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BENEDICT KINGSBURY INTERVIEW*

Lecciones y Ensayos: —What led you to become involved in legal research and education?

Benedict Kingsbury: —I am not a person who makes big long-term plans. As a law student in New Zealand, I did my law degree and then went to Oxford University to do a master's in international Relations and, later, a doctorate in international law. The exposure to so many thoughtful academics who asked me such interesting questions led to real depth of thought, to the ability to see around corners and to have strong foundations to think about new problems. All of this made me feel so captivated by the possibility that one could try to do that, and I got drawn into the feeling that there was something really valuable about trying this.

So, I started trying. I eventually got one job that led to another job and like that I got pulled along the track. I also felt a sort of satisfaction. It made me think that maybe I could do something here, I could address some issues which I thought were important, quite often issues which were bad injustices. It made me think about what to do to make the world —or at least some things in it— a bit fairer. I got a lot of satisfaction from that, and I have felt very happy being an academic ever since.

What you are experiencing now, being law students, is the other side of what would happen if you became a professor. After a while, the people who were your students go on to have their own students and you get an unexpected connection that widens your perspective. And you see ideas that you had thought in the past being changed and concretized in ways you had not imagined in many different places. The world changes and people try to adapt the ideas to the places they live in and to the situation they find in the world. That is why I believe there is a great responsibility in being a professor when you realize that it has those consequences. This also shows why universities should really evaluate who to hire as professors and the importance of vocation.

Lecciones y Ensayos: —Related to this, in Argentina, most law professors are not exclusively dedicated to academia, but also carry out other professional activities.

* Interview done by the members of the Editorial Board of *Lecciones y Ensayos* on the 14th of december of 2022. Benedict Kingsbury is a Murry and Ida Becker Professor of Law and Director of the Institute for International Law and Justice, New York University School of Law.

Along these lines, what is it like to be a full-time professor? What are your thoughts on part-time work in such an important task as training the future professionals?

Benedict Kingsbury: —Every personality, every situation and every place in the world is different. For me, to be a full-time professor is a means to satisfaction and an indulgence, but also a responsibility. People invest very much in their tuition payments and universities allocate resources and the synergy of the system into supporting someone as a professor. Therefore, there is a responsibility on that professor to do things which justify all of that; and this means trying hard.

Trying hard with teaching students, with working with one's colleagues, —especially helping younger colleagues with their own work and very active programs—, commenting on other people's work, and overall trying to nurture all young scholars at all stages. It also means trying to find ways to bring new people from disadvantaged circumstances into the field to make it more perceptive and equitable and to help think of ideas that are relevant to the problems the world has or will have in the future. So that is the responsibility part, and I think you must take it very seriously if you have got the luxury of being a full-time professor.

Law is a very distinctive area. It is simultaneously a profoundly serious academic subject with deep connections with power, justice, life, structuring of futures and past wrongs, but also a vocation and a practice. Universities are trying to cater to each of those sides. In fact, a lot of the most satisfying parts of law, including for academics, is to use concrete technical questions and experiences to see how ideas really work out, or to find those things you have missed. I think that the whole enterprise of a university law program is to integrate theory and practice and make it a sort of continuous interlocution between those.

In respect of people, there are some who are full-time academics, at least in certain areas, like philosophy for example, while others are involved in different kinds of practices, not always related to commercial money making, but to governmental, public interest, NGO, activists, or different sorts of consciousness-rising. Then, there are also practices which involve bringing people into the field and maybe working with high-school students or continuing education to try to connect with communities with critical

arrangements. So, there is so much to do there, and a lot of people are even going to be in the middle doing both, teaching and practice.

I think I do not see it much as 'what the individual is about' but more as 'what the institution is about' and how it can be set up in a way to deliver all those things at once. Of course, it is also a matter of the resources of the country. For instance, the U.S. has terrific law schools' full-time professors. But, of course, we have high tuition so someone's paying for it.

Lecciones y Ensayos: —In Argentina, it is not only hard for professors who are part-time professors, but also for students who are 'part-time' students.

Benedict Kingsbury: —New Zealand, where I am now and I grew up, is a farming country like some parts of Argentina are. So, we have this phrase: 'the grass is always greener'. There is something to be said about knowing how the world is and how tough it is for ordinary people living different lives. You learn a lot from having to struggle through different kinds of work. However, of course some work is very frustrating, and you do not feel much fulfillment or diversion from studying. I think, as far as I know, all over the world, across different cultures and history students have struggled on little resources, trying to work full-time while trying to read and to think.

Lecciones y Ensayos: —It is very challenging, but it is also amazing to see how different people who were able to have these opportunities have used them to expand their knowledge, to come in contact with different students from all over the world and to try to bring them closer to these different ways of teaching law.

Benedict Kingsbury: —I see now more and more networks of people organized across lots of countries using social media who are first generation law doctoral students. That is to say, that none of their families went to university and they may be immigrants, their parents may be driving trucks or things like that. So, they try to juggle that life.

I think those networks are very affirming because they help break apart the stereotype that one must look, dress, or talk in a certain way to be a lawyer. After all, law is about following patterns, forms, and conforming, but there has been a huge attempt in lots of places to break away intellectually and socially —in the terms of life possibilities— and celebrate and validate those many ways of coming into it and the

things people bring to it. Still, it is always a struggle because institutions always tend to replicate themselves and urge the new people to be like the previous people, and it is important to always attempt to break out of that.

Lecciones y Ensayos: —Now we wanted to ask some questions about your work. What should be understood as global administrative law? What are the reasons for its emergence?

Benedict Kingsbury: —Global administrative law is an idea, a need to find a label for a practice which already existed when we and other scholars launched this in the 2000's.

