Legal Preparations for an Imperial World State

(with help of ChatGPT 6. pro)

by Béla Pokol

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Comprehensive introduction

A substantial body of legal and sociolegal scholarship examines institutional changes that create structures of power extending beyond states and incorporate their operation into national legal systems. This literature is particularly extensive in the fields of international investment protection, global private law, financial regulation, intellectual property, judicial networks, and the constitutionalization of international institutions. Several authors explicitly investigate the legal organization of transnational economic power. assets.cambridge.org

In my view, the research finding most closely connected to your question is that **a significant part of transnational power is organized through states' own laws**. International treaties, arbitration clauses, conflict-of-laws rules, corporate and insolvency law arrangements, and national judicial decisions enable certain actors to acquire decision-making powers and property interests enforceable across several countries. The works of David Schneiderman and Katharina Pistor demonstrate this particularly clearly. academic.oup.com

For a detailed assessment, however, it is important to distinguish four kinds of claims.

What does a study claim?	What can substantiate the claim?
Particular actors deliberately initiated an institutional change.	Drafts, programs, lobbying activities, negotiating documents, and interviews.
A program in legal scholarship explicitly supports the institutionalization of power beyond states.	The author's openly stated normative proposals.
A legal change actually redistributes opportunities to make decisions.	Analysis of legislation, judgments, procedures, and their consequences.
These changes form part of an overarching development of global power.	A theory of society and power connecting the preceding findings.

The fourth claim requires considerably more substantiation than the first three. A rule's consequences for the distribution of power do not, by themselves, prove that all its initiators intended those consequences. At the same time, there are cases in which an actor's strategy for bringing about legal transformation can be directly documented.

1. B. S. Chimni: a direct legal-theoretical thesis on the emergence of a global power system

The connection you raise is formulated most directly in **B. S. Chimni's "International Institutions Today: An Imperial Global State in the Making."** The article appeared in the *European Journal of International Law* in 2004.

According to Chimni, the network of international economic, political, and social institutions is beginning to perform the functions of an emerging global statehood. His theory's central claim is that this structure institutionalizes the interests of a transnational capitalist class while narrowing the room for maneuver available to subordinate social groups in different countries. WTO rules, the conditions imposed by the IMF and the World Bank, and the activities of other international institutions collectively reshape states' economic policy options. However, states' roles in the formulation and implementation of these rules are distributed unequally. Chimni also acknowledges that some international institutions can provide protection and opportunities for action to weaker states and social movements. www.ejil.org

The article's significance for legal theory lies in its functional interpretation of the "global state." Investigating this does not necessarily require looking for a single world government. The question is which state functions—from taxation and redistribution to norm creation and the imposition of sanctions—become embedded in institutional relationships over which national political communities exercise only partial control.

From this perspective, a state may remain formally sovereign while the content of some of its decisions is shaped by international obligations, financing conditions, or external review. The unit of analysis for examining power is then the entire institutional relationship: the actor formulating an international norm, the government accepting the obligation, the authority implementing it, and the forum reviewing its application.

In assessing Chimni's approach, it is necessary to recognize that he consciously works within a Marxist and postcolonial theoretical framework. This is developed more fully in the 2017 second edition of **International Law and World Order: A Critique of Contemporary Approaches**. That framework helps explain why, for Chimni, institutional changes must be connected to class relations, historical dependencies, and social subordination. www.cambridge.org

Chimni is therefore exceptionally close to the question you pose. The force of his overarching thesis is strengthened most effectively, however, by more detailed studies that reconstruct particular legal mechanisms and the actors involved in them.

2. Stephen Gill and A. Claire Cutler: making economic power legally durable

The meaning of "new constitutionalism"

Stephen Gill uses the concept of *new constitutionalism* to describe legal and institutional changes that provide lasting protection for certain economic arrangements against subsequent political alteration. The concept also occupies a central place in his 1998 article **"New Constitutionalism, Democratisation and Global Political Economy."** According to this analysis, the institutionalization of capital's interests within the state also transforms the structure of democratic decision-making opportunities. www.tandfonline.com

The 2014 volume **New Constitutionalism and World Order, edited by Stephen Gill and A. Claire Cutler**, develops this argument across several areas of law. Here, "constitutionalization" means a form of legal entrenchment that partly removes economic rules from ordinary political renegotiation. International treaties, guarantees protecting property, and institutional

commitments can make it more difficult for a subsequent electoral majority to implement a fundamentally different economic policy. The authors nevertheless emphasize the uneven and conflictual character of these processes and the importance of active state participation. assets.cambridge.org

Gill's 2000 conference paper **"The Constitution of Global Capitalism"** analyzes several concrete instruments: strengthening the constitutional protection of property, investment treaties, independent monetary institutions, fiscal constraints, privatization, and domestic legal changes aligned with international economic commitments. Their common feature is that they create durable commitments for economic actors and influence the freedom of decision of subsequent governments. stephengill.com

The question of power can be formulated very precisely here: **who receives legally protected continuity, and who must bear the costs of adapting to changing circumstances?**

Stability is valuable in itself: without it, long-term investment, contractual cooperation, and public policy planning become more difficult. The analysis becomes a theory of power when it examines which social interests receive guarantees of stability and what procedures remain available for correcting them.

Cutler: the public significance of private norm creation

A. Claire Cutler's Private Power and Global Authority: Transnational Merchant Law in the Global Political Economy, published in 2003, examines transnational commercial law. Its central claim is that the creation of commercial norms by private actors constitutes an exercise of power with political significance: it determines the conditions of market participation, acceptable conduct, and the procedures for resolving disputes. Private actors develop standards and contractual arrangements; parties apply them, arbitrators interpret them, and states recognize and enforce them. Public and private power become durably interconnected through this process. www.cambridge.org

Following Cutler, the crucial research question is **which actors possess an effective capacity to shape rules behind the formal principle of freedom of contract**. The drafter of a globally used standard contract occupies a different position from a business that can gain access to a market only by accepting the established terms.

This research approach is therefore particularly well suited to processes that lack a conspicuous moment of constitution-making but nevertheless durably redistribute legal opportunities.

3. David Schneiderman: investment protection as the constitutionalization of economic globalization

In terms of their direct relevance to your question, I would place David Schneiderman's works among the most important. This is especially because he examines the intersection between international economic law and functioning national constitutional systems.

The foundational 2008 book: external obligations and internal constitutional transformation

According to **Constitutionalizing Economic Globalization: Investment Rules and Democracy's Promise**, published in 2008, the international investment protection system creates durable constraints resembling those of a constitution. Schneiderman connects two levels: external constraints arising from international treaties and the adaptation of domestic law. Through its own legal acts, the state assumes obligations that may subsequently narrow the possibilities for democratic experimentation in economic policy. The investor's legal position thereby becomes partly insulated from political changes in the host state. The book's democratic alternative is to preserve the possibility of revising economic arrangements. assets.cambridge.org

To understand the mechanism, it is useful to distinguish three different decision-making powers:

1. Can the state adopt a new rule?
2. Who decides whether the state has thereby violated an international obligation?
3. What financial consequences follow from a finding of violation?

The legislature may retain the first power while the second passes to an external forum and the third makes exercising the first significantly more expensive. Formal competence and effective political room for maneuver can therefore diverge.

The political significance of liability for damages

The 2018 article **"Against Constitutional Excess: Tocquevillian Reflections on International Investment Law"** develops this problem. Schneiderman examines demands for stability within investment law, the requirement of fair and equitable treatment, and the protection of legitimate expectations. He argues that a substantial obligation to pay compensation can also constrain the freedom to change public policy. At the same time, the functioning of democracy requires that the political community be able to reconsider its previous decisions in light of experience. lawreview.uchicago.edu

For legal precision: investment arbitration generally determines international responsibility and its consequences; this does not entail a general power to invalidate national legislation. Article 54 of the ICSID Convention nevertheless requires awards to be recognized as binding and their pecuniary obligations to be enforced as if they were final judgments of a court in the state concerned. Article 55 preserves the applicable rules on immunity from execution. icsid.worldbank.org

This demonstrates the significance of connecting international and national law. The effect of the external decision becomes durable through the participation of the national enforcement system. Describing investment protection as "supraconstitutional" can therefore be understood as a functional analogy: it expresses the constraint on political change rather than a uniform formal hierarchy of legal sources.

The 2024 book: what do national apex courts do?

The book **Constitutional Review and International Investment Law: Deference or Defiance?**, published in 2024, directly investigates domestic constitutional review. Schneiderman compares the practices of apex judicial bodies in several countries and regions.

The central question is how they respond to tensions between investment obligations and national constitutions.

The responses examined include strong accommodation and conditional acceptance requiring adjustments. The book associates Peru, for example, with the former and Colombia with more moderate resistance. Its conclusion is that courts frequently develop interpretations and solutions that allow the system to be maintained. academic.oup.com

This almost exactly matches the subject of your formulation: **an institution within an already functioning legal system—constitutional review—acquires a mediating role in consolidating a transnational legal order**.

The significance of such judicial practice is not revealed solely by the number of international treaties declared unconstitutional. It is also necessary to examine the interpretive starting point courts adopt: whether they adapt their reading of the domestic constitution to international obligations, which conflicts they regard as legally relevant, and what changes they require to establish compatibility.

The 2026 development: constitutional reasoning in investment arbitration

A Sociology of International Investment Law: Themes from Max Weber, published in 2026, also analyzes the legitimation of authority and modes of legal thinking. Its chapter on proportionality examines how a technique of constitutional balancing is transferred into investment arbitration.

Schneiderman illustrates the problem through disputes arising from changes to Spanish solar energy subsidies. Changes accepted by national courts resulted in compensation in some arbitral proceedings. His criticism is that certain applications of proportionality reasoning may shift toward assessing investors' financial returns and make the broader consequences of public policy decisions less visible. academic.oup.com

The theoretical significance is that institutional power can also grow **through the adoption of methods of reasoning**. If a forum engages in balancing resembling that of a constitutional court, it may thereby reinterpret its own role: moving from reviewing compliance with treaty obligations toward authoritatively weighing competing public interests.

The contested character of this process is discussed in **M. Sornarajah's Resistance and Change in the International Law on Foreign Investment**, published in 2015. It examines state resistance, efforts to recover regulatory space, and changes directed against expansive interpretations of investment law. The system's development is therefore shaped by legal and political struggles. www.cambridge.org

4. Katharina Pistor and Horatia Muir Watt: the private law infrastructure of global power

Pistor: the legal creation of capital

According to **Katharina Pistor's The Code of Capital: How the Law Creates Wealth and Inequality**, published in 2019, wealth requires special legal protection to function as capital.

