



THE UNIVERSITY *of* EDINBURGH

Edinburgh Research Explorer

Introduction

Citation for published version:

Desai, D & Lang, A 2020, 'Introduction: Global un-governance', *Transnational Legal Theory*.
<https://doi.org/10.1080/20414005.2020.1824515>

Digital Object Identifier (DOI):

[10.1080/20414005.2020.1824515](https://doi.org/10.1080/20414005.2020.1824515)

Link:

[Link to publication record in Edinburgh Research Explorer](#)

Document Version:

Peer reviewed version

Published In:

Transnational Legal Theory

Publisher Rights Statement:

This is an Accepted Manuscript of an article published by Taylor & Francis in *Transnational Legal Theory* on 7 October 2020, available online: <https://www.tandfonline.com/doi/full/10.1080/20414005.2020.1824515>

General rights

Copyright for the publications made accessible via the Edinburgh Research Explorer is retained by the author(s) and / or other copyright owners and it is a condition of accessing these publications that users recognise and abide by the legal requirements associated with these rights.

Take down policy

The University of Edinburgh has made every reasonable effort to ensure that Edinburgh Research Explorer content complies with UK legislation. If you believe that the public display of this file breaches copyright please contact openaccess@ed.ac.uk providing details, and we will remove access to the work immediately and investigate your claim.



Introduction: Global Un-Governance

We sketch a novel mode of governance – “global ungovernance” (GU) - which draws on and informs the articles in this special issue. GU operates in the context of transnational institution-building projects which at once pursue big visions with claims to universality (e.g. building “markets” or the “rule of law”), and at the same time offer no adequate prescriptions. We argue that the “impossibility of closure” becomes a central problematic of practical activity in GU -- by which we mean the ultimate practical impossibility of matching institutional structures with desired outcomes in these contexts. Viewed as a set of organised practices, GU evinces a commitment both to pursue closure and to embrace its impossibility, equally competently and even at the same time. As a result, GU changes the nature, purpose and conditions of possibility of institution-building techniques and practices.

Keywords: global governance, ungovernance, institutions, rule of law, markets Deval Desai, Lecturer in International Economic Law, University of Edinburgh Law School; and Research Associate, Albert Hirschman Centre on Democracy, Graduate Institute, Geneva; corresponding author: ddesai@ed.ac.uk

Andrew Lang, Professor of Law, Chair in International Law and Global Governance, University of Edinburgh Law School, alang3@ed.ac.uk

Introduction

[N]ot that long ago most in the legal profession thought they knew how it all worked. There was private law and public law, national law and international law, each with its own domain. Global governance was the sum of these well known parts...

[Today, there is] accumulated frustration among all those navigating the global political economy with only our routine maps of how the global game is played and where the rules are made.¹

If our ‘routine maps’ of the ‘game’ of global governance are a source of frustration—and we agree that they are—then such frustration demands a new cartographic enterprise. On one level, this is the purpose of this special issue. It contributes to new maps of the complex and fragmented ‘global game’ by offering a description of a novel mode of governance— ‘global

¹ David Kennedy, ‘The Mystery of Global Governance’ (2008) 34 *Ohio Northern University Law Review* 827, 828.

ungovernance' (GU).² In this piece, we introduce GU through some short vignettes that demonstrate it in action (section 1). We then sketch some of the characteristic elements of the practice of GU, and what they demonstrate about its novelty (sections 2 and 3).

Our basic argument moves as follows. First, GU operates in the context of transnational institution-building projects which at once pursue big visions of aggregate institutional forms with claims to universality (eg building 'markets' or the 'rule of law'), and at the same time offer no adequate prescriptions nor pathways for attainment. Second, while there are many ways of conducting such projects, GU is distinctive in its relationship to what we call the 'impossibility of closure', by which we mean the ultimate practical impossibility of matching institutional structures with desired outcomes. The impossibility of closure becomes a central problematic of practical activity in a GU mode. Third, viewed as a set of organised practices, GU evinces a commitment both to pursue closure and to embrace its impossibility. This mode of governance is marked by the ability to enact both commitments equally competently and even at the same time. Fourth, GU changes the nature, purpose and conditions of possibility of institution-building techniques and practices. Their success and failure are not measured in their ability to build institutions, but in their ability to keep rearranging what visions such as the 'market' look like. To do so, GU explicitly produces and intervenes on its own conditions of possibility—the complexity and open-endedness of institutional arrangements.

At this level, the term 'global ungovernance' signifies an iteration of 'global governance'. The prefix 'un' does not indicate an *absence* of governance at the global level. Instead, it points to the explicit commitment to the inevitable impossibility of producing aggregate institutional forms that we find characteristic of GU as a mode of governance. At another level, this special issue also troubles some existing cartographic efforts. If maps of global governance describe how 'the global' and 'governance' are made to relate (mutual production, practical assemblage, superstructural effect, and so on),³ global *ungovernance* implies (potentially productive)

² While 'mode of governance' is 'usually polysemous, loosely defined, and often used without the necessary context', we use it to refer to specific ways of organising practices and techniques of governance: Jean-Pierre Olivier de Sardan, 'The Bureaucratic Mode of Governance and Practical Norms in West Africa and Beyond' in Malika Bouziane, Cilja Harders and Anja Hoffmann (eds), *Local Politics and Contemporary Transformations in the Arab World: Governance Beyond the Center* (Palgrave Macmillan 2013) 43, 49–51; Oliver Treib, Holger Bähr and Gerda Falkner, 'Modes of Governance: Towards a Conceptual Clarification' (2007) 14 *Journal of European Public Policy* 1.

³ Andrew Hurrell, *On Global Order: Power, Values, and the Constitution of International Society* (Oxford University Press 2007) 20–21.

tensions between the two, where ‘global’-ness—eg visions with claims to universality—explicitly troubles the possibilities of governance, and *vice versa*.⁴ In Section 4, we consider how the articles in our special issue stage some of these tensions, and in doing so, set out some directions for future research.

1. Vignettes

i. Rule of law reform

It is 2013, at the UN headquarters in New York City. At the fringes of the General Assembly, two-dozen experts have gathered for a two-day workshop to develop global indicators for the rule of law. These indicators are intended to measure the future success of the Sustainable Development Goals (SDGs)—a set of aspirational benchmarks nominally designed to raise living standards, particularly in the global South. In the opening remarks three invited speakers elaborate the futility—even absurdity—of developing meaningful global indicators for the rule of law. They argue that the rule of law is too multi-faceted, too political, too contextually-specific and too essentially contested to be captured in indicator form. No set of indicators can measure the ‘rule of law’ in a way that is valid in every place, and to everyone. The assembled experts nod along. And after a coffee break, they sit down and get to work, haggling out the details of just such an indicator—even having agreed moments ago that the rule of law is fundamentally unknowable and thus unmeasurable, they still believe that it is worth knowing and measuring. They eventually agree not on universal indicators, but on a commitment to ‘pilot’ provisional and differing ‘baskets’ of indicators at different places and times. Indeed, chief statisticians of UN agencies have publicly complained that these indicators are being adjusted *too much* to reflect local political priorities, thereby undermining their comparative data-generating value.⁵

ii. Marketisation

⁴ Stephen Humphreys, ‘Ungovernance of Climate Change’ (2020) *Transnational Legal Theory* (this issue) offers a typology of tensions and effects.

