

KNOWLEDGE AND POLITICS IN INTERNATIONAL LAW

A WORLD OF STRUGGLE: HOW POWER, LAW, AND EXPERTISE SHAPE GLOBAL POLITICAL ECONOMY. By David Kennedy. Princeton, N.J.: Princeton University Press. 2016. Pp. ix, 298. \$29.95.

*Reviewed by Samuel Moyn**

INTRODUCTION

What does it mean to say knowledge is power?

Francis Bacon is alleged to have said it first.¹ In that version, the remark is supposed to have captured the signature aspiration of modernity — to deploy knowledge for the sake of the mastery on which human progress depends. The inquiry of experts would unlock the arcaica of nature, and provide a mode of beneficial rule that could escape old criticisms of the power of ill-informed and thus to some extent illegitimate monarchs. “[T]he sovereignty of man lieth hid in knowledge,” Bacon wrote,

wherein many things are reserved, which kings with their treasure cannot buy, nor with their force command; their spials and intelligencers can give no news of them, their seamen and discoverers cannot sail where they grow: now we govern nature in opinions, but we are thrall unto her in necessity . . . [but] we should command her by action.²

Expertise, that is, would offer liberation from the age-old yoke of nature by taking humanity beyond the realm of mere opinion. Kings had proved themselves powerless to lift this yoke, but experts would do so for the sake of man’s advancement and “sovereignty.” It was an optimistic, untroubled, and even visionary statement.

In the several centuries since, expert governance — rule by elite knowledge claimed to be superior to mere opinion — has fallen under suspicion. But there is a serious debate about how to diagnose its possible failings. Bacon’s own younger colleague, and sometime amanuensis, Thomas Hobbes, could not believe his predecessor’s rather optimistic views of the politics of knowledge. According to Hobbes’s radically nominalist account, there was not a world to know nor master independent of human struggle to decide how to think and even

* Professor of Law and History, Harvard University.

¹ As Professor Brian Vickers writes, “the ascription to Bacon’s philosophical works of the generalized statement that ‘knowledge is power’ is erroneous.” Brian Vickers, *Francis Bacon and the Progress of Knowledge*, 53 *J. HIST. IDEAS* 495, 512 n.47 (1992).

² FRANCIS BACON, *In Praise of Knowledge*, in FRANCIS BACON 15 (Arthur Johnston ed., 1965).

talk about that world. “[S]uch is the nature of men,” Hobbes wrote, “that howsoever they may acknowledge many others to be more witty, or more eloquent, or more learned; Yet they will hardly believe there be many so wise as themselves”³ Kings were needed not because people could agree who knew most, but for precisely the opposite reason. Before human beings could decide what the world was like, they would have to find a way to settle their differences. Knowledge was not an alternative to the uninformed power of kings; rather, bitter partisanship about how to know the world provided one more reason for their pacifying authority. But after Hobbes, exactly what drove epistemic struggle — and how it was best to be explained — have remained themselves persistently controversial.

For Karl Marx and his heirs, expert rule would have to be regarded as a species of ideology originating in and covering up the class domination that, in turn, followed from the mode of production of an age. The forms and workings of intelligence, for this reason, had to be traced to ultimately material factors. For twentieth-century skeptics, things seemed more complicated. While never freeing expertise from the workings of capital entirely, French sociologist Pierre Bourdieu insisted that professional fields had their own internal dynamics of struggle for prestige and status. Yet like Marx, Bourdieu hoped to demystify these workings, for the sake of better insight and political change.⁴ Michel Foucault, in his withering portrait of “power/knowledge,” took cynicism to the breaking point.⁵ Knowledge did not merely serve power; it was power. It constituted domination in claiming to neutrally describe reality. And there was no apparent, let alone easy, alternative to subordination. Foucault went as far as possible to reverse the Baconian vision of liberation and legitimation through knowledge — studying experts was for Foucault the great device of delegitimation, with unclear consequences.

In his new book on how the world is ruled today through expert knowledge, Professor David Kennedy enters this continuing discussion in brilliant, pathbreaking, and trademark fashion. Slyly presenting himself as a disinterested observer of global governance, Kennedy eclectically draws on twentieth-century perspectives about knowledge, achieving a synthesis all his own. Presented without theoretical encumbrance or jargon, *A World of Struggle* is a straightforward but sophisticated account that capitalizes on prior insight to achieve a

³ THOMAS HOBBS, *LEVIATHAN* 87 (Richard Tuck ed., Cambridge Univ. Press 1996) (1651).

⁴ See, e.g., PIERRE BOURDIEU, *DISTINCTION: A SOCIAL CRITIQUE OF THE JUDGEMENT OF TASTE* (Richard Nice trans., Harvard Univ. Press 1984) (1979).

⁵ See MICHEL FOUCAULT, *POWER/KNOWLEDGE: SELECTED INTERVIEWS AND OTHER WRITINGS, 1972–1977* (Colin Gordon ed., Colin Gordon et al. trans., 1980).

unique and powerful vantage point. The superlative book wins its distinction not only because it constructs a novel theory but also because it applies that theory to how the globe as a whole is ruled — something no one in the canon of social theory has really done.

According to Kennedy, accounts of global governance are themselves typically products of an expertise that does much of the work of immunizing a contestable world from serious critique or change. “Terribly unjust, subject to crisis, environmentally unwise, everywhere politically and economically captured by the few, and yet somehow impossible for anyone to alter or escape” is Kennedy’s description of the contemporary situation (pp. 31–32). His “hypothesis” in response is that “this stability arises from the relative invisibility and imperviousness of the world of technical management to contestation” (p. 32). To understand expertise is to grasp how the terms of debate and decision about solutions end up reinstating problems.

Much in the book is vintage Kennedy. There is a sinuous prose cast with enviable lucidity in spite of its high level of complexity. There is, as I will examine later, the structuralist vocation that, from Kennedy’s beginnings, has delighted in providing inventories of options of discourse (and charts graphically illustrating the argumentative choices). Indeed, one of the hallmarks of *A World of Struggle* is how heavily it focuses on the language that constitutes, in Kennedy’s account, the familiar realities of global governance, from the interstate system to the global economy. There is also, as I will take up later, the extravagant political hope that Kennedy never imposes on his readers but allows to lurk on the margin as an attractive but vague possibility.

Altogether, Kennedy’s new book reminds his old readers and instructs his new ones why he is, without doubt, the single most important innovator in international legal thought of the past several decades, a fact proved not only by his own arguments but also by his extraordinary influence. Inaugurating a “new stream” of scholarship on international law, Kennedy has brought the field out of its doctrinalism and parochialism into conversation with social thought and humanistic inquiry.⁶ With few possible contenders, like his close associate Professor Martti Koskenniemi, Kennedy may have done the most to make the “invisible college”⁷ of international lawyers visible, or at least interesting, to those outside it in diverse fields of academic

⁶ See David Kennedy, *A New Stream of International Law Scholarship*, 7 WIS. INT’L L.J. 1 (1988); see also NEW APPROACHES TO INTERNATIONAL LAW (José María Beneyto & David Kennedy eds., 2012); Ntina Tzouvala, *New Approaches to International Law: The History of a Project*, 27 EUR. J. INT’L L. 215 (2016) (reviewing NEW APPROACHES TO INTERNATIONAL LAW, *supra*).

⁷ Oscar Schachter, *The Invisible College of International Lawyers*, 72 NW. U. L. REV. 217 (1977).

pursuit. And this book takes that remarkable achievement to a new level. As a result, this is the rare text occupied with international law that is likely to be legible by — indeed, exhilarating to — outsiders to the field, elsewhere in the legal academy and beyond.

