

Bristol Studies in

International Theory

Praxis as a Perspective on International Politics

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First published in Great Britain in 2022 by

Bristol University Press
University of Bristol
1–9 Old Park Hill
Bristol
BS2 8BB
UK
t: +44 (0)117 374 6645
e: bup-info@bristol.ac.uk

Details of international sales and distribution partners are available at bristoluniversitypress.co.uk

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British Library Cataloguing in Publication Data
A catalogue record for this book is available from the British Library

ISBN 978-1-5292-2046-9 hardcover
ISBN 978-1-5292-2048-3 ePub
ISBN 978-1-5292-2049-0 ePdf

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Cover design: blu inc, Bristol
Front cover image: © 2022 [The contributors]

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Printed and bound in Great Britain by CPI Group (UK) Ltd, Croydon, CR0 4YY



Acting, Representing, Ruling: A Conversation with My Critics on Social Reproduction and the Logic of Social Inquiry

Friedrich Kratochwil

Introduction

Coming last in this collection of essays on one's work is a privilege and a challenge. It is a privilege not only because one has now different texts articulating different facets of a common concern, but it is a privilege in that it shows that my attempts to rethink the issue of acting with all the conceptual baggage that comes with it has been useful for others, even if they (dis-)agree. Thus, the position alone could tempt one to provide just an overview and impose some weak order, familiar from the 'contrast and compare' genre. But one also could do worse, by creating the impression of a synthesis by opting for selective attention, in order to show how we all mean the same thing. Such an approach might be all the more tempting since we all seem to agree, due to the post-modern turn in social theory,¹ that *the world out there* does not provide us with unadulterated and free-standing facts which serve as last appeals.

These observations point to the challenge part of the task, especially for someone who has warned of last words and grand theories. Similarly, in insisting that we filter our experiences through categories and concepts defining what is normal and making sense, or what is deviant or out of bounds, I can deny neither that these 'bounds' are not only logical

¹ See the still seminal anthology by [Seidman \(1994\)](#).

distinctions – although they serve as criteria of intelligibility – nor that they are merely cognitive. Since they are norms, they not only state regularities but provide – through their counterfactual validity – for the enactments of ‘rules’ and the reproduction of social order, whereby alternatives are excluded and *dominium* is exercised *as rule*. Consequently, the notion of a ‘full view’ – attributed to theories when conceived from the point of the ‘view from nowhere’ – seems a doubly problematic metaphor for the social world where the observed order is based on rule-following and intersubjective understandings, some of which are clearly ‘fictions’ (such as corporations, or representations of a ‘people’, comprising also the dead and future generations), or they entail certain ‘truths’ that are *held and declared*, rather than found and available for inspection. Therefore, I think that both the notion of theory as a *full view of everything* and the idea of a universal, all-inclusive order – bolting together the visible and the invisible, the normative and the factual, the present, the past and the future – are incoherent. For starters, if order depends on distinctions and boundaries, every outside has to *exclude* something in order to mark an inside. Similarly, to conceive of order, especially social order, by a metaphorical extension of a homogeneous space in which there may be movement from here to there, but where no real transformative (historical) change can occur – as the past and the future are just like the present – is hardly plausible. Thus, I think the two *problematiques* are two sides of the same coin, which leads to the mistaken belief that knowledge consists in ‘seeing’ this totality into which everything is to be folded, but also that everything in it remains fixed.

In order to elaborate on this argument, I begin with an examination of two root metaphors of knowing – seeing vs grasping – which allows me to place the International Relations (IR) discussion about practices in the wider setting of the epistemological problem (section on ‘Setting’). I then address the issue of institutionalized action and professional responsibility in the section ‘What shall we do?’ and conclude with some critical remarks on ‘Law and its empire’.

Seeing and grasping

The plausibility of the previous ‘hunch’ rests on what we experience when we change the root metaphor for knowing, which relies on sight (evidence, idea, seeing), and shift to the different one of grasping (*‘capire’*, *‘begreifen’*) something. The latter involves us not only as passive observers, who just receive sense impressions, but as beings involved in what we perceive, by choosing a perspective, using instruments and controlling for what we think can be neglected. Such a switch in the root metaphor immediately confronts us also with the realization that in the case of thinking about order and social reproduction the term ‘order’ covers two rather different conceptions that

partially overlap, but which point in different directions. One is the notion of the perfect order that is like a finished product open for our contemplation, so to speak the *ordo ordinatus* conception. But there is also the notion of an *order ordinans*, that is, of *ordering* conceived as a never ending effort to *create* order and ensure its reproduction in time.

Significantly, both stories are laid out in the first chapters of Genesis. The first few paragraphs of [chapter 1](#) outline the *ordo ordinatus* position: ‘and God saw that everything that he had made and behold, it was very good. ... And on the 7th day God finished his work ... and rested’. But just a few lines later, in the second chapter, another story line emerges with the creation of man, the seduction of the tree of knowledge, the fall of Adam and Eve and the expulsion from paradise. It introduces not only mortality but also the beginning of ‘history’. Not only do the first couple have to leave paradise and ‘make a life’ through toil, but God also has now continuously to intervene in the course of events to protect his sacred line – listed meticulously in the *Chronicles* and continued by Matthew for the New Covenant (‘Testament’) – with which God makes the old and the new covenant. Part of this ‘maintenance regime’ is that the chosen people have to be reminded of their obligations through prophets, and God has even to use other peoples in order to keep his wayward tribes – which have through the Covenant become *a people* – in line.

I think Cecelia Lynch’s ([Chapter 3](#)) interpretation points to some interesting further questions, aside from elaborating on prophecy as a mode of internally situated criticism, which she thinks my approach to praxis fits. Where she and I perhaps disagree is that the extension of prophecy in the tradition of Deutero-Isaiah and the emergence of an apocalyptic version in Daniel – taken up again in John’s Book of Revelations – makes out of the situated criticism a message of universal redemption and damnation, with some unenviable consequences. The radicalization of the original prophetic perspective to one of a final convulsion and/or accounting fundamentally alters the function of earlier prophecies, which took issue with concrete problems of common concerns, in that the prophet reminded the people and their rulers of their obligations, rather than propagating a (catastrophic) vision of things to come. Now the shadow of the future casts its ominous spell over the present, especially since the return to an idyllic past is foreclosed. This has important implications for what we can know, what we shall do and what we can hope for in making sense for our individual and collective life.