⁵ IISD’s SDG Knowledge Hub, ‘Guest Article: Are We Serious About Achieving the SDGs? A Statistician’s Perspective | SDG Knowledge Hub | IISD’ online: <<http://sdg.iisd.org/commentary/guest-articles/are-we-serious-about-achieving-the-sdgs-a-statisticians-perspective/>> accessed 21 January 2020.

A series of increasingly bitter economic disputes has arisen in international forums between China and its major trading partners. The subject matter of these disputes is not eye-catching: they concern steel pipes and cylinders, woven sacks, tyres, aluminium extrusions, and other products which rarely trouble the imagination of even the most engaged global citizen. But they represent the outcome of a deeply held view, prevalent in the relevant corridors of Washington, Brussels, Paris, and elsewhere, that China's emergent market economy is profoundly distorted, and that its emergence as a major player in global trade has as a consequence structurally distorted the global economic order. Chinese firms, it is said, benefit from artificially low costs of production—cheap finance from state-owned banks, under-priced raw materials costs from state-owned enterprises operating with structural overcapacity, land rights allocated by non-transparent processes at below market rates—and their exports artificially depress world prices.

As these disputes are litigated before domestic and international tribunals, a series of technical and juridical processes are set in motion, which have as their objective to define the nature of these distortions, and to quantify them. What, precisely, are the distortions which beset China's markets, and how are their impacts felt? What, in fact, should the true price of steel—or the true cost of finance, or the true value of land rights—be in China, were it not for these distortions? Indeed, is the Chinese economy a 'market economy' or not? These are the questions on which vast commercial stakes depend, and a variety of bodies of international expertise have emerged, alongside a range of new legal and scientific techniques, to try to answer them more or less definitively. But the task is at some level impossible, and a recognition of this impossibility seems never far from the surface. A tribunal acknowledges that the job of controlling for all distortions simultaneously is too complex to be amenable to rigorous reasoning.⁶ A chief trade negotiator with deep experience opines that certain questions of this kind are fundamentally unsuitable for litigation. A dispute concerning the nature of the Chinese economy is discontinued by mutual agreement of the parties—even after the issuance of an interim decision.⁷ There is, moreover, a sense of deep unease amongst many of the professional civil servants assisting these tribunals, that they are being asked questions which

⁶ Panel Report, *United States – Countervailing and Anti-Dumping Measures on Certain Products from China*, WT/DS449/R and Add.1, adopted 22 July 2014, as modified by Appellate Body Report WT/DS449/AB/R, DSR 2014:VIII, p. 3175 para 10.189 and surrounding.

⁷ *European Union – Measures Relating to Price Comparison Methodologies*, DS516/13, Communication from the Panel (14 June 2019).

are beyond their proper mandate and competence. But disputes continue to be brought, and the practical imperative of their determination remains.

iii. FairTrade

The FairTrade label was established in order to provide an alternative to existing market mechanisms for organising relations between suppliers and consumers, and an alternative to existing market prices as a means of valuing production. Producers of selected primary products are remunerated at an above-market rate, provided they meet certain defined social, environmental and other standards. The scheme is a clear expression of the view that market price is not a true, adequate or justifiable measure of the value of the work of producers—or, in other words, that their activity is undervalued by existing markets.

In May 2017, the UK-based supermarket chain Sainsbury's decided no longer to certify its own-brand teas as FairTrade, and instead to start its own in-house ethical label, 'Fairly Traded'. This decision apparently came after growing doubts within Sainsbury's that the FairTrade label was indeed working as well as it could, and in particular, whether the FairTrade premium, paid to producer cooperatives in the FairTrade model was being put to the best and most socially responsible use. The departure of Sainsbury's was experienced as something of a bombshell within the UK ethical trading initiative sector, but it was reflective of a broader trend towards in-house standards across the agri-business sector globally. It also followed a well-known earlier splintering, when in 2011 Fair Trade USA separated from the international fair-trade network to create its own certification scheme, over its decision to certify all plantation crops using hired labour.

In part in response, the FairTrade Foundation has developed a dual focus. On one hand, it has continued to defend its own practices of valuation and its own standards of ethical production. It continues its core standard-setting activities, calculating proper prices for different commodities through complex metrics for determining the costs of sustainable production, asserting their superior claims to 'fairness', and promoting a particular vision of the organisational structures of a fair market, based on producer collectives, enhanced labour organisation, environmental sustainability, and so on. On the other hand, however, it has also begun to view the proliferation of certification schemes not (just) as a problem to be managed, or a set of competitors to be confronted, but also as something to be enabled, supported, and

even embraced. In a world of proliferating ethical trading initiatives, the ‘role of FairTrade’, Lord Price of the FairTrade Foundation has observed, ‘is to help those organisations be the best they can be’.⁸ As a result, there is now an important additional focus of the FairTrade Foundation’s work, namely, providing consultancy services to other organisations on how to establish and run a certification scheme effectively. The role of FairTrade in the Ethical Trading Initiative space, then, is doubled: to define and defend a particular set of rules and frameworks for equitable global commerce, and at the same time to enable and ensure the integrity of a more open-ended process for the co-generation of a plurality of standards, working in competition with one another.

2. Global Un-governance

These vignettes together and individually gesture towards a set of phenomena which we are provisionally lumping together under the label of ‘global ungovernance’. They are not simple illustrations of GU, nor are they morphological components of an elephant which we are trying blindly to understand. Rather, together they manifest some contextual characteristics that seem to us to be aspects of GU as a mode of governance. We detail what we consider to be four key characteristics here. The aim of this section—and the vignettes just set out—is not to provide a fully specified account of GU, but rather to offer a loose but hopefully productive framework with which to read the subsequent contributions. We make no strong or conclusive claim about the constitutive and defining elements of GU, but rather a series of observations about a number of elements which have a central place both in the vignettes above and the articles in this special issue.

First, we and our contributors are interested in contexts explicitly oriented towards the construction and reconstruction of ‘institutions’: the reconfiguration of political institutions under the rubric of the ‘rule of law’ within the larger context of development; the reassembling of economic institutions in the context of building competitive markets; the post-conflict (re)construction of political and constitutional order, or of institutions of transitional justice. For the moment, we set aside the question of the historical trajectories in which these different

⁸ ‘Is fair trade finished?’, *The Guardian*, 23 July 2019, available at <https://www.theguardian.com/business/2019/jul/23/fairtrade-ethical-certification-supermarkets-sainsburys>.

institution-building processes may best be understood, and their similarities and differences, returning to it in Section 4 below.

These institution-building processes, moreover, are typically attached to particular, institutionally-oriented, larger visions—development, the rule of law, marketisation, sustainable production, self-determination, constitutionalisation, and so on. These visions are expressed as the ultimate goals of the construction of institutions, and they are expressed in a form which is general, aspirational, inspirational, chimeric—and yet also tractable. While we are not interested here in these larger visions themselves, they are important in part because they help to provide the basis for practical commitments underlying these fields.

As a result of their tractability, these visions are accompanied by fields of activity of institutional (re)construction (we use ‘field of activity’ in an ordinary sense to refer to an allied and non-exclusive set of forms, artefacts, and practices). These fields are structured by a particular kind of expert practice, which consists in matching institutional forms to desired aspirational goals stated generally. Such practice entails, for example, deducing institutional form from abstract principle, measuring institutional characteristics and outcomes with metrics representing these larger goals, modelling of ideal types based on these larger visions, diagnosing success and failure by reference to some version of them, identifying instances of transferable success, and so on.