The practice encompasses all kinds of institutions: intergovernmental formal and informal ones, hybrid ones, public or private ones and institutions of different sorts. There is an amazing range of institutions exercising some sort of power and people inside are aware that they are exercising power. They do this either by making decisions on individual situations —for example, when admitting a member, granting a license, recognizing somebody— or by making some sort of rule. Rules to guide the conduct of the members, to shape the way a particular economic sector operates internationally or globally, or rules about safety and risk-assessment before hands. These are what we could call primary rules, according to H.L.A Hart; but then there are also secondary rules which are rules about who can participate in the making of those primary rules or rules on how to interpret them and what should happen if there is a dispute. 'Will it be resolved authoritatively, within the rule-making system, or by an outside body?'.

Additionally, there are also many people in and around these institutions who have concerns about these questions. They might work for these institutions; they might be part of one of the member bodies or they may critique institutions.

All these questions and issues arising in different institutions across thousands or probably hundreds of different areas of practice or life will be resolved in an ad hoc way by people trying to come up with something. 'What are we going to do about this?', 'Who is going to participate in this?', 'Do we have to give a reason if we do that?', 'What kind of reasons would count here?', 'How do we treat someone else who has made a decision in this space?' or 'Do we follow the decision or differ from that? '.

The global administrative law idea was to produce an organizing concept which gave a label to those sorts of questions. So, they then began to introduce some principles which might be helpful in approaching them in different contexts.

I think that in global administrative law —everywhere, nationally, and transnationally— there has got to be a mixture of general principles or core ideas you can evoke in a specific context or in specific situations where the principle may apply. But then, there are also principles that might apply in an unusual way or that do not apply because they are incompatible with something about that sector or incompatible with some other principle.

So, we try to introduce ways of thinking and organizing ideas but at the same time not to be very strongly prescriptive and to encourage research which looks at details about how a particular body is working. For example, 'How is the United Nations High Commission for Refugees administering refugee camps?', 'How are they making contracts with other bodies who are administering them?', 'What sort of accountability mechanism are there?', 'Should there be something like the World Bank Inspection Panel for review that applies instead to refugee situations?', 'Would that be a good borrowing, or not? ' or 'Maybe it looks like it would be a good borrowing, but it hasn't happened, so why does it not happen?'.

By thinking about principles, we hope to stimulate and catalyze in-depth studies. Studies also provoke lots of debates but by giving a unified label to all of this we hope to make connections between areas of practice in the world that were unconnected or where people did not see any relationship. Like between refugees and World Bank policy or between something being done in Latin America and something else being done in Africa. This often could be connected because they had overlapping questions.

We hope to bring these things together and create a stimulated dialogue between those who are participating in the same thing. What was quite striking about developing that label and that set of ideas, was how many people involved in the practice, straight away felt 'yes, this says something about what I do' and 'what I do has not had a label until now'. I never learnt this in law school, there is no textbook; I just did it, and now I see there is a way to do it and a lot of people doing it, and we can start to think together.

This is what we hoped: that people in different universities can contribute with ideas which give some organizing structure to a practice that is already happening. Because it is very often the case that even if people are not doing any specific kind of law, they are still doing something, so they end up using standard terms. The same terms about participation, transparency rules, a review mechanism, an accountability principle, damages, remedies or some sort of conflicts of interests' rules. There are lots and lots of things that people with a legal education or at least with good governmental bureaucratic instinct bring. But they often do not have much encouragement to think that this is all connected.

So, a lot of it was about putting some labels or organizing ideas and practice in a better way. That is one reason why it got going on so quickly. It was not something like saying 'governance of some new form of crypto' or something where the technology was involved and so when people try to propose an approach, they cannot do it until there is a lot of technological practice. In this case, there has been practice for more than a hundred years, probably much more, so we felt that we were really trying to draw from that practice and theorize it.

It was also very striking how, when we organized conferences on governance and law in different parts of the world, there were huge differences in how people from different places solved the questions. For example, in Buenos Aires, there was a strong focus on human rights as it was a central way of thinking of these kinds of organizations of power. While other places might have been much more focused on efficiency, on protection of state sovereignty, on combating dominance from the historically imperial country or on particular elements of capitalism or extractivism. Some places really put emphasis on trying to democratize, to use democratic principles in its governance areas, and others not so much. While their own views on how to govern weren't particularly liberal they still could see something in transparency and in trying to organize governance better.

Lecciones y Ensayos: —Why do you think, going back to what we were just talking before, these important entities feel the need to replicate certain logics of administrative law to grant legitimacy to the different decision-making processes? Why do they feel the need to justify those decisions?

Benedict Kingsbury: —It is a really interesting question about why people with power ever feel the need to produce legitimation or justification.

One element is that whenever there is power —especially if it is exercised as a form of domination or something which is noticeable over time as opposed to something where everyone is just so co-opted into it that they are all unaware of having become a subject of power— there emerges counterpower. There emerges someone who wants to do it differently or someone who sees that power and wants to take a piece of it, overtake it or change the leadership. Therefore, whoever has power, also has an awareness that there are going to be other forces deployed. It is a pretty simple driver, a kind of self-preservation. Whoever is running the thing thinks: 'Well, how can I sustain this?'. Sometimes it is venal: 'I just want to be in power and I am going to try to preserve that'. But, very often in this context, it is because of a belief in what that person in that organization is doing. They think: 'Yeah, this is the right way to do this' and they are concerned that someone else is trying to personally aggrandize or to introduce different values, different core principles, which they may not agree with.

As such, in some cases, there is a lot at stake which is genuine and ideological or ideational. Very frequently there is also a need for the people who have power to encourage other people to cooperate in it. Most powers depend on quite large corporations and with an international body, certainly, very rarely do they have much power of coercion. They need people to buy into it, to the normalization of their power, to the normalization of the way it works. If people think that this is okay, they are not going to change it and they are actually going to support it. They are going to try to implement it in their places or sectors and they will go to the meetings and try to work out the theme.

