

SCRIPT

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Beyond the State? Hegemony and Decadence

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Thank you. I'm very happy to be here.

It's been a fascinating day, and we've heard a lot, so I'll try to be brief. I should perhaps warn you, however, that I usually fail to be brief, so I hope you're comfortable.

I've probably been too formal here, but this is what I've been thinking about. And I usually speak *ex temp*, but in the interest of clarity I'm going to read.

I want to sketch three movements in thought, or more vaguely, in a complex of ideas, centered around the concept of "the state." Or, as the Germans might put it, I want to trace the wanderings of the *Zeitgeist* as it imagines what it is to do politics.

I'm also going to be focused on the North Atlantic, the EU and the US especially. The picture is different in other places, of course, which is why we have WAIS.

I should also say that it's a great honor to be speaking at this Golden Jubilee.

WAIS was founded in 1965, the year of my birth. And a year before the Superbowl. So I feel a kind of kinship here.

In my remarks today, however, I'm only going to go back a long generation, to the early 1990s.

Maybe you remember the early '90s. The Cold War ended. The Berlin Wall fell in 1989. The Soviet Union dissolved in 1991. People talked about the end of history, by which Fukuyama meant not the end of events, but the hegemony of a certain idea of liberal modernity.

Intertwined with the end of the Cold War was the emergence, or perhaps the fashionability, of something called globalization. Conferences were held, and books were written. I too was guilty of this. There was even a WAIS conference, right here, on globalizations.

Globalization meant a lot of things, but one of the things it meant was that the State -- both as a form of political organization, and as a nation, the governance of a distinct place, e.g. Spain or South Africa -- didn't mean as much as it once did.

Goods, people, information, and especially money could move as never before, and so specific places were less important. By

extension, the governments of such places, nation states, were less important.

So there was wild eyed talk about the end of the state, that history had somehow moved "beyond" the nation state that had dominated social life, at least in the heart of Europe, for centuries.

Considering that the State had been the vehicle for episodic genocide and perennial subjugation, many people thought the decline of the State to be a promising development.

Nowhere was this sense of a seismic shift in the nature of political life more strongly sensed, or more loudly welcomed, than in Europe. Recall that the European project, going back to its establishment by the Rome treaties, grew out of concern for the horrors wrought by modern states, especially Germany,

In 1992, the Maastricht Treaty creating the European Union was signed. Suddenly the European project seemed close to some sort of definitive fruition, resulting in what Jacques Delors, then President of the Commission, once dubbed an Unidentified Political Object.

The shape of this project, however, stubbornly remained vague. Treaties, ECJ decisions, countless talk gave rise to more and more Europe, but not much clarity, that silly Enlightenment virtue. It was widely said, at the time, that Europe was "sui generis."

Even then, I thought that "sui generis" was a little unsatisfying by way of political understanding. Even if there's only one of them, can we say what makes this UPO new?

Be that as it may, on both the global and European level, there was a sense of more than ordinary historical change, a sense that the nature of politics itself was being transformed, from the national and particular to the global and integrated, networked, systemic, and things like that. From German to European, to take an especially important instance. Or, to put it differently, and as it often was said, the world seemed to be moving, in sundry areas of life, from a style understood as "modern" to something struggling to be born, the not yet positively named that was therefore called merely "postmodern," whatever that might reveal itself to be. So that was the state of play at the end of the 1990s.

And then things started happening. Most dramatically, the 9/11 attacks thrust the United States into what was called the Global War on Terror. Integration may be nice, but there is nothing like a large nation state to wage large scale ideological conflict.

Note that not only was the US government back in the spotlight as a central, and very national, political actor. Ideological conflict, supposedly buried with the fall of the Berlin Wall, was back with a vengeance, and is with us still.

In Europe, the concept of the State resurfaced more subtly but perhaps even more decisively. In 1999, the Euro was established as a single currency for many states, comprising the Eurozone.

The Euro was conducted by the European Central Bank, based in Frankfurt.

In order to join the currency, Member States were obliged by treaty to harmonize their economies.

So we see a project of widespread conformity in order to create a unified space, administered by a highly bureaucratic central authority. Sounds sort of familiar, much like the history of France.

Things get more interesting still.

In 2008, financial issues in the United States spin out of control. A Global Financial Crisis, also called the Great Recession, ensued.

Responding to the crisis, the US government nationalized or forcibly transferred the ownership of huge institutions, printing money as necessary. Other governments around the world did much the same thing. Here again, the State seemed not irrelevant, but indispensable, to making globalization work.

In Europe, Dexia and Fortis, which were banks that had been encouraged to do business across Member States, suddenly found themselves on the brink of insolvency. There was, at the time, no European process to resolve banks, and so the banks turned to national governments. Spending taxpayer money, the national governments rescued the bank operations within their own borders.