That is to say, whether through some intrinsic quality, efforts to make it so, or some combination of the two, these visions are suffused with the possibility, necessity, and urgency of their realisation, while offering little guidance in how to make them real. As a result, and importantly, disagreements are typically not expressed or occasioned as conflict over desired endpoints, but rather as disagreements about facts, directions and mechanisms of causation, what counts as evidence and how it can appropriately be used, etc.

Second, GU emerges in some manner from an encounter with what we call the ‘impossibility of closure’. This is an important term here, as our understanding of it sets the stage for our account of GU. We begin by explaining what we mean by ‘closure’.

Institution-building projects of the kind we are interested in are oriented towards ‘closure’ in the sense that they are directed towards the definition and production of

determinate and mobile artefacts that lead to seemingly specific institutional forms. These institutional forms may be thought of in aggregate terms as a ‘market’, a ‘political settlement’, a ‘constitutional order’, or the ‘rule of law’, and in that sense ‘closure’ refers to the work of establishing and maintaining these forms. But doing this work effectively involves the endless production, operationalisation and arrangement of a range of component artefacts. Pursuing sustainability by way of a certification scheme for ethical production requires the definition of acceptable organisational forms and decision-making structures for certified producers, as well as calculative techniques for determining fair prices and wages in different sectors and contexts.

To say that these fields of activity are oriented towards ‘closure’ is simply to say that they are organised around the goal of producing some imagined aggregate institutional end-states, by means of *practices* which typically involve the ongoing mobilisation and operationalisation of such artefacts. These practices can usefully be thought of as ‘knowledge practices’, in the sense that they have an inescapably epistemic character, and centrally involve the knowledge work of trained professionals. And ‘closure’, assuming it were ever possible, is not simply an inherent characteristic of the artefacts these professionals set in motion. It is intended to be understood as a practical achievement of these practices. Thus, for rule of law experts, the rule of law is not achieved simply by its transformation into an indicator, but by their continual work to produce, mobilise, and reiterate indicators and other artefacts like it.

Importantly, the notion of ‘closure’ involves not just the production of these artefacts in any particular context, but also their mobility. Miller describes in her article how the development of the field of transnational justice depended on both the commensuration of different contexts (narratives which emphasised ‘the commonality of distinct places, nationalities, and backgrounds in relationship to violence and justice’) and the creation of a ‘transplantable toolkit’ of common practices (‘trials, truth commissions, reparations, lustrations’).⁹ This is a common feature of many of the contexts in this special issue: knowledge practices not only make and use artefacts, they make them moveable and move them, for the purposes of evaluation and taking action.

⁹ Zinaida Miller, ‘Embedded Ambivalence: Un-Governing Global Justice’ (2020) *Transnational Legal Theory*, (this issue).

What, then, of the ‘impossibility’ of closure? In short, we are asserting here that these practices of ‘closure’ fail, in the specific and limited sense that they do not and cannot achieve the closure that they purport to seek. (In other words, in speaking of failure, we are not discounting the possibility that ‘failure’ is in fact productive of other goals, as we further discuss in this section.) Moreover, they ‘fail’ in a way which is not just sporadic or contingent but rather necessary, enduring, pervasive, or spectacular. This ‘failure’ can take different forms. The goals and imagined end-states of professional practice may never materialise: ‘peace governance’ produces no enduring peace. Institutional transplants may fail in the sense that they fail to transfer their predicted or characteristic modes and logics of operation from context to context. Knowledge practices may fail to adequately account for complexity—that is, there may be a persistent and unavoidable mismatch between the knowledge artefacts associated with these fields of activity, and the complex world which continually surprises, confounds, and escapes prediction and control. Or knowledge artefacts may fail to take determinate form despite efforts at ‘closure’—that is to say, they may contain salient and persistent indeterminacies, *aporiae* and insubstantial qualities. The second and third of our vignettes exemplify this sort of failure, demonstrating the ways in which practices for measuring market ‘distortions’ on one hand, and fair conditions of production on the other, consistently resist closure and fragment in their operationalisation. The ‘impossibility’ of closure, for us, refers to the inescapably fragile, contingent, interested, indeterminate nature of these artefacts, and the ultimate practical impossibility of decisively matching institutional structures with desired outcomes.

Just as ‘closure’ is, for us, a practical achievement, so ‘impossibility’ is a claim about the relationship between practices and their effects. We do not intend it as an epistemological claim—that ‘closure’ of the relevant knowledge artefacts in the sense described above is to some degree always impossible. Equally, we do not intend this as a phenomenological claim about the subjectivities of individuals operating in these professional fields—that is to say, the claim that these individuals come to believe in the impossibility of closure. This can be true, and often is, though in our view the way that the impossibility of closure is subjectively experienced and internalised at the individual level is highly variegated.¹⁰ Rather, we make the

¹⁰ It might be the experience of being misunderstood by an interlocutor, attending a meeting characterised by ‘talking past’ rather than ‘talking to’, a sense that the questions routinely being asked of you are not the ones you are equipped to address, a frustrating inability to replicate ‘success’, a narrowing of the perceived boundaries of one’s expertise and competence, and so on.

claim that the impossibility of closure is a matter of observable relations between practices and outcomes in the field under study. To the extent that our argument depends on the idea that the impossibility of closure is *explicitly recognised* within the field of activity, it should be understood as a *problematic* of the field of activity itself (i.e. that which the field takes as its formative and logical prior). To continue this claim, the impossibility of closure is baked into, and evidenced in, the structure, artefacts, practices and organisation of a field of activity, rather than as a particular set of beliefs common to its participants. The ‘rule of law’ takes the form of ‘baskets’ into which different ‘provisional’ and ‘pilot’ indicators can be placed and removed over time, and which vary by context. The FairTrade Foundation’s role in ‘certifying the certifiers’ emerges precisely from an embrace of the impossibility of closure—that is to say, the fragmentation and pluralisation of the space of ethical certification.

Third, from the foregoing flows our core claim about GU: it involves a change in the relationship of a field of activity to what we have called ‘the impossibility of closure’. Gordon and van den Meerssche provide us with a useful analytic for describing the nature of this change.¹¹ On one side is Oedipus, whose approach to governance consists in ‘cabining off and setting limits to the *aporiae* and the unknown’. Governance in this mode involves a set of techniques which presuppose the possibility of ‘closure’ and set about achieving it—even if, as a practical matter, the application of such techniques endlessly fails and endlessly iterates. On the other side is the ‘wellness guru’, who actively seeks to ‘embrace the unknown for productive purposes’. In this mode, governance involves a set of techniques which presuppose the impossibility of closure, and use that impossibility as the precondition, impetus, and starting point for mechanisms of social control and the production of social order.

Embracing the impossibility of closure thus signifies something different from acknowledging the *fact* of the impossibility of closure (which we think has been a feature of many of these fields from their inception). Nor are we saying that GU consists in an awareness of the limits of one’s knowledge, and responding to it through routinised adaptation, learning, or further experimentation, nor for that matter in an understanding of the inevitability of indeterminacy and doubling one’s subjectivity accordingly (eg the disenchanted expert).¹²

¹¹ Geoff Gordon and Dimitri van den Meerssche, ‘Cultivating Machers: Risk and Resilience at the World Bank’ (2020) *Transnational Legal Theory* (this issue).

