

Neither global nor national: novel assemblages of territory, authority and rights¹

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Abstract

The central argument developed in this essay is that today we are seeing a proliferation of normative orders where once state normativity ruled and the dominant logic was toward producing a unitary normative framing. One synthesizing image we might use to capture these dynamics is that of a movement from centripetal nation-state articulation to a centrifugal multiplication of specialized assemblages. This multiplication in turn can lead to a sort of simplification of normative structures insofar as these assemblages are partial and often highly specialized formations centered in particular utilities and purposes. The valence of these particular utilities and purposes can range from the search for justice (the ICC) to narrow self-interest (Lex constructionis). While this is still a minor process in the larger scale of our geopolitics, it signals the beginning of a multi-sited, though partial, disruption of its existing formal architecture. This raises questions about the future of crucial frameworks through which modern societies, economies, and politics (under the rule of law) have operated: the social contract of liberal states, social democracy as we have come to understand it, modern citizenship, and the formal mechanisms that render certain claims legitimate and others illegitimate in liberal democracies. These frameworks have held together complex interdependencies between rights and obligations, power and the law, wealth and poverty, allegiance and exit.

Keywords: *assemblages; normative; globalization; denationalization; centripetal; centrifugal; utilities; logics; liberal state; claims*

INTRODUCTION: MAPPING AN ANALYTIC TERRAIN

A key yet much overlooked feature of the current period is the multiplication of a broad range of partial, often highly specialized, global assemblages of bits of territory, authority, and rights (TAR) that begin to escape the grip of national institutional frames.² These assemblages cut across the binary of national versus global. They continue to inhabit national institutional and territorial settings but are no longer part of the national as historically constructed. They exit the national through a

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process of denationalization that may or may not lead to the formation of global arrangements.

These assemblages are enormously diverse. At one end we find private, often very narrow, frameworks such as the *lex constructionis*, a private ‘law’ developed by the major engineering companies in the world to establish a common mode of dealing with the strengthening of environmental standards in a growing number of countries, in most of which these firms are building.³ At the other end of the range they include far more complex (and experimental) entities, such as the first ever global public court, the International Criminal Court; this court is not part of the established supranational system and has universal jurisdiction among signatory countries.⁴ Beyond the fact of the diversity of these assemblages, there is the increasingly weighty fact of their numbers—over 125 according to the best recent count.⁵ Their proliferation does not represent the end of national states, but it does begin to disassemble the national.

Central to the argument in this paper is that although for now these are mostly incipient formations, they are potentially profoundly unsettling of what are still the prevalent institutional arrangements (nation-states and the supranational system) for handling questions of order and justice. One of the consequences of the sharpening differentiation among domains once suffused with the national, or the supranational, is that this can enable a proliferation of temporal and spatial framings and a proliferation of normative orders where once the dominant logic was toward producing unitary spatial, temporal, and normative framings. A synthesizing image we might use to capture these dynamics is that we see a movement from centripetal nation-state articulation to a centrifugal multiplication of specialized assemblages. This multiplication in turn can lead to a sort of simplification of normative structures: these assemblages are partial and often highly specialized formations centered in particular utilities and purposes. The valence of these particular utilities and purposes can range from the search for justice (the ICC) to narrow self-interest (*Lex constructionis*).

What distinguishes these novel assemblages is that they can de-border, and even exit, what are today still ruling normative orders. Further, and equally important if not more so, they can constitute particularized ‘normative’ orders internal to each assemblage which easily amount to mere utility logics. These assemblages are not only highly specialized or particular, they are also without much internal differentiation, thereby further reducing normative orders to somewhat elementary utilities. This is still a minor process in the larger scale of our geopolity. But it may well be the beginning of a multi-sited disruption of its existing formal architecture. It is a process that lifts a variety of segments (involving dimensions of TAR) out of their nation-state normative framing, thereby reshuffling their constitutional alignments. Not even well-functioning states with their powerful *raison d’etat* can quite counteract the particularized normativities of each of these assemblages, and their easy slide into narrower utilitarian logics.

This slide into utilitarian logics is not always bad. In the case of a single-minded pursuit of human rights, we can see many positive outcomes. But a similarly single-minded pursuit of profits and disregard of state welfare functions is troubling. There

is, then, multivalence in this process of multiplying lower-order normative framings. But whether good or bad, the de-bordering of national normative frames is a change, and it carries implications for how we are to handle the often complex interactions of larger normative issues.

My argument is then that these developments signal the emergence of new types of orderings that can coexist with older orderings, such as the nation-state and the interstate system, but nonetheless bring consequences that may well be strategic for larger normative questions. These developments are both strategic and particular, and hence often illegible, requiring diverse modes of decoding.

Emphasizing this multiplication of partial assemblages contrasts with much of the globalization literature. That literature has tended to assume the binary of the global versus the national, and hence to focus on the powerful global institutions that have played a critical role in implementing the global corporate economy and have reduced the power of 'the state'. I rather emphasize that the global can also be constituted inside the national, i.e. the global city, and that particular components of the state have actually gained power because they have to do the work of implementing policies necessary for a global corporate economy. Thus my focus in the larger project (2006) and in this particular paper opens up the analysis of what is described as 'globalization' to a far broader range of actors, and it repositions the powerful global regulators, such as the (reinvented) IMF or the WTO as bridging events for an epochal transformation, rather than as the transformation itself. The actual dynamics getting shaped are far deeper and more radical than such entities as the WTO or the IMF, no matter how powerful they are as foot soldiers. These institutions should rather be conceived of as powerful capabilities for the making of a new order—they are instruments, not the new order itself. The multiplication of partial assemblages examined in this paper signals a new ordering that begins to unsettle older frameworks that have held together complex interdependencies between rights and obligations, power and the law, wealth and poverty, allegiance and exit—albeit always imperfectly.

In what follows I first discuss the features of some of these assemblages, then examine questions of method and interpretation that shape this particular conceptualization of current transformations, and conclude with a discussion of their normative and political implications. Both self-evidently global and denationalizing dynamics destabilize existing meanings and systems.