To get that sort of buy-in often depends on people feeling that the process is fair, or at least that their voice can be heard, or that the key people addressed really are represented there. That there is not a structural flaw in the whole enterprise which means it will break apart or it will not be any effective because it is missing key planning. So, for power to work, it often needs to be organized in a way which gets a lot of buy-in and just quite inclusive, at least, of some core interests.

Of course, often, they want to exclude others, so there is a driver just to be successful with power towards efficient organization, but also an organization which

people will support. In this way, these are all principles that seem to correspond quite well with what a lot of people find to be basic procedural fairness.

Think to yourself: 'even if I do not really like what those people do, I think the way they are doing it is okay', and that is because you can challenge it if you do not like it or because they are giving reasons and we can have a debate about it or because they have made sure there is some participation or they are accountable, at least, if they do it wrong; and you see that in a lot of governances. It is a constant issue, for example, in global sports in which governances are often monopoly organizations. They try to influence local practices, control the politics, and a lot of what happens in a host state for a big tournament; all these things they do can intercede with other types of politics. So, for those bodies to sustain themselves they must do something to recruit a lot of support and seemingly find legitimation.

What has really been striking in our work is how widely that is true. How widely it is the case that bodies exercising power do follow some of these kinds of principles, sometimes even before they had a name, and now they often come onto these names and sometimes they will try to improve the principles. That is particularly true for private power, because a private power often does not have legitimation from a state. It does not have a very strong existing structure of legitimation. And quite often, not a single corporation, but once it becomes private beyond a single company, they are keen to shore up that power by following these principles.

Lecciones y Ensayos: —Considering that many private, or even public, entities— such as the Security Council— have the power to make decisions without the need to justify themselves, do you think there is resistance from this type of organizations to think of something like Global Administrative Law?

Benedict Kingsbury: —The Security Council is quite unusual. First, it has a treaty basis, so all states of the world have accepted the Security Council and it has a particular authority which is given to it in the UN Charter. Also, most countries have an obligation in their domestic Laws to implement binding decisions of the Security Council —or at least to give them serious thought—. There are not many other bodies where such strong powers are given by a treaty to a sort of international executive of a few countries.

Second, the principle of the Security Council was that the great powers were all going to be there. So, in 1945 at least, there was this idea that the five major powers, as they were thought then, would have a veto. The point was to concentrate the big powers of the world together so if they all supported something that was enough, then the decision would work because of the amount of power behind it. If they did not all support it, well, according to the original UN Charter, that would not pass.

Later, that was adapted by practice so if one abstains it still passes; so, in effect, if they really do not like it, they can block it. They can block it by voting, or by getting smaller states to vote against it, or just by encouraging it not to come to a vote, so it is a deliberate design where the point is to concentrate power and to act based on that concentrated power. That overlaps with a culture about security, state and military security, which also is quite resistant to transparency and accountability; except the extreme accountability if they lose a war.

It also overlaps with the strand of diplomatic culture which prizes secrecy, negotiations not being transparent and not letting the public know what their positions are. Partly because they are trying to do deals which a lot of people would not like, which might involve surrendering principles that people really care about; and partly because if whoever is going to lose out in a potential deal between states, or in the private sector, knows that in advance, they are going to try to mobilize against it. They are going to try for it to have leaks and to make the agreement hard to reach. So, there is a strong diplomatic culture of secrecy, a culture that thinks of themselves as the elite, as those who get things done. Which means that 'If we make a deal, as long as those with political power back it that is enough'. Therefore, they want to resist that kind of accountability, complex review and things like that. All these elements are combined together in the Security Council.

It used to be that some countries —probably still is— thought that real core power issues like nuclear weapons should somehow function outside of a kind of real legalized structure, outside public scrutiny, and accountability. I think some intelligence services work like that, and of course in many places there is even an effort to give a sort of shield to some levels of corruption on the same ground. So, the Security Council ends up operating as a fulcrum where a lot of those features come together.

This situation came into tension mainly with individual rights, especially when they started putting individuals by name, or individual banks or companies on lists of people whose bank accounts —or other assets— would be frozen or should be blocked; originally in the name of antiterrorism, trying to combat the financing of terrorism. So there, the rights of the individual were being severely compromised by a process which clearly was not organized with any kind of global material principle. This led to a series of cases in several national courts, and in the European courts, which tried to establish a standardized process, a proper process, if core rights of individuals were going to be compromised in those ways. In consequence, the Security Council made some adjustments that pointed in this direction and made some effort to review their culture of wanting to resist those things. Yet, it has not been fully or satisfactorily resolved.

However, despite the fact that the Security Council or some governance areas such as security or intelligence services function like that, this does not mean that most of global governance runs like that.

Lecciones y Ensayos: —Do you consider that there might be a displacement of domestic regulations by global administrative law provisions which would imply an affectation of the democratic legitimacy of such regulations (at least in democratic systems)?

Benedict Kingsbury: —National democracy in countries which are democratic or are strongly striving towards democracy is absolutely fundamental, and that creates a tension with almost all kinds of international law. Because international law is, firstly, about pre-commitment, which means making decisions that will be binding in the long future through treaties or custom. As such, it locks in for the future and it is often hard for democracy to change its position later or back out, which is in some tension with democratic self-governance. Besides, the procedures for change and revision of these internationalized arrangements are often not the same, as even amendments of the national constitution. In Chile, for example, they are trying to reform the Constitution now, but that does not mean that they can remake the international agreements that they have called up (even though some of the people who want a new constitution today also dislike some of the international economic arrangements), so there is some tension between international law and national democracy on that ground.