In Kant’s ‘secularized’ version of this story, redemption has become self-redemption accomplished by the human actor through individual moral action – rather than bestowed by the grace dispensed by God – which is the key problem from Augustine to Luther and the Reformation. The theme park of the paradise has thereby morphed into a kingdom of ends towards which mankind is moving. This construction creates new conceptual

fault lines which are of interest to us. Thus, the old chestnut of medieval philosophy concerning the freedom of will and the role of grace (or divine election) reappears in the modern counterpoise of the *List der Natur*² – now standing in for God and his interventions maintaining order – and of the individual's free will. The latter requires the actors – if they really want to be free – to work in the 'interest of reason', imposing on all of us a *duty* to work towards that goal (Kant, 1991 [1795]: 114, 122). But then, again, the question of agency raises its ugly head. Since Kant does not trust the 'warped wood' of 'the human species' (Kant, 1991 [1784]: 46) to make the jump from nature as physis to morality and the kingdom of ends, his 'solution' of the free will determining itself can barely paper over the contradictions.

These introductory remarks shall only illustrate and justify my strategy of involving my critics in a further conversation, rather than provide a spectacle of 'gladiatorial fights' as Jörg Friedrichs once called it, and which is familiar from the theoretical debates in the field. The latter operate with the simple is/is not disjunction and with the winner takes all presumption as the 'end'³ – which is of course an illusion, as the debates continue. But how are we then to think about action and our task as critical observers of the construction of the social world?

Friedrichs (Chapter 12) not only makes the case that as social analysts we are not condemned to be only apologists of the existing order pointing to the facticity of observational statements, nor do we have to become revolutionaries, as the prophecy/teleology of the history of humankind is equally distorting for analysing the problem of praxis. By using the framework of a triple hermeneutics – consisting of the issue of reference, that is, what we consider a problem; of interpretation (how it is perceived by the observer); and by our realizations that the observer is shaped by the cultural context in which they operate – Friedrichs opens up a fruitful discussion of the problem of social reproduction and action. It takes the issue of social reproduction out of the semantic field of 'sameness', which in a way justifies theory's mistaken claim of universality – since truth cannot be different from situation to situation – thereby easily mistaking action for just making the same thing again and again, as if all our actions were standardized moves like punching holes or hammering (remember the 'law of the hammer'!). But acting in time is different, as it entails yoking the present to past and future, and not just moving along a line from here to there, in an ahistorical continuum. Friedrichs elaborates on his triple hermeneutics by

² See the more recent discussion of Kant's later works by Brand (2009, 2010), which critically evaluates the systemic coherence of the Kantian oeuvre. See also the harder criticism of Kant's political and legal writings by Horn (2014).

³ Here again the double meaning of 'end' as 'goal' and as 'finish' play on each other.

briefly discussing in an ideal-type fashion Nietzsche, Weber, Foucault and Hume, showing why social theory – if we take theory as critical reflection rather than merely as a distanced observation – is not like a simple tool, nor does it have a predetermined end (like a product, or a known future) but is a particular take by a theorist to come to terms with the problems of world-making and change.

Patrick T. Jackson ([Chapter 14](#)) and Hellmann ([Chapter 5](#)) carefully map out the similarities and differences between my attempts at thinking about praxis and those of the Western philosophical tradition, and of other participants and the disciplinary discourse of IR. Such a concern with the setting which frames our way of thinking and communicating is not simply a luxury adding adornment to the subject matter, which could be stated without reference to seminal contributions in the construction of the field; but, as we never can start from ‘nowhere’ and also not from an original position or a fictitious contract, these figures of thought emerge out of historical experiences and highlight the background, problems and concerns. Consequently, we are limited by the vocabularies we use, and thus clarifying their limitations and possibilities is the first order of business for analysts of the social world. This might limit our imagination – as we have to deal with situations and particular conjunctures – but it also limits our responsibility. We are not here to ‘save the world’ but to provide some orientation of how to lead a decent life individually and collectively, as best we can. Precisely because I am – for better or for worse – part of a privileged group of academics, I do have, above all, the obligation to engage critically with arguments made in this context, because we do ‘learn’ something by making distinctions and we become aware of their entrapments when, in dealing with political projects, we compare different concepts and semantics and trace their historical origins and trajectories before we come to conclusions and judge.

To that extent I appreciate fully Antje Wiener’s ([Chapter 13](#)) thoughtful interpretation of my attempts as ‘interventions’ in the disciplinary debates which – while not changing the existing practices of politics in general or even those of academia – nevertheless created new opportunities for raising questions and thinking differently about what we are doing. That such a different ‘thinking space’ is not the same as providing prescriptions or ‘practical advice’ to the decision-makers is as clear as its importance is obvious. I certainly do not want to claim that my take on the problems is the only possible one, as different approaches amply demonstrate.⁴

As opposed to calling attention to such substantive concerns, the issues of fault – whether I failed to make myself clear or the critic misunderstood

⁴ See Tetlock (2005), Tetlock and Gardner (2015), Tomasello (2003, 2009), Abbott (1988) and Kennedy (2016).

me, or erroneously objected – can take second place. Here Oliver Kessler’s (Chapter 10) corrections on my critique of game theory – while at the same time not invalidating the major point I tried to make – is right. Acting in contingent circumstance requires a concept of intersubjectivity that is rather different from that of the rationalist approach. The latter limits itself to the individually conceived best answers while leaving the ‘social’ – which addresses the problem of *structures, situations* and *actors* – unattended.

I have tried to answer some of the more specific questions raised at the symposium in Frankfurt, which discussed the book *Praxis*, and also at a previous conference hosted by Jens Steffek in Darmstadt, which focused on the dilemma of ‘being condemned as social scientists to provide mere “narratives” instead of “theories”’, in a separate work which is in press (Kratochwil, 2021). In the following short remarks, I rather want to engage the writers in a further conversation instead of a detailed critique, which is hardly possible anyhow given the limitations imposed by the format. For that purpose, I want to concentrate on the topics outlined earlier.