SPECIALIZED ASSEMBLAGES AS NEW TYPES OF TERRITORIALITY

If you see through the eye of the national state, these assemblages look like inchoate geographies. But they are actually the bits of a new type of ordering, a reality in the making. Perhaps starting with some actual elementary spatial instances might help illuminate some of the issues for politics and normative questions to which I return in

the second half of this essay. These are instances where we can detect a process of at least partial denationalizing of TAR. Here, then, follow some of these instances.

I will use the concept of territoriality, usually used to designate the particular articulation of TAR marking the modern state, in a slightly different way so as to capture a far broader range of such articulations. But the national state does function as the standard against which I identify the following four types of territoriality assembled out of 'national' and 'global' elements, with each individual or aggregate instance evincing distinct spatio-temporal features. (In the larger project, 2006, I examine yet other emergent assemblages.) These four types of instances unsettle national state territoriality, that is to say, the institutional framing of territory that gives the national state exclusive authority in a very broad range of domains. The territory of the national is a critical dimension in play in all four instances: diverse actors can exit the national institutionalization of territory yet act within national territory, and do so in ways that go well beyond existing extra-territorial arrangements. What gives weight to these four types of instances is not simply a question of novelty but their depth, spread, and proliferation. At some point all of this leads to a qualitatively different condition. We can conceive of it as emergent institutionalizations of territory that unsettle the national encasement of territory.

A first type of territoriality is being constituted through the development of new jurisdictional geographies. Legal frameworks for rights and guarantees, and more generally the rule of law, were largely developed in the context of the formation of national states. But now some of these instruments are strengthening a non-national organizing logic. As they become part of new types of transnational systems they alter the valence of older national state capabilities. Further, in so doing, they are often pushing these national states to go against the interests of national capital. A second type of instance is the formation of triangular cross-border jurisdictions for political action, which once would have been confined to the national. Electronic activists often use global campaigns and international organizations to secure rights and guarantees from their national states. Furthermore, a variety of national legal actions involving multiple geographic sites across the globe can today be launched from national courts, producing a transnational geography for national lawsuits.

The critical articulation is between the national (as in national court, national law) and a global geography outside the terms of traditional international law or treaty law. A good example is the lawsuit launched by the Washington-based Center for Constitutional Rights in a national court against nine multinational corporations, both American and foreign, for abuses of workers' rights in their offshore industrial operations, using as the national legal instrument the Alien Torts Claims Act. In other words, this is a global three-sided jurisdiction, with several locations in at least two of those sites—the locations of the headquarters (both the US and other countries), the locations of the offshore factories (several countries), and the court in Washington. Even if these lawsuits do not quite achieve their full goal, they signal it is possible to use the national judiciary for suing US and foreign firms for questionable practices in their operations outside their home countries. Thus, besides the much noted new courts and instruments (e.g. the new International Criminal Court, the

European Court of Human Rights), what this example shows is that components of the national rule of law that once served to build the strength of the national state, are today contributing to the formation of transnational jurisdictions. Another instance is the US practice of 'exporting' prisoners to third countries (rendition), *de facto* to facilitate their torture. This is yet another instance of a territoriality that is both national and transnational. Finally, diverse jurisdictional geographies can also be used to manipulate temporal dimensions. Reinserting a conflict in the national legal system may ensure a slower progression than in the private jurisdiction of international commercial arbitration.⁶ Diverse jurisdictional geographies can also be used to manipulate temporal dimensions. Reinserting a conflict in the national legal system may ensure a slower progression than in the private jurisdiction of international commercial arbitration.

A second type of specialized assemblage that is contributing to a novel type of territoriality is the work of national states across the globe to construct a standardized global space for the operations of firms and markets. What this means is that components of legal frameworks for rights and guarantees, and more generally the rule of law, largely developed in the process of national state formation, can now strengthen non-national organizing logics. As these components become part of new types of transnational systems they alter the valence of (rather than destroy, as is often argued) older national state capabilities. Where the rule of law once built the strength of the national state and national corporations, key components of that rule of law are now contributing to the partial, often highly specialized, denationalizing of particular national state orders. For instance, corporate actors operating globally have pushed hard for the development of new types of formal instruments, notably intellectual property rights and standardized accounting principles. But they need not only the support, but also the actual work of each individual state where they operate to develop and implement such instruments in the specific context of each country. In their aggregate this and other emergent orderings contribute to produce an operational space partly embedded in particular components of national legal systems which have been subjected to specialized denationalizations;⁷ thereby these orderings become capabilities of an organizing logic that is not quite part of the national state even as that logic installs itself in that state. Further, in so doing, they often go against the interests of national capital. This is a very different way of representing economic globalization than the common notion of the withdrawal of the state at the hands of the global system. Indeed, to a large extent it is the executive branch of government that is getting aligned with global corporate capital and ensuring this work gets done.

A third type of specialized assemblage can be detected in the formation of a global network of financial centers. We can conceive of financial centers that are part of global financial markets as constituting a distinct kind of territoriality, simultaneously pulled in by the larger electronic networks and functioning as localized micro-infrastructures for those networks. These financial centers inhabit national territories, but they cannot be seen as simply national in the historical sense of the term, nor can they be reduced to the administrative unit encompassing the actual terrain

(e.g. a city), one that is part of a nation-state. In their aggregate they house significant components of the global, partly electronic market for capital. As localities they are denationalized in specific and partial ways. In this sense they can be seen as constituting the elements of a novel type of multi-sited territoriality, one that diverges sharply from the territoriality of the historic nation-state.