Secondly, international law is often about moving decisions outside of the country. It is about working things out, especially when national institutions are involved and there is another place where things are going to be decided. This is sometimes used quite cynically by the national governments —as Americans call it in sports— as an 'end-run' around the national democratic controls. As such, something which would be controlled by the minister of law or constitutional rights in the country, cannot be controlled because the decision has been moved —after some international or even foreign arrangement— to another country. So, there is an element of circumvention in some of that internationalization but mixed with the necessity of integration since so many things depend on flows between countries.

Many ways of organizing a lot of elements of life —not just economic life— depend on harmonization, relative unity, or some sort of arrangement which keeps politicians out of it and enables genuine science, sports, or medical processes. There must be an effort to try to keep politicians at arm's length because politicians, while they may be democratic, they may also be opportunistic and they are accountable to just one country, or to one part of a country. Even when the issue may be beyond that state and be global or planetary. So, there has to be some capacity to deal with things beyond that state, which means that some power has to go beyond the state, and that is always going to be in tension with national democracy.

The usual theory states that national democracy has delegated the power that way; has decided, as a democratic decision, to let the power be exercised in that other place. And people feel more comfortable with that if the delegation can be reversed, if the power can be pulled back. However, in many of these systems there is such a strong path dependence that it is really not realistic to escape from it once countries get in.

So, there is an overall concern about democracy, but it is much more complex in international or global arrangements because many countries are not democratic, and in many of them their governments have no aim to be democratic. Some might be a kind of democracy, but not a liberal one —which means that it uses democratic forms, but the aim is to keep a non-liberal kind of government in power, or semi-liberal one— and that is the pluralist world, which is not only true for governments but also true for lots of people. They think: 'well, at least on some things I do not want a purely democratic process'. Even people who are very democratic may feel concerned when they see a

majority deciding something that they do not like, that they think is wrong. They may try to block some of that by constitutional law, but there is always going to be a complex kind of churning in trying to work out how to manage the governance once you are outside of a single national democracy, and how much to diminish or sacrifice democratic values to achieve other things. And so that is what is going on here, global law certainly involves that.

Our original article from 2005 called 'The Emergence of Global Administrative Law' says: 'Well, we are going to bracket the question of democracy'. Of course, it is not that we are against democracy, but we are not going to try to incorporate a theory of democracy into the global law principle. We think it is more clearly about efficient and effective governance combined with protection of rights, and core procedural principles which will be attractive to people whether their commitment is democratic or something else. So, we thought that was a clearer foundation for a lot of what we could see happening. Of course, that we have a strong push for democracy and many people care intensely about that, but a lot of governance law, as a practice, could be understood without having a pre-commitment to democracy as a kind of decisive triumph. Of course, that seems very unsatisfactory to people who think 'Well, that is not right. You are selling out democracy and going down there'.

We then wrote a later paper about the degree to which deliberative democracy principles could be assisted by global administrative law. That, I think, are the basic outlines of the discussion at least on this topic. I think it has had a sharper focus with deglobalization, reassertions about sovereignty, real anxieties about the future, instability, and security; and also, a concern that planetary type issues are not very well addressed by democracy. For instance, democracy makes a huge difference to, let's say, climate change. However, if the state is the key intermediate in all these decision processes, the problem cannot really be dealt with even by the states getting together. There has to be some other way of thinking and organizing processes for some of the planetary issues, maybe also some existential issues.

Lecciones y Ensayos: —In view of the growing role of platforms as a global medium for the dissemination of information, do you think there is any duty on the part of the States to guarantee some principles such as the democratic element?

Benedict Kingsbury: —When there is some sort of power which is not exercised directly by the state, there is always the question of whether the state is the body that ought to be invoked to provide accountability of that power; either the state through its regulatory agency, or as a lawmaker, or as rights protector through courts. This is because for most people's political thinking, the state is the core agent; certainly, it is for the design of international law between states. People are taught to think of the state as where the power is, as the legitimate organization and, at the same time, as the functional manager of the world, territories, people, and governments.

Whenever there is a problem, the first line of thinking is: 'How can the states deal with this?'; perhaps the states individually if there is a problem with one of them, perhaps one state if it is accountable to others for doing something about it, or perhaps the states collectively if there is a bilateral, regional, or global context. That is a very strong pattern of thinking. Anyone who learns international law learns to think and talk like that, and many people who are political tend to have the state as a starting point. However, social media type platforms are one manifestation of a structure which has grown up not by an articulate permission of the state nor usually by creation of it, but by some sort of enterprise which is usually driven by profits and has some sort of corporate structure. In addition, —to a most amazing extent— people have joined these things and, usually voluntarily, have communicated by it, put up their photos and personal or business data, advertised, become influencers, and gotten a second level or third level career through those things. So, of course many other kinds of institutions have joined and communicate through platforms. Many States do, as well as their emergency agencies and public institutions, —like for example educational institutions—. It has become a backbone.

The way that I have been trying to think about those things is to 'think infrastructurally' about them. Not simply to think about the content and free speech, but to think about them as an infrastructure with infrastructural power. To think: 'What does it mean to be infrastructural here?'.

Our project called 'InfraReg' is about infrastructures as regulation, and the idea is that infrastructures themselves regulate. So, the starting point is that platforms are regulating people's lives and ways of thinking and communicating. Not just by allowing free speech or by blocking it, but also by all the ways they prioritize feeds, use recommender algorithms, or use addiction techniques to keep people on this thing. In

many deeper ways also by the organization of knowledge itself, the systematicity of it, and the ways in which data is collected and data markets work.