The rules of contract, property, corporations, trusts, and insolvency can be combined into arrangements that give certain claims durability and priority. Major providers of legal services play a decisive role in constructing these arrangements; their effectiveness depends on state legal systems. scholarship.law.columbia.edu

The article **"Capital's global rule,"** also published in 2019, explains the global operation of this process in greater detail. Pistor highlights four attributes: the priority of a claim, its durability over time, its convertibility into safer assets, and its general enforceability against others. Of particular importance to transnational capital is that arrangements created under certain legal systems—for example, English law or New York law—receive recognition in other states. Connecting choice of law with enforcement can thus give particular national laws a global reach. www.law.nyu.edu

The resulting asymmetry of power can be understood as follows. One actor can combine the opportunities offered by several legal systems: it can separate the place of incorporation, the law governing its contracts, the structure of its financing, and the forum for resolving disputes. The options available to an opposing employee, injured party, or local authority may be much more closely tied to a particular territory.

In this situation, the capacity to connect different national legal systems becomes an independent resource of power. Whoever can design those connections can also, to some extent, shape their own legal environment.

Concrete legal institutions: choice and exceptional protection

The 2022 article **"Legal coding beyond capital?"** examines the state foundations of private legal arrangements. Pistor addresses gaps in legal oversight, choice of law and forum, and insolvency law exceptions relating to financial collateral and derivatives. Certain financial positions may receive protection departing from ordinary procedural rules and rules governing the satisfaction of claims. The article's normative direction is toward more democratic control over these processes of lawmaking and enforcement. www.cambridge.org

From the outside, these changes can easily appear technical. Yet the order in which claims are satisfied or an exception in insolvency law directly determines who bears the losses of an economic failure. A detail of legal technique thus becomes a rule governing the distribution of income and power.

Muir Watt: the governance significance of private international law

Horatia Muir Watt's 2011 article "Private International Law Beyond the Schism" demonstrates that rules of jurisdiction and choice of law also participate in organizing global private power. The economically unified operation of a multinational enterprise may be connected to legally separate companies. Rules governing access to a forum, applicable law, and corporate separateness determine whether injured parties can attach legal responsibility to economic decisions. The article therefore advocates greater awareness of the public policy responsibilities of private international law. iilj.org

The 2014 volume **Private International Law and Global Governance, edited by Muir Watt and Diego P. Fernández Arroyo**, addresses this research question more broadly. Its central

significance is that it makes jurisdiction and conflict-of-laws rules available for examination as institutions of global governance. academic.oup.com

The decisive connection to your question is that the development of power does not require the creation of new public bodies everywhere. Altering existing rules on responsibility, choice of law, and enforcement may be sufficient to bring about a substantial redistribution of decision-making positions.

5. Two particularly well-documented cases: financial contracts and intellectual property

ISDA and the coordination of national financial laws

John Biggins and Colin Scott's 2012 article **"Public-Private Relations in a Transnational Private Regulatory Regime"** examines the relationship between ISDA—a major international industry association in financial derivatives—and state regulation. It shows how the legal order of over-the-counter derivatives markets developed through cooperation between public and private actors. This included, for example, excluding the application of gambling-law invalidity rules to certain financial transactions. www.cambridge.org

Direct evidence of deliberate institutional design is also available in the organization's own document, the **ISDA 2018 Model Netting Act and Guide**. ISDA openly explains that it works with lawmakers and regulators in different countries to support the adoption of legal rules ensuring netting. When contractual positions are closed out, netting can convert reciprocal claims into a single net claim. The stated objectives are legal certainty and the reduction of credit risk. www.isda.org

This is one of the strongest empirical examples relevant to your question: **a transnational private organization deliberately initiates coordinated changes in domestic law**. The demonstrated objective is to ensure the legal operability of its market. The broader conclusion about power must be formulated separately: an organization representing regulated actors acquires a significant capacity to shape the content of state regulation.

Biggins and Scott's 2015 article **"Licensing the gatekeeper?"** examines ISDA's credit derivatives determinations committees. These can decide whether a credit event triggering payment obligations has occurred. Through the examples of Greek debt restructuring and Austria's KA Finanz, the authors analyze the public financial significance of such private decisions, together with problems of participation and review. researchrepository.ucd.ie

The transformation of power occurs at two points here: the private organization participates in shaping the general legal environment, and a decision-making mechanism organized by it subsequently determines specific financial legal consequences.

Drahos and Braithwaite: the corporate strategy behind the TRIPS Agreement

John Braithwaite and Peter Drahos's Global Business Regulation, published in 2000, examines global regulation in several sectors on the basis of extensive interviews. The research analyzes the diffusion of rules through relationships among corporations, states, international

organizations, and civil society actors. It identifies different mechanisms: pressure, emulation, reciprocal adjustment, and networked cooperation. www.cambridge.org

Their 2002 book **Information Feudalism: Who Owns the Knowledge Economy?** reconstructs the development of global intellectual property protection. They examine the role of executives at Pfizer and IBM, the activities of the *Intellectual Property Committee* established in 1986 and bringing together thirteen American corporations, and the alliance formed with European and Japanese business organizations. In 1988, corporate actors developed a joint proposal for intellectual property protection to be established within the GATT framework. The authors identify the shift to the trade policy forum and American trade pressure as important factors in the emergence of TRIPS. www.thecornerhouse.org.uk

The legal outcome was the TRIPS Agreement operating within the WTO framework: participating states must meet minimum requirements for intellectual property protection and maintain appropriate domestic enforcement procedures. National courts, administrative authorities, and customs administrations participate in enforcement. www.wto.org

This case is particularly strong as an investigation of actors' intentions. Corporate cooperation, the development of a legal program, the selection of an appropriate international forum, and the organization of state participation can be connected to one another.

A separate analytical question concerns which forms of protection serve innovation or other public interests. The documented aspect of power is that the economic actors most directly affected by the rules were able to translate their own legal demands into the development of international minimum requirements.

6. Yves Dezalay and Bryant G. Garth: the institution-shaping role of transnational legal elites

The personal and professional connections mediating between powerful groups and legal changes are examined in particular detail by **Yves Dezalay and Bryant G. Garth**.

The social construction of international arbitration

Their 1996 book **Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order** analyzes the development of the professional field of international commercial arbitration. They examine competition between eminent European lawyers and professors and American providers of business legal services. Professional authority acquired within national institutions can be converted into international appointments and decision-making influence. The legal order of arbitration is therefore also shaped by participants' careers and their relationships with one another. press.uchicago.edu

This approach opens up an important question: through what process of social selection does someone acquire a position in which they can make authoritative decisions in disputes between states and global corporations?

International resources in national elite struggles

The 2002 book **The Internationalization of Palace Wars: Lawyers, Economists, and the Contest to Transform Latin American States** examines transformations in Argentina, Brazil, Chile, and Mexico through more than three hundred interviews. American universities, foundations, professional networks, and institutional models appear as resources in local elite struggles. Qualifications and networks acquired abroad can become instruments for reshaping domestic institutions. The research also examines the careers of neoliberal economists and human rights lawyers, taking account of their different objectives and positions. press.uchicago.edu

The significance of this process for a theory of power lies in the mutual interests involved. International institutions and centers of knowledge find local intermediaries; local actors acquire international support and professional authority for their own institutional programs. Domestic reform can therefore be explained through the connection between external and internal resources.

The transformation of legal education

The 2021 book **Law as Reproduction and Revolution: An Interconnected History** also discusses the spread of American-style legal education and corporate legal services in several Asian countries. The authors examine how educational reform, international professional careers, and elite reproduction become interconnected. The example of legal education in India also shows how institutions originating in public interest reform objectives can subsequently become important recruitment sources for the corporate legal market. webfiles.ucpress.edu

This is particularly important when assessing unstated objectives. A later institutional function does not automatically reveal the original founders' intentions. It is nevertheless possible to examine how financing, promotion systems, curricula, and labor market incentives altered an institution's operation.

Dezalay and Garth's greatest contribution is to break down the concept of the "legal elite" into concrete careers, institutions, relationships, and competitive situations.

7. Anne-Marie Slaughter: an explicit program for a global network of state institutions

Anne-Marie Slaughter's A New World Order, published in 2004, describes and supports the international networking of state institutions. Judges, central bankers, regulatory authorities, and other officials cooperate directly with their counterparts abroad. Within the "disaggregated state," individual institutions possess their own international connections and obligations.

The book's normative proposal is to reinterpret sovereignty in this way, as attached to particular state institutions. Rules of network participation, professional support, training, and membership requirements can directly affect the activities of public officials. Slaughter advocates the deliberate institutionalization of these networks. assets.press.princeton.edu

Here, therefore, we encounter **an explicit program of institution-building**. The entity around which power is organized becomes, in part, a particular institution of the state rather than the state as a whole.

As a consequence, the balance of power within the state may also change. A regulatory authority may gain professional support, information, and international prestige. This can increase its autonomy in domestic governmental or parliamentary debates. External cooperation may thus acquire domestic constitutional significance even if the institution's formal competence remains unchanged.

Slaughter's **"Disaggregated Sovereignty: Towards the Public Accountability of Global Government Networks,"** also published in 2004, nevertheless makes accountability a central concern. The closed character of professional networks, unequal opportunities for participation, and their effects on domestic politics generate demands for transparency and oversight. slaughter.scholar.princeton.edu

Slaughter should therefore be read as an author who deliberately supports an increase in global governance capacity while also seeking appropriate institutions of legitimation. In her network model, multiple decision-making centers cooperate; the essence of the proposal lies in the legal organization of their relationships.

8. Global administrative law: the tension between controlling and legitimating power

Benedict Kingsbury, Nico Krisch, and Richard B. Stewart's "The Emergence of Global Administrative Law," published in 2005, is a foundational work in global administrative law.

The authors identify exercises of power resembling administration in the activities of international organizations, networks of state regulators, national authorities implementing global rules, hybrid public–private organizations, and private standard setters. They connect these activities to requirements of transparency, participation, reason-giving, and review.

The article is particularly noteworthy because it itself acknowledges that an administrative law approach may stabilize and legitimate existing structures of power and reinforce certain Northern or Western conceptions of law. The authors discuss this as a risk while also emphasizing the approach's critical and reform possibilities. iilj.org

The general problem arising here is that **procedural improvements in the exercise of power may simultaneously contribute to the institution's acceptance**. A procedure for participation or review may provide real protection. The same procedure may also consolidate the assumption that the body concerned is entitled to decide the issue.

Chimni's 2005 article **"Co-option and Resistance: Two Faces of Global Administrative Law"** criticizes the program from this perspective. He argues that procedural rights do not necessarily counterbalance inequalities embedded in substantive rules. Formally open participation requires expertise and money, as the example of the Codex Alimentarius also illustrates. At the same time, he recognizes the potential of legal procedures to support resistance and the advancement of social interests. www.iilj.org

This debate reveals one of the most subtle versions of your question. The stated purpose of an institutional reform may be to control power, while its consequences include making existing power more durably acceptable. Which effect predominates must be assessed by examining the

procedure's actual accessibility, its weight in decision-making, and the opportunities it provides for correction.