A fourth type of assemblage can be found in the global networks of local activists and, more generally, in the concrete and often place-specific social infrastructure of 'global civil society'.⁸ Global civil society is enabled by global digital networks and the associated imaginaries. But this does not preclude that localized actors, organizations, and causes are key building blocks of global civil society as it is shaping up today. The localized involvements of activists are critical no matter how universal and planetary the aims of the various struggles—in their aggregate these localized involvements are constitutive. Global electronic networks actually push the possibility of this local-global dynamic further. Elsewhere I have examined⁹ the possibility for even resource-poor and *immobile* individuals or organizations to become part of a type of horizontal globality centered on diverse localities. When supplied with the key capabilities of the new technologies—decentralized access, interconnectivity, and simultaneity of transactions—localized, immobilized individuals and organizations can be part of a global public space, one that is partly a subjective condition, but only partly because it is rooted in the concrete struggles of localities.

In principle, we can posit that those who are immobile might be more likely to experience their globality through this (abstract) space than individuals and organizations that have the resources and the options to travel across the globe. These globalities can assume complex forms, as is the case with first-nation people demanding direct representation in international fora, bypassing national state authority, a longstanding cause that has been significantly enabled by global electronic networking. They can also be more indirect, as is the case with the Forest Watch network which uses indigenous residents in rain forests around the world who can detect forest abuse long before it becomes visible to the average observer. They then pass on this information to what are often long chains of activists eventually ending in the central office; the early links in the chain, where the deep knowledge resides, are typically not via digital media nor are they in English.

We can see here at work a particular type of interaction between placeless digital networks and deeply localized actors/users. One common pattern is the formation of triangular cross-border jurisdictions for political action which once would have been confined to the national. Local activists often use global campaigns and international organizations to secure rights and guarantees from their national states; they now have the option to incorporate a non-national or global site in their national struggles. These instances point to the emergence of a particular type of territoriality in the context of the imbrications of digital and non-digital conditions. This territoriality partly inhabits specific subnational spaces and partly gets constituted as a variety of somewhat specialized or partial global publics.

While the third and fourth types of territoriality might seem similar, they are actually not. The subnational spaces of these localized actors have not been denationalized as have the financial centers discussed earlier. The global publics that get constituted are barely institutionalized and mostly informal, unlike the global capital market, which is a highly institutionalized space both through national and international law, and through private governance systems. In their informality, however, these global publics can be seen as spaces for empowerment of the resource-poor or of not very powerful actors. In this sense the subjectivities that are emerging through these global publics constitute capabilities for new organizing logics.

These emergent assemblages begin to unbundle the traditional territoriality of the national, albeit in partial, often highly specialized ways. In cases where the global is rich in content or subject to multiple conditionalities, its insertion in an institutional world that has been historically constructed overwhelmingly as a national unitary spatio-temporal domain is eventful. It is the combination of this embeddedness of the global along with its specificity.

Although these four types of emergent territorialities are diverse, each containing multiple, often highly specialized and partial instances, all three evince specific features. First, they are not exclusively national or global but are assemblages of elements of each. Second, in this assembling they bring together what are often different spatio-temporal orders, that is, different velocities and different scopes. Third, this can produce an eventful engagement, including contestations and the frontier zone effect, a space that makes possible kinds of engagements for which there are no clear rules. The resolution of these encounters can become the occasion for playing out conflicts that cannot easily be engaged in other spaces. Fourth, novel types of actors can emerge in this assembling, often with the option to access domains once exclusive to older established actors, notably national states. Finally, in the juxtaposition of the different temporal orders that come together in these novel territorialities, existing capabilities can get redeployed to domains with novel organizing logics.

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AVOIDING OLD BINARIES

A major methodological, theoretical and political implication of the type of analysis I am proposing is that it is insufficient to focus on the nation-state and the global system as two mutually exclusive and distinct entities. There are global formations that are indeed distinct and mutually exclusive with the nation-state, and I have studied these as well. But the transformations that concern me here criss-cross this binary, and enter the national and even the state apparatus itself. They may be a global conditions that gets endogenized into the nation-state or they may be endogenous to the nation-state but become denationalized in this process of change.

To historicize both the national and the global as constructed conditions, I have taken three transhistorical components present in almost all societies and examined how they became assembled into different historical formations. (This is fully developed in the larger project (2006) on which this paper is based.) These three components are territory, authority, and rights (TAR). Each can assume specific contents, shapes, and interdependencies across diverse historical formations. The choice of these three rests partly on their foundational character and partly on the contingency of my fields of knowledge. One could choose additional components or replace one or another of these.

TAR are complex institutionalizations arising from specific processes, struggles, and competing interests. They are not simply attributes. They are interdependent, even as they maintain their specificity. Each can, thus, be identified. Specificity is partly conditioned by levels of formalization and institutionalization. Across time and space, TAR have been assembled into distinct formations within which they have had variable levels of performance. Further, the types of instruments and capabilities through which each gets constituted vary, as do the sites where each is in turn embedded—private or public, law or custom, metropolitan or colonial, national or supranational, and so on.

Using these three foundational components as analytic pathways into the two distinct formations that concern me in the larger project—the national and the global—helps avoid the endogeneity trap that so affects the globalization literature. Scholars have generally looked at these two complex formations *in toto*, and compared them to establish their differences. This is not where I start. Rather than comparing what are posited as two wholes—the national and the global—I disaggregate each into these three foundational components (TAR). They are my starting point. I dislodge them from their particular historically constructed encasements (in this case, the national and the global) and examine their constitution and institutional location in these different historical formations, and their possible shifting valence as the global grows. An example is the shift of what were once components of public authority into a growing array of forms of private authority. One thesis that arises out of this type of analysis is that particular national capabilities can be dislodged from their national institutional encasement and become constitutive of, rather than being destroyed or sidelined by, globalization.¹⁰

This type of approach produces an analytics that can be used by others to examine be it countries in the context of today's globalization, be it diverse or different types of assemblages across time and space.¹¹ In the modern state, TAR evolve into what we now can recognize as a centripetal scaling where one scale, the national, aggregates most of what there is to be had in terms of TAR. Although never absolutely, each of the three components is constituted overwhelmingly as a national domain and, further, exclusively so. Whereas in the past most territories were subject to multiple systems of rule, the modern state gains exclusive authority over a given territory and at the same time this territory is constructed as coterminous with that authority, in principle ensuring a similar dynamic in other nation-states. This in turn gives the sovereign the possibility of functioning as the exclusive grantor of rights.