This Review focuses on what is newest in the book: Kennedy's development of a theory of expertise to map the terrain of contemporary global governance. The Review proceeds in six parts. Part I begins my reconstruction of Kennedy's theory of expertise by emphasizing the centrality of struggle to his account. Part II then provides an overview of the core of *A World of Struggle*, rehearsing Kennedy's argument that endemic struggle explains the role of expertise in global governance. Part III completes my survey of the work by showing how Kennedy applies his general theory of expertise to international law.

From reconstruction, the Review then turns to contextualization and critique. Part IV puts pressure on Kennedy's theory by placing it in the setting of argument from Bacon to Foucault concerning the relation of knowledge and power. A theory of global power that is discursive in general and structuralist in particular will have the vices of its virtues. Experts do no more than talk, and it is tempting to believe an analysis of their discourse goes further in explaining their role than it does. In particular, it may scant causation outside the frame of language and focus on the processes of rule at the expense of outcomes. Part V takes up Kennedy's case study on the law of war as an instantiation of how his theory of expert knowledge works. Part VI concludes by examining whether Kennedy is subject to his own analysis and how he hints at the promise of a form of responsible power beyond expertise. Most worrisome about the book is that Kennedy is driven to a skepticism of expertise so withering that the sole alternative he can recommend — a potentially empty one — is what he calls "unknowing."

I. OUR STRUGGLES

In the beginning, Kennedy says, was struggle (pp. 54–86). We know of such a story in politics: states coexist and compete in the nervous condition of "anarchical society" that sometimes devolves into war.⁸ And it is familiar to envisage the economy as a realm of the collision of interests (which in more affirmative accounts can sometimes harmonize). But the novelty in Kennedy's approach is that expertise does not accrue within an overall system that is *political* or *economic* by definition: the international state system or the global economic order as the most fundamental realities. Rather, knowledge — the

⁸ See generally HEDLEY BULL, *THE ANARCHICAL SOCIETY: A STUDY OF ORDER IN WORLD POLITICS* (1977).

struggle to claim expertise — produces such domains about which experts say they know something. Experts, Kennedy writes,

generate identities for themselves and allocate powers and resources in ways that might be interpreted, with the benefit of distance or hindsight, as constituting a system [A]ctivity that might otherwise seem a technical practice *within* a system can be understood as generative of the ‘actors’ and ‘structures’ that populate the systems” (pp. 55–56)

Not politics first, or economics first, but epistemic struggle first.

Now on what grounds can Kennedy defend such an account? After all, Hobbes’s picture, famously starting from struggle, was itself fundamentally epistemic first. But Kennedy’s state of nature is even more barebones, especially since he wants to emphasize that there is ultimately no exit from the terrain of struggle. He starts from “people pursuing projects” as the most neutral description he can find (p. 56). “States” or “individuals” in a relationship of rule and rights, or “capital” and “labor” making serial bargains over distribution, are terms already committed to some epistemically fraught picture of the world. In contrast, the notion of “people pursuing projects” is not. Of course, to understand global governance as driven by struggle is not to posit a “level playing field” among such people, since it is an “iterative affair” that has already been through endless rounds (p. 56). And then the next round starts, with endless cycles of winners and losers locking in advantage but never foreclosing renewed engagement.

What seems distinctive about Kennedy’s view — after all, he cites illustrious predecessors for it, from Hobbes himself to Adam Smith, Carl von Clausewitz, and Carl Schmitt⁹ — is that he places a large emphasis on how intellectual expertise figures in the game (pp. 56–58). That is why he requires so neutral a description of struggle: “To speak about the system and its logic can only be a strategy: to orient or justify oneself or talk one’s opponent into a corner of necessity” (p. 58). Even to say politics is a struggle that leads to a state (Hobbes) or that economics involves the play of self-interest (Smith) is to try to set expertise up as a special arbiter or umpire whose representatives have privileged insight into the proceedings. But this is just a move in the game, not an analysis of it. In a sense, then, Kennedy is claiming that only the most austere social theory positing epistemic struggle first can claim to be neutral description. Otherwise, his book itself would be an act of expertise enacting a strategy, rather than a detached look at it.

⁹ Kennedy refers to THOMAS HOBBS, *LEVIATHAN* (Bobbs-Merrill Co. 1958) (1651); ADAM SMITH, *AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS* (London 1812) (1776); CARL VON CLAUSEWITZ, *ON WAR* (Michael Howard & Peter Paret eds. & trans., 1976) (1832); and CARL SCHMITT, *THE CONCEPT OF THE POLITICAL* (George Schwab trans., Univ. of Chi. Press 1996) (1932).

(I will come back to this problem of self-reference later: in what sense is Kennedy's own approach not an analysis of a system and its logic?)

Expertise also defines what is to be gained by fighting. The spoils are determined not by objective facts about the world — for example, that labor accounts for value in the economy — but are themselves a topic of contention that expertise helps define. Kennedy remarks that the point of his approach is to provide immunity from three mistakes: “the tendency to reify the actors and structures one sees, a bias toward order, and the potential to overlook the knowledge work of experts with the result that their shared logic is treated as the logic of the system itself” (p. 75). And what the continuing struggle is itself about is similarly swept into the analytic framework. Kennedy says the goal of his austerity is to force us to ask how different framings of global activity would have different winners and losers: “Placing struggle rather than system at the center of the story encourages opposing interests to be identified and the costs and benefits of alternative projects to be assessed” (p. 59). Yet what you get from winning and losing — and even what counts as interests — are not set in advance, but are themselves subject to intense struggle.

That struggle only very rarely involves outright force (though the threat of its use is rarely entirely absent), as the centrality of expertise in Kennedy's account already suggests. Or in another formulation, the tradition in which Kennedy places himself redefines war to be not simply traditional military activity, but what all the multifarious forms of human life are ultimately about. Where von Clausewitz argued that war is politics by other means, and Foucault added that the reverse is also true,¹⁰ Kennedy claims that expertise is also a form of politics and therefore a form of war. And the most exciting plays in this game are those that transform the game itself: “The most savvy players are always on the lookout for moves, risks, and opportunities outside the frame” (p. 64).

A profoundly strategic view of human action of this kind may seem unlovely, and has elicited howls of protest over the centuries for misunderstanding the potential of collaboration and compassion. But its power has always been that cynicism helps immunize against overly romantic accounts of why some people have always ruled over others, and continue to do so. Law figures not as a necessarily pacifying agent — as international lawyers over the generations have sometimes optimistically hoped — but as a manual for impending combat: “[l]aw provides a kind of guidebook to the global terrain of struggle” (p. 61).

¹⁰ See VON CLAUSEWITZ, *supra* note 9, at 87; MICHEL FOUCAULT, “SOCIETY MUST BE DEFENDED”: LECTURES AT THE COLLÈGE DE FRANCE 1975–1976, at 15 (David Macey trans., 2003).

However, law is not simply a kind of antecedent record of how the fighting has gone previously for the prospective participant to survey the lay of the land and to learn how the rules of the game are currently written. Lawyering does serve that purpose, but it also enters into the terrain of struggle itself as competition unfolds. Kennedy explicitly uses the newfangled term “lawfare” to make sense of this aspect of his argument, and how specifically legal expertise figures in the epistemic war of all against all (p. 62).¹¹ If expertise is war, then practicing law is also war.