9. Explicit programs in legal scholarship for international constitutionalization and global governance

Anne Peters: constitutional control beyond the state

Anne Peters's 2006 article "Compensatory Constitutionalism" starts from the proposition that globalization may weaken the controlling capacity of national constitutions. In response, she proposes extending constitutional requirements to the international level. She emphasizes the constitutional significance of fundamental international norms and treats state consent as one source of legitimacy, but not its exclusive source. She examines conflicts between national and international constitutional claims as questions requiring balancing. www.cambridge.org

Peters's **"Dual Democracy"** chapter in the 2009 book **The Constitutionalization of International Law, written by Jan Klabbers, Anne Peters, and Geir Ulfstein**, proposes two democratic connections: representation mediated through states and more direct participation by individuals in institutions above the state. This also includes strengthening the role of international parliamentary bodies. academic.oup.com

This is explicitly a program for the constitutional organization of public authority beyond the state. Its purpose is to increase the rule-of-law and democratic constraints on already existing or emerging power. From the perspective of sovereignty, it nevertheless represents a significant change: the exclusivity of state mediation is partly replaced by individuals' direct international legal and political relationships.

The Petersmann–Alston debate: human rights and economic integration

Ernst-Ulrich Petersmann's 2002 article **"Time for a United Nations 'Global Compact'…"** proposes connecting human rights with the law of worldwide economic organizations. Drawing on the experience of European integration, he supports the international institutionalization of individual rights protection, economic freedoms, and judicial review. In his program, human rights and economic law structures would mutually reinforce one another. www.ejil.org

Philip Alston's response, published in the same year under the title **"Resisting the Merger and Acquisition of Human Rights by Trade Law,"** sharply disputes this approach. He argues that there is a danger that the language of human rights will be used to legitimate a particular market-centered economic program. His criticism targets the excessively close identification of economic freedoms with human rights requirements. academic.oup.com

The significance of the debate is that it shows how **the content of the concept of constitutionalization is itself a question of power**. The institutionalization of the "rule of law," a "fundamental right," or "constitutional protection" can be assessed precisely only by examining which entitlement is protected, what obligation is created, and which forum receives the primary authority to interpret it.

Joel P. Trachtman: global governance capacity

Joel P. Trachtman's The Future of International Law: Global Government, published in 2013, derives the strengthening of international law's organizing and governing functions from increasing international interdependence. The author supports deliberate institutional design: he seeks legal instruments capable of addressing shared problems that cross borders. assets.cambridge.org

"Functionalism, Fragmentation, and the Future of International (Trade) Law," developed from the 2018 Hudec Lecture and published in 2019, offers more concrete proposals. Trachtman advocates reducing fragmentation in international lawmaking and adjudication, coordinating different policy objectives, and moving toward majority decision-making. sites.tufts.edu

Here, the redistribution of competence is direct: the possibility of majority decisions would reduce individual states' independent capacity to block action. Its democratic quality would depend on how the majority is formed, whom the decision-makers represent, and what remedies and political responsibility attach to the decision.

10. European integration as a legal mechanism studied in detail

The literature on European integration is particularly important because it allows the construction of legal authority beyond states to be examined over an extended period.

J. H. H. Weiler's 1991 article "The Transformation of Europe" is a foundational analysis of the constitutional transformation of the European legal order. Through direct effect, primacy, and the participation of national courts, Community law became increasingly embedded in the application of law within the member states. openyls.law.yale.edu

Alec Stone Sweet's The Judicial Construction of Europe, published in 2004, examines the interaction between cross-border economic relationships, litigation, and judicial norm creation. In this approach, litigants and courts actively shape integration: disputes produce new interpretations that enable further economic and legal integration. academic.oup.com

Antoine Vauchez's Brokering Europe: Euro-Lawyers and the Making of a Transnational Polity, published in 2015, adds an analysis of the legal intermediary stratum. Lawyers moving between scholarship, European institutions, courts, and legal practice contributed to the development of Europe's legal definition. His article on the historical processes surrounding the Van Gend en Loos case also demonstrates the institution-building significance of legal expertise. www.cambridge.org

The generalizable mechanism is that an international obligation becomes a right that can be invoked by a private party, the national judge becomes involved in enforcing it, and the common judicial forum provides a unifying interpretation. A substantial part of the transformation of power thus occurs in the everyday application of law. The global extension of the European example must nevertheless be assessed in light of concrete legal conditions. The EU's own institutional structure is distinctive. Moreover, different transnational forums can come into conflict: in the **Achmea judgment**, the Court of Justice of the European Union held in 2018 that the arbitration mechanism in the investment treaty between member states at issue was incompatible with EU law. curia.europa.eu

This is an important observation for a theory of power: strengthening one supranational legal order may involve restricting another transnational system of decision-making.

11. Expert language, fragmentation, and the internal conflicts of global power

Understanding global legal power also requires examining how particular professional fields develop their own criteria for decision-making.

Martti Koskenniemi's 2009 article "The Politics of International Law – 20 Years Later" highlights the political significance of expert languages. Defining an issue as a problem of trade, human rights, security, or environmental protection influences which institution may decide it, with what expertise, and according to what standard. The political content of law is therefore also present in the professional definition of the problem. www.ejiltalk.org

To illustrate: the same environmental measure can be analyzed as an investor's loss, a public health obligation, or a barrier to trade. The choice of starting point can already bring different entitlements and burdens of proof to the foreground.

David Kennedy's A World of Struggle: How Power, Law, and Expertise Shape Global Political Economy, published in 2016, likewise examines how expert practices distribute opportunities and resources. In this approach, global governance operates through competing professional worlds and institutional struggles. hls.harvard.edu

Nico Krisch's 2014 article "The Decay of Consent" points out that the importance of state consent may also decline through the spread of informal or unilateral governance mechanisms. Using examples from competition law, climate policy, and efforts to combat the financing of terrorism, he examines the relationship between classical consensual international law and newer forms of governance. nicokrisch.net

Andreas Fischer-Lescano and Gunther Teubner emphasize the sectoral fragmentation of global law in their 2004 article **"Regime-Collisions."** Teubner's 2012 book **Constitutional Fragments** explores the possibility of imposing constitutional limits on global private regimes. In this approach, financial markets, corporations, and other transnational systems possess their own dynamics of power, which must be addressed through appropriate legal counterweights. repository.law.umich.edu

These works refine the concept of global power. A set of interconnected institutions can be profoundly unequal even while being divided by internal conflicts. The task of analysis is to establish which actors can acquire durable priority in which areas of law, and where they encounter resistance from other centers of power.

12. Which studies provide the strongest answer to your question?

On the basis of the works reviewed, an affirmative answer can be given in three different senses.

First, there are documented studies of deliberate, transnationally coordinated legal change. The research by Drahos and Braithwaite reconstructing the emergence of TRIPS, together with studies of ISDA, demonstrates this most concretely. The actors, the legal solutions they developed, the connections leading to national and international institutions, and the resulting rules can all be identified. www.thecornerhouse.org.uk

Second, there are explicit programs in legal scholarship for strengthening governance and constitutional institutions beyond states. Slaughter, Peters, Petersmann, and Trachtman address this expressly, although with different objectives and institutional models. Their proposed aims include networked cooperation, the protection of fundamental rights, democratic legitimation, economic integration, and the effective resolution of common problems. assets.press.princeton.edu

Third, there are detailed legal analyses of how transnational power is generated through the participation of existing national legal systems. Schneiderman explores the relationship between investment protection and constitutional arrangements; Pistor examines organization through private law; Muir Watt investigates private international law; and Dezalay and Garth study the intermediary strata of the legal profession. On this basis, the consequences for power can be investigated even where no unified, explicit political program is available. academic.oup.com

In terms of their direct relevance to your research question, I would consider the following reading sequence the most productive:

1. **Schneiderman's 2008 and 2024 books:** the relationship between international economic constraints and functioning national constitutional institutions.
2. **Pistor's 2019 book and her article on capital's global rule:** the private law structure of transnational power.
3. **Drahos and Braithwaite's research on intellectual property:** the documented connection between organized corporate strategy and international lawmaking.
4. **The three books by Dezalay and Garth discussed above:** the social mediation of legal elites, professional networks, and institutional reforms.
5. **Gill and Cutler's 2014 volume:** a common political-economic interpretation of different legal mechanisms.
6. **Chimni's 2004 article:** the connection of these developments to the most strongly formulated critical thesis of emerging global statehood.

In my view, the general proposition best supported by this literature is the formation of transnational power mediated by state legal systems. The formulation, authoritative interpretation, and enforcement of rules are increasingly connected to different institutional levels. The national political community's control therefore does not necessarily extend across the entire decision-making process. The most important research question is **who can turn their own decision-making criteria into legal conditions that are binding on others and remain effective over time**. The works discussed provide precisely the concrete institutional, doctrinal, and sociolegal analyses needed to investigate this. They offer the strongest starting points for uncovering the legal dimension of the transnational power relationships examined by van der Pijl.

David Schneiderman and Katharina Pistor' s work

David Schneiderman and Katharina Pistor provide two complementary explanations of how economic power acquires a global legal structure. Schneiderman examines how international investment law constrains the economic choices of states and gives transnational adjudicators authority over politically consequential disputes. Pistor examines how private law creates durable economic advantages and allows their holders to mobilize the legal and coercive resources of several states.

Read together, their work explains how a global economic order can acquire some functions traditionally associated with political government: defining protected interests, allocating decision-making authority, constraining public policy, enforcing obligations, and distributing the costs of economic failure. Their shared insight is that these functions can become transnational **through the reorganization of state power**. Annual Reviews

Their relationship to the idea of an emerging world state nevertheless requires precision. **Neither author's central argument is that a unified world sovereign has already emerged, or that its emergence is inevitable.** Pistor explicitly explains how global capitalism can function without a global state. Schneiderman investigates constitution-like international constraints while continuing to regard national institutions as important sites of democratic resistance. Their work is therefore especially valuable for asking whether the developments they identify constitute steps toward a world state, or a durable arrangement in which economic authority becomes global while political authority remains divided. Coding Capital for the Globe

1. The meaning of "world-state emergence" in this comparison

For this purpose, I would distinguish three levels of institutional development.

Level	Defining feature	Principal analytical question
Global enforceability	Rights created or selected in one jurisdiction can be enforced across others.	How do legal claims acquire international reach?
Global governing authority	Institutions and coordinated actors influence or determine decisions across national boundaries.	Who can make consequential decisions binding on others?
Global statehood	A durable political organization possesses overarching authority and an institutional	How are the different governing powers integrated into a common political order?

