

Global Agenda Council on Global Governance 2008-2009

The Mystery of Global Governance

By David Kennedy

In our conversations in Dubai we will not be alone. Many are rethinking our capacity for effective and sustainable global governance. That people are thinking anew reflects how little we actually know about how we are governed. Indeed, as the current financial crisis demonstrates, global governance remains a mystery in part because so much about global society itself eludes our grasp. Consequently, simply mapping the channels and levers of influence and public capacity now available remains an enormous sociological challenge.

At the same time, I share the conviction that our current institutional arrangements are not up to the challenges we face, and it would be surprising if the new order were waiting to be found rather than made. If there is to be a new order, legal or otherwise, it will be created as much as discovered. We know this – it is why we've come together.

Like constitutional orders before it, however, a new global governance regime will be imagined and built through collective hope, struggle and disappointment as much as by discussion at meetings like this.

The questions we raise about are quite traditional ones, for which I think we know we will need new answers. We know that the structure of the global economic and political life has changed dramatically in the last decades, even if we would each emphasize different factors in the shift. At the same time, we have long known that we are governed by a hodge-podge of national and international norms, made, interpreted, enforced or ignored by all manner of actors. For many years it has been said that the state has been opened up, broken apart, replaced by the shifting internal dynamics of national bureaucracies and local powers, and the distribution among them of the authority to resolve various issues. We have long known that the world's elites inhabit a fluid policy process in which they would as often make as follow the law, just as we realize global governance is as much a work of the spirit – the liberal spirit, the humanitarian spirit, the spirit of human rights or free trade – as it is a matter of rules and institutions.

As we think anew about the potential for global governance in our new situation, let me quickly suggest a few issues to which we might pay more attention.

1. Mysterious governance is not no governance. The sheer density of rules and institutions in the global space is already astonishing.

Although global has fragmented economic and political power, it has not de-legalized them. Think of the network of impenetrable obligations which has tied our global financial system in knots. Even war today – asymmetric war, high-tech war, war stretched across a global battlespace, war of missiles and missives – is an affair of rules and regulations and legal principles. As a result, the problem is not to bring political or legal actors into law or governance, but to understand and, where necessary, rearrange the laws and institutional machinery which constitutes those actors, channels their interactions and influences their relative powers.

2. Global governance is, and will likely remain, extremely disorderly, plural and uncertain.

The globalization of law, the legalization of politics and economics, has brought with it a tremendous dispersion of law. We live in a world of conflicting and multiplying jurisdictions, in which people assert the validity or persuasiveness of all manner of rules with no decider of last resort. Although some of this disorder is structured – various federalisms, multiple jurisdictions, choices of law provisions, even races to the top and bottom – much is a matter of struggle and conflict among legal and political orders as parties strategize their use of various governance mechanisms. Moreover, it is not clear the situation would be improved by a net reduction in the plurality of law – it might or it might not.

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3. The informal and clandestine sides of global order are increasingly important — customary norms, background patterns of private and public expectation, black markets and illegal flows.

Although the clandestine, the informal, the illegal, the corrupt, the black market are all quite different, each is a governance regime. And as everyone exercising a prosecutor's discretion to bring charges well knows, those who govern often strategize about the residual of non-compliance to be tolerated, just as economic and social players strategize about the mobilization of formal and informal systems. In the global governance business, we have been too prone to imagine the exceptions to rules as outside law and governance altogether. Guantanamo, for example, far from being a legal black hole, is one of the most regulated places on the planet — it is simply that different rules apply and different rules do not apply.

4. Things we don't like — war or poverty or environmental damage — may also be legal institutions and structures of governance.

It is striking how often the chapter of an international law text labeled "international environmental law" will focus only on rules and institutions dedicated to environmental protection, forgetting that the law also offers comfort to the sovereign or property owner who wants to cut down that forest. Indeed, we rarely pay enough attention to the governance significance of legal privileges. Despoiling the rainforest is not only an economic decision — it is also the exercise of legal privilege.

5. Global governance occurs in a system of global power — it demands allies and creates losers. Talking about "the international community" obscures this fact. Moreover, people want different things. They disagree about the most fundamental things.

We ought not to be carried away by the dream of universal values. Or, for that matter, by the idea that we face technical challenges which would yield to a consensus response if only our governance machinery were more effective. There turn out to be more than one ways to skin a cat — and real disagreement about the functions to be served by global governance. I believe this simple truth underlies our intuition that the "rise of Asia" may change things profoundly, if we are unsure precisely how.

No matter how we slice it, the benefits of good governance will be unevenly distributed. We need to be conscious not only about who will win and lose, but about whom we expect to carry the program to victory. For the United Nations it was to be the United States, founder, host and leading source of funds, along with the other Allied Powers granted veto status in the Security Council. The success of the GATT depended upon harnessing the great trade blocs and dominant traders within its terms from the start, just as the Coal and Steel Community, whatever its legal structure, depended upon cementing a core trade-off between France and Germany which could be expanded, both geographically and substantively. The interests to be engaged were not simply states — they were farmers and industrialists.