No account of distributive outcomes in today’s world — who wins and loses — can afford to skirt expertise in general and legal expertise in particular. Kennedy cautions that his own account of expertise is not committed to the view that all players are warriors seeking dominance (though most are). Some in struggle want to be generals, but most willingly serve as soldiers. A few even are content with the role of perpetual losers: “[s]ome people — even entire professions — seek marginality, even misery,” Kennedy says (p. 68). From benevolent Christians to human rights activists, groups have long known that the struggle to dominate is so deeply the way of the world that they would rather embrace the role of victims or minister to the defeated, choosing morality over victory. Even if they rarely change or even hope to change the outcome of cyclical engagement, such figures can at least claim not to have caused it. But ingeniously, Kennedy supposes that “losers” hardly portend some full-scale alternative to a world of struggle (as Jesus Christ and his followers have often prayed). For today’s losers by choice develop their own forms of expertise, Kennedy says, to justify and advance their roles in the world.¹² Perhaps the righteous will reap rewards in the next life, or the meek will inherit the earth someday. But the real point is strategizing in this world. No one, it seems, is above the will to power.

II. A THEORY OF EXPERTISE

It is within the general landscape of struggle with its multifarious forms, Kennedy thinks, that the specific device he calls expertise plays an unrecognized role. The bulk of *A World of Struggle* constructs a theory that brings the otherwise hidden role of expertise to light.

¹¹ For the coinage of “lawfare,” see Charles J. Dunlap, Jr., Commentary, *Lawfare Today: A Perspective*, 3 YALE J. INT’L AFF. 146 (2008).

¹² Kennedy does not appear to go so far as Friedrich Nietzsche in presenting losing as itself a covert attempt driven by resentment to establish domination out of a situation of weakness. See generally FRIEDRICH NIETZSCHE, *ON THE GENEALOGY OF MORALITY* (Maudemarie Clark & Alan J. Swensen trans., Hackett Publ’g Co., 1998) (1887).

For a book intended to surpass prior accounts of “global governance,” Kennedy usefully begins the core of his book by disengaging how ubiquitous struggle sometimes constructs problems *as* global in the first place (while others remain local or national) (pp. 23–53). No problem is global until it is defined as such, with a certain priority — which simultaneously means that other problems are either not problems or not viewed as having a worldwide scale or solution. Insiders decide what those problems are, while outsiders generally see their priorities lose out. Thus, before the game even begins to make global governance work, Kennedy observes, a prior game has been played over its parameters, with winners and losers.

This fact is a legacy, Kennedy says, of a centuries-long series of calls for and legitimations of global governance — with problems identified at a worldwide scale requiring outcomes at that level (pp. 89–107). He offers an illuminating parallel of early modern Spanish theologian Francisco de Vitoria and the Apollo 17 “blue marble” photograph of the earth from space (pp. 91–93). Both legitimized world-making for elites, giving them the sense that there was one human community, with the specific demands of that realization now open to definition and contestation. Vitoria thought that the discovery of the new world meant that there was a universal obligation to hear the true gospel of his time, which meant that of the Christian religion; for Kennedy, not much has changed in the aftermath of the most recent spates of “world-making stories,” which create the impression that global unity is a problem for those in power to impose politically and technocratically. “The world pictures of insiders are rarely fully settled into common sense: they still need the space photo as the Spanish needed Vitoria,” Kennedy explains (p. 93). “Nor are outsiders unable to assimilate or argue forcefully in the insider language of problem solving. The opposition nevertheless marks the boundaries and provides the terms within which debate and conflict over more specific world-making projects occurs as experts arrange and rearrange images drawn from this stock” (p. 93).

At the core of Kennedy’s theory of expertise is a pivotal distinction between “foreground” and “background” (pp. 108–34). What takes place in the foreground — even grand decisionmaking where real choices appear to be momentous and deep (Kennedy’s repeated paradigm case is the Cuban missile crisis) — presupposes prior scene setting, as his originally dramaturgical terms suggest (pp. 112–13). Previous foreground decisions have excluded certain options, while making others appear unreasonable. But above all, the background work of experts functions not only to naturalize those prior decisions but also to set up the coming foreground decision, by providing a sense of the situation and enumerating the choices. Experts rule by shaping the decisions of those who believe they decide everything. Existing theories of global governance, Kennedy is contending, disregard or down-

play how central the expert scene setting has been both to why the choice in the foreground seems plausible and why it takes the form it does. “When background work has been most successful,” he remarks, “it is very difficult to see” (p. 116). But if we are distracted by the foreground, then we will easily miss how much it requires a background, where experts have been struggling to frame and influence the front of the stage.

Kennedy goes on to say that experts rule by “articulation” — simply claiming to describe neutrally and counsel uncontroversially (pp. 135–67). Law does not coerce, at least on its own; it only does so when lawyers say the state or other actors need to interpret and apply it in certain ways and find their advice operationalized. As Kennedy immediately clarifies, those occasions when experts engage with one another, or see the need to argue at all, are the exceptional cases, not the routine ones, because argument risks revealing how contestable authority is (p. 136). Someone forced into giving an argument might be wrong. Most of the time, therefore, expertise works by assertion. “Expert articulation is straightforwardly performative: this is how things are. In this sense, expert argument is the tip of a large iceberg of expert effect” (p. 136). Articulation by experts is their general mode of rule, which the infrequency of argument proves. And there is no one, Kennedy insists, outside the ultimately discursive realm of articulation, for everyone must assert or argue on the road from norm to application. “When the prince decides,” Kennedy remarks, “his decision is also an argument and assertion, to himself and others: an argument for his own authority, for its meaning, and for the consequences that ought to flow from it” (p. 135).

To anticipate my later critical engagement with the book, it will help to dwell on the relationship between the discursive matters that Kennedy puts at the focus and the real world that expertise is in some sense about. From the first page, Kennedy refers to “wealth, status, and opportunity” as the stakes of the game (p. 1), and it would be implausible not to notice Kennedy’s interest in the distribution of the hierarchy of opportunity in the world and the radically distinctive material circumstances different people enjoy (or suffer). But it is equally implausible to pretend he thinks the definition of these achievements for winners and losers somehow lies outside the forum of their contest as stable metrics of victory and defeat. And the analytical weight of the book, not least in the core theory of expertise, falls so heavily on the discursive that it makes Kennedy sound like a full-blown social constructionist — or if not, someone whose default when in doubt is to dwell within the discursive setting of expert struggle, rather than seek its relationship with its own larger setting.