The setting

My dissatisfaction with a ‘science’ of politics – and of international politics in particular – developed over the years, as Jackson so diligently documents by unearthing my first publication on different conceptualizations of politics. He thereby – surprisingly even for me – throws new light on the later ‘ruptures’ in my thinking that led me down the garden path to constructivism and a renewed interest in law and its role in social reproduction. The first intervention – co-authored with Ruggie (Kratochwil and Ruggie, 1986) – was to show why the methodologically tinged debates in the field were missing the mark, precisely because methodology and ontology were misaligned. The second was occasioned by my exposure to Hume’s form of pragmatism – so aptly emphasized in Hellmann’s chapter. As one of the constructivists of the first hour in the field of IR, I soon had to come to terms with the fact that some of the openings created by this intervention were foreclosed, precisely – and perversely – because constructivism became more or less the accepted third way of ‘theorizing’ after Marxism had dropped out of IR’s ‘paradigm’ competition. One result was then a new round of rather arcane debates about the primacy of ontology or of methodology that killed many trees and spilled much ink, but which was pretty useless, as neither the disjunction nor the hierarchization of these problems but their co-constitution was the actual issue, as Hellmann rightly argues. Another problem was that the conceptual issues of the constructivist agenda became subject to what Yosef Lapid and I called exclusionary/inclusionary modes of control, as opposed to a theoretical reconstruction (Lapid and Kratochwil, 1986). Significantly, this article, in which we called

attention to this sociology of knowledge problem, dealt with a ‘substantive’ problem, that is, the inability of the prevailing theoretical debates in IR to deal with the problem of nationalism. This was all the more astonishing since that field itself had chosen as one of its tags the ‘inter-national’ (instead of, e.g., calling itself world politics). As such, ‘international politics’ had, however, surprisingly little to say on both the nation and politics, not to mention power, which remained perhaps the most important concept, but remained – as Aristotle’s ‘fifth essence’ (*quinta essetia*) – nebulous, even when ‘operationalized’ as capabilities.

Significant, though, was the fact that at this point Lapid and I still used the term ‘theory’, although we both thought in terms of a thorough reconstruction, rather than just an extended form of theorizing that would explain more of the variance.⁵ If I had any illusions that a theoretical reconstruction was possible, they came to an end when Wendt’s *Social Theory* appeared (Wendt, 1999). It managed – despite its considerable sophistication – to radically reduce the constructivist agenda by trying to convince the mainstream that constructivists were not the feared barbarians at the gate who wanted to storm the citadels of science, but that they could also do ‘science’. Thus, the main focus of Wendt’s inquiry became the ‘profession’, and much effort went into showing where different scholars fitted in a table, utilizing the apparently self-justifying dichotomies of materialism/idealism and holism/individualism (Kratochwil, 2000). Ironically, this exercise showed how the cognitive dominance of science, claiming to provide the universal yardstick for true knowledge, reinforces the social arrangements which make out of the scholar – committed to the pursuit of knowledge – a ‘professional’ who is supposed to provide useful knowledge. The result was a cognitive orthodoxy (although it included some different schools) which further weakened the critical inquiry of presuppositions and justifications of knowledge, so that even the creation of knowledge is nowadays recast in terms of ‘practice’ which orients itself on the template of production and *techné* rather than praxis.

Here I have some beef with Bueger’s (Chapter 4) argument, and this objection has nothing to do with my rejection or failure to recognize that the organization of knowledge and of its dissemination is an important issue area that provided invaluable impulses for social thought. After all, although *The Practice Turn in Contemporary Theory*, edited by Schatzki et al (2000), as well the work of Jasanoff did not prepare the road for the emergence of ‘constructivism’ in IR – as here the work of Mead and others indebted to American pragmatism was instrumental, as Hellmann (Chapter 5) points out – it nevertheless contributed immensely to the heuristics and to the

⁵ See Patrick T. Jackson’s superb discussion of the relevant issues (Jackson, 2011).

valorization of this approach. Furthermore, I am also not a definition fetishist who thinks that meaning is established solely by reference instead of being a language game. But acknowledging that ‘theory’ is a language game does not mean that no criteria are necessary for playing it and that one can go ‘with the flow’ (as one author, cited by Bueger, suggests). Is the ‘attuning to the world’, that is, ‘to see, hear feel and taste it’, a task for theorizing or practical reflection? This metaphorical stretching is particularly problematic, when the good old notion of the ‘world out there’ is still charged with doing most of the work by generating truths and by providing iconic matches, rather than being concerned with justifiable assurances, or appeals to aesthetic yardsticks.

Thus, a kind of happy inductivism prevails in contemporary practice studies (Schmidt, 2018) – without even having critically examined the exemplars which should be included or excluded. This is paralleled by a proliferation of categories in classifying the different ways of skinning the cat, without raising the question of whether we are dealing with fish or fowl, or ‘just’ ideas. The attempted clarification then consists largely in citing several taxonomies which one encounters in the literature. One can, of course, distinguish between those wanting to abandon the theory project and those who want to transform it; or one can distinguish between generalizers and singularizers in the ‘theory building’ game. But how does this classification then mesh with the other classification of modes of theorizing according to locale and purpose, which Bueger employs? Somehow, we seem to be in Borges’s imaginative story of the classification of animals in Imperial China, where the distinctions concern male and female, animals which belong to the emperor or to others, or they are classified according to their being big or small, and so forth. Besides, as the example of classification according to traditional logic shows, the ‘definition’ of man as a featherless bi-ped is not ‘wrong’ logically speaking, as it focuses on one clearly identifiable property, but it is ‘useless’, as it generates no further interesting questions – such as defining man as the animal which associates by means of shared concepts (Aristotle). I am therefore a bit at a loss as to why singularizers will try to ‘disrupt’, while for generalizers the ‘purpose of theorizing lies much more in producing order’. Why this should be so is not quite clear. Is the further implication that the ‘full view’ of order (theory) is already the same as realizing it? Then even Plato should be breathless. Practical experience as well as the Genesis example given previously seem rather to point in the other direction.

In short, is perhaps the attempt of getting as many relevant others under one roof not only distorting, but self-defeating, as differences are negated rather than mediated or perhaps even settled? Since I am credited with a style of theorizing that is less concerned with ‘generalization and order and more with process and thinking’, I am *faute de mieux* welcome in the theory tent. Okay, so be it, as long as it is clear that ‘theory’ can be used in a quite latitudinarian fashion, but that a rather different research programme follows

from my approach than from the turn to practices, or from knowledge ‘production’, or syncretistic notions of ‘wholeness’.

For this reason, I also have to clear up some things in Jens Steffek’s (Chapter 15) chapter, knowing full well that, of course, the author of a text is not the only authoritative source for deciding what it means. I was astonished, nevertheless, that aside from the well-taken amusement about my – admittedly rather obsessive – use of quotation marks which defeat my own purpose of communicating in ordinary language, another charge was levelled at *Praxis*, that is, that it allegedly called for returning to a golden past in which we could recover the ‘wholeness’ that we have lost in modernity.