Territory is perhaps the most critical capability for the formation of the nation-state. But it is not for today's new type of global regulators, for whom authority is more critical than territory. Nor is it for the human rights regime, for which rights are more critical than territory.

Globalization can be seen as destabilizing the particular scalar assemblage represented by the nation-state. What scholars have noticed is the fact that the nation-state has lost some of its exclusive territorial authority to new global institutions.¹² What they have mostly failed to examine in depth are the specific, often specialized rearrangements inside the highly formalized and institutionalized national state apparatus aimed at instituting the authority of global institutions. This shift is not simply a question of policymaking—it is about making a novel type of institutional space inside the state. In overlooking such rearrangements, or interpreting them as simply national changes, it is also easy to overlook the extent to which critical components of the global are structured inside the national, producing what I refer to as a partial, and often highly specialized, denationalizing of what historically was constructed as national.

Thus today particular elements of TAR are becoming reassembled into novel global configurations. Therewith, their mutual interactions and interdependencies are altered as are their institutional encasements. These shifts take place both within the nation-state, for example, shifts from public to private, and through shifts to the inter- and supra-national and global levels. What was bundled up and experienced as a unitary condition (the national assemblage of TAR) now increasingly reveals itself to be a set of distinct elements, with variable capacities for becoming denationalized. For instance, we might say that particular components of authority and of rights are evincing a greater capacity to partial denationalization than territory; geographic boundaries have changed far less (except in cases such as the disintegration of the Soviet Union) than authority (i.e. the greater power of global regulators over national economies) and rights (the further institutionalizing of the international human rights regime). It points to possibly sharp divergence between the organizing logics of the earlier international and current global phases; these two phases are often seen as analogous to the current global phase, but I argue this understanding may be based on a confusion of analytical levels. In earlier periods that international logic was geared toward building national states, typically through imperial geographies. In today's phase, it is geared toward setting up global systems *inside* national states and national economies, and in that sense, at least partly denationalizing what had historically been constructed as national. This denationalizing can take multiple concrete forms. Two critical ones are global cities and specific policies and institutions within the state itself, including such different regimes as instituting human rights and instituting the rights of foreign firms. The Bretton Woods agreement, often seen as the beginning of the current global era, in my interpretation is not part of the current phase because it sought to protect national states from excessive fluctuations in the international economy.

The scholarship on the state and globalization contains three basic positions: one finds the state is victimized by globalization and loses significance; a second one finds

that nothing much has changed and states basically keep on doing what they have always done; and a third, a variant on the second, finds that the state adapts and may even be transformed, thereby ensuring that it does not decline and remains the critical actor. There is research to support critical aspects of each one of these three positions, partly because much of their difference hinges on interpretation. For some, states remain as the key actors no matter how the context has changed, and hence not much has changed about states and the interstate system.¹³ For others, even if states remain important there are today other key actors, and globalization has changed some important features of states and the interstate system.¹⁴ But notwithstanding their diversity these scholarships tend to share the assumption that the national and the global are mutually exclusive.

A second line of argumentation concerns what has changed. Thus for Mann, the present era is merely a continuation of a long history of changes that have not altered the fundamental fact of state primacy.¹⁵ Both the 'strong' and the 'weak' version of neo-Weberian state theory¹⁶ share certain dimensions of this conceptualization of the state. While acknowledging that the primacy of the state may vary given different structural conditions between state and society, these authors tend to understand state power as basically denoting the same conditions throughout history: the ability successfully to implement explicitly formulated policies. A second type of literature¹⁷ interprets deregulation and privatization as the incorporation by the state of its own shrinking role. In its most formalized version this position emphasizes the state's constitutionalization of its own diminished role. In this literature economic globalization is not confined to capital crossing geographic borders as is captured in measures of international investment and trade, but is in fact conceptualized as a politico-economic system. A third, growing literature emphasizes the relocation of national public governance functions to private actors both within national and global domains.¹⁸ Key institutions of the supranational system, such as the World Trade Organization, are emblematic of this shift. Cutting across these types of literatures are the issues raised earlier as to whether states are declining, are remaining as strong as they have ever been, or, have changed but as part of an adaptation to the new conditions rather than a loss of power.

Given my effort to expand the analytic terrain within which to map the question of the global and the national, the larger research and theorization agenda needs to address aspects of globalization and the state which are lost in these dualized accounts about their relationship. In these accounts, the spheres of influence of, respectively, the national and the global are seen as mutually exclusive. While there are indeed many components of each the national and the global that are mutually exclusive, there is a growing, often specific set of components that does not fit in this dual structure.

Factoring in these types of conditions amounts to a fourth position alongside the three referred to above. While this fourth type of approach does not necessarily preclude all propositions in the other three, it is nonetheless markedly different in its foundational assumptions. For instance, in my own research I find that far from being mutually exclusive, the state is one of the strategic institutional domains where

critical work for developing globalization takes place. This does not necessarily produce the decline of the state but neither does it keep the state going as usual, or produce merely adaptations to the new conditions. The state becomes the site for foundational transformations in the relation between the private and the public domains, in the state's internal balance of power, and in the larger field of both national and global forces within which the state now has to function.¹⁹ One feature of the larger field of forces is the multiplication of specialized assemblages described earlier. I now turn to this in greater detail with a particular focus on the political and normative implications of this development.

NORMATIVE AND POLITICAL IMPLICATIONS

The centrifugal multiplication of specialized and/or particular assemblages of TAR is a partial rather than all-encompassing development. Yet its character is strategic in that it unsettles existing normative arrangements and produces a new type of segmentation. One way of formulating the consequences is in terms of novel types of systemic inequality and novel locations for the normative.