Level	Defining feature	Principal analytical question
	framework determining ultimate competences.	

The first two can develop considerably without producing the third. Conversely, a world state need not resemble a highly centralized national administration. It might be federal, institutionally dispersed, and dependent on existing national bodies for implementation. What would need to be demonstrated is the emergence of an overarching structure capable of authoritatively organizing those relationships.

The distinction between **statehood and democracy** is equally important. The absence of global democratic representation would not, by itself, disprove the emergence of a world state: such a state could be authoritarian. The more decisive questions concern the integration of authority, the allocation of ultimate competence, and the capacity to sustain and enforce collective decisions.

Schneiderman and Pistor illuminate different parts of this problem:

- Schneiderman's strongest contribution concerns **the internationalization of constraints on public authority**.
- Pistor's strongest contribution concerns **the transnational organization of legally protected private authority**.
- Their combined significance lies in showing how these two processes reinforce one another.

The following interpretation separates their own arguments from the broader conclusions I draw about state formation.

2. David Schneiderman: the constitutional organization of transnational economic power

2.1. Investment protection as an institutional transformation

Schneiderman's **"Investment Rules and the New Constitutionalism"**, published in *Law & Social Inquiry* in 2000, establishes a central theme of his subsequent work. States enter into treaties that protect foreign investors against specified forms of treatment and give investors standing to bring international claims. The combination of substantive protection and an independently exercisable right of action creates a system of state self-binding.

Schneiderman examines the potential conflict between these arrangements and domestic constitutional settlements, including South Africa's distinctive approach to property. His concern is that internationally protected expectations may constrain choices embedded in a national constitution that balances property protection against other social objectives. Cambridge Core

The institutional importance of this development can be understood by distinguishing an ordinary international undertaking from a privately enforceable international right.

An intergovernmental undertaking normally leaves governments with considerable control over whether, when, and how disagreements are pursued. A right that an investor can activate gives a private actor an independent role in initiating authoritative review of state conduct. The state has therefore done more than announce an economic policy: it has helped create an external decision-making relationship that subsequent governments must take into account.

From the perspective of state formation, the important change concerns who can call public authority to account, before which forum, and according to which standards. An international regime can acquire governing significance through these decisions even without possessing a general legislative power.

2.2. The constitutional analogy: fixing the limits of future political choice

The principal statement of Schneiderman's position is **Constitutionalizing Economic Globalization: Investment Rules and Democracy's Promise** (Cambridge University Press, 2008).

The book distinguishes two interconnected processes. International investment commitments create external, constitution-like constraints. Domestic constitutional amendments and judicial interpretations can then accommodate or reinforce those constraints internally. The analogy concerns the durability of commitments and their capacity to restrict future political choices.

His normative position is equally significant. In the introduction, especially pages 7–9, Schneiderman remains open to the possibility of democratically legitimate transnational government, but emphasizes the difficulties of constructing it. He favors institutions capable of sustaining democratic experimentation, particularly national, subnational, and local institutions. The desired relationship between public authority and markets should remain open to revision. assets.cambridge.org

This produces a distinctive conception of constitutional conflict. The issue is not simply whether a government has breached a previously accepted obligation. It is also whether one generation of decision-makers can entrench a particular economic settlement so strongly that later political communities cannot meaningfully reconsider it.

Consider a hypothetical case. A government privatizes a public service and encourages investment through a favorable regulatory framework. Years later, a different majority concludes that the arrangement has produced unacceptable distributional consequences. Three separate questions arise:

1. Does the legislature retain formal authority to change the regulatory framework?
2. Does an international tribunal have authority to determine whether that change violates investor protections?
3. Could the resulting financial liability make the change practically unaffordable?

These questions distinguish **formal legislative competence from effective political capacity**. The continued existence of the first does not settle the extent of the second.

For a theory of world-state emergence, the implication is that governing authority can be redistributed before it is formally consolidated. National institutions remain visible, while some of the effective conditions under which they exercise power are determined elsewhere.

2.3. Compensation as a means of governing: the Argentine example

Schneiderman develops this argument in **"Against Constitutional Excess: Tocquevillian Reflections on International Investment Law"**, published in the *University of Chicago Law Review* in 2018.

His discussion of *BG Group v. Argentina* is particularly revealing. During Argentina's economic crisis, the government altered arrangements linking gas tariffs to dollars. The investor relied on the legislative and licensing framework, while Argentina emphasized its capacity to respond to a general emergency and the absence of a treaty stabilization clause. The tribunal found a violation of fair and equitable treatment and awarded more than US$185 million.

At the same time, the tribunal maintained that Argentina retained regulatory authority. Schneiderman uses the case to demonstrate that compensation obligations can constrain the exercise of a power without formally abolishing it. His Tocquevillian alternative emphasizes democracy's capacity to make mistakes and subsequently repair them. 12 Schneiderman_SYMP_Online

The theoretical point is that **a governing system need not prohibit a decision outright in order to influence whether it can be made**. It may instead attach consequences that redirect the decision-maker's priorities.

This does not mean that compensation is inherently illegitimate. Governments can act arbitrarily, discriminate, or confiscate property. The crucial questions are how the protected entitlement is defined, what degree of policy change is foreseeable, and which public interests enter the adjudicator's assessment. A theory of power becomes necessary because those questions distribute the costs of social change.

The enforcement mechanism also matters. Under Article 54 of the ICSID Convention, contracting states must recognize awards as binding and enforce their pecuniary obligations as they would a final domestic judgment. Article 55 preserves applicable immunity from execution. The arrangement therefore connects international adjudication to domestic enforcement institutions; it does not generally give investment tribunals a power to annul national legislation. icsid.worldbank.org

This is a particularly clear example of transnational authority being made effective through state institutions.

2.4. From compensation to fiscal discipline

In **"International Investment Law and Discipline for the Indebted"**, published in the *European Journal of International Law* in 2022, Schneiderman connects investment arbitration with the political consequences of sovereign indebtedness.

His recurring example is the US$5.84 billion award issued against Pakistan in *Tethyan Copper* in 2019. He compares its scale with a US$6 billion IMF financing package. The comparison illustrates how liability arising from a particular investment dispute can become significant for a country's wider public finances.

Schneiderman expressly acknowledges that the award was unusually large and that IMF lending and investment adjudication are institutionally different. His argument concerns comparable disciplinary effects: obligations to creditors can narrow future policy choices and place competing public expenditures under pressure. The comparison does not establish that Pakistan paid the full award or that IMF funds were transferred to the investor. ejil.org

From the world-state perspective, this suggests a form of **indirect fiscal authority**. A transnational adjudicator does not need to possess a general taxing power to influence the allocation of public resources. It can create an obligation that a national fiscal system must address.

Yet this also marks a limit to the state analogy. The tribunal establishes a claim; it does not thereby become responsible for the entire budget, the provision of services, or the political reconciliation of competing social needs. Decision-making authority and responsibility for maintaining social order become separated.

That separation is a central concern in evaluating these arrangements. The institution deciding the protected claim may exercise significant influence over public choices while bearing little responsibility for the comprehensive consequences.

2.5. The internationalization of particular national models

Schneiderman's **"'Writing the Rules of the Global Economy': How America Defines the Contours of International Investment Law"**, published in the *London Review of International Law* in 2018, addresses the geographical distribution of power within the regime.

He challenges the characterization of investment law as simply "denationalized." Examining American congressional debates, he shows how protections associated with US constitutional law became privileged reference points for international investment standards. These international protections could nevertheless exceed the corresponding domestic guarantees. His interpretation concerns the presentation of a particular national legal experience as a universally appropriate model. academic.oup.com

This is directly relevant to your broader interest in powerful groups within the West. A legal order may become global in reach while remaining selective in the experiences and interests from which it draws its standards.

It also complicates the opposition between "national sovereignty" and "global power." Some national institutions participate in exporting the standards by which other states will be judged. Internationalization may therefore strengthen certain states' influence while constraining other states' options.

The inference is not that every international decision expresses the current wishes of a particular government. Once established, legal institutions and professional interpretations can acquire autonomy. Rather, the historical and institutional selection of the relevant standards creates durable asymmetries.

2.6. Domestic constitutional courts as intermediaries

Constitutional Review and International Investment Law: Deference or Defiance? (Oxford University Press, 2024) examines how domestic apex courts address tensions between constitutional commitments and investment protection.

The comparison includes North America, Europe, Peru, Colombia, Indonesia, and Israel. The responses range from strong accommodation to qualified resistance. Peru illustrates extensive compatibility reasoning; Colombia illustrates conditional constitutional acceptance requiring adjustments. The broader finding is that courts often manage conflicts indirectly rather than reject the investment regime altogether. Oxford Academic

This adds a crucial institutional dimension. National courts can participate in the formation of transnational authority by deciding how domestic constitutional commitments should be reconciled with international economic obligations.

The relevant process is not exhausted by a formal transfer of jurisdiction. It also includes changes in interpretive presumptions:

- Which legal commitment is treated as the starting point?
- Which institution's interpretation receives deference?
- Which interests must be accommodated?
- What kind of constitutional conflict is considered serious enough to require renegotiation?

These decisions can progressively alter the effective constitutional settlement.

For the world-state question, this is evidence of institutional interconnection, but not uniform subordination. National courts retain differentiated roles. Their participation can consolidate international authority, qualify it, or resist a particular technique of governmental self-binding.

2.7. Colonial continuities and the justification of authority

Investment Law's Alibis: Colonialism, Imperialism, Debt and Development (Cambridge University Press, 2022) extends Schneiderman's inquiry into the historical and normative language surrounding investment protection.

The book examines how practices associated with colonialism, imperialism, development, and debt continue to provide justificatory resources. Its question is how legal arrangements that exercise power over vulnerable states and populations are represented as necessary, beneficial, or technically appropriate.

A methodological qualification is essential: Schneiderman explicitly states that the book does not employ historical methods in the conventional sense. It investigates recurring justifications,

techniques, and legal forms. It should therefore be read as a critical analysis of the reproduction of authority rather than an archival demonstration of a continuously organized directing coalition. assets.cambridge.org

Its relevance to global state formation concerns **legitimation**. Governing institutions require accounts of why their authority should be accepted. In economic governance, the promise of development can perform that function: external constraints are justified as conditions for investment and future prosperity.

The critical question is whether this promised benefit explains the actual institutional design. Who receives enforceable rights immediately? Who receives benefits only contingently? Who decides whether the expected development occurred? These questions connect the distribution of legal authority with the distribution of justificatory burdens.

2.8. The 2026 book: a bureaucracy of international investment law

A Sociology of International Investment Law: Themes from Max Weber (Oxford University Press, 2026) develops the analysis of expertise, legitimacy, and institutional authority.