Since I have taken Steffek’s advice and written – I hope more clearly – about the problem of distance and engagement in social analysis in a separate piece (Kratochwil, 2020), the second charge needs some further discussion. Here I am a bit surprised since neither my argument nor the examples I cite sit well with such an interpretation. As the example of Odysseus in the last chapter shows, this *nostos* is precisely not the happy end of a return to the old and familiar past. Instead, it recognizes that a new situation requires dealing with what transpired in the meantime and that a new order has to be established. Nor is Hume’s argument about the Glorious Revolution, on which I rely, a paean to the return to the old freedoms of Englishmen. Instead, in following Hume I show why such presumably ‘historical’ constructions are particularly partisan and ideological examples of dubious historiography. Nor is my discussion about tradition – part of the examination of choice in which always the present, the past and the future interact – a plea for a return to an Arcadian utopia that never was. If anything, *Praxis* is an indictment against fantasies of a lost or prophesized wholeness. Even the present preoccupation with constant ‘self-improvement’ and of the quasi-religious delusions achieved through revivals or physical regimes in the *Praxis* book can hardly be understood as an endorsement of these practices.

So, what is the evidence for the second charge? I guess it is largely based on guilt by association. For that purpose George Morgan’s (1968) book *The Human Predicament* provides for Steffek the link, since many of my criticisms have a ‘striking similarity’ to those of Morgan. Although I have used the term ‘predicament’ quite often, I am not familiar with Morgan’s work. Since even Steffek considers him an obscure professor at Brown University who decried the decay of modernity, characterized by a ‘prosaic mentality’, my first question is why Morgan should provide the template. After all, the disenchantment of modernity has been a constant theme from Durkheim to Weber to Heidegger, Wittgenstein, Adorno, Taylor, Walzer, to name just a few, which I have read, and which have influenced my work.

Thus, putting an author’s work into a context requires something more than just noting some coincidences with some other work, as such evidence is not even circumstantial. After all, Jackson does a yeoman’s job

in identifying the sources of my thinking without falling prey to the rather simplistic analogy that everything can be reduced to a ‘disenchantment’ with modernity, and Hellmann elaborates well on its pragmatist heritage – the ‘third rupture’ – which had important implications for my thinking. For Steffek, however, the actual key seems entirely personal, psychological and idiosyncratic, as it is more a *mood* that directs my attempts at world-making, rather than the dialogues I engage in with ‘others’, be they Aristotle, Peirce or Wittgenstein. Consequently, even my turn to pragmatism seems to prove for Steffek his point, since both my praxis approach and pragmatism ‘defy the idea that great rupture came with the modern age’. This alleged common denial then justifies the inference that the nostalgic quest for a ‘wholeness’ aims at a world of ‘virtues so old that they are best expressed in ancient Greek letters’. The latter expression is a hilarious gloss, but it provides illumination by low wattage, especially in the light of Steffek’s counter-proposal to interpret our ‘predicament’: the normalcy of habit with which normal people go about their business. Needless to say, I do not find the bowdlerized form of Humean or Oakshottian habits that is now being sold to an IR audience (by Hopf and others) illuminating.

Mathias Albert’s (Chapter 11) imaginative reconstruction of my struggle and my love/hate relationship with Luhmann might also be perhaps a bit exaggerated, but it does serve a good heuristic purpose, as his chapter raises one important methodological issue, and one more substantive one concerning theory building. The methodological issue concerns the issue of exaggeration and – *mirabile dictu* – its heuristic potential. After all, this is what we do when we create caricatures – and I mean this not at all in a derogatory fashion, since caricatures are quite different from simple distortions in that they highlight or bring out what otherwise might not be that obvious. For a constructivist who has always insisted that our work does not consist in just trying to represent as closely as possible a pre-existing reality, but what matters is how we bring this about by our doings and speaking – whereby this dichotomy collapses in the case of speech acts – such a technique of highlighting for heuristic purposes is well in tune with my approach. Similarly, as someone who believes that meaning is not primarily established by reference but by use, I also have to agree that the language game of theory is much more complicated than the traditional dichotomy suggests. To that extent I have no problem with the equivocal use of the term theory, as long as it is understood not as the pure and unadulterated ‘view from nowhere’.

As to the more substantive point: it might be true that most of us start out as some type of Platonists. Later we perhaps free ourselves from it through the critical epistemology of the Enlightenment, only to end up as Marxists, structuralists or systems theorists à la Luhmann. Throughout we use terms such as culture or language or the ‘world’ in our explanations, and this seems to suggest that we all have a hard time – or seem to be unable to do without

a device that serves as a last frame (à la Kant and his ‘ideas’, the ‘world’ being one of them) within which everything can find its place.

Here the close interaction of emotions and cognition might have more to it than we recognize at first blush. It explains why something that cannot find its place has to be met with the verdict *that it does not exist*, and that someone challenging our experience also calls into question our ability of judging and finding our way, individually and collectively. Here charges get generated. On the most innocent level, the charges are those of *idiocy* of yore – that is, being concerned only with one’s own thing and not caring for the common world. But, as we know from experience, such insinuations can quickly change into charges of being unwilling to see, whereby the at first excusable error becomes stubbornness; a mistake is then no longer treated as a lapse or an inability, but as a sin or transgression that needs not only correction but punishment.

Those observations show that the semantic field connects different dimensions of cognition and emotions and provides various strategies of dealing with deviance or disappointment of our expectations. Against this right belief (the *orthodoxa*) heterodoxy is treated as a violation, in spite of the fact that the exclusion of a third possibility is even in strict Aristotelian logic limited to an impossibility ‘at the same time’ (‘a’ cannot be ‘b’). But does this mean that, seen from a different perspective, ‘a’ can *never* be a ‘b’, as an independent variable can quickly become a dependent one (or vice versa) depending on the ‘problem’? Things are even trickier, as Hellmann and Steffek ([Chapter 1](#)) suggest in the introduction by quoting the ‘duck’/‘rabbit’ example used by Wittgenstein in calling attention to gestalt switches.

Since we all have such longings to know absolutely and once and for all, as expressed by Diotima in Plato’s *Symposium* or by Goethe’s *Faust*,⁶ a latitudinarian attitude towards the use of the term ‘theory’ seems to recommend itself. Nevertheless, the last two examples deserve a short further gloss, since they show that the real issue is not that we (all?) have this longing but rather *what we do with it* – whether giving in to it allows us to orient ourselves or whether it leads us astray. In this context Kant’s ironic gloss on the seduction of ‘theory’ starting from postulates and working its way down to the actual comes to mind.