We can begin with the novel types of systemic inequality that are being produced. These are kinds of inequality that can cut across every scale, nation-state, major city, and state apparatus. It is not the kind of intra-systemic inequality that emerges from inside a unitary, albeit highly differentiated system, such as a nation-state. Nor is it the kind of inequality that exists between developed and less developed regions of the world. These are two types of recognized and named inequalities, and we have developed massive institutional and discursive domains to address them; although all this effort has only partly reduced those inequalities, they are a recognized target for existing efforts and resources.

In contrast, the proliferation of specialized assemblages that exit the grip of existing normative frames and cut across countries produces a kind of inequality we might conceive of as multiplying particular types of intersystemic segmentations, where the systems are these particularized assemblages. It is, then, also a kind of inequality that can coexist with older and recognized forms of differentiation inside countries and among countries. But it is to be distinguished from these.

Secondly, on the locations for the normative, these assemblages tend to have rules for governance wired into the structures of their system in a way reminiscent of how free markets function. That is to say, these are not explicated rules and norms. The new forms of unaccountable power within the executive branch of government and in global markets illustrate this; but so does the world of NGOs, perhaps especially when they function internationally. This wiring of rules and norms in the structure itself of the system can be distinguished from formalized systems for governance where rules and norms are meant to be explicated and are located both inside and outside the system itself in that they are accountable to external authorities.²⁰

We can see here a disaggregating of the glue that for a long time held possibly different normative orders together under the somewhat unitary dynamics

of nation-states. The multiplication of partial systems, each with a small set of sharply distinctive constitutive rules produces a proliferation of simple systems. This also brings with it a reshuffling of constitutive rules. Not all of these new specialized assemblages contain such constitutive rules, but it is evident in a number of those that constitute themselves precisely as disembedded from state authority and normativity and as systems of justice and authority (for instance, the ICC), including private systems of justice (for instance, international commercial arbitration).²¹

Perhaps it is tempting to see in these trends arrangements akin to European feudalism, a period marked by the absence of centralized national states. Some of the globalization literature positing the weakening, and even ‘disappearance’ of the nation-state has made this type of argument. I see this as a mistake (2006: Part One). In identifying a multiplication of partial orders I find a foundational difference with the medieval European period, one when there were strong broadly encompassing normative orders (the church, the empire) and the disaggregations (the feuds, the cities) each contained within them a fairly complete structure involving many if not most aspects of life (different classes, norms, systems of justice, and so forth). Today these assemblages are highly specialized, partial, and without much internal differentiation. In contrast, the localized and limited world of the manor or the fief of the medieval lord was a complex world encompassing constitutive rules that addressed the full range of spheres of social life.

The multiplication of partial, specialized, and applied normative orders is unsettling and produces distinct normative challenges in the context of a still prevalent world of nation-states. Just to mention one instance, we can deduce from these trends that normative orders such as religion reassume great importance where they had been confined to distinct specialized spheres by the secular normative orders of states. Thus I posit the rise of religion in the last two decades is part of a new modernity rather than a fallback on older cultures, no matter how ‘traditional’ its contents. It is a systemic outcome of cutting-edge developments. In brief, this can then be shown to be not pre-modern but a new type of modernity, arising out of the partial unbundling of what had been dominant and centripetal (secular) normative orders into multiple particularized segmentations.²²

This incipient formation of specialized or particularized orders extends even inside the state apparatus. I argue that we can no longer speak of ‘the’ state, and hence of ‘the’ national state versus ‘the’ global order. There is a novel type of segmentation inside the state apparatus, with a growing and increasingly privatized executive branch of government aligned with specific global actors, notwithstanding nationalist speeches, and a hollowing out of the legislature whose effectiveness is at risk of becoming confined to fewer and more domestic matters.²³ A weak and domesticated legislature weakens the political capacity of citizens to demand accountability from an increasingly powerful and private executive, since the legislature gives citizens stronger standing in these matters than the executive. Further, the privatizing of the executive partly has brought with it an eroding of the privacy rights of citizens—a historic shift of the private–public division at the heart of the liberal state, even if always an imperfect division.²⁴

A second critical divergence is between the increasing alignment of the executive with global logics and the confinement of the legislature to domestic matters.²⁵ This results from three major trends. One is the growing importance of particular components of the administration, such as ministries of finance and central banks (respectively, Treasury and Federal Reserve in the US), for the implementing of a global corporate economy; these components actually gain power because of globalization. Secondly, the global regulators (IMF, WTO, and others) only deal with the executive branch; they do not deal with the legislature. This can strengthen the adoption of global logics by the executive. A third becomes evident in such cases as the Bush-Cheney Administration's support for the Dubai Ports' proposed management of several major port operations in the US. In contrast to these trends, the legislature has long been a domestic part of the state, something which begins to weaken its effectiveness as globalization expands. This then also weakens the political capacity of citizens in an increasingly globalized world.

The participation of the state in the implementation of a corporate global economy engenders a particular type of international authority for the state vis a vis global firms and it engenders a kind of internationalism in state practice. But for now the deployment of this authority and new internationalism have largely been confined to supporting private corporate interests. Such a conceptualization introduces a twist in the analysis of the state and corporate economic globalization because it seeks to detect the actual presence of private agendas inside the state, rather than the more common focus in the globalization literature on the shift of state functions to the private sector and the growth of private authority²⁶. Further, it differs from an older scholarly tradition on the captured state, which focused on cooptation of states by private actors²⁷. In my own research I emphasize the privatization of norm-making capacities and the enactment inside the state of corporate private logics dressed as public norms.²⁸ An important question is whether these new properties of state practice could be reoriented to questions concerning the global common good. For this to become an aim, a number of issues need to be addressed. What type of state authority is this mix of public and private components: most importantly, could it accommodate interests other than private corporate ones? Does the weight of private, often foreign, interests in this specific work of the state become constitutive of that authority and indeed produce a hybrid that is neither fully private nor fully public? My argument is that we are seeing the incipient formation of a type of authority and state practice that entail a partial denationalizing of what had been constructed historically as national. This denationalizing consists of several specific processes, including importantly, the re-orienting of national agendas towards global ones, and the circulation inside the state of private agendas dressed as public policy. But this denationalizing also can open up space for non-corporate international agendas.