The discursive clearly has considerable autonomy, because experts have the trump card of articulation when it comes to the nondiscursive. And critically, Kennedy contends, there is no general

scheme for explaining how exactly it is that what once had to be argued can now simply be asserted. Similarly, there is no general theory offered to account for the transformation of assertion into common sense. "The process by which an assertion that began as an argument passes over to performative articulation is difficult to unravel," Kennedy surmises (p. 136). He writes further:

It is easy to underestimate the role of coercion or social hegemony, to overestimate the role of persuasion, or to imagine persuasion as a matter of good arguments driving out bad. In every field, relations with the material world of force and the social world of prestige and legitimacy will be different. (p. 136)

But if this is the case, then expertise still must work in relation to other forces, like the coercive structure of a professional discipline, governmental hierarchy, or a broader set of social norms established by other forces than discourse, that together explain why some opinions win out among experts while others do not. That is, expertise itself has its own larger ecology, and ultimately it is critical to engage the relationship between the intra- and extra-discursive. One thing is clear: Kennedy is very far away from an approach to discourse in which correspondence with the world, a tribunal of experience, or the inbuilt norms of communicative rationality (which allow the best arguments to win without force) could serve.¹³

Whatever the difficulties of Kennedy's account of the relation of language and reality, he powerfully applies his broader theory of expertise to real cases. Throughout the book, but notably in his theory of articulation, Kennedy refers to expert domains such as economic development and human rights law. He proves that experts in such domains are well described by the theory of expertise he is generating, while also illustrating that differences among fields generate a diverse range of forms for that expertise to take. For example, economic development is relatively interdisciplinary and fact sensitive. Much turns on specific features of the terrain to be developed, including the willingness of local states to participate. By contrast, human rights law tends to be more context independent (at least when it comes to political and civil rights): the rules apply no matter what else is true of a regime's political and social situation. In his theory of articulation, Kennedy notes that economic development specialists are much more familiar with argument than assertion, perhaps because so many of their expert schemes have proven faulty, if not disastrous, in the past (p. 151). By contrast, human rights experts with their stripped down

¹³ For possibilities that contrast with Kennedy's, see JÜRGEN HABERMAS, *Wahrheitstheorien*, in *VORSTUDIEN UND ERGÄNZUNGEN ZUR THEORIE DES KOMMUNIKATIVEN HANDELNS* 127 (1984). Habermas explicates his scheme of "communicative rationality" in other texts of the same volume.

list of norms experience less argument (few will push back in response by asserting the validity of torture, even if the states they represent engage in the practice). In revenge, however, human rights lawyers suffer the repeated experience of “articulat[ing] what needs no articulation” but not being heeded (p. 145).

In a particularly interesting discussion, Kennedy notes that expert articulation thrives on ambiguity and what he calls “disenchantment” (p. 151). In many domains of expert knowledge, the iterative struggle of the past has produced a series of bad options that define the boundaries of future engagement. Much as no economist today, when it comes to the role of the state, would advocate either the absolute non-interventionism of the nineteenth century or the command-and-planning ideologies of the twentieth, so in all fields experts generate viable choices along a continuum that extends from one impermissible extreme to another. But if this is true, the continuum of permissible options in between is always going to be a matter of more or less, rather than either/or: how much state intervention in economic affairs is allowed, for example, once total absence or control are ruled out. And so expert recommendations will always be possible to outflank in either direction on the continuum.

In consequence, expertise works in part by destabilizing confidence in its own contribution. “One would expect a field to fall out of use as it loses decisive clarity: if you can’t tell us what is and is not legal or how to bring about development, then we don’t need your expertise,” Kennedy observes (p. 153). “Instead, the more complex and indecisive the expertise, the more useful it has become” (p. 153). He explains: “There is something useful about a vocabulary of debate that is able to draw fine distinctions on the basis of an undecidable difference between indefensible extremes” (p. 152). Experts rule in part by multiplying options and asserting (or if necessary arguing) that we live in a world that needs their ability to choose the right point on the line after simple options have lost credibility.

As Kennedy goes on to detail, the experts working on the line develop a specific personal style: they rule nonexperts out, while their “sophistication” combines a certain disenchantment about the availability of self-evident answers with a commitment to the proposition that only experts can dictate responses (p. 155). Indeed, Kennedy records, they “can experience themselves as more ‘professional’ even as their confidence in the content of their expertise declines” (p. 155). In part for this very reason, experts thrive on not deciding and remaining in the space of uncertainty before someone else has made a decision. Given their druthers, experts would continue deliberating. “Experts often flee from this experience,” Kennedy writes of the moment of decision that officially justifies their existence but which they avoid at all costs (p. 166). “Their flight, their denial of freedom and responsibility is part of their self-presentation as an expert” (p. 166).

III. INTERNATIONAL LEGAL EXPERTISE

Intended as a general account of expertise, Kennedy's scheme takes on extra importance when deployed to make sense of how international legal authority works in today's world. As in any domain, expertise in international law is specific, but — Kennedy suggests with some indecision of his own — in ways that “may be exemplary for other globalizing modes of expertise” (p. 5). While some might want to cordon off specifically legal knowledge, Kennedy's impulse is the reverse. Indeed one good way to read his book is to understand it as an account of what an international lawyer notices about governance and can teach his differently situated colleagues in diplomacy or economics. Law therefore pervades the book as a model on the premise that legal expertise helps reveal the nature of other kinds of expertise. Correspondingly, Kennedy courts the risk of emphasizing far more continuities between expertise generally and legal expertise in particular, focusing only rarely on whatever might make the process of presenting claims and establishing authority in international law distinctive.¹⁴

But the emphasis on law in global governance also has a historical justification. The sheer relevance of international law for decision-makers has surged in recent decades, which — predictably, but powerfully — Kennedy views as an event following on prior struggles that has in turn hewed out new terrain for future conflicts. In both developments, expertise has been central. Articulating law before a receptive audience transforms political debate into a legal question, narrowing the source of legitimacy that one can bring to bear on it, and entitling one set of experts to a preeminent role.

As a result, an account of the expertise of international lawyers will have to be central to any theory of “global governance.” Even if traditional skepticism of international law remains, it is startling how legalized contemporary global relations now are, with obvious consequences both for outcomes and for who determines them. “Although it is easy to think of international affairs as a rolling sea of politics over which we have managed to throw but a thin net of legal rules,” Kennedy writes, “in truth the situation today is more the reverse. There is law at every turn. Even war today is an affair of rules and regulations and legal principles” (p. 174). In an apparent paradox, Kennedy adds, “[t]he dispersion and fragmentation of economic and

¹⁴ Kennedy worked through disciplinary specificity for much of his career and notably at its beginning, while Koskenniemi's similarly classic inventory of argument in international law makes the task of connecting law to governance more generally the priority now. *See generally* DAVID KENNEDY, *INTERNATIONAL LEGAL STRUCTURES* (1987); MARTTI KOSKENNIEMI, *FROM APOLOGY TO UTOPIA: THE STRUCTURE OF INTERNATIONAL LEGAL ARGUMENT* (1989).

political power brought about by their globalization have only accelerated their legalization” (p. 174).

Although Kennedy is clear about the meteoric rise in the salience of legal rules within international affairs in the last century, he scants any account of how and why it occurred. He opts instead for an internalist portrait of how international lawyers have interpreted their own plight and kept the reality of the power they exercise as experts at arm’s length, and references only the increase in their sophistication as the reason for their growing relevance (p. 172). The result of this increase in sophistication has been that these experts mask — even for themselves — how decisive a factor their own expertise has been in outcomes they might personally abhor.

In this vein, Kennedy paints what he rightly intends to be a devastating portrait of international legal expertise (pp. 218–55). It is all the more cutting for being completely free of abuse or contempt: after all, Kennedy is describing his own community. Disenchanted professionals, international lawyers hew nonetheless to “a faith that precludes some kinds of self-reflection. Law’s role in distribution, inequality, and conflict are leached out: they belong to politics or to economic competition. Law is a nobler thing” (p. 219). Indeed, according to Kennedy, the very faith that suspends insight into their participation in rule is one reason why international lawyers may secretly cherish the eternal debate about whether international law is law: the more the reality of international law is an open question, the harder it is to admit the role of international lawyers in outcomes.