⁶ See Plato’s *Symposium* (Plato, 2008: verse 208d, at p 46): ‘I think that it is for the sake of immortal fame and this kind of glorious reputation that everyone strives to the utmost, and the better they are the more they strive: for they desire what is immortal’; and Goethe’s *Faust* (Goethe 2014 [1808]: verse 382/83 at p 13): ‘That is why I’ve turned to magic, in hope that with the help of spirit-power I might solve many mysteries, so that I need no longer toil and sweat to speak of what I do not know, can learn what, deep within it, binds the universe together’.

Mathematics gives us a splendid example of how far we can go with *a priori* cognition, independently of experience ... Encouraged by such a proof of the power of reason, the drive for expansion sees no bounds. The light dove, in free flight cutting through the air the resistance of which bit feels, could get the idea that it could do even better in an airless space. (Kant, 1998: B8, A5 at p 129; emphasis in original)

Faust's belief that absolute doubt is more likely to lead to despair than to Cartesian certainty leads him to admit to being beguiled by the aura of the occult and the seductions of magic, and finally to his pact with the devil. While we, of course, have abolished the devil, the seductions of mood-altering drugs – and the flight from the actual to that of fantasy, by endless gaming or chatting on the net, or chasing the chimera of 'satisfaction' through mindless consumption – are still readily available. They seem to become ever more popular and are no longer limited to the fringes of society but are now found among members of the former middle class, who fear ending up in a precariat.⁷

This suggests to me that the liberal project of negative freedoms, as important as it is, is not enough for guaranteeing that this freedom *from* interference will also result in a freedom *for* creativity and self-realization. Even worse is that this flaw cannot simply be fixed by adding an ever-expanding catalogue of subjective rights as has become wont. Having emptied the world of praxis of content, in pursuing the ideal of formalization, or in the devotion to mindless activities, it has now to be filled up again by all those things we consider desirable and which we re-package now as individual 'rights'. This leads then to the odd construction that even constitutional issues are now formulated as individual human rights, such as 'the right to democracy'.

'What shall we do?' Some thoughts on institutionalized action, law and professional responsibility

Are we, then, as observers of what takes place before our eyes, condemned to accept this as 'reality', or even worse of 'singing' it into existence, when, as Steve Smith (2004) once called it, we no longer give the eye the pride of place? Let me get at the issue of what we shall and should do once more, by engaging with some of the contributors' suggestions.

⁷ See the controversy surrounding the Sackler Foundation, which was set up by the family owning Purdue Pharma who have pushed opiates on people via a doctors' network. According to lawsuits filed by advocates, some 300,000 people have died over the years after becoming addicted to opiates. The US Centers for Disease Control and Prevention attributed 49,000 deaths in 2017 to the drug (see Perraudin and Neate, 2019).

As usual I have no final answer, but in thinking about it, several considerations come to my mind. Indeed, one of the themes running through several chapters is the issue of (professional) responsibility. This ranges from Chris Brown's (Chapter 6) unease with the lack of answers to the contemporary problems in my work, to James Davis's (Chapter 9) argument that in my analysis I might be too conservative and too radical at the same time, as there might be some grounding of our actions which social psychology or, even better, neuroscience provides; to Anthony Lang's (Chapter 7) criticism that a more complete reading of Aristotle's work, especially on education, would supply me with some valuable guidelines for building a constitutional order beyond the classical state; to Jan Klabbers's (Chapter 8) surprise as to why I have not really looked at issues of distributive justice, which has been a powerful force in modernity.

Let me begin with Brown (Chapter 6), which stresses mostly the Kantian dimension in the question of what acting is all about, and then engage with the other contributors. I shall use the problem of 'we', to which or for which we are accountable, as my point of departure. This has two important implications: one is that we have to realize that our questions are always formed by a context and thus there cannot be only the one right answer. The implication is, then, that we have to look primarily at the question side and what it tries to articulate and requires the addressee to respond to, rather than at the answers as if they could be free-standing. The second implication is the realization that many questions *cannot* be answered because – despite the depth of concern they articulate – they are formulated quasi-context-free: why something is there and not nothing, or 'what is it all about'. Then we do not get a definite answer, that is, one we can use for orientation – and we have to be satisfied with truisms, such as: 'do the right thing' – or we are getting involved in paradoxes. For Kant, such questions arise at the limits where 'reason is set against itself' and attempts to illuminate the unfathomable analogously to the tricks of the trade provided by the mind (*Verstand*) inevitably lead to paralogsms and paradoxes, or just simple nonsense (Kant, 1957: Part III).

I think Brown's discomfort precisely arises out of such an attempt to use the tools, or better the vocabulary, of understanding to answer the metaphysical question of what we ought to do as humans *tout court*. So yes, a theory in the social sciences is, and cannot be 'neutral' as it is always not only a theory *of*, but also *for something*, ensconcing historical victories and defeats, and establishing the normal ground from which one has to build up one's arguments. This not only enables some actors to do certain things but also immunizes them from responsibility in case their actions interfere with or have negative externalities for other actors, precisely because they can invoke the law and its universal applicability which is binding on all subjects.

There seem to be four interconnected issues that need further elucidation. First, there is the question of the 'in order to', the Aristotelian *hou heneka*

that is determinative of action as we strive for something, rather than looking backward at a cause which will result in an effect. The second one is the baseline, which is of course not beyond doubt but depends on what the relevant facts and the rules for resolving the issue are. In this way, law also systemically creates injustices: someone who has given cash or a cheque to someone else in payment for a good cannot just cancel the cheque, and they might have no remedy if there was no guarantee for the good, as it was sold ‘as is’.

This might sound like petty cash but it is here that the third and often neglected aspect of law comes to the fore: law’s role in immunizing actors from responsibility for the harm they create, by allowing certain actions, such as enslaving certain people – especially if they are members not of one’s own community but of other groups – or accepting that the harms done through normal market transactions will not be recognized as they are ‘just’ externalities (see [Kratochwil, 2019](#)). This then engenders, fourth, some further thought on the construction of the ‘we’ and of its representation (of making that which is absent present), as the ‘will of all’ transforms itself together with the actors into a common will and the individual – pace Rousseau – is transformed from a brute animal, governed by desires, into an intelligent and moral being ([Rousseau, 1967](#): Bk I, [chapter 8](#), at p 22).