At least to some, this train of events cast an odd light on the European project. When times are good, we talk about integration. But when the chips are down . . . the Europeans always turn back to their states.

And we've heard variations of this claim ever since, especially with regard to the Greek crisis.

Which is not to say that the European project didn't and doesn't have its supporters. Supporters, such as my acquaintance Nicholas Veron or fellow WAISer Angel (I call him that to bother John) Vinas, strenuously argued that the problem was that Europe didn't have a true banking union, with the resources to resolve banking crises at the European level.

Europe has since established a banking Union, but at least for many, a more general lesson emerges: the problems within the Eurozone should be addressed by more intense processes of European integration.

Now this may be the case -- it is not my point here. What I want to emphasize, however, is that "more Europe" means, in effect, shifting legal and regulatory authority to the European plane. Shades of the New Deal in the United States. Whether or not that's the right thing to do, the political imagination at work seems to be fundamentally national, i.e., what is strongly implied by supporters of the European project is another continental State.

That is, the State seems to be the horizon for our constitutional thought.

The State is hegemonic in the sense of authoritatively shaping how we seem to be able to think about serious politics, or at least institutions. That is, I'm rather unhappily making a kind of "end of history" argument -- for a while we promised ourselves a new kind of politics, but it didn't really happen.

So if the first wave I wanted to talk about was anticipation of something "beyond the state," running through the '90s, the next decade saw the resurgence of the state as the fundamental form of political thought, a kind of hegemony over the imagination.

This creates a rather unpleasant paradox.

On the one hand, the state is passe.

On the other hand, the state evidently cannot be passed.

Globalization and integration across politics did not go away. Weakness in China just appears to have motivated the US Federal Reserve to keep interest rates low. And so forth.

For my own purposes, I stand by my own articulation of global capitalism as a form of political life, which I called the City of Gold. But the City seems to work by changing the meanings of older institutional forms, rather than creating new forms of institutional life.

This contradiction, an understanding of the State which is not generally credible but which is also necessary, has led to a kind of decadence, a sort of false consciousness.

We think and speak in a republican vocabulary, but the grammar, the internal logic, is gone. We don't really believe our stories, not even as metaphors.

To give a better sense of what I mean, let me suggest three areas in which the modern State's decadence is advanced.

A. First, and most obviously, consider electoral politics in the United States.

The democratic ideal, Bush v. Clinton in a battle of the brands, has been upended by the current circus of Republican candidates.

Meanwhile, the Supreme Court has insisted that spending money pretty much is the core of democratic discourse -- even over the objections of the legislature.

The media, for its part, needs to feed a 24 hour news cycle. Fortunately, politics can be treated like sports, and it is almost as engrossing as football. We don't talk about issues nearly so much as we talk about advantage. And, like fantasy football, that talk can be extended indefinitely.

Indeed football, the superstar spectacle combined with the corporate complexity of it all, legalistic distinctions and the rules behind rules, is a perfect metaphor for US political life writ large.

At some point, all of this becomes simply unserious, not in terms of people's lives (do we go to war, raise interest rates, or what have you), but in terms of a project of collective self-governance.

So I'm trying to make my peace with that. The US is the third largest nation on the planet, fourth if we treat the EU as a single country, and Rousseau taught us to be skeptical of the

idea that large groups of people could reach rational consensus, or even fellow feeling.

Where the US has chosen celebrity, the EU has chosen bureaucracy as the key style of post-Enlightened political life. So a number of countries simply reject the (somewhat nationalist) idea of a European Constitution? No problem. We will simply renegotiate the constitution as the Lisbon Treaty, decided among professionals (and virtually unreadable).

In Europe, the Enlightened ideal of politics has not been subverted by some reversion to the premodern, a return of the repressed, as was long feared. Nor has it been subverted by carnival, as in the United States. Instead we get just the opposite: bureaucracy as end in itself, the extension of texts, endless texts, until . . . nobody knows, and rationality, at least publicly accessible rationality, is no longer on the table.

B. So politics, in the narrow sense of official governance, is the first area in which we easily observe what I'm calling the decadence of the enlightened, democratic, republican, modern State.

A second, but perhaps more important to this group, area of life that I would say suffers from the decadence of the State would be the University, understood as an ideal.

In the countries where the modern university was founded, the nation framed the deep structure of elite imaginations, and in so doing, made a certain kind of liberal education (and by extension, politics, and by extension, law) thinkable.

Study the classics and administer India, I like to quip. But the point was that an ideal of the English gentleman, or the German or the American, underwrote what used to be called liberal education. There were certain things that a gentleman should know, and conversely, there were things worth paying people to think deeply about, not least so they could teach young gentlemen.