Of particular relevance is its examination of investment arbitration as an international bureaucracy. Schneiderman investigates how expert knowledge and institutional autonomy permit adjudicators to exercise politically consequential authority. His account identifies hierarchy within the investment regime; it does not describe merely a collection of horizontal connections.

The book also examines proportionality reasoning. Spanish solar-energy disputes illustrate his concern that apparently balanced review can prioritize investor returns and stabilization expectations while giving insufficient attention to broader consequences. The argument concerns particular uses of proportionality, not uniform outcomes across all such disputes. Oxford Academic

This is one of the closest connections between Schneiderman's work and a theory of emerging statehood. A specialized body of officials and professionals develops a shared vocabulary, recurrent procedures, and authority to classify conduct as legally permissible or impermissible.

Nevertheless, **bureaucratization within a regime does not by itself establish a comprehensive world administration**. What it demonstrates is the consolidation of one component of governing authority.

2.9. His alternative: preserving the possibility of political change

Schneiderman's **Resisting Economic Globalization: Critical Theory and International Investment Law** (Palgrave Macmillan, 2013) makes the continuing role of states explicit. Through encounters with thinkers including Hardt and Negri, Teubner, Habermas, Santos,

Wolin, and Foucault, he examines the possibilities of resistance by public institutions and social movements.

The central intervention is that states remain important sites for challenging and reversing investment disciplines, even though they created and sustain them. His approach therefore retains the contradiction between states' contribution to transnational constraints and their capacity to oppose those constraints. Springer Nature Link

The normative objective is democratic revisability. The decisive issue is whether people retain meaningful opportunities to reconsider the organization of economic life.

Accordingly, Schneiderman should be understood as analyzing the formation of transnational economic authority while criticizing its insulation from democratic change. Reading him as an advocate of a global state would obscure the direction of his argument.

3. Katharina Pistor: the legal construction of capital and its global authority

3.1. An earlier foundation: legal diversity and economic development

Pistor's work with **Curtis J. Milhaupt**, **Law & Capitalism: What Corporate Crises Reveal about Legal Systems and Economic Development around the World** (University of Chicago Press, 2008), provides an important background.

The book uses corporate crises—including Enron, Mannesmann, Livedoor, and Yukos—to examine the interaction between legal systems and economic organization. Its comparative approach challenges the assumption that a single optimal legal model can be transferred across countries to produce successful development. Legal and nonlegal institutions operate together and adapt to changing circumstances. press.uchicago.edu

This matters because Pistor's later account of global capitalism should not be mistaken for a prediction that all legal systems will converge into one homogeneous order. Her research began with sensitivity to institutional differences and the limitations of standardized prescriptions.

The problem she subsequently investigates is how powerful actors can operate across those differences and use them to their advantage.

3.2. The legal construction of capital

The Code of Capital: How the Law Creates Wealth and Inequality (Princeton University Press, 2019) argues that assets become capital through legal arrangements that protect and enhance their capacity to generate wealth.

Pistor identifies four important attributes:

Attribute	Legal significance
Priority	Some claims prevail over competing claims.
Durability	Protection can persist over time and survive changes affecting particular holders.
Convertibility	Certain assets can be exchanged for safer assets, helping preserve accumulated value.
Universality	Protected positions can be asserted against parties beyond the original transaction.

Contract, property, collateral, corporate, trust, and insolvency law supply the principal building blocks. Private lawyers combine them into arrangements supported by state enforcement. The book's distinctive move is to locate the construction of economic advantage within ordinary legal institutions. Coding Capital for the Globe

The significance for a theory of power lies in the difference between possessing something valuable and possessing a legally protected position.

An enterprise may be economically productive but vulnerable to creditors, competitors, political change, or the death of its owners. Legal organization can alter those vulnerabilities. It can determine which assets answer for which debts, who controls decision-making, and which claims survive institutional disruption.

The state's contribution is therefore constitutive. Its legal institutions help establish the very positions from which private actors bargain.

From the world-state perspective, the question becomes how these legally constituted positions acquire an international reach.

3.3. Global capitalism through selected domestic legal systems

Pistor's **"Capital's global rule"**, published in *Constellations* in 2019, gives a direct answer. Global capital remains rooted in national legal orders, but these orders have unequal influence. Choice-of-law rules, recognition of foreign corporate forms, and enforcement arrangements allow actors to combine legal devices across borders.

Her examples include the coordinating role of ISDA in standardizing financial contracts, identifying governing law and forums, and promoting legislative changes. The resulting international order depends on the extension and coordinated use of state law. Its reach does not require a global legislature. law.nyu.edu

The most important analytical distinction is between **uniform law** and **portable legal advantage**.

Suppose a company operates in several countries. A uniform-law solution would require those countries to agree on substantially common corporate rules. A portability solution allows the company to organize itself under one jurisdiction's law and have that status recognized elsewhere.

Under the second arrangement, the decisive political choice can occur at the point where national law accepts foreign legal arrangements. That recognition rule determines whose legal decisions can travel.

This can produce a striking asymmetry: people subject to the practical consequences of a corporate structure may have little influence over the jurisdiction whose law created it.

Pistor's argument thus provides especially strong support for a conception of **global power operating through unequal national legal authority**. The continuing existence of national jurisdictions is part of the mechanism.

3.4. Private law as a means of reshaping public regulation

In **"Regulating Financial Markets—An LTF Perspective"**, published in the 2019 volume *The Political Economy of Financial Regulation*, Pistor examines the interaction between private law and public regulation.

Private law supplies the assets and organizations that populate financial markets. Public regulation attempts to address the risks these arrangements generate. Yet new private arrangements can modify the practical effects of regulation, permitting actors to reorganize transactions or entities around the rules imposed on them. An LTF Perspective" by Katharina Pistor

This reveals a continuing institutional process. Regulation changes the incentives facing market participants; participants redesign their legal arrangements; regulators then confront a transformed field.

The capacity to engage in this process is uneven. It depends on legal expertise, organizational resources, and the ability to coordinate across jurisdictions. A rule formally applicable to everyone may therefore constrain actors differently.

The ISDA example also supplies direct evidence of deliberate legal coordination. Its **2018 Model Netting Act and Guide** openly supports national legislation ensuring the enforceability of close-out netting arrangements. The declared purposes include legal certainty and the reduction of credit risk. This is a documented effort by a transnational industry organization to secure compatible domestic legal conditions. www.isda.org

The broader inference concerns institutional authority: private actors can participate in designing both the transactions and the public legal environment in which those transactions operate.

That is highly relevant to global governance. It does not establish that the participants intend to create a world state. Their documented objectives may concern particular markets, while the accumulated institutional consequences extend further.

3.5. The legal theory of finance: power becomes visible in crisis

Pistor's **"A Legal Theory of Finance"**, published in the *Journal of Comparative Economics* in 2013, adds a crucial dimension.

Financial systems depend on enforceable commitments. Yet when a crisis threatens the system, enforcing every commitment in full can intensify collapse. Pistor calls this the law–finance paradox. It tends to be resolved through selective flexibility where the survival of the system is at stake.

Her account is hierarchical: the capacity to secure relief from strict commitments is associated with an actor's position in the system. Public and private finance therefore form an interconnected structure, and crisis management reveals relations of power that ordinary market transactions can conceal. scholarship.law.columbia.edu

For state theory, this raises a question different from ordinary rulemaking: **who can determine how obligations will be treated when their enforcement threatens the system itself?**

That capacity can be as significant as the authority to formulate rules initially. It concerns the conditions under which a legally organized order is maintained through exceptional intervention.

The comparison with Schneiderman is revealing. His work emphasizes circumstances in which governments face liability for changing economic arrangements. Pistor shows why financial orders can require considerable flexibility when central institutions are threatened.

The two propositions are not logically inconsistent. They invite an empirical inquiry into **whose expectations receive rigidity and whose obligations receive flexibility**.

This is potentially a powerful way to investigate global governing authority without assuming in advance that it is exercised by one organization.

3.6. Financial interdependence and the problem of coordination

In **"Governing Interdependent Financial Systems: Lessons from the Vienna Initiative"**, published in 2012, Pistor examines the mismatch between internationally connected finance and governance remaining substantially national.

The Vienna Initiative, developed in response to the financial crisis in Central and Eastern Europe, illustrates coordinated governance involving several kinds of participant. Pistor emphasizes the role of a coordinating institution deeply interested in systemic stability but not directly competing with the participating market actors or regulators. scholarship.law.columbia.edu

Her short paper **"Stabilizing Global Financial Markets: The Case Against Global Standardization"** makes the normative qualification particularly clear. She argues that uniform regulation can spread common vulnerabilities and inhibit local experimentation. Her preferred arrangement combines regulatory diversity with international coordination, minimum requirements, monitoring, and crisis-response capacities. Pistor Stabilizing_final.docx

These works prevent a simple classification of Pistor as either a defender of entirely separate national systems or an advocate of centralized global administration. She seeks coordination capable of addressing interdependence while preserving institutional variation.

For the world-state question, they demonstrate that increasing international governing capacity can follow different institutional paths. More coordination does not automatically imply a movement toward one general-purpose sovereign.

3.7. Digital power and the possibility of new statehood

Pistor's digital writings come closer to directly examining the emergence of new forms of sovereignty.

In **"Rule by Data: The End of Markets?"**, published in *Law and Contemporary Problems* in 2020, she considers whether control over processed data can provide a mode of governance competing with both market coordination and conventional legal ordering. The question extends beyond whether platforms possess valuable assets: it concerns their capacity to organize economic relations and influence conduct. Katharina Pistor

She addresses statehood explicitly in **"Statehood in the Digital Age"** (*Constellations*, 2020). A particularly clear statement of the argument appears in her own 2021 German-language guest essay on digital platforms and nation-states.

There she considers sovereignty based on control over data rather than solely on territory. Data can provide revenues and means of behavioral governance. Platform power nevertheless remains dependent on territorial resources, including energy and the location of infrastructure. She presents several possible outcomes: states discipline platforms; platforms subordinate states; or states and major technology companies enter into alliances. Wiley Online Library

This contribution is important because it concerns a possible transformation of the basis of political authority itself.

However, its implications remain open. Several overlapping digital authorities, alliances between particular states and platforms, or renewed public control would all be compatible with the problem she identifies. The argument therefore supports investigation of changing sovereignty, rather than a prediction of one inevitable digital world state.

3.8. The 2025 book and the architecture of private power

The Law of Capitalism and How to Transform It (Yale University Press, 2025) expands Pistor's inquiry from the coding of assets to capitalism as a legal regime.