Let us begin with the first issue, that is, the identification of the ‘for’ (the *hou heneka*) as the characteristic of the practical realm. When we act, we act ‘in order to’ rather than just react or engage in routines that provide outside observers with regularity descriptions. But making out of this observation that we should look for a *theory* of the good in Plato-like fashion has its problems, to which Aristotle first alerted us and which I take seriously. These ‘visions’, which in their contemporary versions unfortunately often run under the marketing label of cosmopolitanism,⁸ have as their sparring partner suspect communitarians or downright reactionaries, people of yesterday and so forth. The paradox, then, is that despite the commitment to very real policy questions, the issue of how these problems and the different policy options arose, and whether any of the options discussed in the echo chambers of public opinion actually *address a problem that can be solved by*

⁸ See, for example, Montesquieu’s noble rhetoric (quoted in [Kristeva, 1993](#): 28): ‘If I knew something useful to myself and detrimental to my family I would reject it from my mind. If I knew something useful to my family but not to my homeland, I would try to forget it. If I knew something useful to my homeland and detrimental to Europe or else useful to Europe and detrimental to mankind, I would consider it a crime.’ Here we finally seem to have found someone who, like Aristotle suspected, would have to be made a king (or expelled from the city) since he is so much better, as we seem able to imagine it. Unfortunately, dilemmas abound and going through life is not like putting together or taking apart Russian dolls.

individual or collective action, is easily displaced by the claim that we should or should not do something about it. Never mind that the ‘it’ remains often unclear precisely because of its strategic nature; success or failure crucially depend on the other’s actions, not only on our intentions.

This realization brings into play the dialectic of restraint and constraint – of self-imposed discipline due to the experience that in strategic situations we hardly ever can get what we want, as we are constrained by what the opponent wants, and they in turn are constrained by our wishes. Unless they can be eliminated through the escalation to full-fledged conflict, they are also (it is hoped) aware of the dangerous possibility of their own elimination. Analogizing this mutual regress of reflections to some rare natural constraints is not really helpful. Here Brent Steele’s (2019) searching and sophisticated analysis shows why this is so.

Distancing oneself from the strategic situation and taking a view from the ‘outside’ by, for example, pretending to know what the telos of humanity is changes the question substantially, reducing it again to an ends/means issue. It rather easily moves then from the questions of what we are to do about a particular problem to: why are you (not) on my or our side since I or we are defending the case of humanity; further, possible elaborations are insinuations, such as: you just want to ignore what is at stake, or: you want to ‘sit out’ the situation, thereby also undermining our ability to act collectively. While Brown, of course, does not take these last two steps, since they are *ad hominem*, such derailments are all the more likely not only if they are elicited in terms of a ‘political’ question on which we have to decide in terms of how it affects our conception of the common good, but if they are explicated in moral or legal terms.

In the moral discourse the ‘we’ then simply become instantiations of what all humans should do, and here again the tricky issue of priorities and trade-offs, of tragic conflicts among values and duties, is backgrounded by the supreme confidence that the proper values and their ‘lexical ordering’ à la Rawls will be enough to show the way. Choosing, therefore, a different vocabulary – that is, that of subjective human rights – might be more appropriate. It is, however, even more exacting if taken seriously. The notion of a right means not only that something is desirable, and we commit ourselves to its realization – subject to situative opportunities and re-assessments, as in the case of political goals – but that it can be claimed against the others in the community, or even beyond. To that extent, universalization of concerns transcends the usual boundaries of an established community which allocates the benefits and burdens by reference to the status of membership. It seems ‘to stand to reason’, then, that in secular times the old ‘we are all Children of God’ argument is transformed into the self-assertive vocabulary of subjective rights accruing to individuals qua their status as being human.

This move is not costless, however. Suddenly all concerns are ‘politicized’, but politicized in a special and rather strange way, in that they become universal concerns but without, for example, ‘the peoples of the United Nations’ becoming ‘the people’. Thus, not only is the issue of how right- and duty-bearers are determined left hanging, as Onora O’Neill (2005) pointed out, but the question of ‘universal concern’ itself becomes problematic. Here Aristotle’s arguments against Plato’s community of wives and children come to mind, and also the questions of autonomy and domination raise their ugly head. Now ‘humanity’ can be invoked as the ultimate source of authorization – by anyone (?) having the guts and wherewithal to take this job and make it stick? Is thus the legacy of the French Revolution, which, as Kant acknowledged, ‘can never be forgotten’ (Kant, 1991 [1798]: 184), not only the rights revolution, but also the dynamic at whose ‘end’ a Napoleon stands? But would this not amount to endorsing the return of a politics as pure dominium, as *gloire* and subjection buttressed and justified by unadorned hero worship? Is populism really not such a new phenomenon as we think, since it recurs, although in different forms? Kant feared this drift (Kant, 1991 [1786]), although he remained ambivalent when commenting on the events in France, and he died in 1804 before Napoleon (since his successful coup in 1799 the First Consul) returned from Africa and used Europe as his battleground. But he witnessed the Great Terror, and perhaps the rather ample room accorded to ‘heteronomy’ in the later Doctrine of Rights (*Rechtslehre* of 1797) is a reflection of this fear, in that the different ‘publics’ were not to meddle with the politics of the (of course) ‘enlightened’ sovereigns. Is this also the reason why popular participation was limited to a right of remonstrances, and to the principle that the subjects have to be informed about the laws (publicity) and that the cosmopolitan right only entailed a right of visit, not of residence abroad?⁹

This leads me to the fourth problem adumbrated earlier: another cluster of problems concerned with the definition of ‘we’ that is crucial for illuminating the social that transforms the conception of ‘we’ as an aggregate of individuals into a ‘we’ of the first-person plural. This ‘we’ can then be invoked for authorizing actions and assigning responsibility ‘in the name of ...’. This is, of course, particularly crucial for states, but also for the international system through the creation of organizations, as well as for the state-transcending networks that have proliferated and are lumped together as non-governmental organizations of various kinds.

This problem of the ‘we’ is prominently raised by Davis (Chapter 9), and it is also the focus of K.M. Fierke’s (Chapter 2) examination of ‘making present what is absent’, making actions and actors visible or invisible, or by

⁹ For a searching criticism of Kant’s alleged liberal project, see Horn (2014).

probing what we remember or forget and the responsibilities this entails for the scholar in a post-modern but also post-colonial epoch. This goes far beyond just paternalistically inviting some voices from the periphery in order ‘to do’ international relations, as it requires a different way of understanding world order problems (Getachev, 2019). The latter have little to do with the social Darwinist approach that underlies the Waltzian adapt-or-get-eliminated logic, or the popular learning thesis propagated by Tilly (1993) and Hoffmann (2015). Instead, a radical reorientation is necessary in that, for example, European exceptionalism (McNeill, 1963) or even its materialist interpretation in terms of the ‘military revolution’ thesis (Parker, 1988) need to be re-thought.¹⁰ For not only a new historical understanding of the interactions among European powers and the rest of the world becomes necessary, we also have to deal with colonialism and imperialism and their aftermath, instead of just noticing the *extension* of the Westphalian system to the world (Anghie, 2004).