Although there is certainly power in the players implicit in the phrase "the international community" when they act collectively these are a rather weak reed, likely to stimulate a backlash more powerful than what it can bring to the table in defense.

6. Experts and expertise are an understudied component of global governance.

We focus on statesmen and public opinion, and not enough on the ways in which their choices, their beliefs, are shaped by background players. 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.

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Moreover, we rarely have a good picture of the blind spots and biases introduced by expertise, along the lines of the old adage that to a man with a hammer, everything looks like a nail.

In thinking about the politics of global governance, we tend to focus on the authority of agents we can see to act within structures we understand. We have paid too little attention to the myriad ways power flows through the capillaries of social life, including flows of belief, affiliation, or the experience of victimization, pride and shame. All these things move like a virus or a fad, but our epidemiology is weak, our sociology of status, convention and emulation at the global level rudimentary

7. Knowledge about how we are governed is very unevenly spread about the planet.

Those in a system's center can often see how the order is ordered in ways inaccessible at the periphery. From the outside, it can seem the powerful know and intend all that they do, while from the inside, it is easy to feel buffeted by one thing after another. We might say much the same thing about those who live in the worlds of public and private power on the global level. Private actors at the center of the global economy understand how to operate within a plural and disaggregated global legal order far more instinctively than do their counterparts in national government service, diplomacy or the world of international public institutions. Military professionals often have a far more difficult time thinking strategically about operations in a global battle space stretching across jurisdictions and characterized by wildly divergent interpretations of supposedly common rules and principles than their counterparts in the world of transnational finance or business, for whom legal pluralism is an everyday matter of risk and opportunity.

8. Global governance is not only about management and problem solving: we must grasp the depth of the injustice of the world today and the urgency of change.

We have built fault-lines into the political economy of the world. At the top and the bottom of the economy, we have deracinated ourselves, moving ever more often across ever greater distances. In relative terms, the middle classes are the ones who have become locked to their territory. Increasingly, the relative mobility of economics and territorial rigidity of politics have rendered each unstable as political and economic leadership have drifted apart.

The result is a mismatch between a national politics on the one hand, and a global economy and society on the other. You can get a good sense for this by watching the flows, legal or otherwise, of migrants and remittances, or by traveling the world from one "free trade zone" to another, each an enclave of informality, an exception from bureaucratic rule, and then trying to adopt a child abroad or listen for the idea that Americans and Mexicans might share a common political future in the speeches of any American local or national election campaign.

At the same time, the rumbling fault line of an accelerating social and economic dualism haunts our world. We now face a revolution of rising frustrations among the hundreds of millions of individuals who can see in, but for whom there seems no route through the screen except through rebellion and spectacle. Globalization makes people nervous. Iowa corn makes migrants of Mexican peasant farmers while Chinese factories sour investment in Maquidora. With drought in Australia you get foot riots in Haiti. To say nothing of the global credit crunch brought on by the American mortgage crisis. Citizens in every nation know this – and they fear it. What government has not tried to stoke such fears as its grasp of economic and cultural authority has ebbed?

Were we to take these eight thoughts more fully into account, I hope we would be able to quicken the pace and emotional tenor of decisions in the background institutions of life. I would hope that we could carry the revolutionary force of the democratic promise – of individual rights, of economic self-sufficiency, of citizenship, of community empowerment, and participation in the decisions that affect one's life – to the sites of global and transnational authority, however local they may be. To multiply the sites at which decisions could be seen and contested, in the hope for a heterogeneity of solutions and approaches and a large degree of experimentation, rather than an improved constitutional process or

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more stable settlement. I have in mind less new procedures than a new spirit of management, encouraging the human experience of responsible freedom throughout the worlds of corporate, private, public and technical expertise.

There are lots of institutional ideas lying around — utopian heuristics for a politics remade. Perhaps the new politics will be about experimentation and institutional diversity, protected by a re-activated sovereignty in the middle powers of the South. In such a vision, we might strengthen and defend small pockets of public sovereignty in cities and churches and corporations and nations which have the capacity to experiment, as shields for the weak, guarantors of policy diversity and arenas for democratic political life. Perhaps the new politics will be about mobility, involving a grand bargain linking free trade in goods, free movement of capital, with free movement of persons. A new global politics may also be about building a transnational political will, through which sovereignty would come to be seen as an open-ended promise of inclusion. If the new politics is to be about empowerment, we might imagine citizens not only informed, consulted, their polling data serving as base line for expert management, but actually deciding.

It took a long time to invent a national politics and to organize the world in nation states. 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. Building a new politics for a global society and a global economy will be equally difficult. Let us hope it does not take as long. And does not require as much violence to be born.