Its central concern is an institutional architecture that empowers private actors while also enabling them to avoid constraints imposed collectively. Transformation must therefore reach the legal relations that produce economic power, rather than address only the distribution of wealth after those relations have operated. scholarship.law.columbia.edu

In her October 2026 essay **"Rewriting the Laws of Capitalism,"** Pistor identifies three mechanisms particularly relevant here:

1. Private actors receive legal powers to organize relationships and assets.
2. They have decentralized access to centralized state coercion through litigation.
3. They can use legal arbitrage to pursue purposes that public regulation sought to constrain.

Her reform discussion includes alternative corporate and trust arrangements and a normative orientation toward human capabilities and democratic self-government. LPE Project

This formulation is perhaps Pistor's most direct contribution to your question. Coercive capacity remains institutionally concentrated in states, but access to that capacity is dispersed among actors possessing very different resources.

A transnational actor can therefore draw upon several states' authority without itself becoming a state. The resulting arrangement may be highly organized, durable, and unequal while lacking a single overarching sovereign.

3.9. Her reforms do not simply transfer authority to judges

Pistor's **"Legal coding beyond capital?"**, published in *European Law Open* in 2022, is especially important for assessing her institutional preferences.

She argues that progressive legal principles require changes in interpretation and enforcement. Her proposals include greater scrutiny of arbitration and choice of law, stronger collective procedures, and reconsideration of mandatory arbitration.

For questions with broad social consequences—such as the classification of platform workers—she explores ad hoc committees selected from residents through representative lotteries. Courts or petitions could refer questions to them. The purpose is to avoid leaving major policy choices to private legal innovation and occasional judicial decisions. Cambridge Core

This matters for constitutional theory. Pistor recognizes that correcting private power by expanding judicial discretion can create another problem of accountability.

Her 2026 conversation with **Hagen Schulz-Forberg**, published in *Global Perspectives*, further develops the need for a durable normative basis for legal transformation. It discusses democratic self-government, human capabilities, and the possibility of denying enforcement to claims inconsistent with those commitments, while acknowledging the need for further institutional development. University of California Press

Her reform trajectory consequently contains a tension worth examining: legal institutions must become more responsive to substantive social obligations, but the authority to interpret those obligations must itself be made legitimate.

4. Their principal similarities and differences

The following comparison is my synthesis of the works discussed.

Dimension	Schneiderman	Pistor
Principal object	The international investment regime	The legal organization of capital and finance
Characteristic legal mechanism	Treaty rights and international adjudication	Private legal construction, recognition, and enforcement
Main effect on public authority	Limits or increases the cost of changing policy	Enables powerful actors to shape or reorganize their legal environment
Important professional actors	Treaty lawyers, arbitrators, judges, and officials	Transactional lawyers, financial institutions, judges, and regulators
Role of national states	Create, maintain, accommodate, and sometimes resist international constraints	Supply the law and coercive resources on which global capital depends
Central democratic problem	The restriction of collective economic experimentation	Unequal access to legal powers and enforcement
Normative direction	Reopening political choices	Reconstructing legal empowerment and accountability

Their deepest common ground is that **economic power is institutionally constituted**. It does not stand outside law and merely exert pressure upon it. Law helps establish the capacities through which that pressure becomes effective.

Their most productive difference concerns the direction of movement.

Schneiderman often begins with a state decision and asks how international law constrains it. Pistor often begins with a private legal arrangement and asks how state institutions make it possible and enforceable.

Together, these approaches allow a more complete investigation:

- How was the protected economic position created?
- How did it acquire international enforceability?
- Which public decisions can threaten it?
- Which institution decides whether those decisions are permissible?
- Who ultimately bears the costs?

This combined inquiry is stronger than a general assertion that markets have become more powerful than states. It identifies the legal relationships through which that power operates.

A particularly important implication is that **fragmentation can be advantageous to powerful actors**. A unified legal order would also have the capacity to impose uniform obligations. A system of several jurisdictions may allow actors to select favorable arrangements while relying on cross-border recognition.

Consequently, the persistence of national legal diversity can be part of the explanation of global economic power, rather than merely an obstacle awaiting removal.

5. How far does the evidence support the emergence of a world state?

5.1. The strongest support: the internationalization of governing functions

Their work supports a substantial argument that functions associated with the economic constitution of states are becoming organized transnationally.

These include the definition of protected property interests, the assessment of public measures, the authoritative resolution of disputes, and the allocation of financial consequences. Legal professionals and institutions can exercise influence across national boundaries in ways that are not fully controlled by any single affected political community.

This is more than ordinary international cooperation. It concerns durable relationships through which some actors can activate authority over others.

If "world-state emergence" refers to the gradual construction of such capacities, Schneiderman and Pistor offer significant evidence relevant to it.

5.2. The additional step that remains to be demonstrated

The stronger claim is that these capacities are converging into an overarching political organization.

That would require evidence about their integration:

Question about state formation	What further evidence would be needed?
Who settles conflicts among regimes?	An accepted structure assigning ultimate competence.
Who can revise the governing settlement?	Institutions capable of authoritative change across the system.
Who bears comprehensive responsibility?	Capacities extending beyond the protection of selected claims.
How is coercion coordinated?	Durable authority over the institutions providing enforcement.

Question about state formation	What further evidence would be needed?
How are shared resources mobilized?	A sustained fiscal or equivalent mechanism supporting general governance.

The absence of a single visible headquarters is not decisive. A dispersed system could still acquire overarching authority. But the integration must be shown rather than inferred merely from the existence of internationally enforceable claims.

The strongest conclusion from these authors is the formation of an economic legal order with substantial governing effects. Its identification as an emerging world state remains a further theoretical interpretation.

5.3. Constitutional constraints and democratic authorization

A published criticism of Schneiderman by **Joel Colón-Ríos and Martín Hevia**, **"What Makes the International Investment Rules Regime Undemocratic?"** (2009), sharpens this issue. They argue that restrictions on future governmental decisions are not automatically incompatible with democracy. The process through which commitments are authorized, and citizens' limited control over representative institutions, must also be examined. Cambridge Core

This is a serious qualification. A political community can decide to bind itself, including through international commitments. The problem cannot therefore be established solely by showing that a later government encounters constraints.

The assessment must also consider the specificity, duration, reversibility, distributional consequences, and democratic authorization of those constraints. Otherwise, the distinction between objectionable insulation and legitimate commitment becomes unclear.

5.4. The limits of explaining capitalism primarily through law

Leon Wansleben's "Capitalization and its Legal Friends" (2021) argues that Pistor's account requires a broader explanation of investment, financial accounting, professional practices, and the social distribution of resources. Legal coding is important, but cannot alone explain the production and distribution of wealth. Pistor's **"Theorizing Beyond 'The Code of Capital': A Reply"** acknowledges the need for further theorization of state power, resources, social relations, and knowledge. pure.mpg.de

For a world-state theory, this identifies a major research requirement. Demonstrating the legal machinery of transnational power does not yet explain why particular groups control its development.

That requires analysis of ownership, financing, political organization, professional recruitment, and the relationships between economic and governmental actors. Pistor supplies indispensable institutional mechanisms; a broader political economy is needed to explain their direction and reproduction.

5.5. The problem of the agents of transformation

The 2026 debate over Pistor's newer book makes this issue particularly explicit.

Ingo Venzke's "It's a Lawyers' World!" questions whether the legal professionals who constructed the prevailing order can also become effective agents of its transformation. **Martijn W. Hesselink's "Beyond Capitalist Law"** asks whether existing constitutional principles and the capabilities approach provide sufficient resources for change, and who could act effectively and legitimately against entrenched corporate power. repository.law.miami.edu

These criticisms apply directly to the relationship between legal expertise and political authority. A proposal to correct global private power through new legal interpretations must explain who will authorize those interpretations and how the interpreters will be held accountable.

Pistor's citizen-participation proposals are one response, but they leave significant questions of scale, implementation, and political support.

5.6. Global authority remains politically contestable

Institutional change does not proceed in only one direction. The withdrawal of the **EU and Euratom from the Energy Charter Treaty became effective on 28 June 2025**, demonstrating the continuing possibility of substantial political reconfiguration. Withdrawal should not be equated with the immediate disappearance of all legal consequences. energy.ec.europa.eu

At the same time, UNCITRAL's work on proposed permanent investment adjudicatory bodies illustrates movement toward greater institutional consolidation. These remain reform proposals and negotiations, rather than an already established universal investment court. uncitral.un.org

The theoretical ambiguity is important: reform may increase public accountability while also strengthening international authority. Whether it contributes to world-state formation depends on the powers conferred and their relationship to other institutions.

6. Overall assessment

Schneiderman provides the stronger account of how a global economic order acquires constitution-like constraints on government. Pistor provides the stronger account of how global economic actors obtain legal powers through the continuing operation of states.

Schneiderman is especially valuable for investigating the transfer of authority over politically consequential decisions: who judges public measures, whose expectations receive protection, and how obligations constrain future choices.

Pistor is especially valuable for investigating the prior construction of those expectations and capacities: how assets, corporations, contracts, and financial relationships are organized so that private actors can command legal protection across jurisdictions.

Their combination suggests three conclusions.

First, globally organized power can precede a globally unified political order. The ability to enforce claims and constrain policy can develop without a comprehensive world government.

Second, existing states are constitutive participants in that development. Their legislative, judicial, and financial institutions provide much of the authority that makes transnational arrangements effective. Investigating global power therefore requires examining changes within national legal systems.

Third, there is no necessary progression from globally protected capital to a world state. Powerful actors may benefit from an arrangement combining broad enforceability with fragmented political responsibility. A more integrated world authority could impose obligations that the existing structure allows them to avoid.

My assessment is therefore that their work most convincingly explains **a transnational economic constitution sustained by state power and shaped by unequal access to legal institutions**. It supplies essential material for a theory of world-state emergence, particularly concerning its possible economic and judicial foundations. To establish the stronger thesis, however, one would need to demonstrate how these foundations become integrated into an overarching political authority.

The decisive research question is consequently not only how far rules travel, but **who can organize, revise, and ultimately control the system through which they travel**.

B. S. Chimni’ s work

B. S. Chimni is especially relevant to your question because he explicitly argues that international institutions are forming a global state with an imperial character. He also envisages the democratization of global authority as a desirable political objective. His work therefore contains both an explanation of emerging global domination and a programme for transforming it. ejil.org

My overall assessment is that **Chimni offers a powerful account of how international law reorganizes political authority across states, but a more contestable account of when this reorganization should be called state formation**. His strongest contribution is to connect legal rules and institutions with the social groups that shape them and the populations whose choices they constrain. His most demanding theoretical claim is that these arrangements collectively constitute an emerging state.

To understand this distinction, we need to examine his institutional theory, his Marxist and postcolonial foundations, his analyses of particular legal mechanisms, and his proposals for democratic transformation.