But let us return to the contributors. Klabbers’s (Chapter 8) focus on the distributive consequences of institutions backgrounds the constitutive function of rules, which have been my main interest, not because I think that distributive questions do not matter, but because I increasingly became dissatisfied with the Rawlsian reduction of the problem of justice to one of distributive justice. Besides, Klabbers’s main concern over the last few years has been how institutions matter in allowing for ‘variation’ in performance – to phrase it in social science lingo – and finding for the problem of leadership some answers in the revival of a virtue ethics. To that extent, making distributional issues the hinge for his comments was a bit surprising to me, although, of course, the activities he analyses are highly relevant for understanding the organizational revolution and its legacy for us.

I just wonder, however, whether the success story of formal institutions buttressed by an ideology of functionalism provides us with an adequate template to tackle the issues of praxis. Shall we again think about the problems of praxis in terms of an ‘ideal’ legislator à la Bentham who ensures the ‘felicity’ of people by applying a felicific calculus, that ‘pushpin is as good as opera’, and that the greatest happiness of the people is the ultimate yardstick that can and should be applied? I have my doubts, not because I am ‘against’ happiness but because this truism does very little work in an actual choice situation, as does the admonition: do the right thing! Was it not for good reasons that ‘the law’ always called attention to the fact that such a yardstick presupposes the commodification of different goods, and that recognizing the incommensurability of at least a few important ones was the precondition for individual freedom? And that we had better not lament the problem that

¹⁰ For a devastating critique of this thesis, see Sharman (2019).

we do not have a general currency for all social issues,¹¹ but spend much time and energy in keeping different domains or spheres apart? The focus on distribution is certainly not irrelevant, but it presupposes answers first *about the goods* to be distributed and of the subjects or *actors among whom* it is distributed. That leads me back to the problem of the ‘we’.

Contrary to Davis’s intimation that I have no good concept of the *we*, as I do not investigate the formation of the *we* through the process of aggregation, I do take the ‘we’ seriously. Against any naturalism or mistaken methodological individualism I have always used the ‘intersubjective’ sphere for its explication, showing how the ‘I’ and the ‘we’ are constituted within a semantic field of common understandings (Kant’s *sensus communis*, or Hume’s common sense) and that the construction of a ‘common weal’ (*salus publica*) that marks the boundary between ‘us’ and ‘them’ is fundamental: to put it with Rorty, ‘that is one of us’, or with Walzer, ‘they are like us but are not one of us’, is a necessary implication of this recognition. As a matter of fact, Davis recognizes this indirectly. After the bow to science, which supposedly requires strict individualism and perhaps a physiological explanation of the ‘we’, in the second part of his chapter he references the symbolic interactionists. Here the process by which, through mutual role-taking, the ‘I’ of each interacting party gets formed supplies the answer. The same mode of analysis then allows us to see how a ‘we’ is formed when the interacting participants commit themselves to a concern that establishes a group in whose name action can be taken and responsibilities can be assigned. To the extent that individuation and socialization are the two sides of social reproduction, the idea of a pre-existing self is highly problematic. Consequently, the notion that society has to be explained, but not individuation (or identity formation) – as we all have virtually the same physiological make-up and can ‘see’ individuals but only indirectly observe society – could be a case of the fallacy of misplaced concreteness. Perhaps I do not understand him correctly, since he has argued previously to good effect that even colour concepts are not simple names for identical observations across cultures but are prototypes of what best represents, for example, the colour red, which varies from culture to culture (see [Davis, 2005](#)).

In this context, Hellmann’s reference to pragmatists and particularly to John Dewey on the formation of ‘publics’ is also informative.

Associated or joint action is a condition of the creation of community.
But association itself is physical and organic while communal life is

¹¹ See the collection of seminal articles written on the problems of exchanges and power by David Baldwin, such as ‘Money and Power’, ‘Power Analysis and World Politics’ and ‘Power and Social Exchange’, all in [Baldwin \(1989\)](#).

moral, that is emotionally intellectually consciously contained ... For beings who observe and think and whose ideas are absorbed by impulses and become sentiments and interests 'we' is as inevitable as 'I'. But the 'we' and 'our' exist only when consequences of combined action are perceived and become object of desire and effort, just as 'I' and 'mine' appear on the scene only when a distinctive share in mutual action is continuously asserted or claimed. (Dewey, 1946: 151–2)

Thus, while interaction, role-taking and communication are obviously the necessary parts of individuation and socialization, for social reproduction to succeed something more has to happen, otherwise the episodic character of interactions and the specific interests among the parties involved is not able to manage the problem of shirking, or even of exit, which both inevitably arise when conditions change. Customers are not members; although they have rights, their rights are different! Members are supposed to have the conception of a continued interest that transcends episodes and requires some notion of a good that can only be produced jointly. But if they remain members of an interest group only, they are free to opt out, unless they morph into 'fans'. In that case their identification can become an all-consuming, perhaps even pathological, interest. Nevertheless, they cease to be actors and just become 'followers' as that provides the only reference point for action. They feel they have no choice but to root for their home team or follow their celebrity and live their life vicariously.

This realization also cautions us to apply 'constitutional thinking' – perhaps contrary to Lang's version of Aristotelianism – too readily to the global arena, despite the proliferation of regimes as islands of order. In a significant passage at the end of Book III of his *Politics*, Aristotle cautions us not to extend the concept of a political community without making much ado of settlements of different people, even if they share the same space and agree to common measures to prevent injustices and provide for security through an alliance. As if he were presciently addressing 'Project Europe', he states:

[T]he state is not an association of people dwelling in the same place, established to prevent its members committing injustice against each other, and to promote transactions. Certainly all these features must be present if there is to be a state; but even the presence of every one of them does not make a state *ipso facto*. The state is an association intended to enable its members, in their households and the kinships, to live well.' (Aristotle, 1981: Bk. III, chapter 9, quote at pp 197–8; emphasis in original)

Such a conceptualization highlights the problem that beyond identification, the members must make *commitments* to the 'project' of remaining a

group – exemplified by the transgenerational nature of an ongoing concern that has to be shored up by norms and defended against opportunistic deviance and holdout problems. As a project that is aspirational rather than ‘real’, it cannot be understood in terms of the execution of an existing design (production) or in terms of a step-by-step realization of a prophecy or teleology.