We studied all of that in our work on Global Data Law, and tried to intersect that with our more general work on infrastructural regulations which covers physical infrastructures such as the Panama Canal, or a system of railroads and subways, and tries to cover these digital infrastructures. I think it shifts the analysis towards platforms as a manifestation of a much more general form of infrastructural power, instead of thinking that it is a unique problem or question about platforms and technology.

It is very easy to think that there is something special or different about a technology that so many people use and that has made life so different to what it was 25 years ago. A technology that is so captivating and has so much influence that it surely must be unique and should be thought about in a unique way. A lot of the platform discussion is like that, but in my own view it is good to try to review what type of general class platforms belong to. In my approach, it is a form of infrastructure. A different approach would be to say that it is a continuation of historic news media like the old newspapers, TV, radio or a continuation of computers and information communication technology. But I think it is more helpful in the end to see it is a manifestation of infrastructure. So that is at least the beginning of my answer about platforms.

However, I think the platform question is anyway going to be eclipsed by the artificial intelligence (AI) question. Of course, AI does not have any particular meaning yet. Lots of things are called AI and things which you called AI are already heavily used by the platforms as well as other digital businesses. So, there is already a lot of AI, but, the possible futures of AI will probably swamp the significance of the experience people have on platforms. So, of course there are important questions and there is the Meta's Oversight Board matter, and some interesting examples people take because they look like global administrative law, but that is not something to get too caught up in. It is just an interim phase and the AI questions are the ones that have very high stakes there.

So, I think the question of how the State should act is probably different from the question of how to think about platforms. The Global Data Law element of this is to see what is going on in the platform simply as a manifestation of the collection and repackaging and use of data.

Lecciones y Ensayos: —You were talking about artificial intelligence, and this will be like a new way of creating rules. Is it a different question from the one we have with platforms related to global administrative law or how do you think is the best way to face that challenge?

Benedict Kingsbury: —Yes, well, of course it is wildly speculative how to think about artificial intelligence because most of the technologies which could really have a dramatic effect only exist as constructions of possibility, but not of realization. As far as I am aware, there are very important things already happening with AI, but many of the things people can talk about and imagine are more at the stage of potential.

I think one can at least speculate that over time it will be the case that one AI system, maybe a very general system, is interacting with another one, and maybe with another one, and that their interactions will themselves have a structure. And if there is machine learning or if the systems are writing their own code, which is already possible, then they will be changing what they are doing and writing a new code to do it and some of that will be in their interactions with each other. One could imagine that they begin to form rules about how to interact with each other in the same sort of way that States or human beings form rules. And if they do that, then there will be a question of: 'How do those rules operate as regulation?', 'Do the AIs accept each other?', 'Is it just a pattern of behavior?', 'Do they expect what the other ones will do, or does it start to be implemented somehow in code so that they have to act that way?', or 'Could they even get to the point of refusing to deal with another AI or doing something negative against any kind of sanction if there is a breach of a rule?'. So, this is very speculative, but one can at least imagine a world where there are interactions amongst AIs which have their own regulation.

Thinking about the platform case at the moment, although all have an enormous number of rules that are coded, these core rules seem to be mainly written by human programmers. But once AIs get further development, become more agential and start to act more substantially directly and especially with each other it could be that rules start to emerge there. Maybe that is desirable. Maybe it could be possible for humans to program the rules, but there is some prospect that they themselves will form or adapt those rules and that may be necessary since this is going to be very high-speed. If you think of very high-speed trading systems on a trading market, it may make sense that the

interaction between AIs is governed by rules of their understanding, and how they recognize each other and what they consider is a trade, what is not, and what to do if the price goes out of a range or things like that. One could imagine that the model would evolve to something like this.

But my point is that there is a real concern about whether AIs can make rules individually or make rules interactively on things that affect human beings or core features of the human life possibilities like weapons systems or the environment. And there is an even more serious concern if AIs become the deciders of what the rule is or what it means to be a rule. Then their attitude on whether this is a rule or not becomes a way of defining, 'is it a rule?'. And if they do not accept it as a rule, then perhaps it is not.

So, this begins to eclipse what has been a human function, regardless of the fact that they are often exercised by institutions. And I think we can easily imagine some kinds of conduct, a weapon system, where they target a particular thing, the question would be: 'Will or will not they operate in a specific case?'. If they are being controlled by AIs, at least partly, then the AIs have been coded to say, 'well, it would be unlawful for me to do this'. Now, 'what happens when the other AI has done something?', 'Am I allowed to retaliate against or not?', 'Has the other AI, in firing off this weapon or destroying this, breached a rule?'. So, if the AIs are controlled in retaliation for example, the AIs' interpretation would become an element of deciding, 'Is this law or is this a rule anyway?' and if so, 'Is there a breach of a sanction at all?' and 'how to interpret that rule?', 'How does it know that this is the rule?', 'What is the material which is relevant to that?', 'What is being processed there?', 'What evidence is needed to be just decisive, this happened, what is the standard proof?'. All of that will be going on in the computer systems, so it is not a very big step to think of AIs becoming some kind of rule makers, or certainly having a big rule function. And there, I think, it may be an important question whether humans should try to completely prohibit that step being taken, and whether that may become an international or global law principle. I think this is not being taught yet, but it is not too difficult to think down that track, that is one of the many reasons I raise that. It is always a challenge because it is very easy to drift into speculation.

It is a new way of thinking. But not thinking about it, when we can, seems like a big mistake.

Lecciones y Ensayos: —We wanted to ask you a question related to a term that you used and that you have also referred to in a recent interview, which is this idea of international law 'endowment'. What do you mean with this concept? May you elaborate on that?

Benedict Kingsbury: —Was that in Germany, in Berlin?[1] I just gave three lectures in Cambridge, England, a couple of weeks ago with the Lauterpacht Memorial lectures[2] and the title of the three of them was international law futures. They will eventually become a book with Cambridge University Press.