1. What does Chimni mean by an emerging global state?

A functional conception of statehood

In his foundational 2004 essay, Chimni identifies four elements of statehood: the prescription of general norms, legitimate coercion, effective enforcement, and reasons for accepting obligations. He argues that international institutions and existing states increasingly supply these functions collectively. They need not be concentrated in a single integrated organization. In the short and medium term, his argument concerns the transformation of the sovereign state system, with national states continuing to operate within the emerging formation. The crucial exposition appears on pages 5–6. ejil.org

This definition changes how the world-state question must be investigated. Looking only for a world parliament, a universal executive, or a single constitutional document would miss the kind of development he describes.

Nevertheless, several different propositions must remain analytically separate:

Proposition	What would establish it?
Economic globalization	Production, investment, and exchange operate across national borders.

Proposition	What would establish it?
Global legal integration	Rules and legal decisions increasingly organize conduct across jurisdictions.
Global political hierarchy	Some actors possess durable authority over others' policy choices.
Global state formation	These powers acquire sufficient integration, continuity, and authority to constitute a political organization performing state functions.

The first three propositions can be true without the fourth necessarily following. Chimni's distinctive move is to connect them through an account of class power and institutional development.

My interpretation is that his concept is most productive when treated as a **hypothesis about the organization of governing power**. It directs attention to relationships that conventional institutional analysis might examine separately. Its explanatory value then depends on demonstrating how those relationships actually work.

For example, it matters whether trade rules, financial conditions, domestic administrative reforms, and security arrangements merely coexist, reinforce one another in particular circumstances, or form a durable system capable of coordinating policy across fields. Those are different degrees of political integration.

Why the distinction matters for your original question

An institution can contribute to a global governing order while remaining legally constituted by a treaty among sovereign states. Its officials may describe their activity as technical cooperation, economic stabilization, or legal harmonization. The relevant analytical question is what powers the arrangement creates and how it distributes them.

However, evidence that an arrangement performs a governing function does not itself establish that its designers intended to create a world state. Institutional effects, political purposes, and the eventual character of the whole system require separate investigation. This distinction is essential when using Chimni to examine explicitly stated or unspoken institutional objectives.

2. The intellectual foundations: Marxism, TWAIL, and the relative autonomy of law

2.1 International law as a constitutive element of capitalism

Chimni's 1999 analysis of Marxism and international law provides an early foundation. He argues that international law helps extend private-property relations, protect transnational capital, prescribe common standards, and provide enforcement arrangements. Law participates in constructing the economic order it regulates.

He also rejects a mechanically deterministic relationship between economics and law. Legal systems possess distinctive sources, interpretive practices, and institutional dynamics. Economic relations influence legal development, while legal arrangements help define and

reproduce economic relations. This makes legal analysis indispensable to understanding global capitalism. jnu.ac.in

The implication for world-state analysis is substantial. Political integration need not begin with an overt transfer of general sovereignty. It can proceed through legal changes governing what may be owned, how claims are enforced, which policies are permissible, and what obligations survive a change of government.

Consider a hypothetical state whose electorate supports a new development strategy. The practical scope of that strategy will depend on pre-existing rules governing investment, debt, intellectual property, taxation, and public procurement. If these rules operate through institutions beyond the electorate's effective control, the location of political authority becomes a substantive question even though the state retains its constitution, parliament, and courts.

This is a useful way to translate the broad world-state problem into legal research: investigate the **distribution of effective decision-making power**, rather than relying exclusively on the formal identity of the rule-making body.

2.2 TWAIL: the standpoint of subordinated peoples

Chimni's manifesto for **Third World Approaches to International Law**, or TWAIL, links globalization to the displacement of national policy choices by international legal obligations. His concern is that electoral competition may persist while governments face pressure to pursue similar economic programmes.

Yet his "Third World" category does not imply that Southern societies form a homogeneous bloc. He recognizes internal divisions and the participation of Southern ruling elites in transnational domination. His normative standpoint therefore requires attention to oppressed populations within states as well as inequalities between states. Resistance must connect domestic struggles, interstate cooperation, and transnational social movements. jnu.ac.in

This substantially complicates a straightforward opposition between "national states" and "global power."

A national government can resist external domination while oppressing its own population. Conversely, a domestic elite can use international commitments to advance policies that would face stronger resistance through ordinary domestic politics.

Accordingly, two questions must be asked of any sovereignty claim:

1. **What external constraints does recovering sovereignty remove?**
2. **Which domestic actors gain the ability to decide once those constraints are removed?**

For the world-state perspective, this means that changing the geographical location of authority cannot be the sole criterion of emancipation. The social organization of authority matters equally.

2.3 The integrated Marxist approach

The second edition of *International Law and World Order* develops what Chimni calls an **Integrated Marxist Approach to International Law**, or IMAIL. It combines selected insights from Marxism, socialist feminism, and postcolonial theory. The book develops this framework through critical engagement with realism, the New Haven school, Richard Falk, critical international legal scholarship, and feminist approaches. Its methodological ambition is to assess competing theories on their own premises while also examining their social and political limitations. assets.cambridge.org

In his subsequent author's response, Chimni identifies five interacting logics: **capital, territory, culture, nature, and law**. He rejects explanations that derive all legal developments from a single economic mechanism. EJIL: Talk!

For the present inquiry, this framework suggests several distinct investigations:

- Capital directs attention to accumulation, ownership, and economic dependency.
- Territory directs attention to the persistence of states, borders, and security interests.
- Culture directs attention to hierarchy, identity, and the production of authoritative knowledge.
- Nature directs attention to ecological conditions and limits.
- Law directs attention to institutional competence, legal form, interpretation, and enforcement.

The advantage is explanatory breadth. A global governing order might be economically integrated while remaining territorially divided, culturally hierarchical, and legally fragmented.

The difficulty is specifying how these dimensions interact. A framework becomes less informative if every possible outcome can be explained retrospectively by invoking whichever "logic" appears most relevant. Its practical strength depends on identifying mechanisms and specifying circumstances in which one influence prevails over another.

3. The social basis of global authority: a transnational capitalist class

Chimni's 2010 class analysis supplies the social theory behind his institutional account. It directs attention to the groups that shape state policies and international legal regimes. He treats class formation as mediated by political, ideological, racial, and gender relations, rather than as a simple division between two uniform economic camps.

He also assigns international lawyers an important position in this process. Academics, diplomats, officials, judges, and arbitrators participate in translating social projects into legal categories and institutions. Nevertheless, the interstate system remains foundational: security interests, domestic compromises, resistance, and distinctive law-making processes prevent economic interests from becoming legal rules automatically. ejil.org

This is the closest connection between Chimni's legal scholarship and the class-oriented international political economy literature underlying your original question.

Coordination does not require unified command

The analytical significance of a transnational class depends on more than the existence of wealthy individuals in different countries. A persuasive account must establish some combination of shared interests, organizational connections, common strategies, professional practices, and political influence.

These connections can operate through different mechanisms:

- Direct lobbying for particular legal rules.
- Recruitment and career patterns that shape institutional assumptions.
- Dependence on particular sources of finance.
- Shared professional judgments about legitimate economic policy.
- Domestic coalitions that seek international commitments to stabilize their programmes.

These mechanisms should not be collapsed into one another. A lobbying campaign can provide evidence of deliberate coordination. A pattern of similar professional assumptions provides a different kind of evidence. Dependence on funding may constrain an institution even without direct instructions.

For this reason, identifying beneficiaries is the beginning of an explanation, not its completion. The next task is to trace how particular preferences entered legal texts, administrative practices, or judicial reasoning.

The North–South distinction becomes more complex

In his 2012 account, Chimni argues that a global class division is increasingly superimposed on the geographical North–South division. Segments of capital in emerging economies participate in the developing formation. Seeking greater influence within international institutions need not entail challenging their underlying economic orientation. He also locates the coercive support for this formation in advanced capitalist states, particularly the United States. These are historically situated arguments about that period. Chimni

This produces an important test for contemporary research: **does a change in the distribution of power between states also change the distribution of power within societies?**

Greater representation for a rising state may alter international bargaining without improving the position of its workers, small producers, or marginalized communities. Conversely, a reform that imposes costs on a powerful domestic industry may advance social interests without substantially changing interstate rankings.

A study of emerging global authority therefore needs both geopolitical and social measures of change.

4. The legal mechanisms through which authority is reorganized

4.1 Treaty consent and the problem of unequal bargaining

Chimni's 2004 outline of a Marxist approach examines treaties as expressions of social and political relationships. He questions whether formal consent adequately establishes legitimacy

when bargaining occurs under unequal resources and restricted alternatives. He also asks whose consent is being expressed: governmental agreement does not necessarily demonstrate meaningful participation by the affected population. His broader historical argument describes a movement from a postcolonial international order allowing greater national policy autonomy toward a more intrusive international legal order. legalform.blog

For a legal researcher, this requires distinguishing three questions:

- Was the agreement validly concluded?
- What political and economic conditions shaped its conclusion?
- What authority does it subsequently confer or constrain?

An affirmative answer to the first question does not answer the others.

Consider a government accepting long-term policy restrictions during an acute financing crisis. There may be no doubt that authorized officials consented. Yet the democratic significance of the arrangement depends on the alternatives available, the distribution of costs, its duration, and the possibility of subsequent revision.

This distinction also prevents an analytical error: unequal bargaining does not automatically make an agreement legally invalid. It can nevertheless be central to explaining the power relationship embodied in an otherwise valid agreement.

4.2 WTO law: domestic policy becomes an international legal concern

In his work on WTO democracy and development, Chimni argues that dissatisfaction with an institution does not imply that all participants are equally disadvantaged. Governments, corporations, and NGOs can all criticize the WTO while occupying markedly different positions within it. He proposes evaluating procedures and outcomes through a social audit identifying seriously affected populations, then prioritizing reforms accordingly. cambridge.org

The underlying legal mechanism is concrete. Article XVI:4 of the WTO Agreement requires members to bring their laws, regulations, and administrative procedures into conformity with their obligations under the annexed agreements. Domestic legislation can therefore become the object of international legal scrutiny. Page 1

TRIPS offers a useful qualification to the language of uniform global standards. Article 1 permits members to provide more extensive protection and leaves them freedom over methods of implementation, subject to the agreement. The legal structure combines common obligations with continuing national variation. general provisions

From a state-formation perspective, the important feature is the creation of an additional level at which domestic choices are assessed and constrained. This can produce substantial integration without identical national statutes.

The next empirical question is distributive: which choices become internationally constrained, which remain open, and which interests benefit from the resulting allocation?

A common rule can reduce opportunistic conduct and improve predictability. It can also preserve advantages held by actors better positioned to use the protected rights. Establishing its political character requires examining its design and effects.