Furthermore, although communities are constituted by a common language, the notion of a common weal and a common sense do not coincide with the sharing of a particular language. Instead, the actual ‘we’ emerges from the historical circumstances by which the boundaries between the ‘we’ and the ‘them’ are drawn and normatively secured. We have to be part of a particular group whose communication is informed by a particular notion of a ‘we’, but for that we do not have to speak only one language – as multilingual communities exist, as do many separate communities who function on the basis of the same language – nor do the bounds of sense have to coincide with one language *tout court*. To that extent, the alleged attempt to derive or ground the particularity of such a perspective in a transcendental (universal) interest of communicative rationality, – as, for example, the early Habermas attempted – is unconvincing. Issues of intelligibility get mixed up with issues of identification and commitment, the former being part of the (Kantian) transcendental subject, the latter being the result of historically emerging customs and transformations that ‘stick’ – in the Humean sense – as they are *intersubjectively* (but not universally) reproduced.

But precisely because these boundaries are not given but represent a ‘task’, naturalizing them will not do. This, of course, puts us right back into the old Platonic cave,¹² and it is cold comfort when not only adherents of the unity of science approach propose such a return, but also some exponent of phenomenology, such as Husserl,¹³ and the subsequent efforts for grounding our analysis of the social world in ‘objective values’, succumb to this temptation.

¹² To be fair to Plato, the *Republic* and the conception of a *kallipolis* was not his last word as his later ruminations in the puzzling *work* of the *Statesman*, and the ‘second attempt’ – the famous second voyage of the *Laws* (*deuteros plous*).

¹³ See, for example, Husserl (1982 [1929]). In his Introduction, Husserl makes no bones about his ‘transcendental interest’ – which seems quite at odds with the usual use of the term indicating an interest in the *phenomena* (as things appear) and affirms the Cartesian intent underlying his predecessor’s efforts in the *Meditationes de prima philosophia* by postulating ‘the need for a rational rebuilding that satisfies the idea of a philosophy as the all-inclusive unity of science’. Consequently, he announces a program that would ‘provide complete and ultimate grounding on the basis of absolute insight behind which one cannot go back’ (Husserl, 1982 [1929]: 2).

If we act *in order to* achieve something, we are not simple observers and, thus, the theoretical view of how things really distorts of what is at stake when we act. The *good* is not some everlasting part inhering in things but has to be realized through our actions in time. This does not mean that we act blindly, as there are criteria by which we and others can judge whether we act well or badly. The last horizon is then not ‘being’, but a life well lived, not contemplation of (eternal) truths; but it is also not a life in which we maximize something, such as the *greatest happiness*, as this would presuppose a common measure for all things and the readiness to exchange everything when the price is right (and this is not an empty or stretched metaphor). As Marx suggested, this commodification of different forms of acting well represents the fetishization of money constitutive of capitalism.¹⁴

Since I have dealt with this problem extensively in *Praxis*, let me pursue here a different line of argument, linking Aristotle’s practical philosophy to modern language philosophy, that is, Wittgenstein and ordinary language philosophy. If we look at the ‘episodic’ character of action, this situatedness cannot be just interpreted as a lesser form of attaining the truth, which we can overcome by looking at what is universal or by making assumptions, so that we can predict. Such gambits simply miss the point of making practical choices because it is precisely this situative contingency we have to deal with. To that extent, the activity cannot be characterized by the regularity which a distant observer might register or by the fact that the execution of the rules requires one to be able to work with them, even though they might have become habitual and no explicit invocation is involved anymore. As the often ethereal discussions in international law about custom showed, we must cite a rule *opinio juris sive necessitatis* in order to show the ‘existence’ of a valid custom.

Some further questions of law and its empire

The upshot of the previous arguments is that when we utilize norms, we are not simply engaging in assertions of facts subject to truth conditions but we are justifying and explaining our actions by providing acceptable reasons for doing something. This is why my interest in law was originally kindled not by the particular political project of ‘peace through law’ but rather by the epistemological issues raised in the classical debate about ‘prudence’ and ‘theory’, since jurisprudence, for better or for worse, was the ‘field’ which had successfully defended its claim to autonomy until very

¹⁴ Aristotle hints at this ‘malformation’ of a good life in his criticism of *chresmatic*, that is, a form of the economy in which one produces for the ‘market’ and by extension orients itself simply on ‘money making’ (Aristotle, 1981, Bk. I, chapters 8–10).

recently, when ‘theories’ invaded its domain (system theories and rational choice approaches).

Against these attempts I argued that providing reasons implies not only the utilization of norms for acting and understanding (first-person and third-person perspectives by means of intersubjectivity) but also the *realization of a background*, that is, *for whom and in what situation the norms shall be applicable* (the ‘we’ problem). The situative- (context-) dependent and the subject-dependent elements of norm use become most visible in institutional rules, such as ‘x is legal tender’, which means that ‘x is y in circumstance z for all bs’. This sentence raises three issues: the first concerns the power of speech acts, which has been extensively discussed and which ‘explains’ the self-referential capacity of law to say what the law is (*juris dictio*). The second and third parts (relevant circumstances) and the ‘for all “bs”’ part, however, have unfortunately received less attention. Hans Lindahl has recently called attention to this problem (Lindahl, 2018), noting also the importance of the obscure notion of the a-legal, which the law might not officially recognize, as discussed earlier in the context of systematic injustices created by law in defining ‘actionable claims’.

Here a recent searching investigation of property rights by Katharina Pistor (2019) provided a new perspective on the problem of ordering in the international arena. She showed how law creates wealth and inequality, which lead to fundamental ordering problems, putting a rather disenchanting gloss on the attempts at global governance, or the viability of global civil society to stem the tide of the systematic abuse of public law for ‘private’ purposes. Since there is simply no ‘public’,¹⁵ what goes for a global legal order, such as the codification of the *lex mecatoria*, or the growth of bilateral investment treaties, or the codification of enforceability of arbitral awards, or the enforcement of property rights, serves more and more the ensconcing of private interests which are no longer subject to any public ordering. What is even worse, nobody seems to be much disturbed, although the ‘unseen hand’ – accountable to no one but itself, since it substitutes now for the *manus gubernatoris* of yore which kept the world going – is obviously no longer ‘liberally’ spreading the accumulated wealth and providing the necessary public goods. If the future is simply ‘private’, as one of the ‘visionaries’ of the new age suggests, then we’d better beware. But that is an issue that will have to be taken up another time.

¹⁵ The traditional distinction of public and private international law is *ex initio* problematic since the corpus of rules binding on states is based primarily on the private law instrument of ‘contract’ and private international law is based on different ‘national’ conflict of law procedures which determine which national regulation shall prevail in cases where the contending parties are different ‘nationals’.

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ISBN 978-1-5292-2046-9



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