For the purposes of this essay it matters whether this participation by the state in global processes and the consequent partial denationalization, can also take place in domains other than that of economic globalization. Among these are recent developments in the human rights regime which make it possible to sue foreign firms and foreign dictators in national (rather than international) courts. Can

denationalization be extended to aims other than those of global corporate actors, including an attempt to develop a global economy with broader social justice aims, and aims other than economic ones.²⁹ Elsewhere I have argued that yes, like globalization, denationalization can be multivalent: it can include the endogenizing into the national of the global agendas of diverse actors, not only corporate firms and financial markets, but also human rights and environmental agendas.³⁰ The existence of a dynamic and growing transnational sphere³¹ becomes critical at this juncture as it can sustain this entry by national actors into global struggles using national instruments.³² Sometimes these processes of denationalization allow, enable, or push the construction of new types of global scalings; other times they continue to inhabit the realm of what is still largely national.

An issue in all of this is the considerable illegibility, ultimately, of this shift from a centripetal to a centrifugal logic. We cannot quite see that this centrifugal logic has replaced important segments of the centripetal logic of the nation-state. This is partly because the national state continues to be the dominant ordering institution and because war and militarized border controls mark the geopolitical landscape and have mostly been sharpened rather than diluted in much of the world. It leads many observers to overlook the fact that wars and borders can coexist with centrifugal logics. Even more difficult to apprehend is the fact that through processes of denationalization some of the components of the nation-state and the state apparatus are themselves part of the new centrifugality. Elsewhere I have shown how this trend holds even for particular segments of the executive branch of government,³³ in spite of varied nationalisms. The ongoing prevalence of strong state politics and policies may well increasingly be a matter more of raw power than the more complex category that is authority. The new types of wars, whether 'civil' or international, suggest this rise of raw power over authority. Even as the raw power of national states in many cases has increased, this may not necessarily mean that sovereign territorial authority has become more significant. This distinction is critical to the analysis in the larger project on which this essay is based.³⁴

Important to my argument is that some of the most complex meanings of the global are being constituted inside the national, whether national territories and institutions or national states. A good part of globalization consists of an enormous variety of subnational micro-processes that begin to denationalize what had been constructed as national—whether policies, laws, capital, political subjectivities, urban spaces, temporal frames, or any other of a variety of dynamics and domains.³⁵ This argument can perhaps be developed most persuasively at this time through an examination of the critical role of national states in setting up the basic conditions, including governance structures, for the implementation of a global economy.³⁶ Ministries of finance, central banks, legislatures, and many other government sectors have done the state work necessary to secure a global capital market, a global trading system, the needed competition policies, and so on.

CONCLUSION

Both self-evidently global and denationalizing dynamics destabilize existing meanings and systems. As the unitary character of the nation-state becomes disaggregated, even if only partially, sovereign authority is itself subject to partial disaggregations. The weakening of the centripetal dynamic of the nation-state also can generate exit options for the disadvantaged. Denationalization is the category through which I attempt to capture these transformations because they are not necessarily global in the narrow sense of that term. This is a historicizing categorization with the double intent of de-essentializing the national by confining it to a historically specific configuration and making it a reference point by positing that its enormous complexity and large capture of society and the geopolity make it a strategic site for the transformation—the latter cannot simply come from the outside. What this categorization does not entail is the notion that the nation-state as a major form will disappear. Rather that, in addition to being the site for key transformations, the state will itself be a profoundly changed entity.

Except for the most superficial and self-evident instances (e.g. globalized consumer markets), this constituting and shaping of global dynamics inside the national generally gets coded, represented, formulated or experienced through the vocabularies and institutional instruments of the national as historically constructed. This is to be expected insofar as nation-states and national states are enormously complex organizations, with often very long histories of developing the needed capabilities. In contrast, the current phase of global institutions and processes is young and is as yet thin reality. Part of the research task is, then, decode, and, more generally, discover and detect the global inside the national.

These and other denationalizing dynamics (e.g. the insertion of human rights in national judiciary decisions) have additional consequences. They begin to disassemble bits and pieces of the nation-state and the state apparatus itself as containers. This disassembling is one dynamic feeding the multiplication of partial, often highly specialized, cross-border assemblages of bits of TAR once lodged inside the national. Many of these are beginning to function as formal or informal entities for both operational and governance tasks in a growing range of global processes stretching across nation-states. The clearest normative implication is a proliferation of particularized normative orders, including their downgrading to utility logics. Whether this is the beginning of a phase that might still see the formation of larger and more encompassing normative orders remains an open question in my reading.

All of this points to at least three distinct subjects for further research and theorization. One concerns the degree of specificity of these emergent assemblages that result from the partial disassembling of unitary nation-state framings. That is to say, what is the extent of their normative and analytic legibility? The second concerns the level of complexity and power these assemblages can evince given their as yet elementary character compared to the internal diversity, organizational complexity, and social thickness of the national. A third subject concerns the move away from unitary normative and spatio-temporal alignments inside nation-states as a result of

this proliferation of multiple assemblages. In brief, what are the normative and political implications of these moves toward centrifugal dynamics and away from the centripetal dynamics that have marked the development of nation-states.

