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## From ‘people with projects’ to ‘encountering expertise’: a feminist reading of Kennedy’s *A World of Struggle*

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*A World of Struggle* is a lively, interdisciplinary and challenging account of how international actors might map the global order with greater accuracy.<sup>1</sup> In this, his latest book, David Kennedy encourages the reader to understand the role of expertise and technical vocabularies in the contemporary international order. In situating experts—and their struggles to assert a position, an approach, or technique—within the discourse and decision-making structures of international institutions, Kennedy renders the complexity of the global order of the early twentieth first century with greater nuance. This is an important work for international lawyers and for institutional actors in the international realm, or indeed for anyone who regards expertise itself as a solution to legal dilemmas and competing demands, be they within international humanitarian law, the law of the sea, international financial law, international environmental law, or international human rights law. In this brief comment on Kennedy’s book, I celebrate the potential it holds to transform our international legal methodologies, while inserting a series of feminist questions on structural biases (and the role of privilege in maintaining them) to draw out the substantive claims of the book. I also briefly engage with what I regard as the central challenge in the text: Kennedy’s optimism about the value of mobilising continued projects within the global order. Ultimately, I conclude, *A World of Struggle* provides an interesting juxtaposition found in the optimism of its concluding chapter and Kennedy’s own latent scepticism about the capacity for a responsive (and responsible) international order.

### Notes on Methodology

The innovation of Kennedy’s book lies in its approach to expertise: Kennedy commences a project to shift expertise out of the background of our thinking as international lawyers. Kennedy encourages international lawyers not only to foreground the work of experts but also to ask questions about the claims and demands made of experts. This leads to questions regarding how experts might be expected to provide neutrality while still reflecting complex projects and agendas via their expertise. Kennedy demonstrates how the political and ethical decisions that inform expertise are layered beneath the technical language that experts are expected to develop, refine and deploy to advise those with power to make decisions. Humanitarian intervention is a good example. While a legal analysis of decisions to deploy military force on humanitarian grounds might involve technical questions regarding the means of authorisation and/ or the nature of the force deployed, ultimately, Kennedy argues, the very language of humanitarian intervention shifts attention away from the complex ethical questions of using force to save.<sup>2</sup> Kennedy’s text re-positions the language and techniques of expertise as infused with political and ethical commitments and reminds us of the need to foreground the work of experts.

Kennedy’s approach dovetails with contemporary critical engagements on the role of indicators within international institutions and the increasing awareness of their embedded political and ethical

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<sup>1</sup> D Kennedy, *A World of Struggle: How Power, Law, and Expertise Shape Global Political Economy*, (Princeton UP, 2016).

<sup>2</sup> The best account of the ethical dilemma and law’s inability to actually provide a guideline for action is T Franck, *Recourse to Force: State Actions against Threats and Armed Attacks*, (Cambridge UP, 2003) chapter ten. Also, see: Kennedy, *ibid.*, at 115, 144-45.

character.<sup>3</sup> Indicators are increasingly developed to quantify complex social phenomena and to assist international institutions in developing comparisons. Thus, indicators can be described as ‘a named collection of rank-ordered data that purports to represent past or projected performance of different units’.<sup>4</sup> Contemporary critical legal work focuses, in particular, on how indicators often transpose political assertions into seemingly neutral assessments.<sup>5</sup> In this sense, Kennedy’s book is an important contribution to the emergent subgenre of critical legal scholarship that takes the technical components of the global order and renders their normativity visible. Rather than directly addressing the power differentials relevant to the workings of the global order and expertise within the global order, Kennedy provides an impartial account of expertise that allows understanding of the role of normativity without needing to overtly challenge specific actors within specific institutions.

