State, Restraint and the Open Internet

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A. I come at the problematic of 'internet jurisdiction' from an international political angle: I accordingly see internet governance in the context of global governance regimes. (Note: that said, the comments below should not be considered 'ontological', but pragmatic: they look for change in a stalled system, dogged by important threats)

We are at a very interesting historical juncture. There is broad consensus that global governance has 'failed' or is in 'crisis', but theorists and practitioners are uncertain what it is morphing into, what is taking its place, or how it might be immediately bettered (though there is agreement that South-South development is no longer peripheral to world power dynamics).

I understand by 'global governance' effective and accountable management of global problems. I understand by 'global problems' threats and challenges of a specifically global dimension that require resolution. I understand of 'a specifically global dimension' threats or challenges that either have global causes or global effects. We are entering into an era of human civilization where systemic interdependence among previously discrete entities can make causation global.

Several scholars have called the above situation of crisis one of 'gridlock' (Vincent 2011, Keohane and Victor, 2010, Held 2012, 2013, Goldin 2014): whether the global problem is one of nuclear non-proliferation (or indeed nuclear armament *per se*), one of climate change mitigation and adaptation, financial stability, abolition of global poverty, global/regional migration flows, or global health pandemics like the HIV virus or SARS—whatever the specific global problem (and this list *is* obviously finite despite present inflation of terms), there is a *gap* between these problems and effective, if not effective *and* legitimate responses to them.

There are an increasing number of arguments made that rehearse the reasons for this impasse of global politics. The basic argument goes something like this: global problems are second-order cooperation problems, posed by self-reinforcing interdependence within the dynamics and deep tensions of technological and economic globalization. As a result of ever-deepening interdependence through technology, communications and the global capitalist economy, new and more complex problems are being thrown up which require innovative institutionalization to be addressed, but are caught in a historical constellation of processes and constraints (the principle of state sovereignty is the central one) that impede such reform. Tom Hale, David Held and Kevin Young's recent book *Gridlock*

(2013) offers in this perspective one of the best explanatory frameworks for this impasse. I use and illustrate it below:

1. *Diffusion of power from West to East or Unipolar to multipolar world*. The recent increase in the *number* of global actors and the *diversity* of interests and their expression in international politics undermine global collective action.

2. *Complexity of problems*. More dense interdependence leads to more recalcitrant problems. Climate change offers a clear example: mending the ozone layer is much easier to do than address global warming (predominantly because agents of change were large American and European industrial corporations who had the technology ready to bypass goods containing chlorofluorocarbons). In this sense Montreal protocol no longer considered (as it was until 2005) the right policy framework to create interstate cooperation.

3. *Institutional inertia*: since the end of the Cold War there has been no radical reform of BWs institutions as needed to address a stable and fairer global economic system – unlike 1945. The occasion for structural reform was, of course, a world war, but *with* what is called the 'nuclear revolution' in the discipline of International Relations (Morgenthau, 1961; Jervis, 1978, Craig, 2003), the human species can no longer afford the means of war to achieve a new global world order.

4. *Fragmentation of interests*. i) Different geographical, cultural and social interests under one problem. So -- climate change = what is bad for the survival of the low-lying lands of Pacific Islands or Bangladesh is good for Canadian or Siberian food-production; ii) But also uncoordinated plurality of interests across different institutional structures: the difficulty of 'Afghanistan' redounds to the lack of effective coordination between American military command and UN diplomatic and development provision.

These four impasses, blocking global collective action on global problems, have not of course just emerged. They were always there, but events since 2004 onwards (post-2003 re-militarization of the Taliban, post-2004 failure of Iraq War, post-2007 Western financial crisis) have *undone* an array of normative (and mutually contesting) discourses that framed the possible success of global governance – whether these discourses were/are those of American unipolarity (military, economic and ideological power preponderance), neoliberal belief in market fundamentalism, or international liberal commitment to multilateralism and global regulatory regimes.