Even when international lawyers insist doggedly on the reality of international law, Kennedy says, they are loath to view their own expertise as a form of authority that inevitably privileges and distributes. “Rather than seeing the hand of power in the glove of law, mainstream international lawyers focus on the glove,” Kennedy writes:

They see *law* acting everywhere in the world and celebrate the ability of civil society organizations, individuals, or national judges to participate in global rule making. Where the outcomes are not desirable or when bad things happen in the name of law, they prefer to see the misrule of power dressing itself in legal justification. (p. 240)

Kennedy explains the fact that this goes on with a remarkable venture into the sociology of religion. He argues that there is a professional community fideistically committed to the proposition that international law is ultimately a good thing. This dictates necessary belief in the viability of the professional role, while also subjecting the religious community to the threat that belief may fail (p. 242). Kennedy takes the metaphor of faith — if it is a metaphor — very far, proceeding to interpret international legal theory as “a ministry to a doubting church” whose members need reassurance in the face of the unending threat of disbelief (p. 252).

That international lawyers have not theorized their own expertise does not mean they fail to conform to Kennedy's theory of it. In another chapter, Kennedy explores the specificity of international law as a lexicon of expertise (pp. 171–217). At the focus, in the spirit of legal institutionalists and realists such as Robert Hale and Wesley Hohfeld and the intensification of their thought in the critical legal studies movement, is an explanation of exactly how legal expertise can have *distributive* consequences.

When one side in discursive struggle prevails, there are winners and losers distributionally, too. Expounding David Ricardo's theory of trade and rents, Kennedy attributes the enormous importance of legal entitlements to the role they play in determining who wins and loses (and by how much) (pp. 177–82). "The bargaining power of everyone involved" in a given trade relationship "depends on their ability to exclude others and coerce others to surrender gains," Kennedy writes (p. 184). "All countries now understand that you have to strategize your insertion into the global economy by arranging the institutions over which you have some control to enable economic actors you prefer to get and keep the gains" (p. 188). Law — or more exactly legal expertise — matters because it convinces people to allow one set of actors to keep gains by excluding another set from taking rents. In the aftermath of struggle, law registers who won, as kept gains are consolidated. Legalization is a fundamental move in the game itself, as well as a kind of consensual means of keeping score. The dynamics that prevail at the more microscopic level also prevail at the macroscopic scale of the world, as global rules ratify and entrench the results of prior struggle while providing the terms for new ones. The frequent though not inevitable result is that the rich get richer. The larger lesson is that actors not only aim for discrete outcomes in games, but also "play for rules" that will repeatedly determine outcomes in future ones — and those rules call on legal expertise to be the essential weapon (p. 199).

Kennedy's picture would be hilarious if it were not depressing. Somewhat like the protagonist of Molière's comedy, who does not realize he speaks prose, international lawyers play the same discursive and distributional role that all experts do, *sans le savoir*.¹⁵ As a rule, however, expertise even among reformers serves to ratify the continuing and cumulative victories of the powerful, rather than serving the weak. What would happen, Kennedy asks, if international lawyers who frequently think they are making the world a better place spent more of their time puzzling through why this is?

¹⁵ MOLIÈRE, LE BOURGEOIS GENTILHOMME (1670).

IV. ACCOUNTING FOR EXPERTISE

All told, Kennedy has assembled a complex and fascinating scheme to account for the power of experts in today's world. Compared with the analysts of world affairs or international law who leave that factor out of account, he is very good about expounding why it is important to study expertise. But Kennedy is not as good at recounting other ways to foreground expertise, or how his views about it differ from those who also give it pride of place.

In a helpful section, Kennedy specifies exactly what approaches to international affairs or law miss in avoiding inquiry into how expertise constitutes intellectual fields like "political science" or "economics" — as if their objects of study were real things independent of expert observation and theorization. These approaches, whatever their value, often commit three cardinal sins: reifying their objects of study, overestimating order, and mistaking an expert claim that the object has a logic — for example, that capitalism is self-regulating — for a truth about the world (pp. 75–86).

In his portrait of the constructive and aggressive role of experts in continuing the fight to rule the world in the name of analyzing it, Kennedy certainly affiliates not with Bacon but with Hobbes — in spite of some hints of his own utopianism (to which I will return in the last section). Knowledge is not an alternative to the struggle of interpersonal life, but part of its very essence, and a means through which some achieve domination over others, and lock in that domination indefinitely.

Meanwhile, Kennedy mentions a series of twentieth- and twenty-first-century authorities in the critical tradition, but normally in endnotes, in an offhand way, without detailed affiliation (or rejection). In a revealing endnote, for example, he remarks that Foucault has placed a premium on "revealing rather than obscuring the role of war in the routines of peace" (p. 284).¹⁶ This is probably the best description of what Kennedy himself is trying to achieve in this book with respect to expertise in international affairs in general and in international law in particular. But his reference is charmingly vague, saving Kennedy's exposition from scholastic infighting while making it hard to identify what is supposed to be unique about his venture.

Kennedy does say that he has been especially inspired by "science studies" (itself often Foucauldian in inspiration) for disengaging the "performative dimension of expert practice: expert work constituting

¹⁶ Kennedy cites Michel Foucault, *War in the Filigree of Peace: Course Summary*, 4 OXFORD LITERARY REV. 15 (1980), an early Collège de France course description that appeared in English in 1980; today the *locus classicus* for Foucault on struggle, taking matters far beyond the slogan of "power/knowledge" that was once notorious, appears in FOUCAULT, *supra* note 10.

the space of its own expertise" (p. 4).¹⁷ This is certainly true of Kennedy's approach to expertise in global governance and international law, but may not help figure out what struggles are continuing within the community of experts on struggle — in the Hobbesian tradition of which Foucault and Kennedy are recent luminaries. In lieu of any detailed examination of how distinctive Kennedy's theory is relative to his own competitors, it is nevertheless worth putting pressure on its central implications. And it may also help to distinguish Kennedy's approach from others with which it is liable to be confused.

Kennedy's theory of expertise is discursive in general and structuralist in particular. It focuses on expert language — the sole tool experts have to wield power. And it is especially interested in the architecture of the claims. Just as in built space, design elements that seem to oppose each other can shore each other up. In fact, Kennedy's theory flows pretty naturally out of the marriage of the discursivist epistemology characteristic of Hobbes, Foucault, and others with the structuralist approach to legal discourse that — Kennedy acknowledges — his mentor Professor Duncan Kennedy made famous as part of the invention of "critical legal studies" (p. 172). It is notable that when his theory becomes most detailed, what Kennedy continues to find most exciting is the possibility that a theory could systematize "the iterative and interactive process of doing things with words" in which speakers are involved (p. 144). Indeed, Kennedy goes so far as to write: "[p]erhaps expertise is analogous to language" (p. 144). The gambit or temptation of structuralists — for whom discourse has long provided their most reliable example — is to see expert activity itself as possessing the same logic as the discourse experts use. "[G]iven a vocabulary," Kennedy remarks, "many things can be said on the foundation of grammar" (p. 144). This is a classic structuralist thought, implying that the best way to illuminate some form of activity — expertise in this case — is to unveil the rules shaping it. And the classic example of a structure is a language. *A World of Struggle* appears to reach its culmination when it is engaging in the structuralist work of outlining discursive possibilities, providing inventories of assertion, and demonstrating how binary oppositions embrace one another as argumentative options.

¹⁷ Specifically, Kennedy remarks:

My approach has been most directly influenced by scholarship in sociology and science studies that stresses the context within which expertise arises and is practiced, from the laboratory to the boardroom, and the components of expertise that operate in those spaces, from "tacit knowledge," through shared ethics of perception, to modes of reasoning and argument. (p. 4)

He cites his colleague and frequent co-teacher Professor Sheila Jasanoff as a particularly fertile source of inspiration, along with contemporary "actor-network" theory (p. 282).