The antecedents of this recent turn towards the study of indicators and expertise can be located in a long tradition of sociological and economic approaches to law within critical legal scholarship. Kennedy’s book thus reminds us of the continued value of critical legal studies to international law. In *A World of Struggle*, Kennedy extends the purchase of critical legal method through a careful unpicking of what experts actually ‘do’. He demonstrates the ways in which legal traditions, such as critical legal studies and legal realism, inform contemporary legal writing while also passing on the tools not only to renew but to also further critical legal practices. In this sense, *A World of Struggle* reaffirms the prescience of critical legal scholarship as straddling the political and the legal, as attentive to the modes and methods of legal reasoning and legal structures, and as explaining the indeterminate nature of legal structures through attention to actors, power and assemblages.

*A World of Struggle* is also adventurous at a methodological level. By this I refer not to its interdisciplinary scope or application, but rather to the underlying anthropological method Kennedy develops. While other authors, such as Prabha Kotiswaran, have shown the purchase of legal anthropologies in relation to the study of local communities, Kennedy asks what happens when anthropological tools are deployed to understand the knowledge-generating practices of the powerful.<sup>6</sup> He describes his inquiry as an attempt ‘to steer between bird’s eye accounts of the structures of the world system, the operation of the global economy or the constitution of the global legal order, and ground-level anthropology of people and things as they move in the world’.<sup>7</sup> Kennedy uses his engagements within international institutions as expert and amongst experts to conduct an ethnographic study of how decisions are undertaken and represented. The shift from an international order understood in the abstract—in isolation from the actors who construct and people the global order—to understanding international law through the eyes of the many people who realise its existence is of great value. Kennedy’s approach invites us to reflect on what it means for an international lawyer to make transnational actors their subject/sources for research. As international lawyers, even critical ones, we traverse and enter multiple spaces that invite us to participate in the making and development of international law. Intellectual projects that take stock of, listen to, and record how power is operationalised and maintained, on the one hand, and anthropological projects that listen to, record and analyse how power emerges from intersectional privilege, on the other, are

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<sup>3</sup> See, for example, KE Davis, A Fisher, B Kingsbury & K Engle Merry, *Governance by Indicators: Global Power through Quantification and Rankings*, (Oxford UP, 2012).

<sup>4</sup> Davis et al., (2012) 6.

<sup>5</sup> For example: S E Merry, ‘Measuring the World: Indicators, Human Rights and Global Governance’ 52 *Current Anthropology* (2011) 583; D Buss, ‘Measurement Imperatives and Gender Politics: an Introduction’ 22 *Social Policy* (2015) 381.

<sup>6</sup> P Kotiswaran, *Dangerous Sex, Invisible Labour: Sex Work and the Law in India*, (Princeton UP, 2011).

<sup>7</sup> Kennedy (2016) 2.

equally important to understanding how the disadvantages and harms experienced by those with greater distance from the working of power are constructed. In this sense, the legal anthropology undertaken by Kennedy—situating himself within spaces of expertise and recording how expertise operates, shifts and deploys within the global order—is an important methodological contribution to the discipline of international law.

### Insider Perspectives

Kennedy's mapping of expertise left me wanting to ask what is lost when international lawyers and scholars only engage from the perspective of insiders. The book develops 'an approach to conflict in global affairs from the inside out, foregrounding the knowledge practices of experts in the making and re-making of actors and structures through struggle' and proposes 'a cartographic model of expert struggle from the perspective of those who engage in it'.<sup>8</sup> Kennedy, while quite literally walking with experts within the global order, maps the structures and edifices that define the spaces within which international expertise operates. This is, in many ways, the strength of Kennedy's book. The insight garnered is complex, challenging and powerful. Yet questions about the persistence of structural bias risk being overlooked when a system is viewed only from within. The structural effects of race, economic, gender and ableist power differentials perpetuate and create preferences within institutional structures that can be impenetrable while rewarding actors and projects with similar biases. This leads to a space to ask of the effects of the flattening out projects/people as though all were equally entitled and to consider what happens when there is a failure to recognise projects/people that have no voice and cannot speak in the international realm. Furthermore, it is necessary to pay attention to the power of the structures of the international order to transform projects in such a way as to reassert the status quo rather than transform the structures of global governance.

