

## **Global Un-Governance Workshop – Panel Report**

University of Edinburgh

23-24<sup>th</sup> of May 2019

On un-governance:

*We don't have a good vocabulary for thinking and talking about these practices of governance, or for grasping their consequences as they are put into action. It appears to involve above all giving form to negative aims – the active undermining of claims to authoritative knowledge, the denial of the possibility of shared realities, the indefinite deferral of foundational questions, the decentering of the polity as the foundation of legal order – precisely as a way of facilitating collective and cooperative action of a certain sort.*

*We could, for now, call it “un-governance”.*

## **PANEL 1 – Un-Governance as Strategic, Oscillating and Unknowable**

*Presenters:*

1. Jan Pospisil, ‘The Un-governance of Peace: Evolving Frameworks of Transitional Patchiness in Contemporary Armed Conflict’
2. Zina Miller, ‘Un-governing Justice’
3. Michelle Burgis-Kasthala, ‘States of Failure? Un-governance and the Project of State-building in Palestine under the Oslo regime’

*Commentator: Rebecca Tapscott*

The first panel’s discussions emerged in the context of the fields of peacemaking and state building. The first paper, presented by Jan Pospisil, focused on the “patchiness of governance knowledge” in peacemaking practices in armed conflict. In his presentation, Jan explored the shift in focus from “governance design” to ongoing “governance of effects” and the ways in which it may lead to further patchiness. Similarly, the second paper, from Zina Miller, investigated the “ungovernability of transitional peace projects” and the recognition of the failure of “blueprint governance practices” that emerge within these projects. Here she noted the tension that exists between practitioners who continue to make use of the vocabulary and methods associated with transnational peace practices despite recognizing themselves as being “deeply uninvested” in them in light of their limitations and failures. Lastly and expanding on this, Michelle Burgis-Kasthala’s paper took us beyond the acknowledgment of unknowability as un-governance and characterized it as a “strategic mis-governance” that facilitates structures of violence in the Palestinian context. In her presentation, she stressed the blurry juxtaposition of governance, un-governance and mis-governance.

Behind this backdrop of conflict, three main dynamics of un-governance emerged in the panel discussions. The first recognized un-governance as involving an acceptance of the unknowable. This included the acknowledgement of the inherent ambiguity and complexity of virtue-fields and the inadequacy of the binaries that so often characterize their virtuous practices (i.e. global versus local or victim versus perpetrator). The need for a practice of self-reflexivity by the expert or practitioner was expressed several times throughout these discussions and others. Secondly and in line with this, un-governance was discussed in the form of an oscillating dilemma: between on the one hand the need to respond to a call for action that is unavoidable in virtue-fields, and on the other the practitioner’s acceptance of the unknowable complexity that appears as an impediment to action. Lastly, un-governance was framed as a type of “strategic mis-governance”. Perhaps best portrayed in the context of Palestine by Michelle Burgis-Kasthala, ignorance or unknowability was explored as a deliberately used tool of violence that is most effective through the normalization of risk and the creation of perpetual uncertainty in zones of conflict.

## **PANEL 2 – Tools of Un-Governance**

*Presenters:*

1. Stephen Humphreys, ‘‘Un-governing’ the climate’
2. Deval Desai, ‘The perpetual politics of rule of law reform’
3. Rene Uruena, ‘International Courts, Subsidiarity and ‘Not Knowing’ in the duty to prosecute human rights violations in Latin America’

*Commentator: Christine Bell*

The second panel discussions featured three papers on various tools of un-governance. The first paper was presented by Stephen Humphreys and focused on equity as a tool of un-governance in relation to climate change or what he characterized as, ‘‘one of the most un-governable regimes of all’’. Stephen brought to our attention four different dimensions of un-governance and suggested that climate change may be its best ‘‘materialization’’. The second paper, presented by Deval Desai, explored how understanding ‘‘the rule of law as an aesthetic artefact’’ is a useful tool of un-governance for practitioners of legal reform. Deval argued that these practitioners simultaneously ‘‘make and unmake’’ the meaning of the rule of law by claiming its unknowability and, therefore, its un-governability. Lastly, Rene Uruena discussed his paper’s investigation on subsidiarity as a powerful tool of un-governance being used in the Inter-American Court of Human Rights (IACHR). The Court did so by arrogating to itself the power to determine what was ‘‘contextual’’ – a loose, discursive practice – while requiring local actors to produce that context in highly formal ways, such as evidence to the Court. In doing so, the Court operated as a source of antiformal decision-making, and turned local actors into formalists, thereby inverting the usual distribution of forms of knowledge

Both in the comments made by Christine Bell and in further questions, three main themes emerged. The first concerned the sense of an inevitable expansion of the unknowable that was common in all three papers. While in the first panel the acceptance of the unknowable was discussed, in the second panel, the dynamism of its boundaries was emphasized in relation to three distinct spheres – climate change, legal reform and human rights. A second noteworthy theme related to coping with the unknowable. Beyond the acceptance of complexity, all three papers described how the unknowable could be employed strategically in what may be defined as un-governance. The speakers identified three strategic usages of the unknowable in the form of equity, aesthetics and subsidiarity. Lastly, and perhaps the least satisfying in terms of answers, was the overwhelming notion of disagreement on, ‘‘what the humanitarian project really is’’ and what role the rule of law plays within it. This last theme was most eloquently pointed out by Christine Bell and led the discussion into a number of interesting, and perhaps unsolvable, questions regarding the future of international law.