That set of understandings -- what sort of leading citizens does a particular society need, and how do we build such citizens -- has waned, and no longer gives the bureaucratic university, operating in a global frame, its sense of purpose, of meaning. We certainly don't look at the university as transmitting any specific culture (that would be elitist, parochial, and generally politically unsound). Indeed, we (I'm guilty here, too) engage in a global competition for paying students.

Which makes education substantively unimaginable, at least to our administrators, who are left speaking of "excellence," defined in terms of competitive comparison, thought to contribute to "brand," that is, the intellectual equivalent of widgets. Lyotard saw this coming, back in the '70s, when he discussed the fate of the University in postmodern -- post national, among other things -- times.

C. So here's a third area of decadence.

In a world where law = nation was presumed, one could idealistically, even radically, speak of law among nations, or even against, the nation (the subject and the object of PIL). As

an idealistic project. Ending wars, redeeming history, and a rather silly substitute for religion. Etc.

That is, for international law, the state was "the problem," and there was much talk of getting beyond it, beyond Westphalia, world government/citizen, etc., etc. But such talk took place, mostly unself-consciously, in an imaginary of political life itself that was profoundly republican.

So the international law project, envisioned in a world of United *Nations*, could be expanded, with the kind of tractable difficulty that lawyers love, to include international organizations, international human rights, respect for peoples and trade of goods . . . Indeed, at least under these conditions of globalization, consider the UN and the GATT and the Universal Declaration of Human Rights, perhaps the domain of international law had to be expanded, ultimately producing a map of human relations on the planet.

But also a map of nothing. The effrontery of it all. 132 members of the International Law Association claim to speak for the planet, along with a handful of judges deciding a few cases a year?

Meanwhile, in the academy and elsewhere, "public international law" is viewed as marginal, but in a nice way. Like birdwatching, perhaps. It is not what our most powerful people do.

Worse, the map appears to lie quite a bit. So in the US and other countries, we have routinized assassination, for example. Is that not our law, too, really? Mass migrations. History on the march, as we bookishly recite the

various rights of different classes of wanderers, and then bicker about what to do with the people who survive. Banking practice is probably doing more to make the world (certainly in Europe), but is not international law in any traditional sense, though it's omnipresent (and lord knows Basel has failed). Banking is not even mostly law, or alternatively, it is all law, but of oligarchy, and beyond the pale of polite discourse.

To be as clear as I can: I'm *not* saying, in traditional realist fashion, that international law doesn't constrain states (who somehow have a preexisting and unlegally defined "stateness"), and therefore international law is not law.

I'm saying that in a bureaucratic/capitalistic/globalized society, where Chinese asset bubbles deter US monetary policy, defined across vast numbers of people at distance, law is everywhere (e.g., Delaware corporations, which I also teach), and is everywhere international. So there's nowhere obvious for a discrete field, "the international," to stand. No conceptually independent state, we the people formed into groups, against which international law can imagine itself without vacillating wildly between the actions of a tiny elite in relatively small institutions and a simply unbelievable set of claims to be vapoiously the law of international life, that is, of human life.

To quip, globalization has made specifically international law almost unthinkable, though I'm trying.

To put the matter somewhat anthropologically, if we understand law as the formalized understandings of (increasingly globalized) society(ies), including states that think of themselves as truly excellent, then international law

simply doesn't articulate much of contemporary life. It may indeed be law, but it is at best law at the outer gate. The real law lies deeper.

Or, to put it polemically, international law is over, for the same reason that liberal education is over: the soul of the enterprise lived in a profoundly nationalist (republican) imagination of public life. That imagination no longer obtains in the relevant quarters.

This, too, is what "postmodern" means. Or, as I said, decadence.

TO CONCLUDE

One should take all of this with a grain of salt. I don't want to be a downer, right before happy hour.

But something has passed. We won't see another Lincoln or DeGaulle.

And other ways of living together are struggling to be born.

So perhaps international law is a way of organizing moral discourse in a superficially secular way, or at least of justifying the actions of the powerful in more or less populist if not actually democratic fashion.

Perhaps the university isn't the institution of *lux et veritas*, light and truth, but a jobs program, a place to form identity. And it does create spaces for people to think. Sinecures. I certainly appreciate my status, marginal though it is.

Westbrook, *Beyond the State*
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Turning to politics, elections and such, just maybe we should tend our gardens while bemusedly observing our guardians. Self-governance has had a good run, but it has not been the norm during human history.

And we do still vote, and it does still mean something. I have overstated the case in the interest of provocation.

More importantly, surely life in the City of Gold has its pleasures. Including the ability to communicate so easily with others. So let's be thankful for WAIS.

For the rest, we shall come to know.

Thank you.