One element of that was this idea of 'the planetary' and the need to think about planetary scale —but also planetary timing— which often got much foreshortened competitively with the old geological timing. Out of the good thinking was the data AI, also infrastructure will be relevant to trying to think about international law futures. All these questions of who are going to be the agents there are really central —as well as questions about publicness and normativity.

About the idea of the international law endowment, I have been working on trying to capture the fundamental feature that international law is something which has been built with a huge amount of labor and struggle and political contestation over a very long period. Even when there wasn't international law, the core principles that are taught in standard public international law courses already existed. There was case law, the judicial institutions, the state practice collections and the international organizations, the people mobilized to it, the applications, national law, the NGOs working on how to advance it or use it and businesses applying it. There was already an enormous structure distributed all over the world even though it is by no means the same in different places; people think very differently about it, there is a lot of discrepancy. But there is still a common idea very widely distributed. So, it is kind of a global language for thinking about a lot of core questions related to power, organization, accountability, values, and principles that people will follow together.

Also, some of the core limits of things that really ruled out or should be ruled out. That body of thinking and practice and somewhat shared ideas that we call international

1. KINGSBURY, Benedict 'Hersch Lauterpacht Memorial Lecture 2022: 'International...'.
2. KINGSBURY, Benedict '22 September 2022: Thomas Franck Lecture...'.

law really has to be cherished. If we did not already have it, we would not be able to make it now or it would be a real struggle to get far without those things. There is not really another language, another way of thinking which comes close to helping to organize global effort. Of course, you can come up with other approaches, some more philosophical, some more humanity centered, more economic, more core human nature ideas or even religious ideas. There are other ways of doing it, but international law is an important one.

So, I think it is important to think about the future and all the current tensions and problems, see where we are going and have to go but also, we should try to build on what we already have. Not just say 'with digital or nuclear weapons it is different', 'managing the outer space is a different question' or 'climate is a unique subject'. There is temptation to start anew in some of these areas but, in my opinion, we should try instead to work with principles that we already have. So that is the idea of an endowment. The metaphor of an endowment, at least to me, suggests something which has been built up over a long time and where to some extent what was decided in the past has an influence on what happens now, on how we think now. Sometimes that is good and sometimes it is problematic. But also, if there is an endowment, we feel whoever is living now has a responsibility to it, to carry it forward and do something good with it so that next generations have something there.

And if you think of a university, with an endowment or perhaps some sort of charitable institution, it is easy to think that way. If I am the person doing it now, I have to think: 'What am I leaving for the future?'. And try to make it better, maybe update it or adapt it. So that is the image I have in mind, something in which the past has an influence, where there is an inheritance and where there is responsibility to cherish it and make it serviceable for the future. That is how I want to think about international law. That is the understanding of international law that I want to bring, and then try to think about how these newer questions fit into it. I am sure some people would say this is a rather conservative approach, but it is partly an anxiety about not discarding, not throwing out what is already there, either under political pressure or geopolitics. Core values like human dignity, equality and respect for every human being, environmental concerns are trying to resist those kinds of attacks. We should use and cherish the tools that are already there to stand up against those and to address the future from that platform.

I am trying to see whether people think the endowment idea is a helpful one or not. I have not seen it written anywhere, this is what I thought so far, and I am in an early stage of developing this idea.

Lecciones y Ensayos: —We think of international law as something that has been built for a long period of time, that it is not just discharging all ideas. We can see international law as something which has different layers, which are sometimes connected, but not something that just fits in the past and we just leave behind. Maybe it is not 'conservative'. It is just applying the theory of the layers and valuing what came before and using it in the future. That is: not destroying what we have built.

Benedict Kingsbury: —Yes, well, that is how I see it. But I also recognize that it could be seen as conservative. It is true that people who are doing fine under the current system and have good positions or power will be rather happy with this position. So, I am well aware that it could be too conservative even more if people are very dissatisfied and they want to be more radical and change things. Some people are very concerned about the exploitation of animals, injustice in the world or robust decolonization or antiracism. But there are people on the other side who really want to break up the idea of human equality and walk away from it. With points of view similar to those, anything which focuses a lot on endowment is going to seem to be conservative. That is why I am open to any reactions since I have only just started to elaborate this idea.

Lecciones y Ensayos: —When we read your work, we did not really see it as conservative, but it kind of reminded us of a very common discussion. At least in Argentina's legal theory, we study the metaphor of the cathedral: you are not supposed to take down what is already built but must try to look at everything you have in the best way possible and try to grow from there.[3] We do not think that is conservative, we think it is a way to build international law and knowledge in general.

We wanted to continue and focus on some of the distinctive ideas that you were bringing to the table, which is the concept of 'publicness'. We think it is a prominent and characteristic idea of your work in general, and it underlies this whole conversation. What

3. NINO, Carlos S., *The Constitution of Deliberative Democracy*, pp. 33-36

do you mean by this concept? How does it relate to the idea of the legitimacy of international law in general, and particularly global administrative law?