### **PANEL 3 – Un-Governing Global Markets**

*Presenters:*

1. Andrew Lang, ‘Keeping the rules in play: the OECD’s regulatory policy initiatives’
2. Robert Wai, ‘Transnational Private Law Un-governance’
3. Ben Hurlbut, ‘The Agile and the Obsolete: Un-governing Technological Futures’

*Commentator: Amy Cohen*

The third panel opened up the workshop’s discussions to the context of the global economic market. Andrew Lang began by exploring the work of the OECD as a window into the broader landscape of “contestation and de-institutionalization”. He characterized these processes as “strategies of un-governance” for international regulatory bodies in the global economic order. Robert Wai followed by putting forth a “positive account” of how the global economic order is already infused with a series of un-governance-based logics that exist within private international law. He argued that these logics result in, “the intended and effective creation of zones – and not voids – of un-governance”. Ben Hurlbut pushed the debate into its more normative dimensions by reflecting on how the narrative of “un-governable and unknowable technologic innovation” is driving constructions of the future and making un-governance the “normative imperative”. He stressed that un-governance should not be seen as the “abandoning of the power to make the future” by those who lead projects of global governance. Instead, un-governance signals that this competency is now being driven by imaginaries of technological innovation.

In both Amy Cohen’s comments and in further discussion, a few common questions emerged. The first reflected an overall trend in the workshop’s first day relating to the essential nature of self-reflexivity in un-governance strategies. All three papers drew on strong notions of adaptation, contestation and de-institutionalization as inherent to un-governance and a certain necessary self-consciousness on behalf of the expert. As Amy Cohen described it, a particular “constructivist consensus” on what should and what should not be governed by the expert. Secondly, questions emerged in relation to the drivers of this self-reflexivity. From market activity itself to technologic innovation, different “agents of change” were identified as driving self-reflexivity and incentivizing different un-governance practices. Lastly, the impact of certain discursive practices was emphasized. The effects of putting forth particular narratives of the “unavoidable, unknowable and ungovernable” were discussed in relation to the creation of an imaginary that is simultaneously shaped by and impacted by experts.

## **PANEL 4 – Un-Governing in the Face of Challenge**

*Presenters:*

1. David Chandler, 'Un-governing the Anthropocene'
2. Kerry Rittich, 'Un-governance meets governance: nodes and strategies in practices of power'
3. Sheila Jasanoff, 'Thinking the Unthinkable: Towards a Postmodern Politics of Global Governance'

*Commentator: David Kennedy*

The fourth panel closed off the workshop's first day with a reminder of why we are called to un-govern in the first place. David Chandler started the discussions with his investigation of the "un" in un-governance in the context of the Anthropocene. He explored three different temporalities within which un-governance exists, formulating un-governance as an experimental and open-ended approach to governance which recognizes and speculates within a "world of unknowable effects". The second paper presented by Kerry Rittich, put forth the idea that un-governance "mimics" or "bears a striking resemblance" to the modes and processes used in international labor law for the establishment of standards and regulations. She characterized these as "open and continuously revisable" processes that involve enormous reflexivity in relation to both the norm and the outcome. Sheila Jasanoff brought the presentations to a close by suggesting that un-governance should not be understood as a full rejection of governance, but instead, as a "reassertion of what matters" in a complex and globalized world. She emphasized this message in the face of challenges such as climate change which signal a desperate need for "governable modes of governance".

Three different paradigms of time and space were emphasized throughout the panel's discussion and in the comments made by David Kennedy. The first related to what we have considered to be the challenges and realities of global governance. After all, and as Sheila reminded us in her presentation, "at some point, we did believe the world was globalized and required governance of some sort". From climate change to labor regulations, the call for governance existed and, in some way or another, has yet to disappear. The second paradigm discussed regarded the past failures of governance. Here un-governance was understood as what can be best described as the failure of the legal and/or political imaginary to "think the unthinkable". This notion led the panel into considering the final temporal paradigm, the future. Here questions emerged as to whether we are trying to deconstruct governance or attempting to provide alternatives to it. David Kennedy's final proposition was to understand un-governance in the context of "taking a break from governance as the focal point". Here it was suggested that we move away from prioritizing governance itself – power and its distributive effects - and instead focus on the distribution of things like honor.