¹² We suspect that awareness of this fact has probably always been more prevalent than is typically assumed, though no doubt it varies over time.

Rather, GU entails a set of practices which may *actively seek* to encounter, produce, and harness, their own indeterminacy (or the experience and expression of it) as a generative principle. The impossibility of closure is an enabling precondition for these practices, rather than an obstacle to be overcome or managed, or limitation to be accommodated. These are practices oriented not towards the production of stable and coherent artefacts, but rather the maintenance and exploitation of their instability and incoherence.

Importantly, our claim about GU is not that it represents a *shift* from the first mode to the second, from Oedipus to the wellness guru. Rather, the articles in this special issue suggest that GU involves *both* modes. GU evinces a simultaneous commitment both to pursue closure *and* to embrace its impossibility. Its practices keep institutional forms open-ended and ‘in play’, but at the same time pursue the activity of institution-building in some concrete and practical way. As a mode of governance, or organisation of practices and techniques, GU can thus be understood as setting both commitments in relation to one another.

Doing so seems to us to function in significant part as a way of building and holding together spaces for collective action within our fields of activity. The aspiration for closure helps to ensure the continued viability of institution-building projects as the central focus of everyday collective action in the field, and as a plausible (and fundable) focus for the energies of professionals nominally interested in ‘justice’, ‘peace’, ‘development’, ‘growth’. The embrace of openness ensures that these projects remain plausibly fragile and under-determined, reducing the stakes of commitment, making exit easier, and helping to hold diverse interests in temporary and provisional alignment.

From the outside, this looks like a difficult balance to maintain. Part of the solution seems to come from an aesthetic or style of practice which is characteristic of some of these fields—one which valorises a mastery of techniques of both openness and closure, and the ability to move comfortably between competent performances of both. As Miller puts it in her article, this is ‘a governance *style* that manages the seeming contradictions of experiment and blueprint’ by moving between both.¹³ Another part may also derive from practices of representation and argumentation which excel in fragmenting and pluralising concrete

¹³ Miller, (n 8) (emphasis added).

institution-building proposals, thereby holding open spaces of potential future action as the proper domains of practical governance.¹⁴ And, as Bell's contribution clearly illustrates, it can be an effect built into institutional arrangements themselves—that is to say, an effect of setting different institutional arrangements in relation such that they subject each other to mutual critique, thereby unsettling their determinacy even as they take form.

Fourth, we make a series of claims about the translation of this changed relationship to the impossibility of closure into a mode of governance. In particular, we focus on how GU changes the nature of knowledge artefacts, practices, and techniques; as well as their relationships to failure and their own conditions of possibility.

We see GU in fields of activity in which processes of 'closure' have traditionally operated—that is to say, the processes by which mobile and determinate artefacts for institution-building purposes have typically been produced, determined, applied, reinvented, distinguished, transferred and so on. And in those fields with which we are most familiar, GU seems to entail a shift in the nature of the knowledge artefacts produced. One way of describing this change is that these artefacts—institutional models, ideal institutional types, techniques for evaluating and designing institutions, and so on—take on the character of 'organising fictions', which have practical value not from a claim to represent the world accurately, but from their function in orchestrating collective action of the particular kind discussed above. We are used to thinking of knowledge artefacts as authoritative to the extent that their representational claims are accepted, their conditions of production black-boxed, and their underlying epistemic practices mystified. On this basis, World Bank rule of law indicators become 'technologies of global governance'; the market is reified, naturalised, and is made to stand for a more or less well-defined configuration of institutions.¹⁵ The knowledge artefacts we draw attention to look different: they are produced by reflexive rather than essentially mystifying epistemic practices, by which we mean practices which expressly and importantly entail reflections on their own inevitable failure to know much about the institutional problem at hand. Thus, in the vignettes above, the development of rule of law indicators for the SDGs proceeds from the assumption

¹⁴ Andrew Lang, 'Governing "As If": Global Subsidies Regulation and the Benchmark Problem' (2014) 67 *Current Legal Problems* 135; Deval Desai and Mareike Schomerus, "'There Was A Third Man...': Tales from a Global Policy Consultation on Indicators for the Sustainable Development Goals' (2018) 49 *Development and Change* 89.

¹⁵ Kevin E Davis, Benedict Kingsbury and Sally Engle Merry, 'Indicators as a Technology of Global Governance' (2012) 46 *Law & Society Review* 71.

that trying to define the rule of law is an absurd enterprise, while market benchmarking becomes a self-conscious artificial exercise in the application of legal technicality.

GU also seems to be associated with a modified repertoire of techniques and practices of institution building. We are only beginning to explore the nature of this new repertoire, but the contributions to this special issue provide a highly suggestive set of illustrations. This is particularly so for the techniques elaborated in Bell's article.¹⁶ For us, the key is that practices of institutional production in the mode of GU have the effect of keeping institutional forms unsettled, and always potentially in motion, so that they are constantly in play. This is an effect not just of a change in practices themselves, but also in how they are organised in relation to one another and to their larger environment. GU thus entails active work to put institutional forms in motion in a way that does not entail meaninglessness, stasis or continual flux, but instead provides the impetus for ever-more re-arranging. The 'market', the 'rule of law', business 'standards'—forms of all of these can be continually critiqued such that they can be reconfigured. Thus, the supranational process of defining, measuring and disciplining domestic market distortions provides powerful leverage for institutional change, even as it leaves radically open foundational aspects of the imagined trajectory of that change.

These changes in artefacts and practices are connected to a more general dynamic of GU: the structured production and reproduction of openness as a way in which GU produces its own conditions of possibility and success, as well as the emergence of a representational apparatus for constituting the fact of openness as the driving problematic of governance. We see this aspect of GU in a number of the studies in this special issue—witness, for example, the 'reset buttons' in Bell's account, the experimental perturbations of Humphreys' second mode of GU and legal terms of art of the third, the endlessly 'transitional' nature of transitional justice in Miller's article. Describing GU as a 'response' to the impossibility of closure (as we have done above) is not quite adequate. GU is also in part about producing and intensifying that impossibility as a collectively produced and legitimated fact about the space to be governed.

¹⁶ Christine Bell, 'It's law Jim, but not as know it': The Public Law Techniques of Ungovernance' (2020) *Transnational Legal Theory* (this issue).

This, in turn, unsettles attempts at mapping GU. Plotting connections and relationships between practices proves challenging when those practices contest, intervene in, and underdetermine orders of space and time. Thus, as Miller points out, as transitional justice incorporated critical practice into its practical repertoire, that repertoire entailed contesting and unsettling the histories of the field, as well as its spatial divisions between global and local.¹⁷ In the next section, we consider some familiar alternative ways of describing the phenomena we observe, which would resolve this challenge and make these phenomena amenable to insertion in our existing maps of global governance. We discuss what we see as the limitations of these descriptions, and in doing so, clarify what is novel and distinctive about GU.

3. The distinctiveness of GU

There are a number of alternative accounts concerned with how certain institution-building practices in global governance reflect on their inevitable failure as part of their practice. Here, we discuss three from which we have drawn inspiration; we also discuss why we do not find that any of them fully explains the phenomena we are interested in.