In this context of global collective inaction we are (to repeat) at a very interesting historical juncture, one in a sense delayed by what will be seen retrospectively as an unhealthy moment of American unipolarity at the historical end of the Cold War. ast From this perspective (and note one during which the internet was born), the last few years contain:

1) A moment of multipolarity—or rather, since 'polar' suggest different poles of ideology—one of the pluralization of power centers, under the continuing 'hegemony' of *liberalism*.

2) Therefore, as we see in trade policy, emerging middle-income countries are beginning to have weight in WTO and Bretton Woods Institutions and will slowly bring these institutions under sustainable development criteria.

3) In that sense, yes, there is gridlock, but here we should probably not see gridlock as a *failure* of predominantly western global governance than a as a period of stalled transition to new arrangements of power between the developing and developed world.

4) Despite this, the *state* is still a crucial agent of change providing bridge between revamped national interest, security, identity and international purpose and solvable global problems. Despite the 'institutional inertia' point above (one that reduces the inefficacy of international system to state sovereignty), at the same time the state remains the *sole* agent in post-Western state system that still has, with other actors, the power and legitimacy to effect change. While it was 'the inefficacy of the international financial system' that took subprime US domestic lending to the lows of an international catastrophe, 'it was, and is, to nation states that we look' (as lenders of last resort) to exit the mess and provide resolution (Ian Goldin, 2014). No-one should be in doubt after 2008-9 that sovereignty remains a critical lever of executive decision-making (uncontested by any other global actor).

5) Normative framework to work on is, therefore, I believe, Sovereignty *as* responsibility (both to one's own citizens (R2P) and to global problems within systemic interdependence). But here, of course, gridlock remains evident: neither China nor Russia will hear of this principle since it rides against their material and geopolitical interests.

B. In the brief time I have left, what implications does this kind of analysis of gridlock and stalled transition to a new global order have for internet governance? Let me very modestly make a few suggestions/raise a few questions (aware that you are better placed to talk at this point than me):

I. Similarities – lot of talk at the moment of *uncertainty*. What alternative to national jurisdiction and sovereignty if global alternative (that is, global governance of internet) neither feasible nor, for some, desirable? In other words, the impasse of Internet Jurisdiction being grappled with in this conference is an **example** of a general impasse of governance when the externalities of the nation-state and the tragedies of the global commons cannot be yet channeled politically. As a thinker of international relations it is my belief that *political* consensus is required between central actors (particularly states within multi-stakeholder configurations) before there will be global legal consensus and global law.

II. The *relative* decline of American power (evident on the surface of perceptions from the aftermath of Iraq invasion through to the financial crisis of 2008) continues with the Snowden revelations (hypocrisy, double standards, etc.). Here I would like to hear more of the calls to elimination of the relation between the US commerce department and ICANN. I don't wish to fall into the media trap of conflating internet governance with ICANN related issues (there are, as evident by this conference, many other issues), but let us be clear of the normative and material problem behind this attention: the 1990s idea of a decentralized, borderless web with no core was an American idea, working under American technological hegemony. It happens, I think, to be a good idea, but in a multipolar world, working under a diffused, imprecise liberalism, this idea will necessarily change.

III. Finally – The state (I am speaking abstractly) has to get itself into a normative position where it can act, quickly and fluidly, with other states and non-state actors (3rd party platforms, civil society, IOs) to address the material and market unmaking of the Internet (political role it played domestically in the West from 1945-1978). The state has also to get itself into a normative position where it can promote, as far as possible within the trade-offs between individual and group freedoms and cyber-security concerns, the *rule of impartiality*. So -- **while** transnational governance previously resolved by the state is now enacted regarding the internet by private intermediaries (navigation between companies values and national laws), I suggest--*given* lack of supranational architecture--that it still falls upon states to uphold global connection points. A normative framework for *collective state responsibility* should therefore be provided within the thinking and practice of internet governance.

References:

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