People and their projects are at the centre of *A World of Struggle*. Despite the larger focus on the global order, Kennedy starts with people and not with states or institutions as one might expect.<sup>9</sup> 'It is helpful', Kennedy writes, 'to think of people coming to struggle with little backpacks of legal and other entitlements, powers and vulnerabilities ... People with backpacks pursue projects.'<sup>10</sup> This raises the question of whether some issues—say, gender equality or halting the worst effects of climate change or poverty—can be reduced to a project. It is true that the existing global order itself tends to level off the distinction between different issues or projects through the techniques of governance—but the work of critical legal scholarship must also be to identify the mechanisms that ensure the predominance of those 'projects' that lend themselves easily to international governance techniques, rather those that champion issues of intrinsic value, or even urgency. While Kennedy provides tools to illuminate the flattening out of projects or issues within the global order, his refusal (and that of critical legal scholarship generally) to commit to an ethical or political agenda is ultimately disappointing. Ironically, in reducing people to 'backpacks of legal and other entitlements,' Kennedy too risks rendering all 'projects' equal because it is the vernacular, the expertise, the toolkit in the backpack (rather than its intrinsic ethical or political worth) that positions an issue (or project) favourably within the global order. While offering valuable insight at many levels, the book is silent on how ethical and political choices are made. The expanding gap between the economically powerful and communities living in extreme poverty, for example, raises urgent questions about global poverty

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<sup>8</sup> Kennedy (2016) 67.

<sup>9</sup> Kennedy (2016) chapter two.

<sup>10</sup> *Ibid.*, 67.

and inequality that are simply unanswered by a focus on the techniques of global governance. Responding to entrenched poverty is not the same as, say, producing global communications networks—yet both rely on expertise and techniques of global governance

The focus on expertise also risks overlooking those people and communities whose projects do not register in the global order. Kennedy acknowledges that there are many projects regarded as unworthy of global attention.<sup>11</sup> What, however, if the vying for attention within the global order offers, ultimately, a failure of politics and ethics within global institutions? Kennedy addresses the risks of insider perspectives in chapter three and describes the global order as comprising a fluid space (and vernacular) where ‘the most effective players are strategic, flexible in their use of the available vernacular, finding ways to cross lines’.<sup>12</sup> Kennedy seems to be suggesting that there is no permanent outside positioning in relation to the global order and that various groups, and their projects, always retain the capacity to shift and rearrange themselves both inside and outside the global order through the vernacular of expertise and the re-articulation of political and ethical expectations via the neutral language of expertise. Groups outside the global order must use the vernacular of the international to enter the space of decision-making. This, nevertheless, demands knowledge, including the knowledge of how and when to speak and a desire to speak over other forms of communication. Vernaculars of rage, of protest or of desire are often explicitly removed from international spaces and communications. While expertise might offer, if understood in Kennedy’s terms, a vernacular for re-rendering rage, protest, desire, even passion into forms intelligible to the global order, it is important that we pay attention to what is lost—and what of the speakers who understand what is lost—when the poem, or the placard, are re-imagined through the language of expertise.

Gender initiatives provide an excellent example. Gender rhetoric has advanced considerably in the past two decades especially in relation to conflict-related sexual violence.<sup>13</sup> The fact that initiatives to save women from conflict-related sexual violence represent a specific (narrow) feminist agenda displaces attention from postcolonial, economic and structural effects of gender discrimination, in a model that imagines all backpacks, or projects, as equal. Where all expertise is equal, all issues bustle for the attention of the global order and ultimately the success of a project is reduced to the communication tools of the actors and their backpacks. Nevertheless, the underlying assumption—that it is simply a matter of re-fashioning agendas into the vernacular of expertise—is problematic in dictating how—and whose—projects are received into the global order. If the only way to make sense of the loss of an island home due to global warming is through traditional songs that connect local histories to land and sea, it seems impossible that this would be received by or as expertise on climate change.