One possibility is *irrelevance*. Simply put, this account claims that reflexive dynamics are less pervasive or significant than we perceive them to be, such that anything new which they bring is unlikely to shift the trajectory and logics of institution-building projects. Two well-known versions of this argument entail claims about institution-builders. First, to the extent that experts consciously perceive their knowledge structures to be indeterminate in any strong sense, it is just (self-serving) rhetoric.¹⁸ Second, even if it is not rhetoric, it is in fact the domain of a small minority of professionals engaged in these fields.¹⁹ To the extent that these claims are empirically valid (and we note that they require empirically tricky maps of professional backstage consciousness, as noted by anthropologists of expertise),²⁰ our account does not rest on any claim to the contrary. It is simply in a different register. For us, as we note above, the impossibility of closure is a *practical* matter, taking many forms, and need not take the form of a conscious subjective set of beliefs about the nature of knowledge.

¹⁷ See the conclusion to Miller, (n 8).

¹⁸ Felix Rauschmayer, Sybille van den Hove and Thomas Koetz, 'Participation in EU Biodiversity Governance: How Far beyond Rhetoric?' (2009) 27 *Environment and Planning C: Government and Policy* 42.

¹⁹ Hadi Nicholas Deeb and George E Marcus, 'In the Green Room: An Experiment in Ethnographic Method at the WTO' (2011) 34 *PoLAR: Political and Legal Anthropology Review* 51, 55–6.

²⁰ Dominic Boyer, 'Thinking through the Anthropology of Experts' (2008) 15 *Anthropology in Action* 38, 40–42.

Another, more relevant, version of this objection is that, while institution-building projects may well be carried out via a range of institution-building practices, it does not follow from the fact of practical indeterminacy that these projects can indeed be open-ended. The ‘impossibility of closure’, as we have called it, is not on this account necessarily accompanied by the radical contingency of practices—if only because they are limited and structured by the context in which they are deployed,²¹ and because there are patterned qualities to the contingency itself, regarding when it is experienced, by whom, and with what effect.²² In other words, if there is infinite possibility, this infinite possibility is always within structured bounds. ‘Market institutions’ or ‘the rule of law’ might in principle be indeterminate and unknowable, but if we know who is building them, where, with whose money, and for what purpose, then we can have a pretty good guess at what they will look like.

We concur in part. We, too, are interested in patterns and structures. We simply emphasise particular patterns and structures of practices and their use. We also demur in part. We find that those practices scramble our ability to observe the constraints placed upon them by the context in which they are deployed. We have noted how GU incorporates a representational apparatus oriented towards underdetermining institutional forms and the contexts in which they are deployed. This leads us to our emphasis on practices and GU as a mode of governance, rather than on a set of external conditions that structure some institutional outcomes.

A second possibility is *continuity in modes of practice*. On this view, while an experience of the impossibility of closure may well be pervasive or important in the fields we are studying, they have always been so—and the particular modalities of that experience we have identified do not depart radically from what has come before. Sophisticated experts have always used claims of indeterminacy, ignorance and uncertainty as an integral part of their standard arsenal in the politics of knowledge creation, as both a shield and a sword.²³ Such claims can help to erode the boundaries of others’ epistemic authority, they can be the prelude to the application of a particular kind of expertise concerning the appropriate measurement and

²¹ Susan Marks, ‘False Contingency’ (2009) 62 *Current Legal Problems* 1.

²² Fleur E Johns, ‘On Dead Circuits and Non-Events’ (University of New South Wales 2019) Law Research Paper 19–80.

²³ David Kennedy, *A World of Struggle: How Power, Law, and Expertise Shape Global Political Economy* (Princeton University Press 2016); Robert Proctor and Londa L Schiebinger, *Agnology: The Making and Unmaking of Ignorance* (Stanford University Press 2008).

management of uncertainty, they can set the stage for the emergence of new fields of expertise, and so on.²⁴

Again, there is much in this account we agree with, and build on. But in the context of institution-building, this account assumes that institution-builders have a strategic and instrumental relation to the experience of indeterminacy.²⁵ The account thus presumes a foundational commitment to closure through which an expert experience of indeterminacy is refracted. Invocations of indeterminacy, in this account, are always in the service of a larger goal of asserting one's own claim, establishing epistemic authority, or producing solid and durable artefacts of knowledge which serve one's ends.²⁶ By contrast, we hold the commitment to, and embrace of the impossibility of, closure in foundational tension. We are interested in what happens when, as a *practical* matter (not necessarily as an ethical or professional position), one is forced to concede the impossibility of closure at all levels. This is the work that the 'embrace' of the impossibility of closure does for us. It does not mean ignoring the will to power amongst institution-builders, but rather recognising the conditions in which such a will to power can be expressed in and through a different set of practices, in which that power is *not* coterminous with producing closure in the world, and that will is thus not about mastery over its complexity.

Finally, there is a third way of reading the reflexive dynamics we described above: as *continuity in projects*. That is, these dynamics have always already been present in the sorts of institution-building projects in which we are interested. In this account, the experience of the 'failure' of institutional projects—their inability to deliver on their promises, the inevitable gap between actually existing institutions and their ideal and abstracted forms—has been present from the beginning. This baked-in failure has provided the impetus and momentum for further projects—the discipline of development for always-'failing' economies whose condition is worsened by that discipline; the doctrine of statebuilding for persistently 'failing' states whose

²⁴ William Davies and Linsey McGoe, 'Rationalities of Ignorance: On Financial Crisis and the Ambivalence of Neo-Liberal Epistemology' (2012) 41 *Economy and Society* 64.

²⁵ See eg Jacqueline Best, 'Ambiguity, Uncertainty, and Risk: Rethinking Indeterminacy' (2008) 2 *International Political Sociology* 355; Ilene Grabel, *When Things Don't Fall Apart: Global Financial Governance and Developmental Finance in an Age of Productive Incoherence* (MIT Press 2018). Grabel embraces a non-cynical account of the instrumental use and value of the experience of indeterminacy.

²⁶ Jacqueline Best, 'Bureaucratic Ambiguity' (2012) 41 *Economy and Society* 84.

conflicts deepen with every peace agreement.²⁷ Neoliberal institution-building, in other words, has on this view always been experimental in form and even aspiration, provisional and based on explicitly limited knowledge.²⁸ Indeed, this is in part what accounts for its longevity, as each failed experiment provides the impetus, momentum and material for the next.²⁹

We depart from this third account in our understanding of the work that impossibility does in GU. In this account we just outlined, institutional ideal types are possible. There is an implicit teleology that stimulates further operations, whether towards an optimally efficient or a ‘best fit’ institution. The experience of failure is a prelude to the allocation of responsibility for failure (poor implementation, local realities, etc) and the next iteration. By contrast, GU is a set of practices organised around a vague and unrealisable end goal, and thus failure is present from the beginning. GU needs to be explained not in terms of how it allocates failure, but how it diffuses failure as a means of stimulating collective action.

To summarise, we have identified three particular ways of understanding the relationship between institution-building and the ‘impossibility of closure’: that institution-building practices may not afford closure, but they are structured and explained by external *patterns* or conditions, existing modes of *practice*, and/or the distribution of failure through *projects* or the attainment of ideal types. We have suggested that for us, the salient patterns are those of GU practices; that GU is a distinctive mode of practice as it does not resolve the tension between the commitment to, and embrace of the impossibility of, closure, but rather makes it productive; and that GU diffuses failure as much as it allocates it, in the service of facilitating collective action.