It would be easy, though not very illuminating, to wonder if in his discursive and structuralist approach Kennedy has courted biases of his own. Just as Kennedy alleges biases for reification and systemization in those who understate the powers of experts, one can worry that he fails to mark the limits of his own discursive bent and allows his structuralism to beckon him into the very kind of systematization he has banned — as if discursive inventory alone suffices to make much sense of the way power works in international affairs and law. Of course the seemingly neutral workings of knowledge serve the achievement of power, just as Kennedy reports; but many people will want to respond that this is because expertise is so often transparently subservient to forces like the drive to hierarchy and the appetite for wealth — both forces that condition the processes and explain the outcomes of argument more than vice versa.

When Kennedy gestures beyond discourse, it is primarily to psychology or spirituality. The powerful into whose ears experts whisper drop away, reversing the usual penchant to blame them rather than their advisers — but it is legitimate to worry that in reversing the focus, *A World of Struggle* goes to the opposite extreme. It rewrites Niccolò Machiavelli except that now so much attention falls on the adviser that the ruler is nowhere to be found. (It is generally agreed to be a bad thing to stage *Hamlet* without the prince, but it is even more surprising to read *The Prince* without him around.) Those who need to know that international lawyers who claim to be stewards of progress are in fact wielding power will find food for thought in Kennedy's depiction. But the account will not be as compelling to those who are already aware that powerful faith communities teem in the world and wonder how this one achieved such preeminence — and how the faith of this increasingly visible church seems to be a small factor in its own success and in broader outcomes in view of much larger forces explaining who wins and loses in international "order."

And even when it comes to experts themselves, it is not clear what Kennedy thinks is ultimately at stake in their struggles for power, if it is not the promotion of goals and the furtherance of ideologies that expertise has not itself constituted, at least not altogether. It is possible that the foundation of "struggle" provides Kennedy's theory the enduring background motivation of experts, and not just the source of their ongoing engagements with one another. Much as another Hobbesian, Charles Darwin, supposed in *The Origin of Species* that the bitter "struggle for existence" is the context against which the play of natural selection occurs, providing the motor of rivalry that creates evolutionary winners and losers, so in Kennedy's account competition for advantage explains not just the substance of expert maneuvering but its rationale too. But if this is the case it raises a potentially severe difficulty for Kennedy's theory, for the motivation for success in the war of all against all that characterized nature for Hobbes and Darwin —

namely, avoiding the very real threat of extinction — may not obtain as precisely in Kennedy's theater of struggle. (This is especially so if some actors not only perpetually lose, but also embrace this fact as a badge of honor, a possibility that could not occur to Hobbes or Darwin, for whom agents that would *want* to lose in the quest for survival were inconceivable.)

Sometimes, in other words, it appears that because Kennedy has granted so much power to epistemic construction of the realms of their expertise, experts are engaged in relatively free-standing competition, like in a more literal game that people agree to play that has no end outside of itself. In response, one might ask: are world affairs really a game? The stakes certainly seem high to the actors, including the experts, involved. But even to the extent struggle is a motivation for their gamesmanship, and not merely the internal feature that rivalry is in all competitive games, what are experts struggling to win? Hobbes and Darwin could posit that life is what accounts for the struggle, but for all the sophistication of his theory of expertise, Kennedy's discursive and structuralist bias has no answer when it comes to what objectives actors achieve. Kennedy's answer is clearly "distribution," but distribution of what? On this point Kennedy both gestures to the fateful consequences of who wins, while not defining what the stakes are.

I should add that in failing to make his theory of expertise a broader social theory, avoiding analysis of what links struggles of experts to any scheme of underlying causal determinants, Kennedy saves himself from some simple-minded attempts to make the connection. A Marxist with a view of expertise as "ideology" would complain that Kennedy's picture is one of water boiling, but omits the pot, and even the fire. But if it is notoriously difficult to spell out such an alternative materialist view, my point is that Kennedy has not even tried to do so, in part out of the desire to show how far a constructivist and discursive approach can illuminate. The question is whether omitting any causal theory of the worldly rather than epistemic and of real rather than ideal determinants of expertise — aiming at a fully internalist theory of expertise, without reconstructing its setting in a world of power and interest — is satisfactory. The force of this question is redoubled since, unlike Bourdieu, Kennedy does not focus on the "expert capital" that people might gain from simply being good at being experts (promotions, professorships, and so forth). Rather, Kennedy seems to have a completely constructivist notion of expertise in which not only the game is an expert construction, but also the reason for playing it.

This aphasia about or avoidance of any real determinants of expert claims does provide Kennedy considerable analytical purchase on a very different school of thought about international law that one might otherwise confuse with his own theory. Like an older "realist" take on international relations of which their approach is a recent version,

some contemporary theorists of international law suggest that states only follow it when doing so fits their interests in the course of ongoing interstate struggle.¹⁸ Kennedy does not engage this comparably disabused (and likewise Hobbesian) theory of international law. But what he argues of Hans Morgenthau — that he reifies the interstate system and masks the distributive work that epistemic description does (pp. 79–80) — certainly applies *mutatis mutandis* to Morgenthau's contemporary successors in the theory of international law. More interestingly, Kennedy's epistemic constructivism bears powerfully on the notion of the objectivity of interests and preferences that rational choice and other kindred theories of international affairs notoriously leave out of account. Kennedy's theory indicates that it is not just the interests *of states* that such approaches to international law take for granted and therefore fail to explain, but *the interests* of states too. As we have seen in spades, Kennedy certainly emphasizes distribution of advantage that agents seek and gain through expertise as the heart of his theory. Yet he plainly is not operating with a realist or objectivist theory of interests. Put another way, where other approaches make preferences antecedent to struggle, for Kennedy they are endogenous to it, constantly open to expert identification and redescription.

Kennedy seems simply not to worry about one potentially troubling effect of this powerful move, which is to ratify and intensify the discursive and constructivist bias of his own approach. We know that everyone is involved in struggle for advantage, but since the definition of advantage is itself an object of struggle, we no longer know what the game is for.

V. EXPERTS AT WAR

In a final chapter, Kennedy takes up the contemporary law of war. Throughout the book, he provides examples to illustrate his contentions. Regularly a few lines or a paragraph, these examples may accumulate into full-scale meditations on economic development or human rights if pieced together. By contrast, Kennedy's lengthy foray into the law of war in a single chapter of the book is his most sustained vindication of what his theory achieves. It therefore also offers the reader the most substantial material on which to evaluate how his theory illuminates the complexity of a specific expert domain.

¹⁸ For a famous articulation of this approach, see JACK L. GOLDSMITH & ERIC A. POSNER, *THE LIMITS OF INTERNATIONAL LAW* (2005). In contrast to Kennedy, for example, Professor Jens Ohlin criticizes recent rational choice theorists on their own ground, by claiming that international law regularly abets cooperation and advances long-term interests. See JENS DAVID OHLIN, *THE ASSAULT ON INTERNATIONAL LAW* (2015).

Kennedy has an easy time contradicting “the image of law as the voice and hand of the universal come to civilize swords into plowshares” (p. 273). Instead, expert pronouncements on the legality of specific acts of warfare are part of the operation of state power and not merely its limitation. He puts the point powerfully:

International law is equally — indeed, perhaps more routinely — the space within which war is conceived and validated and through which force is disciplined and rendered effective. . . . [S]overeigns do routinely discipline and legitimate their military campaigns by pronouncing on the legality of bombing here or killing there. When this happens successfully, international law confirms the violent expression of sovereign power as right. (p. 258)

For this reason, Kennedy has no trouble, as mentioned earlier, signing on to the frequent American perception that law has today become a weapon of and not just a limitation on military conflict — there is so-called “lawfare” alongside traditional warfare — since it perfectly confirms his theory and is merely a specific instance of the fact that expertise is war by other means.