NOTES

1. This is based on a larger project published as *Territory, Authority, Rights: From Medieval to Global Assemblages* (Princeton University Press 2006; New Updated Edition 2008), henceforth referred to as *Territory*. There readers can find full bibliographic elaboration of the issues raised here.
2. This is clearly an analysis that emerges from European history, with all the limitations that entails. Critical here is Gayatri Spivak's thinking about the diverse positions that can structure an 'author's' stance. Donna Landry & Gerald MacLean (Eds) (1996) *The Spivak reader*. New York and London, Routledge.
3. See generally Teubner, Gunther (Ed.) (1997) *Global law without a state*. Aldershot, UK: Dartmouth Publishing.
4. See Sadat, Leila Nadya, & Richard Carden, S. (2000) The new international criminal court, *Georgetown Law Journal*, 88(3), 381–474.
5. See <http://www.pict.org>
6. *Territory*, Chapter 5.
7. *Territory*, Chapters 4 and 5.
8. This term remains underspecified in the view of many. But there is now a vast scholarship that has documented various features, measures and interpretations. See for instance, the Annual Global Civil Society volumes published by Oxford University Press.
9. *Territory*, Chapter 7.
10. In the larger project (*Territory*, Chapters 1, 8 and 9) there are lengthy discussions of questions of method and interpretation. I propose a distinction between capabilities (for example, the rule of law) and the organizing logics (the national, the global) within which they are located. Thus capabilities are multivalent: as they switch organizing logics their valence changes. But they may be look the same, and detecting their change may well require decoding.
11. I use the concept assemblage in its most descriptive sense. However, several scholars have developed theoretical constructs around this term. Most significant for the purposes of this book is the work of Deleuze and Guattari, for whom 'assemblage' is a contingent ensemble of practices and things that can be differentiated (that is, they are not collections of similar practices and things) and that can be aligned along the axes of territoriality and deterritorialization. More specifically, they posit that particular mixes of technical and administrative practices 'extract and give intelligibility to new spaces by decoding and encoding milieu'. Deleuze & Guattari (1987) *A thousand plateaux: capitalism and schizophrenia*. Minneapolis: University of Minnesota Press, 504–505. There are many more elaborations around the concept assemblage, including not surprisingly, among architects and urbanists (vide the journal *Assemblages*). While I find many of these elaborations extremely important and illuminating, and while some of the assemblages I identify may evince some of these features, my usage is profoundly untheoretical compared to that of the above-cited authors. I simply want the dictionary term. I locate my theorization elsewhere, not on this term.
12. For a number of critical scholars, even if states remain important there are today other key actors, and globalization has changed some important features of states and the interstate system. Phillip G. Cerny (2000) 'Structuring the political arena: public goods, states and governance in a globalizing world', in: Ronen Palan (Ed.) *Global political economy*:

contemporary theories, 21–35. London, Routledge. Phillip G. Cerny (1990) *The changing architecture of politics*. London and Newbury, CA, Sage. Ferguson, Y.H. & Barry Jones, R.J. (Eds) (2002) *Political space. Frontiers of change and governance in a globalizing world*. Albany, NY, SUNY Press; Susan Strange (1996) *The retreat of the state*. Cambridge, Cambridge University Press; Cutler, A. Claire, Virginia Haufler & Tony Porter (1999) ‘Private authority and international affairs’, in: Cutler, A. Claire, Virginia Haufler & Tony Porter (Eds) *Private authority and international affairs*. Albany, NY, State University of New York Press. For others more centered in canonical propositions, states remain as the key actors no matter how the context has changed, and hence not much has changed about states and the interstate system. Stephen Krasner (2003) ‘Globalization and the state’, in: Edwards & Sisson (Eds) *Contemporary debates in international relations*. Ohio University Press; Eric Helleiner (1999) ‘Sovereignty, territoriality and the globalization of finance’, in: Smith, D., Solinger, D. & Topic, S. (Eds) *States and sovereignty in the global economy*. London, Routledge; Pauly (2002) ‘Who governs the bankers’, in: Rodney Bruce Hall & Thomas J. Biersteker (Eds) *The emergence of private authority in global governance*. Cambridge: Cambridge University Press, op.cit.

13. Krasner, ‘Globalization and the State’; Pauly, ‘Who Governs the Bankers’; Helleiner, ‘Sovereignty, territoriality and the globalization of finance.’
14. For example, Cerny, ‘Structuring the Political Arena’; Cerny, *The Changing Architecture*; Strange 1996; Cutler *et al.* 1999; Ferguson and Jones, *Political Space*
15. Michael Mann (1997) Has globalization ended the rise and rise of the nation state?, *Review of International Political Economy*, 4(3), 472–496.
16. Skocpol, Theda (1985) ‘Bringing the state back in: strategies of analysis in current research’, in: Peter Evans, Dietrich Rueschemeyer & Theda Skocpol (Eds) *Bringing the state back in*. Cambridge and New York, Cambridge University Press. Evans, Peter (1997) The eclipse of the state? Reflections on stateness in an era of globalization, *World Politics*, 50(1), 62–87.
17. Panitch, Leo (1996) ‘Rethinking the role of the state’, in: James Mittelman (Ed.) *Globalization: critical reflections*, 83–113. Boulder, CO: Lynne Rienner Publishers. Gill, S. (1996) ‘Globalization, democratization, and the politics of indifference’, in: J. Mittelman (Ed) *Globalization: critical perspectives*, 205–228; Mittelman, James H. (2000) *The globalization syndrome: transformation and resistance*. Princeton, Princeton University Press.
18. For example, Hall and Biersteker (2002) and Cutler *et al.* (1999).
19. Territory, Chapters 4 and 5.
20. I intend this to capture a considerable diversity of formations. For instance, Hezbollah in Lebanon can be seen as having shaped a very specific assemblage of TAR that cannot be easily reduced to any of the familiar containers—nation-state, internal minority-controlled region, such as the Kurdish region in Iraq, or a separatist area such as the Basque region in Spain. It intensifies the difference with the ‘home country’ and in fact extends beyond the latter through specific translocal networks and more diffuse subjectivities. This type of development strengthens types of territorial and authority fractures that the project of building a nation-state sought to eliminate or dilute.
21. I develop these issues at length in Territory, Chapters 5, 6, and 8.
22. We also see these incipient novel mixes of TAR in far less visible or noticed settings. For instance, when Mexico’s (former) President Fox met with undocumented Mexican immigrants during his visit to the US in May 2006, his actions amounted to the making of a new informal jurisdiction. His actions did not fit into existing legal forms that give sovereign states specific types of extraterritorial authority. Nonetheless, his actions were not seen as particularly objectionable; indeed, they were hardly noticed. Yet these were, after all, unauthorized immigrants subject to deportation if detected, in a country that is now spending almost two billion dollars a year to secure border control. No INS or other police came to arrest the undocumented thus exposed, and the media barely reacted, even though it was taking place at a time when Congress was debating whether to criminalize illegal

immigrants. Or when Chavez, seen as an ‘enemy’ of sorts by the US government, is somehow enabled (through the state-owned oil enterprise) to bring oil to the poor in a few major cities in the US. All of these are minor acts, but they were not somehow acceptable or customary even a short time ago. I see these practices as producing novel types of mostly informal jurisdictions, and these are, in the last analysis, assemblages of TAR.