4. The special issue

In this special issue, our authors have generously agreed to experiment with our notion of ‘un-governance’ to help them think afresh about their chosen fields and themes. The article by

²⁷ Doug Porter and David Craig, ‘The Third Way and the Third World: Poverty Reduction and Social Inclusion in the Rise of “Inclusive” Liberalism’ (2004) 11 *Review of International Political Economy* 387, 398–402; Shahar Hameiri, ‘Failed States or a Failed Paradigm? State Capacity and the Limits of Institutionalism’ (2007) 10 *Journal of International Relations and Development* 122.

²⁸ Quinn Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism* (Harvard University Press 2018).

²⁹ Fleur Johns, ‘On Failing Forward: Neoliberal Legality in the Mekong River Basin’ (2015) 48 *Cornell International Law Journal* 347.

Humphreys, ‘Ungoverning the climate’, responds to our provocation by offering an analytical taxonomy of four ‘modes of ungovernance’, all of which he sees at play in one way or another in global climate governance. His starting point is an initial rough approximation of GU as a ‘self-conscious refusal of mechanisms of control’. His first mode of GU is the explicit embrace of ‘non-governance’ associated with the Austrian school, that is to say, the abandonment of certain tools of purposive social control on the basis that we are fundamentally unable to know with any certainty their likely effects. This kind of ungovernance ‘lies in the more or less conscious dismantling of functional institutional systems over time, such that their capacity to ‘govern’ is ultimately and incrementally undone’. Second, the ‘ungovernance of the laboratory’, similarly takes ignorance of outcomes as its starting premise, but this time as a prelude to a set of targeted experimental interventions. GU in this mode refers to ‘the provisional nature of boundary-construction aiming to stabilise a space within which the still unknown or poorly understood can be observed and tested in a controlled environment’. ‘Ungovernance as vaccine’, Humphreys’ third mode, refers to legal regimes which are structured so as to ‘isolat[e] troublesome matters’—ie ones that appear difficult enough to resolve that they might destabilise other projects— ‘from infecting wider policies’, even as they purport to address those matters. This is a kind of strategic and deliberate black-boxing masquerading as action in the service of a resolution. Fourth and finally, Humphreys posits a fourth type of UG, reminiscent of Bell’s ‘reset buttons’, involving the sudden destabilisation of existing functioning regimes: ‘the imposition of an event, as a site of a politics that is disruptive of law’.

There is much in Humphreys’ article which helps us to sharpen our own account of the distinctiveness of GU. His four ‘modes of ungovernance’ might be characterised as four distinctive *effects* of governance practices that refuse ‘mechanisms of control’. Our emphasis, by contrast, is on the distinctiveness of a *particular mode* of refusal (the relation of a commitment to closure to an embrace of openness) that is shared across a body of practices. Framed thus, our account of ungovernance might have any of the effects identified by Humphreys; however, he also challenges us to clarify where the will to power (and its refusal) sits in relation to the practice of GU. In its ongoing commitment to closure, GU clearly does not signify the disappearance of the will to control, but it likely does reconfigure and recontextualise it in ways which need further exploration, and on which our other contributors touch.

Gordon's and Van den Meerssche's article, 'Cultivating Machers', presents a study of risk and resilience practices in the World Bank, experimenting with an interpretive frame in which these practices emerge from a constitutive encounter with the unknown. As noted above, they introduce the figures of 'Oedipus' and the 'wellness guru' as emblems of archetypally different governance responses to a problematic of uncertainty and ignorance. For Gordon and Van Den Meerssche, the work of 'un-governance' is fundamentally that of the wellness guru—cultivating a relation to the unknown which seeks to access it for productive purposes. GU, in their telling, is about 'enabling opportunistic responses to dynamic conditions', and as such is deeply allied to the cultivation of 'resilience' and 'competitive productivity' as ends in themselves of governance work. They explore this dynamic through a study of the World Bank's work on criminal justice reform. In light of our account of GU above, three points in particular stand out to us. First, they show persuasively how the Bank's work in the criminal justice area—traditionally considered 'off-limits'—was facilitated by a new (for the Bank) kind of lawyering which focussed less on clarifying the precise boundaries of the Bank's mandate, and instead on techniques for measuring, monitoring and managing the risk of the Bank transgressing its mandate within the context of particular projects. Second, they argue that in the application of these techniques, the risk scores assigned to projects took on a character similar to what we describe above: they served, in the authors' words, as 'thoroughly artificial heuristics allowing the organization to move beyond the impossibility of closure in a productive manner'. And third, they evocatively describe the way that a resilience frame reconfigures the nature of the Bank's interventions and their associated epistemic practices: trading 'familiar 'cause-and-effect' interventions, grounded in moral or epistemic universals, for iterative, process-based, open-ended and never-ending cycles of policy intervention that work with (rather than against) complexity in an attempt to improve a society's own capacity to manage risk and stress resiliently'.

In 'It's Law Jim, but not as we know it', Bell productively re-interprets the contemporary moment in the public law of the United Kingdom using the language of un-governance. For her, GU emerges from an encounter with 'radical disagreement'—specifically, an irreducible and uneradicable radical disagreement over the values and purposes of government—rather than complexity and uncertainty as such. As a result, her account of GU is concerned less with the transformation of epistemic practices, and emerges instead as a set of legal techniques and institutional arrangements for keeping disagreements open and unresolved—and indeed producing new instability and forms of disagreement as a way of

maintaining a kind of self-consciously fragile, transitional and provisional political order. Her article identifies five such techniques, which she labels re-iterated constitution-making, institutionalised constructive ambiguity, regime assemblage, legalised reset, and legal postponement or deferment ('tajility'). Her illustrations draw on contemporary events (Brexit) and ongoing constitutional trauma (Northern Ireland), but equally on her years of experience studying constitution-building efforts in post-conflict societies across the world. The techniques also have deep resonance across a number of the article, and indeed in the governance domains that inspire our work.

In the final section of her article, Bell addresses squarely the question of what, precisely, is new about GU as she describes it. The idea that there is 'radical disagreement over the nature and purpose of government' at the heart of many polities is, she acknowledges, not new, nor particularly distinctive of the UK. The shared commitments which are imagined to underpin constitutional orders are inevitably in part mythical, and indeed in that sense, the management of disagreement, even radical disagreement, has always been a primary function of public law. Partly, Bell argues, GU is different because of the centrality and intensity of the techniques she identifies. More importantly, perhaps, what distinguishes GU for Bell are the uses to which these techniques are put, and what that says about deeper logics of public law governance in a GU mode. These deeper logics are clear in Bell's account: continuous production of self-consciously transitional states; deliberate and productive use of delay, deferral, ambiguity and periodic disruption to keep even first order constitutional questions in play; and the re-instituting of public law as a constant process of dismantling and recreating the 'state'. This, it seems to us, is in productive conversation with Gordon and Van Den Meerssche's distinction between governance regimes which respond to absence ('radical disagreement') with a constitutive fiction of durable presence, and those which seek to draw their productive and (juris)generative power from the construction and embrace of the absence itself.