Benedict Kingsbury: —International law, like probably all law, is a human enterprise. It is about people and their institutions and their forms, including the state, which makes law and applies it to the people. So, the idea of publicness is one of the approaches one can take to try to put the people more at the center or at least ensure that the persons, human beings, are in the conversation. The publicness idea has a long history in different forms of legal philosophy. My colleague Jeremy Waldron at NYU has done a lot to promote it, and, for at least a while, he was exploring the democratic element of publicness. So, I have been really drawn from his hand and from several other people and I am trying to advance this idea in international law and in global administrative law. The point is that, if there is going to be something called law, it ought to be at least an effort to speak for and to the whole public. So, there should exist this element that the law is a projection of an expression, an articulation of the public's voice. In this sense, to be proper law, it ought to be addressed to the whole public. That is the nutshell proposition: it is an idea of who should properly be speaking, and in a political system, that is usually the people. Once we are in the space of international law or in the governance area of global administrative law, it is much harder to say, 'who is that really?' There is a big issue there, especially when there is private power involved, there is concern on who is 'the public,' for whom is the law speaking. Quite a lot of private governance bodies, and even some states, consider that they are self-constituted powers. That some people got together and announced: 'we are going to be the regulator of this, we are going to make standards on that, we are going to be the association of this, we are going to have mutual recognition of each other's on that, we are going to approve someone as the certifying body, we are going to credit them and they will be sent out there to check if you are following our standard or not'.

Frequently, it is not a power which has been expressly delegated in an organized way by existing powers, it is often just a self-appointed power of some sort, or even some powers which do involve the States acting together. Often by the time they are doing that they are very far away from their own publics and very far away, even in a theorized abstracted way, from knowing who they are trying to speak for when they act. Therefore, they have very little connection with accountability for awareness or very little input from those people —the public. The idea then is being self-conscious about who my public is.

If I am an entity, 'Who is it I am supposed to be speaking for here and in what way do I know what they want to say?' 'How has their voice been articulated here?' 'Am I enough of an articulator?' 'Has there been a process of consultation, of engagement where I really heard something from them?' 'Do I know what their interests are?' 'Do I know that they know what the issues are?'.

So, the publicness idea, as a normative idea, pulls the players —who are the people with positions in these kinds of bodies— to have to articulate that and to come up with an account of those things. That account can be debated and challenged. That is on what we might call the input side. On the output side, the normative idea of publicness is that the institution who is producing rules or decisions will have the following in mind: 'Who is the addressee in this?' 'Who is it I should be speaking to when I act in this space?' 'Whose interest is involved?' 'Whose life possibilities are changed by this?' 'Whose got conflicting obligations and how are they going to manage that conflict?' 'Who is disregarded when I speak?' 'Who should they have been regarding?'. If someone should have been regarding, but no one is, 'how can they be regarded in this enterprise?' So that would rule out some kinds of purely self-serving or very sectarian decisions.

Of course, none of this means that any of these bodies must be plenary. They do not have to speak for everybody, and they certainly do not have to speak to everybody or about every issue. There is a limitation here, but it is the underlying spurred and normative constraint on what these enterprises are about. Also, there is energy and empowerment which comes from that same awareness.

So, that is how I am using the idea of publicness in these contexts. And when one has that idea, it is initially a stimulus for articulation and discussion about those things, but it can also be linked to a mobilizing effort of who should be speaking here and who feels that they are going to be affected. And often, once that is in motion, they will begin to articulate positions or begin to think: I am affected by that so, 'where is the place that I should go to challenge it?' or 'how do I make sure that my interest is taken into account?' So here we are, thinking about trying to express the public in legal terms, to find a way through public international law, national law, or government administrative law to make that public a legal public of some sort.

Lecciones y Ensayos: — We wanted to ask you something, which is also related to a very important part of your work: this idea of infrastructure that you mentioned earlier. What is the relationship between infrastructure, global governance, and participation?

Benedict Kingsbury: —Infrastructure, oftentimes, serves a public of some sort. One can see a lot of infrastructures that have a public in mind and the public might be directly the users. But infrastructures may also be affected by the people whose goods, money, or speech flows along with that infrastructure. For example, a border wall or a big railroad in a war, as a blocking infrastructure, can prevent people from crossing borders. There may be migrants and some infrastructures are aimed to block them. It is an infrastructure which affects their possibilities. Of course, infrastructure serves the public and shapes their possibilities. Based on this, one can see that there is an element there in which those interests, voices, should have some sort of impact on the aim, maintenance, refurbishment, and adaptation of the infrastructure to meet their different needs. Of course, many have something like that, they have planning processes or a public participation process. For instance, some follow a principle of universal service and therefore have to supply water, gas and electricity to all communities which impacts the pricing and affordability of those services. Many of them have a process of how the public utilities of a big city are delivered. The question is, 'What happens if you cannot pay?' 'Should you be disconnected, or you should not be disconnected?' And if there is not a good service for you, 'Could you illegally take some water or some gas?' 'Is that tolerated or wrong?', among other examples. So, in fact, with those kinds of physical infrastructures we are remarkably familiar with the idea of a sensibility of the public or involvement and that is in terms of who participates. It is linked to also who are the affected, and the awareness of who are the users and who should receive the utility services.

But then there are disrupted people who do not have a chance anymore to participate because there is a road that blocks their connection with their community, because it diverts from it or maybe what used to be in their place, is now moved to somewhere else. So, there are also lots of effects derived from infrastructure, which are not the intended effects on the actual users but that produce a big shadow on other people's lives. Often, infrastructure's design and use are poorly thought out to address them; it is not really addressing the intended users or the intended economic beneficiaries.

For example, the people who got to drive their car on that road or build a new factory at the end of it. It is not addressing all the people who are going to be affected because they are not the intended users. So, there is an element of public regarding in some infrastructures, but it is often a pretty poorly worked out one.

Physical infrastructures, like roads or a rail can last for a very long time. So, the decisions that are taken on one time frame can really affect people's life possibilities 50, or even 100 years later. If we think about the Panama Canal, it needs fresh water which comes from all the surrounding hills to lift the boats up through the lock system. And if there is a drought or a shortage of water, that canal tends to get priority. The water still goes to the canal, and then washes out in the ocean, and the people who would need that water for agriculture or even drinking in cities may have a lower priority. That probably would not be the course of action now but that is because of the design of the canal which was in the early 20th century, a hundred of years ago. That is still how the canal regulates water use and it does it by infrastructure, not initially by law, although often law institutions back up the infrastructure.