In the face of this situation, Kennedy proposes that applying his framework to the contemporary law of war means “suspend[ing] the effort to determine who is right” in various familiar debates in order to reconstruct the work of articulation. In this case, it is valuable to capture the articulation of the permissibility and impermissibility of killing:

Articulation becomes effective as force as people make legal arguments about war and all sorts of people have gotten into the act: military officers, human rights lawyers, Red Cross lawyers, demonstrators, ambassadors, presidents and prime ministers, media commentators, and, of course, law professors. . . . The sum of their statements is what international law has become. (p. 269)

In applying his theory to the law of war, Kennedy outlines some of the “projects” that “people with projects” have undertaken (p. 70). Some want room for maneuver so that the state can kill more people, whereas others who present themselves as partisans of humanity against states want fewer dead. And then there is the group that angles for professional victory for its own sake, acting orthogonally to the others but most successfully, since both sides operate through lawfare and thus make law ever more important. Kennedy’s demonstration of how expert articulation is constituted and changes what war is about, even while transforming the identities of experts along the way, is profound. For example, he observes, the rise of lawfare leads what would once have been simple military necessity to be presented in terms of high principles of justice, while the original defenders of justice may be led to extremist interpretations that insist on following rules even when it courts “broader destruction” (p. 272).

All the same, what is potentially most revealing in this account is that, even in Kennedy's rendition, it is pretty clear what the different forces and even interests are. They are not much reconstructed by their own practices of expertise; rather, expertise is a detour through which they travel in order to reinvent their antecedent identities and interests from their old terrain of struggle, even if it is newly legalized. On one side is the military, on the other the humanitarians. Some lawyers (and law professors) may have most to gain if legal expertise is inserted where it did not obtain before, but they themselves tend to divide between sympathies for the military and the human rights communities.¹⁹

But if this is so, then at least when it comes to the law of war, a politics of antecedent interests — including the politics of left and right — turns out to endure powerfully in the storm of articulation. If discourse is constituting these interests, it is not the discourse of the law of war. True, the scene may not be open to a vulgar Marxist reduction of military imperatives to those of capital, any more than Bourdieu's account of professionals struggling for status helps explain why legal experts think their struggles are about the fate of the world rather than their own careers and perquisites, even if they benefit when their arguments succeed. Yet the law of war seems to indicate what everyone knows: the game of expertise is surely about more than itself. Too much is at stake in international affairs, or international law in particular, for a fully discursive or constructivist account to explain everything. Of course, this does not mean anyone has succeeded in reclaiming a sophisticated approach to the intersection of ideals and interests in social theory today.²⁰

In other words, Kennedy's story of lawfare has the vices of the considerable virtues of his general approach. He is clear that “[t]here has been a vast dispersion of sites and institutions and procedures through which legal distinctions about war are made,” but he does not say why (p. 259). And we are largely in the dark concerning what forces are driving expert involvement in war, since Kennedy's emphasis is instead on the threshold point that expertise itself redefines the game once played with less reliance on its tools. True, contemporary armed conflict is no longer like warfare of old, with its once transparent if

¹⁹ The recent appearance of and widespread affiliation with rival blogs for national security law professors on the American scene — illustratively called “Just Security” and “Lawfare” respectively — indicates that everyone knows what the teams are, even as the game changes. See JUST SECURITY, <https://www.justsecurity.org> [<http://perma.cc/M6QC-5NUY>]; LAWFARE, <http://www.lawfareblog.com> [<http://perma.cc/W9UZ-WB7G>].

²⁰ For a depiction of our current moment as a post-discursive and post-idealist one, without any powerful mode of accounting for the interface of ideologies and practices, see Samuel Moyn, *Imaginary Intellectual History*, in *RETHINKING MODERN EUROPEAN INTELLECTUAL HISTORY* 112 (Darrin M. McMahon & Samuel Moyn eds., 2014).

simple rules legitimating the inception of violence, controlling the fighting, and distributing the spoils. As a result, the law governing the use of force has fallen into disarray, and Kennedy agrees that nobody knows in the “fog of victory”²¹ when war is actually over (p. 263). But if Kennedy’s theory is unable to explain why the expert domain of international law spiked in relevance in the first place, it may not account for how enduring the goals of actors within it are, and thus why they are engaging in their expert practice.

VI. THE NIGHT OF NON-KNOWLEDGE?

No description is neutral, Kennedy teaches; each is instead a powerful move in struggle with one’s enemy. But then presumably the same has to be true of his description of global governance. “How might this approach, familiar to people engaged in struggle, be more systematically pursued in academic inquiry?” he asks at one point about his emphasis on struggle-driven and expert-abetted “governance” (p. 66). It is an interesting turn of phrase because his approach is supposed to put “systems” in their place as internal outcomes of struggle rather than as external vantage points on it. Similarly, Kennedy proposes a “cartography” of struggle, and offers a valuable section contrasting his map from standard views (pp. 75–86). But how is his own theory of the role of expertise in global governance immune from his theory itself? If “systematizing” is typically only a move in “struggle” that conceals this fact, then how can he promise to systematize it? If a map is a product of expertise, how can Kennedy’s provide a vantage point on the territory?

Like many before him, Kennedy is not overly concerned with the possibility that his argument may fail the test of self-reference. But it does raise the question of what sort of knowledge this expert book provides, and what difference in the world Kennedy would like to see. To the extent Kennedy’s extremely austere portrait of struggle — people pursuing projects — is supposed to win analytical neutrality precisely in virtue of its austerity, its neutrality succeeds. But no one could read the entire book and doubt that Kennedy is committed to something. He is not describing global governance for the sake of description alone. He has his own struggles.

Something of the cool detachment of the expert he describes marks Kennedy’s own rhetoric and self-presentation. But in a familiar critical move he stresses that the purpose of *A World of Struggle* is to make expert rule visible so as to end it or at least to transform it profoundly. Just as Foucault routinely claimed that a few marginal and monitory

²¹ Gabriella Blum, *The Fog of Victory*, 24 EUR. J. INT’L L. 391 (2013).

poets had preserved external insight on the modern tyranny of experts, Kennedy holds out a promise of justice in the world beyond the workings of expertise. “The fact that their only formulation now is a lyrical one,” Foucault insisted of his favorite pariahs who protested the diagnoses of modern experts, “is not proof that they are dying away, nor that they are merely the prolongation of an existence that knowledge has long surpassed, but demonstrates quite simply that when kept in the shadows they still flourish.”²² Similarly, Kennedy states on his penultimate page that his goal is to raise “critical suspicion” about the reign of expertise, inviting the reader to join in his skepticism (p. 278). “[Y]ou are not alone,” he adds (p. 278). “And you don’t need to start from scratch. There is a long tradition of intellectual work lying alongside the mainstream routines of your professional or academic discipline on which you can rely” (pp. 278–79). In conclusion, it is worth disengaging and putting some pressure on this stance, in part because it is so attractive.²³

Consider two of its possible limitations. The first is that it is vague. In its remorseless censure of human rights and other experts who certainly believe they are working for good causes, even while exempting its own calls for justice from the pathologies of expertise, the critical stance refers somewhat amorphously to the possibility of a better world beyond the expert reproduction of things as they are. “Modern expertise knows and it forgets — or refuses to know — its powers and its limits. When they forget — and we forget — it becomes all the more difficult to understand how this world, with all its injustice and suffering, has been made and reproduced,” Kennedy writes in one passage (p. 5). “And more difficult to identify levers of change or experience the place we stand as a fulcrum of possibility. The result of continuous struggle is an eerie stability it is hard to imagine challenging or changing” (p. 5). After many passages like this in *A World of Struggle*, it begins to seem that the most that one can say about true justice is that expertise postpones it and conceals its participation in the postponement.