The articles by Pospisil and Miller sit alongside one another—and Bell's—in their broad focus on the context of post-conflict transitional governance as it has emerged since the early 1990s. Pospisil uses his contribution to put into dialogue our notion of GU and the conception of the 'formalised political unsettlement' which he and Bell developed in earlier work. His story starts with the emergence in the 1990s of a professionalised field of post-conflict management, with its own distinct set of ideas about what transitions from 'conflict'

to ‘peace’ look like and how they might be successfully managed. For Pospisil the defining experience of this field more than two decades on is one of continual failure: failure to achieve settled peace and resolve disputes, failure to produce the shared foundations of a durable constitutional order, failure of the causal models on which much of their work is predicated, and failure of their tools to achieve the result for which they are intended. His account of what emerges when the felt necessity of continuing the work of peace governance is combined with this experience of failure has resonances with Bell’s description of the UK’s public law order. It includes the abandonment of many of the constitutive, integrative aspirations of peace-building in favour of a set of governance practices which are oriented towards managing and working within a state of perpetual transition, and indeed sustaining it as the closest possible approximation of peace. Pospisil offers his own catalogue of specific institutional and other practices associated with GU in the post-conflict space, including: the simultaneous internationalisation and localisation of conflicts, which sets even the spatial geography of conflict in motion; a set of legal and other arrangements which help to produce divergent meanings of institutional arrangements; strategic non-implementation of agreements; continuous and conscious postponement of resolution; and the extensive use of local in place of national agreements.

Miller provides a different framing of the adjacent field of transitional justice, in which the core dynamic at play is described not so much as an experience of failure, nor really even an encounter with complexity, but rather as an internalisation of critique, which called into question some of the core certainties of the field. The result, in Miller’s terms, is an ‘embedded ambivalence’, a phrase which appears simultaneously to denote a structural characteristic of the field itself, as well as a state of the individual practitioners who inhabit it. ‘Embedded ambivalence’ combines a certainty about broader normative objectives of field (‘justice’, ‘peace’) with an uneasiness about its forms. It is constituted by a desire and a tendency to combine opposites: the global with the local, blueprints with open-ended experiments, rule-based and more flexible techniques governance techniques. Importantly, Miller sees this pervasiveness of embedded ambivalence as both experimental and inoculative, at least in its effects, if not always by design. That is to say, the field’s openness to critique serves primarily to provide the basis for the further expansion and consolidation of its core enterprise—not, or not necessarily, as an effect of cynicism, but rather as a structural effect of the reconfigured practices associated with ambivalence. The result, she urges, should be a reorientation of our target of critique: where the dangers associated with the practice of transitional justice were

once those of excessive and unjustified certainty, those associated with contemporary practice are those associated with routinised uncertainty. For Miller, this includes, importantly but perhaps surprisingly, the continued depoliticisation of the enterprise of transitional justice, and an obscuring of its deeper distributional effects.

Like Bell, Burgis-Kasthala returns our focus to emplaced governance practices, this time within the occupied Palestinian territories. In “States of Failure?”, she builds on and pushes the contexts of post-conflict transitional governance sketched by Miller and Pospisil, as well as literatures on global governance, to explore how and why “the Palestinians seemed to progress towards statehood at the same time as the occupation entrenched itself...”³⁰ For Burgis-Kasthala, this paradoxical situation entailed “a highly regulated series of blueprints to achieve statehood, which were financed by a range of international actors, juxtaposed with the steady truncation of Palestinian lands and institutional capacity that was the result of slow as well as fast and unpredictable Israeli violence.” She argues that these blueprints and practices manifest the characteristics of a “political unsettlement” (referring to previous work by Bell and Pospisil³¹), such that “fundamental points of contention (such as Jerusalem’s status or the rights of refugees) persist, requiring a managerial regime of containment so that such insecurity does not threaten the settlement itself as well as spill over and heighten regional and even global instability.” This she urges us to understand in terms of ungovernance, or “the radical embrace of irresponsibility and failure” with respect to Palestinian statehood by the managerial regime. To this, Burgis-Kasthala adds a register of “*misgovernance*”, or practices by occupying Israeli forces that are fundamentally “pointless”, and demonstrate “abandonment and neglect” towards the governed population. Using the example of checkpoints, she argues that they are “best seen not as a standard and efficient regulatory tool, but as a way of limiting the movement and thus dynamism of a population.” Introducing this register of misgovernance challenges us to think further about the possibility and role of dominant powers: whether there are actors who might indeed have the power to realise “closure”; what is then at stake in their embrace of the impossibility of closure; and how they might consequently structure GU practices.

³⁰ Michelle Burgis-Kasthala, ‘States of Failure? Ungovernance and the Project of State-building in Palestine under the Oslo Regime’ (2020) *Transnational Legal Theory* (this issue), citing A Persson, ‘Palestine at the end of the state-building process: Technical achievements, political failures’ (2018) 23 *Mediterranean Politics* 433, 434.

³¹ C Bell & J Pospisil, ‘Navigating Inclusion in Transitions from Conflict: The Formalised Political Unsettlement’ (2017) 29 *Journal of International Development* 576.

This is a rich set of articles. They set the stage for an ongoing conversation about the GU, and facilitate a productive set of engagements with a few central puzzles which are at the heart of our own thinking about it.

First, why now? As noted above, we are not satisfied with claims that GU is precisely the same as that which has come before it. What then are its historical conditions of possibility? We have indicated above that we think GU can be viewed productively as a chapter in the ongoing evolution of *fin de siècle* neoliberal institutionalism at the global level. Interestingly, and importantly, almost all of our authors follow a similar path. Whether it is transitional justice, post-conflict reconstruction, constitutional unsettlement, World Bank development projects, or climate governance, there is a thread in the narratives our contributors tell which runs from the heady days of the 1990s through the chastening of the early 2000s, to some sort of transformed present. We do not view anyone as suggesting that this is the only relevant historical arc, nor do we think that any of us is positing the 1990s as an origin point in any simple way. There is, for example, a much larger trajectory of public attitudes towards science and technology in later modernity which clearly bears on our understanding of GU. Nevertheless, we are convinced that GU could only emerge in the forms that it has in contexts deeply shaped by late twentieth century neoliberalism. This point is reaffirmed in a number of our contributions, perhaps most explicitly by Humphreys, who shows how a tension between ignorance and hubris, control and relinquishment of control, has in some way always been at the heart of twentieth century (economic) liberal thought and practice, even if its particular manifestations and dynamics change over time.

Presenting GU in this way gives rise to several potential misunderstandings. Specifically, it may look to some as if we are oversimplifying the nature and character of prior governance forms associated with global neoliberalism.³² Hasn't it always been the case that (the best) practitioners in the fields we are studying have been aware of the limitations of their knowledge, and the need to adapt and experiment in each new local context? Hasn't the variegated nature of market institutions been an open secret amongst economic policy makers for as long as we have imagined global markets? Hasn't public law always been more about managing disagreement than genuinely creating or reflecting shared values? In short, haven't liberalism's fictions (the market, the polity, the shared social) always been understood as

³² See Section 3 above, esp pp.XX-XX.

fictions, at some level, and worked precisely on account of their fictional quality? Our view is that global neoliberalism has indeed always been much more complex, conflicted and self-conscious than is often acknowledged. The historical trajectory we seek to describe is not, in the end, a trajectory from certainty to ignorance, embrace to rejection of institutional models, from governing truths to governing fictions. It is, as we have said above, a change in the way that ignorance and failure are constructed as a central problematic of governance, and a reconfiguration of governance practices around that new problematic. It is a change in the function of governing fictions within a larger order of governance, from orienting ideal types and standpoints of critique and control to tools for the fragile orchestration of provisional patterns of collective domination and submission, action and inaction. This is not a crisis narrative, or at least not in any familiar sense. The practices of GU we identify are differentiated and mundane; they play out at different paces in different localities, and can do so recursively and iteratively.