## **PANEL 5 – Devices of Un-Governance**

*Presenters:*

1. Keith Breckenridge, 'Engineering Un-governance: Biometric technologies designed to surpass the regulation of unsecured credit in Kenya and South Africa'
2. Gavin Sullivan, 'Epistemic Infrastructure and Global Security Un-governance: Countering Terrorism and Online Extremism'
3. Sotiria Grek, 'Fabricating Ignorance: International Organizations and the Numerical Construction of an Un-governable World'

*Commentator: Nehal Bhuta*

Starting off the workshop's second day of discussions, the fifth panel included three presenters. Keith Breckenridge explored how, through the establishment of financial and technological dependency networks, biometric registration banking companies have evolved to circumvent regulatory constraints imposed by states. In his paper, he pointed out how constitutional legal interventions have been the most successful in constraining seemingly un-governable practices. The second paper, presented by Gavin Sullivan, showed us how "intervention on the basis of uncertain knowledge" has become the norm in the context of the counterterrorism governance regime. He explained how terms such as "terrorism" have become "broad currency" despite their largely undefined epistemology and legal categorization. Lastly, Sotiria Grek considered how international organization's collective problematization through the construction of global metrics, such as the Sustainable Development Goals (SDGs), requires both the "creation of knowledge" and the "making of ignorance". She demonstrated how the balance that is created from this oscillation creates not un-governance, but instead, "governance at its most effective".

In the comments made by Nehal Bhuta and in the questions made by other participants, a few important considerations emerged. Firstly, it was noted that common to all three papers was a narrative of the "decomposition of public power" in the face of competing governing authorities. This decomposition was unanimously marked by the centrality of devices and the complex regimes that evolved around them. In this panel alone, these devices ranged from biometric registration in banking to algorithmic technologies in counterterrorism. The usefulness of these devices for governance lay very much in the delicate balance between knowing and not-knowing. Lastly and drawing a parallel with previous panels, the panel considered how the notion of strategic unknowability could be incredibly useful for garnering governing powers. Keith Breckenridge revealed how not knowing exactly the financial value of the individual allowed them to become aggregable assets that were financially valuable. Gavin Sullivan demonstrated how not knowing exactly what "terrorism" means enabled broader governance in the name of risk-based interventions. Finally, Sotiria Grek revealed how not knowing exactly where the boundaries of the metrological field consistently allow its indicators and their respective international organizations to govern more broadly.

## **PANEL 6 – Un-Governing the Imaginary**

### *Presenters:*

1. Geoff Gordon and Dimitri van der Meerssche, ‘Cultivating Machers: The utility of unthinkable governance’
2. Hilton Simmet, ‘Un-governing Human Capital: The Making of the Economic Expert’
3. Rebecca Sutton and Caroline Compton, ‘Law, Logic and Performance in Humanitarian Practice: Imagining Emergencies in War and Natural Disaster Contexts’

### *Commentator: Cedric de Coning*

The last panel of the day featured the final three papers of the workshop. In the first, Geoff Gordon and Dimitri Van Der Meerssche used the metaphors of the “inflexible Oedipus” and the “entrepreneurial wellness guru” to explore how law has transformed itself to “embrace the unthinkable” instead of constraining it. The paper focused on the World Bank as a “site of un-governance” that has gradually abandoned formal structures of avoiding risk and instead, cultivated strategies that attempt to manage it. In the second paper, Hilton Simmet made use of the “Kangaroo People” metaphor to illustrate “un-governance as un-masking”. Expressly, how the usefulness of governance lies not in its ability to “know” as such, but instead, on its capacity to produce authority and legitimacy “in and through” particular representations of the world. The last paper of the workshop was presented by Rebecca Sutton and Caroline Compton and investigated what happens when the “emergency imaginary” that “inevitably shapes” and “loads the need” for humanitarian responses falls apart. They demonstrated how in the context of climate change, where “slow violence dominates” and the “reset button” is no longer available, the un-governing mechanisms used unconsciously by humanitarian practitioners to sustain their imaginary are no longer sufficient.

In the commentary, Cedric de Coning reflected on his own position as a practitioner, “working in the shadow of un-governance”. Throughout his comments and the questions, a few themes were emphasized. First there was a recognition of the imaginary as the connecting thread of un-governance. In all three papers the imaginary played a central role and employed important characters - such as the entrepreneurial wellness guru and others - that call on us to “embrace the unthinkable” or who help us engage in “un-masking the illusion”. The reference to temporalities was also considered particularly noteworthy throughout. In particular how these interacted with different notions of the imaginary. This was especially clear in the last paper, where the element of temporality holds the potential of “lodging and dislodging” the entire representation of emergency. Lastly, the discussions came full circle to some of our initial questions on “the search for peace” through governance. Cedric contributed his own framing of un-governance as one that engages not in “abandoning knowledge” nor “embracing the unknowable”. To the contrary, the framing of un-governance should seek the, “active and constant production of adaptive knowledge”. It should include, “a generous amount of self-reflexivity” on the effects of producing and using that knowledge.

*Rapporteur:* Mariana Matias, University of Edinburgh