As for what that justice would look like, Kennedy is coy. It is clear it would have to involve enormous changes, and understandably so. Mere reformism — the kind for which he sees his students signing up

²² MICHEL FOUCAULT, *HISTORY OF MADNESS 169–70* (Jean Khalifa ed., Jonathan Murphy & Jean Khalifa trans., Routledge 2006) (1961). Similarly, Foucault claims in *The Order of Things* that “right up to our own day — from [Friedrich] Hölderlin to [Stéphane] Mallarmé and on to Antonin Artaud — literature” escaped otherwise dominating structures so as to “form[] a sort of ‘counter-discourse.’” MICHEL FOUCAULT, *THE ORDER OF THINGS: AN ARCHEOLOGY OF THE HUMAN SCIENCES* 43–44 (Random House 1970) (1966).

²³ I have certainly indulged the familiar critical move myself. See, e.g., SAMUEL MOYN, *THE LAST UTOPIA: HUMAN RIGHTS IN HISTORY* (2010).

with excitement — may make sense, whether redoing the United Nations Security Council membership, maxing out the International Criminal Court's budget, or meeting the current Millennium Development Goals and adding the much touted and debated Sustainable Development Goals to them (pp. 15–17). Ultimately, however, these achievements “would kick things down the road, manage expectations, and, by rendering the problems sustainable, reaffirm the current distribution of powers” (p. 17). By contrast, Kennedy does not outline what sort of solution would escape this withering verdict. He says he remains puzzled by the fact that experts in training set out to change the world fundamentally and end up choosing lives that leave its basic divisions unaltered. He shies away from counter-expertise, aside from vague calls for justice.

Of course, there is a field of experts — called philosophers — to whom people have long looked for a theory of justice. Interestingly, this field is entirely absent from Kennedy's approach to governance. Kennedy might suspect, rather plausibly, that card-carrying philosophers since Plato have bought into their own myth of the empyrean too much to see that they are operating on their own terrain of struggle, and that they engage in their own strategies that help stabilize the unjust world as it is.²⁴ Or he might think that philosophy as it stands remains a field of expertise able to make critical moves only at the cost of distance from real-world decisionmaking. Either way, it is at some point incumbent on critics who refer somewhat longingly to justice as what contemporary intellectual and political life mostly excludes to engage in normative theory of their own.

The second limitation is a kind of mysticism that rushes into the void of normative theory, when justice is viewed as something that experts are so far failing to provide. Kennedy is convincing in his claim that expertise is the “missing piece” in accounting for the “strange resilience” of the world as it stands (pp. 14, 16). At times he calls for a reformed expertise more knowing about its current reproduction of hierarchy, but in other passages he hints at *a form of rule beyond knowledge*. These absorbing passages deserve a look in conclusion, because in them it seems that Kennedy offers what he believes his deepest wisdom is — and the trouble is that this wisdom is as enigmatic as it is tantalizing.

Kennedy makes it quite apparent that a kind of ambivalent half-belief in expertise among experts themselves is what paradoxically makes the rule of professional knowledge immune from challenge. It

²⁴ And I would concur. See Samuel Moyn, *Human Rights in Heaven*, in HUMAN RIGHTS: MORAL OR POLITICAL? (Adam Etinson ed., forthcoming 2016), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2432448 [<http://perma.cc/4JVP-4CZZ>].

is “the subtle secret of its success,” he says at one point (p. 10). “[I]ndeterminate language and uncertain knowledge distribute wealth and power,” he adds (p. 2). Kennedy dwells repeatedly on the sort of disenchanted faith this uncertainty calls on experts to cultivate, but in perhaps the most remarkable passage in *A World of Struggle*, he explains that buried within the experience of expert rule itself lies an alternative to it. There is a moment, Kennedy reports, of “yielding” when two rival experts sure of their answers contend and one gives up to allow the other’s wisdom to prevail (p. 165). “The personal experience of legal pluralism that comes with ‘yielding’ unmoors professionals from the confident sense that their expertise grounds their action. Suddenly, there is a choice: a moment of vertigo and professional freedom” (p. 255). And in that dizzying instant, actual possibility beckons beyond sham compromises of injustice and the stabilization of expertise. Kennedy calls this “a moment of unknowing” in which it is suddenly possible to “glimpse an alternative to rule by experts” (p. 166).

In that moment, Kennedy affirms, “the world’s irrationality makes plain the constructed nature of theories about how it all fits together and the tendentiousness of practices in their name. Professional practice suddenly has no progressive telos, and international law opens as a terrain for politics, rather than a recipe or escape from political choice” (p. 255). Such a credo is easily recognizable, as Kennedy himself observes, as an existentialist ethics in which the central task is to erase the distortion that there are right choices and a true life, the better to embrace the “responsibility” of contingency and freedom.

But Kennedy leaves existentialist freedom as enigmatic as ever. And it is quite another matter whether such liberation of experts who acknowledge their ignorance would provide much of a step toward justice — for reformist expertise promises a modicum of improvement, not merely false certainty, and perhaps it is for this reason that its appeal regularly wins out.²⁵ It seems as if we will need something better than the mysticism of “unknowing” to beat it. Perhaps my two reservations in this Review concerning Kennedy’s magisterial achievement are related: a theory of how experts rule that is less focused on their language and more on forces outside expertise that help account for its ends, forms and outcomes might also induce less longing for “unknowing.” It might even promote an expertise oriented more explicitly toward alternatives in the world and thus preoccupied with the design of

²⁵ This is especially so since, in the tradition of unknowing with which Kennedy self-consciously affiliates, “[t]he instant of decision is a madness” — a nearly irrationalist stance in which few can have much practical confidence, and understandably so. Jacques Derrida, *Force of Law: The “Mystical Foundation of Authority,”* 11 CARDOZO L. REV. 919, 967 (Mary Quaintance trans., 1990). Derrida claimed to be paraphrasing Søren Kierkegaard. *Id.* Derrida explained, anticipating Kennedy, that such decisions involve “acting in the night of non-knowledge.” *Id.*

truly different institutions. In any case, the release of experts from their own resigned faith is obviously not equivalent to structural justice across the globe.

In *A World of Struggle*, Kennedy has written a memorable classic. It gathers together his longstanding inquiries in one place and takes them far beyond the domain of international law in which he began his career, and even beyond the precincts of legal theory. His book, the most sophisticated interpretation of “global governance” now available, is a tremendous contribution to the present generation, and future ones, about how best to think about our common plight — especially for those who would like a different world. Clearly, achieving that world will not just be a matter of bestowing the gift of beneficent knowledge on the operations of ignorant power; it is far too late for such a project to be believable.

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Published eight times during the academic year by Harvard law students.

Citations conform to *The Bluebook: A Uniform System of Citation* (20th ed. 2015), published by The Harvard Law Review Association for the *Columbia Law Review*, the *Harvard Law Review*, the *University of Pennsylvania Law Review*, and *The Yale Law Journal*.