It is also important to make clear that our story makes a claim about both the novelty and the continuity of GU. GU works in part precisely because it is *not* entirely new, or at least that it takes its character in significant part from its continued attachment to certain familiar elements. Bell makes this clear in her article, where she notes that GU is successful in part because the constitutional techniques it uses are, individually, *not* new, and can therefore more effectively play the new role that is required of them under GU. A similar point is made by our insistence the fundamental dynamic of GU is that it is an embrace of the impossibility of closure *combined with* a continuing commitment to pursuing closure: the latter is as important as the former, and it is the combination which is the key. Miller's notion of 'embedded ambivalence' captures the same thing.

We acknowledge that this insistence raises its own questions, for which we have provided no ready answers. For example, as Humphreys suggests, while we have provided an account of the dynamics which are driving what is new about GU, we have been less clear in explaining the source and strength of the continuing commitment to 'closure'. Is it the normative pull of the generally defined aspirations of 'peace', 'justice', 'prosperity', 'sustainability' which we identified above as central to these fields? Is it simply the powerful inertia of a successful and well-resourced professional field seeking to perpetuate itself? Is 'closure' of some sort a pragmatic necessity of expert practice? The articles in this special issue provide some evidence for each explanation, and more besides. We have, moreover, much

more to do to explain how GU holds together. How are alternatives to the fragility it offers persuasively figured as worse? Why, specifically, is internalisation of critique a central means of doing so? And, speculatively, given the potential instability of the oscillation we describe, is it best to conceive of GU as a temporary mode of governance, a stepping stone on the path to somewhere else? If so, where might it be headed?

Second, what are the necessary and sufficient conditions for GU to take root, rather than any of the alternative responses to the ‘impossibility of closure’ articulated in Section 3? A fully fleshed-out answer to this question would require at the very least some compelling counter-examples in which these alternative responses prevailed. While this is beyond the scope of an introductory piece, our discussion above suggests a few tentative lines of enquiry, most of them directed towards what we might call the ‘socio-epistemological’ conditions of possibility of GU. Does the ‘embrace of impossibility’ only make sense in relation to the domain of possibilities defined by a particular terrain of expertise, and if so what kinds of domains of expertise are particularly fertile ground? The relationships between GU practices and expert epistemologies towards uncertainty seem to us to need further investigation. This no doubt reflects our view that neoliberal institutionalism is in significant part an epistemological project—even as we acknowledge that global neoliberal institutionalism cannot be reduced to the dynamics of thought collectives.³³ Our articles suggest many more questions. How might one think, for example, of GU’s emergence within a specific contemporary configuration and distribution of geopolitical and geoeconomic power? As much as GU might imply a reconfigured cartography of power, does it still in the final analysis operate as a technique of the ‘centre’ (practiced by actors who enjoy a sense of safety and security) playing out in the margins? In what circumstances might it be trained on the centre itself, and how might it look differently in such contexts? , As Burgis-Kasthala’s article suggests, does the effective operation of GU depend on other modes of governance operating elsewhere, helping both to provide GU’s structural conditions of possibility, and limiting both its domains of application and the extension of its effects?

Third, and probably most importantly, our contributors raise the question of the politics and effects of GU. Where is GU leading us? What are its possibilities and dangers? What

³³ Philip Mirowski, ‘Postface: Defining Neoliberalism’ in Philip Mirowski and Dieter Plehwe (eds), *The Road from Mont Pèlerin* (Harvard University Press 2009).

political commitments does it enable and disable? We do not purport to tackle these questions in any detail in this special issue, though we hope we have succeeded in putting them squarely on the table. The politics of GU as a cartographic intervention are, we readily admit, ambiguous to us, and no doubt to the reader. On the one hand, GU takes aim at existing lines of criticism of global governance, exposing them as at least partly misconceived, to the extent that they do not take account of the always already-internalised nature of their critiques. On the other hand, GU quite clearly works to enable rather than disable critique, by shedding new light on certain problematic practices of self-legitimation at work within spaces of global rules which may otherwise remain overlooked. For the moment, we find ambiguity over the precise political stakes of GU to be appropriate and productive, and in this framing article we deliberately seek to maintain it.

It may nevertheless be useful, as we and others work through such questions, to distinguish two levels of analysis. It is necessary to explore, first of all, the effects of GU on the internal dynamics, operation and constitution of a domain of governance. Our description of GU in section 2 above might provide something of a roadmap in this respect. It suggests that one might investigate these ‘internal’ effects of GU by looking specifically at: the ways of seeing and knowing, and techniques of representation, characteristic of the domain; the particular kind of institutional projects which are set in motion (and indeed disabled) by them; the specific kinds and form of legal rules and practices which are produced; and the configuration of the relationships between ‘global’ and ‘local’ actors and spaces, and indeed the internal dynamics of each. Thus Gordon and Van den Meerssche find the impossibility of closure to be characteristically epistemic within the World Bank’s Legal Department, and they focus on knowledge practices; Bell finds it to be characteristically dialogical and disputational within political settlement-building, and she focuses on legal techniques; while Miller finds it to be characteristically judgmental within transitional justice, and she focuses on practices of critique and its reception. Each of these lines of enquiry constitutes a set of ‘effects’ in its own right, but also represents a dynamic which has second and third order effects worthy of analysis.

But, second, this sort of enquiry should also be accompanied by an exploration of the broader effects that the reconstitution of a governance field has on the larger social and political orders on which it works. What are the implications of GU for larger macrostructures implicated in institutional projects, such as reconstituted state and market forms? How, most fundamentally, does GU redistribute power and control over resources? Already, in the

contributions to this special issue, we can see a fault line emerging between those who see GU as at least potentially disruptive (whether positively or negatively, or both), and those who see it, ultimately, as entrenching and intensifying existing logics, practices, and patterns of domination. This is hardly surprising: we would surely expect a combination of elements of both, and we can be sure that GU's will be hard to predict, highly variegated and context-sensitive.

Furthermore, given the self-negating quality of GU—its defining character as a moving and unstable target—investigation of these kinds of effects is likely to be particularly complicated. Schindler and Wille helpfully distinguish two modes of sociological critique of international practices: 'social critique' (or the unmasking of power by '[t]he researcher [who] can see dynamics that unfold behind the backs of the social actors that the actors themselves fail to grasp') and 'pragmatic critique' (or the exploration of practices by a researcher as a way of participating in 'reflexive change effected in political life by the participants themselves').³⁴ However, as Miller points out, both of these modes of critique have been deeply internalised into routinised expert performances in these domains of governance, and can be deployed by practitioners to produce the impossibility of closure. The challenge is to develop a set of methods to observe the production and evolving relationship between a commitment to closure and an embrace of openness within a set of practices, in order to assess their effects.

Ultimately, then, while we see this special issue on 'global ungovernance' as suggesting a distinctive mode of global governance, we also offer it as a cartographic tool. We are confident that the contributions to this special issue collectively point to a research agenda that might both adequately map GU, and in doing so, demonstrate its methodological contribution to broader efforts to map global governance.

³⁴ Sebastian Schindler and Tobias Wille, 'How Can We Criticize International Practices?' (2019) 63 *International Studies Quarterly* 1014, 1016, 1020.