm no meant – will mean – an infinite and preoccupying series of marginal adjustments whose ultimate significance, culturally, economically, politically, we will only know, if ever, many years from now.

Their dilemma is Europe's own – insiders can only double down, reform, renew, continue the program of continuing the program. Outsiders can only say no. Once elected, they too must walk the walk.

Insiders and outsiders are strange bedfellows. Inside, the plot pits the universal against the particular, law against politics – outside, the drama is a struggle of interests, the power of the few transformed into the law of the many. On the inside, one can only keep on keeping on. Outside, there is only rupture, sovereignty....and ultimately participation. Think of this history: anti-colonial struggle, decolonization, and the disappointments of “membership” in the international community.

Although it is easy to personify the difference between insiders and outsiders: the CEO at Davos and the angry young man in Idaho, we should not overdo it. Boris Johnson is not the only one to shift gears from complacent insider to more critical external assessment and back again. There is something to both sides: global governance can be a hopeful project of establishment reform, just as it can legitimate the privileges of the few in the language of general interest. People everywhere struggle to reconcile them. Ought one to pitch in or listen to doubts that the system could ever be satisfactorily reformed? Hillary – or Bernie? Remain – or leave? Work with an international institution or an NGO? A global NGO or a local community?

One of the tragedies of all this back and forth is a collective blindness to the very real alternatives lying all around us – an entire history of heterodox analyses, proposals and real life experiences.

It is not that we lack the ability to rearrange distribution when we want to. Consider the fashionable notion that every country should become Silicon Valley. I've heard this all over the place – in Russia, Kazakhstan, in Doha, Mexico and China. In each case, the tools are legal and administrative changes reallocating opportunities to garner rent in the name of social transformation: adjusting rules on credit, education policy, immigration, intellectual property, local autonomy, export and import licensing: turning the levers of state power to allocate gains to those who would innovate as they had once been turned to those who would industrialize. By changing the rules, the good guys —investors, innovators, entrepreneurs, national champions— would be strengthened and the society transformed. It was no different in the days of ISI when industrialists and national champions were all the vogue – massive projects harnessed resources from all sides to fill their coffers.

The one percent could still have made off with an overwhelming majority of the gains from globalization. So little would have been required for the left-behind to hang in there with them against the centrifugal forces of market integration. Some more jobs, a livable minimum wage, a reliable and comprehensible health care system, somewhat more effective schooling at the bottom, a bit more dignity for those who would never be part of this year's “new” economy – replace the array of welfare programs with national income guarantees, that kind of thing.

It's not clear to me all that would have broken the bank. Or that it would all have been compensatory transfer payments. The dispossessed and left behind – inside the North Atlantic democracies, in the failing states along the borderlands of global warming and military adventures gone wrong – could have been engaged, linked productively to regions and sectors and companies and nations benefitting from new global markets, mobilities and technologies.

Could have been – if that had been the shared and obsessive goal of elite practice. The crucial point is that it was – and remains – outside the plausible terms of elite expertise, as crazy in its way as divine right.

Confidence that we can change the direction of society rarely translates into the feeling that something could be done about --- or anyone has responsibility for -- inequality.. We *intended* to move people from the country to the city, transform peasants into factory workers, remodel low-wage industries into innovation clusters, but no one intended inequality. People *intended* to liberate capital here, expand liquidity there, open these markets, restrict access to credit somewhere else, manage exchange rate fluctuation, and expand opportunities for securitized investment, but no one intended fiscal “imbalances.”

Here again, IGLPers have had something to contribute --- by tracing the impact of legal forms they've identified choices among different political and economic trajectories. Economies put together differently operate differently. The way to do that is change the legal arrangements. Which will require struggle to build alternatives with other patterns of inequality, different distributions of political power and economic benefit, more or less space for experimentation or contestation. It might not have to be *this* – or Brexit.

In the metropolitan Detroit region where I grew up, the slow—and then very rapid—dynamic of inequality between the city of Detroit and its many suburbs arose as people struggled in their own lives for economic advantage against a background of racism, social expectations about the racism of others, and a legal structure that fragmented authority among dozens of small communities, each with independent responsibility for schools, police, zoning, and taxation. With only very weak regional or statewide mechanisms to encourage positive links, one after another suburb found itself pushed up or pulled down by the intense residential segregation by income, race, and ethnicity as individual families struggled to advance and preserve their property values and mobility expectations for their children. Racism was part of what made the rules work this way – and part of why the rules were this way in the first place. It was not “other” or “outside” a system committed to equality – it was embedded throughout a system claiming to be committed to equality. Without the racism, the results may have been different. With different regional legal arrangements, they would certainly have been different. As everyone realized, for example, with “cross-district bussing,” the capacity of families to capture educational rents by purchasing property in a slightly more exclusive suburb would have been

seriously diminished.

At the global level, the interaction of social arrangements, political interests, ideological commitments, and legal arrangements are more difficult to untangle. But the situation is parallel. As in Detroit, the global potential for negative linkages rests on a combination of legal arrangements and attitudes. The world's elites share ideas—including ideas about one another's ideas—just as Detroit residents had varying background notions about the relationship between race and privilege.

Legal arrangement *could* aim to mitigate dualist dynamics. Think of local content, employment, technology transfer, or investment requirements that link firms benefiting from privileged market access or free trade zones to their periphery. Or corporate mandates that prioritize links with communities or unions alongside shareholders, lending requirements targeting credit to peripheral actors, zoning practices linking an office tower downtown with the establishment of a shipping facility in the ghetto and so on. Corporations could be discouraged from offloading workers on national states for tax and transfer welfare and encouraged or required to find something these workers might productively do. Capital flight could be restrained, capital investment in developing regions required. Go-slow provisions could prevent the rapid in- and outflows of speculative capital in thin peripheral markets.

Tracing the links enabled by legal arrangements shifts our focus away from “who did it” to “how does it happen.” Agency, if we can call it that, for the reproduction of inequality, lies with the entitlements and expectations that link people in relationships of relative privilege and vulnerability .

If we want a better world, more just, more equitable, let's explore these possibilities, as we are doing here this week. Things could be different – let's get started.