So that is the idea of infrastructure, the ways they shape our lives and the way in which they have a public that should be speaking through it, they have addressees, and people affected at the other end. So, what we see is that often the law defines who is a public, they define who should be speaking in an infrastructural process. If there is an indigenous community, perhaps they should be consulted or even have a veto. For example, if the taxpayers are going to finance this, if they are going to pay higher rates, or higher taxes for utility services, there is some process for consulting them. Often, that consultation is only at the beginning of the design phase, and they then have very little voice in the running of it which tends to be very bureaucratic or commercial. Because of this, the people affected, often as legal publics, are very limited. They may be the people who can vote, being an electoral public, they might be people who have a legal right and therefore could bring a court action. But very often that legal public is not the same as the public really affected. Then, what usually happens is that the law is not remade to fit the infrastructure, so the infrastructure becomes the regulatory form, and the law just remains how it was. This is acutely true when you go beyond a single state, where it is very difficult to create organized legal public systems beyond states.

Once we understand that publicness is involved in infrastructure and in law, we see the need for the existence of some sort of reconciliation of those factors and that can be done, and is a really important program. This can also be relevant to international infrastructures and to digital infrastructures as well as to the more obvious physical infrastructures.

Lecciones y Ensayos: —This is very interesting since it applies to so many aspects of reality. In Buenos Aires, and we think in every society, there is a big problem with infrastructure, because it really does regulate. It is something that might seem obvious, but it is not. Giving the framework to something that exists is incredible. We really think that we might need to study more to fully understand your work, but we are impressed.

Benedict Kingsbury: —That is very nice. I think that probably this way of thinking seems to have quite a lot of resonance with young lawyers in Buenos Aires, because there is such a culture there of seeing the world, the local aspects and wondering what can I do about them? People seem to study 8 hours a day, work another 8 in the evening in the law firm, and then the last 8 hours they are in some NGO trying to litigate rights. In some ways the sensibility is a bit similar.

In some cultures, it is not the same, and some of these ways of thinking do not resonate as easily. Lawyers are often taught in a more traditional way, much more doctrinal and sometimes quite willing to not see the world very much, ready to be rather bookish and also not to have such aspirations to try to reach out and make change. There are many places where the education of lawyers and self-understanding of lawyers is not so much about 'we could get out and so something important, something different'. One of the joys of working with people from Buenos Aires is seeing all that energy which is devoted to try to do something important.

Lecciones y Ensayos: —To end with, we wanted to ask you some of the classic questions we ask everyone that we interview. The first one is: which authors do you consider fundamental for any law student to read? These recommendations do not need to be strictly law-related.

Benedict Kingsbury: —I would recommend H. L. A. Hart, as he has had an important influence in my work. There are a lot of things people could debate about him,

but I think that, if you are going to be in the world of legal studies, legal practice, it is helpful to have some reference point and some way of thinking 'what does it mean to be a lawyer?' 'How do I know what law is?' 'And how does someone else reach the view that this is law for me?'. An author or a work which is conceptual like that can be really helpful to anchor one's thoughts. It is not necessary that one agrees with everything but that is at least one way of thinking. This is also helpful because it shows us that it is possible to theorize law without the state, so using Hart liberates us from a more Hobbesian interpretation of law.

It is also a little different from the influence of natural law positions which consider that the substantive content of law must be part of the idea of law itself. This is a very influential point of view and I think it leads to the idea that to be a lawyer there should be commitments about the content. Hart offers the possibility to think about Law, without considering that the content should be intrinsically fundamental. It allows us to think that it is at least possible to think about Law without a lot of pre-commitments about the content and that is a very challenging position to be embedded in. I think it is helpful when dealing with a pluralistic world to be able to find languages which allows people in all contexts to figure out what is law. That is what I found helpful about Hart. In fact, my own work tries to suggest that Hart can be extended in a way that might encompass more than just legal positivism, and include some principles, like publicness; maybe even some basic rights, and ideas about what law means. That is of course going to be highly contested, many people have written about that, but I find it helpful to think that as a lawyer one does not arrive at purely formal positivist sensibility. I think it is good for every law student to have some position for themselves on those questions.

Also, I consider that it is really important to read about the world we do live in, and to be pluralistic and think for oneself: what resonates with me and with other people. I can start to connect with other people that I am going to work with who I did not connect with, because when I see their literature, art, movies, and sensibility, I can begin to understand more of what they are thinking and why I am different from them. It is really helpful for an international lawyer, without being too casual or appropriating other people's enterprises, to be aware and alert. And there are millions of ways of doing that: trying to think about what an important film or novel in that culture is or in that context or what is a particular form of empowerment that some group of the population has found there which has inspired some of them.

Then you begin to cross a line and think it is not just me, it is me and them. That is very helpful also for people in powerful countries to have that idea as opposed to just 'I am going to give them something of me'. It is not just what I am going to be trying to predict to them, but also, I wanted to kind of feel who they are. So that is a way of defining a menu of things to look for.

I also have had a good time in my reading group with China Miéville's book called 'The City and the City'; he is one of the few science fiction writers who is a doctor in international law and has also been a lively part in London's politics. China Miéville's 'The City and the City' is an infrastructural and international law book that I have been using to understand planetary thinking because of this idea of history in a pen-free-age. It is not so much because of the answers he is able to give but because of the path of thinking that he brings to the different temporalities that the country now poses for us. These are just a couple of suggestions.

Lecciones y Ensayos: —We loved the interpretation of Hart and the rule of recognition. Our final question is: what recommendation would you like to pass on to a law student?

Benedict Kingsbury: —That it's a world of your own making, so get out there and make it.

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