### **Co-optation**

Kennedy describes expertise in the global order as positioning ‘the people who do it between what is known and what must happen’.<sup>14</sup> The expert is neither the producer of knowledge (informing the measure or the practice) nor the decision-maker (deciding what the measure or practice produces or in which situation it might be applied) but rather ‘the background between the foreground and context’.<sup>15</sup> This permits experts to recede as decision-makers, because their work, while specialised, is technical,

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<sup>11</sup> Kennedy (2016) 108.

<sup>12</sup> Kennedy (2016) 103.

<sup>13</sup> See, for example: SC Res. 2272, 11<sup>th</sup> March 2016.

<sup>14</sup> Kennedy (2016) 110.

<sup>15</sup> Kennedy (2016) 128.

and, as such, ‘when background work has been most successful, it is very difficult to see’.<sup>16</sup> This is a powerful and useful insight, which the book develops with great skill. The gender expert however, who in many cases emerges with a clear set of political and ethical commitments (drawn from feminist politics and feminist histories), instead of finding an embedded feminist agenda within the tools of expertise, discovers the stripping out of feminist knowledge in the development of gender expertise. While the ethical and political commitments of gender initiatives within the global order are (usually) drawn from feminism, or modes of feminism, the outcomes reflect a simplified vision of feminism and tend to reinforce the structures of the global order over a transformative feminist politics.<sup>17</sup>

Of course, feminist projects also encompass a broad set of agendas or, in Kennedy’s words, comprise a ‘plural and contested activity’.<sup>18</sup> However, it is in the emergence of the space of gender expertise, I argue, that feminist agendas are effectively flattened, so as to reflect not feminist commitments, but the available apertures for action in the global order. The most recent Security Council resolution on women, peace and security (SC Resolution 2242) is a good example of the transference of feminist agendas into institutional (or hegemonic) renewal. Through the incorporation of three operative paragraphs on terrorism,<sup>19</sup> the resolution potentially undermines fifteen years of work centring women’s lives in the work of the Security Council, asserting instead the interests of powerful states with respect to terrorism as leading the next stage of work on women, peace and security.<sup>20</sup> In linking ‘women, peace and security’ with the security apparatus for challenging terrorism and violent extremism, the institutional approach, led by states benefitting from a prolonged ‘war on terror’, dominates the approach to terrorism contained in UN Security Council Resolution 2242. For Ní Aoláin

... the superficial inclusion of references to women in the context of addressing terrorism and advancing counterterrorism strategies should not be read as a form of meaningful intersection between the Women, Peace and Security agenda and by now well-established post 9/11 international security regimes.<sup>21</sup>

In other words, the contours and values of the global order re-produce feminist agendas to align with the existing biases and deficits of the structure. While feminist actors might, in the past, have challenged the evolving text on women, peace and security, and critically evaluated the Security Council’s approach,<sup>22</sup> Security Council Resolution 2242 makes explicit the preoccupations of powerful actors in particular states, as mobilising the work of gender experts to pursue a security model that is unlikely to connect to feminist approaches to security in any meaningful way.

Gender experts, if we follow Kennedy’s account, are something of an anomaly because they are likely to clearly express a political/ ethical commitment. The feminist politics deployed through gender expertise in the global order usually makes clear its associations with feminist theories and women’s activism. Unlike the international actor who comes with a project, a backpack, to be deployed via the

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<sup>16</sup> Kennedy (2016) 128.

<sup>17</sup> L Ferguson, “This is Our Gender Person”, 17 *International Feminist Journal of Politics* (2014) 380.

<sup>18</sup> Kennedy (2016) 132.

<sup>19</sup> UN SC Res. 2242, 13<sup>th</sup> October 2015, para. 11-13.

<sup>20</sup> For extended discussion, see: F Ní Aoláin, ‘The ‘war on terror’ and extremism: assessing the relevance of the Women, Peace and Security agenda’ 92 *International Affairs* (2016) 275.

<sup>21</sup> Ní Aoláin (2016) 289.