23. Territory, Chapter 4. In fact, nationality itself is a legal format undergoing change (see, for instance, Karen Knop (2002) *Diversity and Self-Determination in International Law*. Cambridge: Cambridge University Press; Kim Rubenstein and Daniel Adler (2000) ‘International Citizenship: The Future of Nationality in a Globalized World’, *Indiana Journal of Global Legal Studies* 7(2): 519–48). Nationality can no longer be easily deployed as a singular condition. Some of the main dynamics at work today are destabilizing its singular meaning, for example, the granting of dual nationality. Peter J. Spiro (2008) *Citizenship Beyond Borders* and the incorporation of international human rights norms in national law (Harold Hongju Koh (1997) ‘How is International Human Rights Law Enforced?’, *Indiana Law Journal* 74(4): 1397–1417). In this regard nationality may well evolve into an instance of Benhabib’s “constitutive tensions in liberal democracies.” For a more detailed discussion of these issues see the special issue on Benhabib’s work and my response in the *European Journal of Political Theory*, Vol. 6, No. 4, 431–444 (2007).
24. This is a complicated issue that I do not address here, but see (Territory, Chapter 6). One question is whether there is a necessary relationship between an increasingly privatized executive branch and the erosion of citizens’ privacy rights.
25. An issue here is the relationship between this executive branch alignment with global logics, on the one hand, and, on the other, the proliferation of various nationalisms. I address this in Territory, Chapters 6 and 9. Helpful here is Calhoun’s (1997) proposition that nationalism is a process articulated with modernity; this makes room for the coexistence of globalization and nationalization. Craig Calhoun 1997. *Nationalism*, University of Minnesota Press.
26. For example, Cutler, C. (2000) ‘Globalization, law, and transnational corporations: a deepening of market discipline’, in: T.H. Cohn, S. McBride & Wiseman, J. (Eds) *Power in the global era: grounding globalization*, 53–66. London, Macmillan.
27. Panitch, ‘Rethinking the Role of the State.’ op.cit. Cox.
28. Territory, Chapters 4 and 5; Sassen (1996) *Losing control? Sovereignty in an age of globalization*. New York, Columbia University Press, Chapter 2.
29. For example, Lourdes Beneria (2003) *Global tensions: challenges and opportunities in the world economy*. New York, Routledge; Max Kirsch (Ed.) (2006) *Inclusion and exclusion in the global arena*. New York, Routledge; Kate E. Tunstall (Ed.) (2006) *Displacement, asylum, migration: the 2004 amnesty lectures*. Oxford, Oxford University Press; Linda Lucas (Ed.) (2005) *Unpacking globalisation: markets, gender and work*. Kampala, Uganda, Makerere University Press; Natalia Ribas-Mateos (2005) *The Mediterranean in the age of globalization: migration, welfare, and borders*. Somerset, NJ, Transaction; Rami Nashashibi (2007) ‘Ghetto cosmopolitanism: making theory at the margins’, in: Sassen, S. (Eds) *Deciphering the global: its spaces, scales and subjects*, 241–262. New York and London, Routledge.
30. Territory, Chapters 8 and 9.
31. For example, Khagram, S., Riker, J.V. & Sikkink, K. (Eds) (2002) *Restructuring world politics: transnational social movements, networks, and norms*. Minneapolis, MN, University of Minnesota Press; Valentine M. Moghadam (2005) *Globalizing women: transnational feminist networks*. Baltimore, Johns Hopkins University Press; Nancy A. Naples & Manisha Desai (2002) *Women’s activism and globalization: linking local struggles and transnational politics*. New York, Routledge.
32. Territory, Chapter 6.
33. Territory, Chapter 4.
34. Territory, Chapter 4.

35. A focus on such subnationally based processes and dynamics of globalization requires methodologies and theorizations that engage not only global scalings but also subnational scalings as components of *global* processes, thereby destabilizing older hierarchies of scale and nested scalings. Studying global processes and conditions that get constituted subnationally has some advantages over studies of globally scaled dynamics, but it also poses specific challenges. It does make possible the use of long-standing research techniques, from quantitative to qualitative, in the study of globalization. It also gives us a bridge for using the wealth of national and subnational data sets as well as specialized scholarships such as area studies. Both types of studies, however, need to be situated in conceptual architectures that are not quite those held by the researchers who generated these research techniques and data sets, as their efforts mostly had little to do with globalization. I develop this in Saskia Sassen (2007) *A sociology of globalization*. New York, W. W. Norton.
36. For example, Alfred C. Aman (1998) 'The globalizing state: a future-oriented perspective on the public/private distinction, federalism, and democracy,' *Vanderbilt Journal of Transnational Law*, 31, 769–870. Giselle Datz (2007) 'Global–national interactions and sovereign debt-restructuring outcomes', in: Sassen, S. (Eds) *Deciphering the global: its spaces, scales and subjects*, 321–350. New York and London, Routledge; Rachel Harvey (2007) 'The subnational constitution of global markets', in: Sassen, S. (Eds) *Deciphering the global: its spaces, scales and subjects*, 199–216. New York and London, Routledge; Territory, Chapters 1 and 2; Balakrishnan Rajagopal (2003) *International law from below*. Cambridge, Cambridge University Press.