<sup>22</sup> D Otto, ‘The Exile of Inclusion: reflections on the gender issues in international law over the last decade’ 10 *Melbourne Journal of International Law* (2009) 11.



techniques and apertures within the sub-disciplines of the international legal framework (for example, the language of rights or development), the contents of the backpack of ideas and projects brought to the global order via the history of feminist politics are transparent—the agenda and tools are clearly visible. Yet in filtering feminist approaches through its own global institutions and via the required consent of states, the global order re-shapes gender tools to fit the existing contours of the global order and its structural arrangements. This reminds us that there are additional power structures that must be interrogated to fully understand expertise within international institutions. What might look on the surface like the absorption of (say) gender politics into the framework of international institutions, ultimately re-asserts the shape and form of the institutions themselves and quickly discards the underlying political and ethical commitments, and methods, of feminist activism, scholarship and knowledge.

### Optimism

The example of gender experts and their contemporary emergence in global governance tempers my acceptance of the optimism in Kennedy's book. Feminist actors are well aware of the power that disenfranchisement, impulse and a sense of awakened belonging can contribute toward critical endeavours that may dent and transform the global order from within. These are precisely the type of motivations that led women to gather in Geneva in 1915 and create the resolutions for peace, or, almost a century later, the participants in the Women's International League for Peace and Freedom to draft a resolution that would be taken up by the Security Council in 2000.<sup>23</sup> Yet despite the critiques, commitments, and 'backpacks' brought to the global order through feminist and gender initiatives and despite the apertures within which these ideas have been given space, the visible outcome is an inability of the global order to accommodate projects (such as feminist agendas) that were external to its origins. The take-up of feminist agendas reverts to a means for intervention, for military action, for criminalisation, for apprehending terrorists, for 'saving' non-Western women and for propelling Western women into elite spaces. At the same time, postcolonial feminist voices, feminist work on the political economy of gender and feminist engagements with the structural bias of international law remain academic rather than transformative. This, for me, is the unresolved challenge articulated in Kennedy's book. I struggle to remain optimistic about a structure that disguises the ethical and political choices it absorbs. I struggle to accept the vocabularies of expertise in the global order as capable of being transformative tools. At the same time I find Kennedy's insight necessary and his optimism refreshing. This is the tension the title encapsulates—and the book is successful in placing the struggle of structure versus transformation at the forefront of contemporary critical inquiries.

Kennedy's analysis of war and law underscores this point, as does the study of humanitarian intervention in *A World of Struggle*. Kennedy describes the intersection of humanitarianism and militarism in the contemporary global order resulting in 'the modern partnership of war and law [that] leaves all parties feeling their cause is just and no one feeling responsible for the deaths and sufferings of war'.<sup>24</sup> The global order is less amenable to people with projects, he seems to suggest, than we might have hoped. Despite this, Kennedy closes the book with considerable optimism, telling readers:

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<sup>23</sup> On the 1915 peace conference, see: F Baetens, 'International Congress of Peace (1915)', in R Wolfrum (ed), *Max Planck Encyclopaedia of Public International Law*, (Oxford UP, 2010) 455; on the role of Women's International League for Peace and Freedom in the creation of Security Council resolution 1325, see: F Ruby, 'Security Council Resolution 1325: A Tool for Conflict Prevention?', in G Heathcote and D Otto (eds), *Rethinking Peacekeeping, Gender Equality and Collective Security*, (Palgrave 2014), 173–184.

<sup>24</sup> Kennedy (2016) 287.

And there is community. Others, scattered around the world, share a similar impulse for innovative intellectual reflection, if probably for quite different reasons. Together, you can change the world.<sup>25</sup>

Here, Kennedy endorses the role of people with projects in re-making and re-orientating the global order, hinting at the capacity of international arrangements to continually re-align and refine the political and ethical commitments of the system. Kennedy's account in *A World of Struggle* offers this as perhaps the only mode of understanding the international order if we do not wish to walk away in despair.

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<sup>25</sup> Kennedy (2016) 279.