4.3 Financial conditionality: governing through access to resources

Financial conditionality illustrates how governing power can operate without a supranational legislature. The IMF explicitly links financing to specified policy commitments, while its guidelines emphasize national ownership, attention to domestic circumstances, and the purposes of resolving balance-of-payments problems and safeguarding resources. imf.org

These official purposes establish the institution's stated rationale. They do not settle how particular programmes affect the distribution of political authority.

The research questions suggested by Chimni's approach are demanding but concrete:

- Who defined the available policy alternatives?
- Which domestic groups participated in negotiations?
- Which measures became conditions for continued financing?
- Could the government pursue a different strategy without prohibitive costs?
- Were the burdens distributed across creditors, asset owners, employees, and recipients of public services?
- How far could later democratic decisions revise the programme?

The resulting power may operate through incentives and dependency rather than a direct legal command. That distinction matters institutionally, but it does not eliminate the political significance of the constraint.

It also shows why the continued activity of national administrations cannot, by itself, disprove global governing power: domestic institutions can implement decisions substantially shaped elsewhere.

4.4 Customary international law: general rules without a global legislature

Chimni's 2018 study of customary international law examines how particular practices acquire the status of general law. He connects doctrinal selection to colonial history, capitalism, and unequal knowledge production.

A revealing example concerns assertions that investor-protection standards form part of customary law. He questions processes in which arbitral pronouncements help establish propositions that later decisions invoke as authoritative. This is his critique of contested legal reasoning; it should not be read as establishing that every treaty formulation of fair and equitable treatment is customary law.

His proposed reconstruction gives greater importance to deliberation, excluded participants, and a common juridical conscience. He nevertheless recognizes the limits of doctrinal reform undertaken without broader social transformation. Cambridge Core

This work is particularly relevant to the emergence of global authority because it examines how norms may become general without a single universal legislative decision.

It also creates a difficult question for Chimni's own alternative. **Who is entitled to identify humanity's common juridical conscience?**

If judges and scholars claim this authority without adequate representation, a doctrine intended to overcome unequal state power could concentrate authority in an expert community. The problem would be especially acute where disagreement about the purported common value is substantial.

A satisfactory reconstruction therefore needs procedures for identifying whose judgments count, exposing disagreement, and challenging authoritative interpretations. An appeal to universal interests becomes democratically stronger when connected to institutions through which affected people can contest their meaning.

4.5 Jurisdiction: territorial separation and legal harmonization can coexist

Chimni's 2022 jurisdiction article argues that apparently technical rules require explanation through the historical development of states, capitalism, and imperialism. Its published account emphasizes that territorial organization has coexisted with legal harmonization in both colonial and postcolonial periods. Different mechanisms have operated across those periods, with significant consequences for Southern legal and policy space. Cambridge Core

This is an important contribution to the world-state debate because the persistence of borders does not settle the location of effective authority.

Nevertheless, harmonization and state formation should still be distinguished. Similar rules could result from voluntary learning, competitive pressure, treaty obligations, or unequal external influence. They could also remain dispersed because influential actors benefit from differences between jurisdictions.

A convincing state-formation argument must therefore establish why the observed legal similarities indicate a developing common political organization, rather than convergence among separate authorities.

4.6 Membership, exclusion, and institutional access

Chimni's 2022 discussion of inclusion and exclusion identifies membership as a source of material and political benefits: recognition, access to resources, influence over other states' policies, and the ability to stabilize domestic commitments. Admission, suspension, and expulsion consequently raise questions about the fairness of institutional boundaries. cambridge.org

For global-state analysis, membership rules can be studied as mechanisms allocating access to political and economic opportunities.

The relevant issue is not simply whether membership is formally available. Conditions of entry may shape domestic institutions before admission, while the costs of exclusion can influence conduct afterward. Equally, membership may provide weaker actors with resources and bargaining opportunities they otherwise lack.

The same institutional boundary can thus constrain participants and empower them. Its overall significance must be established in context.

4.7 Refugee governance: the administrative organization of human movement

Chimni's 1998 refugee scholarship examines changes in how refugees were understood and governed. He criticizes a distinction between earlier European refugees and later Southern asylum seekers, analyses the turn toward containment and repatriation, and examines institutional knowledge production surrounding these policies. He also recognizes that existing legal protections can resist restrictive developments. mcrg.ac.in

The relevance to global political ordering extends beyond economic regulation. Categories of protection, legitimate movement, return, and responsibility organize the relationship between individuals, states, and international agencies.

My inference is that this provides an administrative dimension to Chimni's broader concern: authority can develop through classification, expertise, and coordinated implementation.

However, coordinated refugee governance does not itself demonstrate a unified global migration sovereign. It may instead reveal a system in which powerful states preserve substantial control while shifting responsibilities elsewhere. That possibility strengthens the case for analysing hierarchy while leaving the statehood question open.

5. Legitimacy: why procedural reform can both restrain and stabilize power

The two faces of global administrative law

Chimni's 2005 examination of global administrative law is especially valuable because it considers both its emancipatory possibilities and its limits.

He argues that transparency and participation can help legitimate an unjust arrangement if its substantive premises remain insulated from challenge. His Codex discussion illustrates the dependence of meaningful participation on resources and expertise. Formal access alone does not equal effective influence.

Yet his treatment of UNHCR refugee-status procedures recognizes the practical importance of reasons, evidence, representation, and review. He welcomes administrative-law development when accompanied by substantive protections, material support, institutional openness, and organized social pressure. iilj.org

This analysis suggests three separate dimensions of democratization:

1. **Access:** Can affected people obtain information and present arguments?
2. **Influence:** Can those arguments alter the outcome?
3. **Scope:** Can participants challenge the governing rules themselves?

A consultation process may improve access while leaving influence limited. An appeal process may correct the application of a rule while providing no means to contest its substance.

For assessing an emerging global state, this is a significant distinction. A growing network of procedural safeguards could indicate genuine democratization. It could also make an existing distribution of authority more acceptable without materially changing it. The answer depends on what the procedures enable people to do.

Legality and legitimacy

In his 2012 discussion of the international rule of law, Chimni values constraints on arbitrary power while questioning whether valid enactment suffices to justify authority. A rule's conformity with an established procedure cannot, on its own, establish the legitimacy of the order that created that procedure. The colonial history of international law makes this question especially consequential. The Cambridge Companion to International Law

The implication is that a global order can become more legal without necessarily becoming more just.

At the same time, legal constraints can have value within an unjust order. Predictable procedures, public reasons, and enforceable protections can reduce vulnerability even when the broader distribution of power remains unequal.

A serious evaluation should therefore ask both whether legal reforms improve people's position and whether they make deeper change more or less possible.

6. Chimni's alternative: democratizing global authority

6.1 Global democratic institutions remain a possible advance

In his 2011 global-democracy chapter, Chimni questions whether parliamentary forms beyond the state might legitimate capitalist domination. He uses the European experience to express doubts about whether representative institutions necessarily transform external relations or the treatment of migrants.

Nevertheless, he supports the potential contribution of a global people's assembly and reforms to the democratic functioning of the IMF, World Bank, and WTO. Such changes could improve the political influence of transnationally oppressed groups. For him, the emergence of global authority makes democratization a practical task. Global Democracy

This is an explicit commitment to political organization beyond national governments.

It also makes the institutional objective more demanding than simply adding elections. A representative body would need meaningful competence, access to information, resources, and a capacity to influence other institutions. Otherwise, representation might remain detached from the decisions that matter most.

6.2 Redistribution, recognition, and representation

Chimni's 2007 Grotius Lecture develops a reform agenda around three connected claims, drawing on Nancy Fraser: redistribution, recognition, and representation.

His proposals include examining international economic law's effects on poor populations, giving human rights priority over internationalized property claims, expanding affected populations' influence, and clarifying international organizations' legal responsibility. He also supports useful elements of global administrative law. The lecture's central concern is how to develop a global legal order oriented toward welfare. peoplesacademy.net

These three dimensions address different failures.

Redistribution concerns resources and economic power. Recognition concerns whose experiences and identities receive respect. Representation concerns who participates in making binding decisions.

Their combination matters because improving one dimension need not repair the others. An institution can become more culturally inclusive while preserving unequal economic outcomes. It can transfer resources without giving recipients meaningful influence. It can improve representation while leaving concentrated private power capable of shaping the agenda.

The world-state perspective becomes more informative when these dimensions are evaluated separately.

6.3 Recovering national policy space can support international democracy

Chimni's work on the "all affected" principle combines participation by those affected with participation by those subjected to political authority. He argues that these principles must take account of the structures of capitalism and social divisions. A significant implication is that meaningful democratization may require returning important decisions to national institutions, where affected populations organize and contest power. tandfonline.com

This creates a potentially coherent multilevel position: some decisions require international institutions, while others become more democratic when made closer to the populations concerned.

The unresolved task is allocation. Which decisions require common rules? Which should remain locally revisable? What happens when local decisions seriously affect outsiders?

Those questions cannot be answered by automatically favouring either centralization or decentralization. A democratic global order needs a defensible distribution of competence.

6.4 Legal protection and economic experimentation

In his 2017 response, Chimni defends the protective value of sovereign equality, nonintervention, peaceful dispute settlement, and human rights, including their use against domestic ruling elites. He places human emancipation above doctrinal loyalty and favours peaceful transformation. EJIL: Talk!

His 2012 discussion also supports experimentation with different property arrangements and recognizes that exclusively socialist ownership can produce domination. Chimni

Consequently, his preferred future should be understood as a programme of social and institutional transformation whose detailed design remains open. It requires evaluating who

controls public authority and productive resources, how power can be challenged, and how different arrangements affect human freedom.

7. Later developments: individuals and the internal workings of institutions

Formal personhood and effective agency

Chimni's 2024 discussion of the individual distinguishes formal legal subjecthood from the social conditions required for effective agency. Recognizing individuals in international law does not itself remove the relations that prevent them from exercising rights meaningfully. His argument situates the individual within class, gender, racial, and other structures of power. Oxford Academic

For the world-state question, this qualifies an easy equation between international rights and global citizenship.

A person might hold a recognized right yet lack the resources, security, organization, or access needed to invoke it. Conversely, organized political action may improve effective agency before legal doctrine fully reflects that change.

A global political community would therefore need more than a catalogue of individual entitlements. It would need institutions and material conditions enabling people to act as political participants.

The 2025 demand for institutional specificity

Chimni's 2025 chapter on critical theory and international organizations explicitly rejects reducing organizations to mere instruments of domination. He calls for combining structural analysis with study of internal rules, funding, mandate interpretation, leadership, recruitment, knowledge production, and organizational culture.

He also examines public–private institutional complexes and stresses that agreed rules can protect weaker states. His constructive orientation extends to proposing a new organization for global digital regulation. cambridge.org

Read alongside the earlier global-state thesis, this later work supplies an essential methodological discipline: broad claims about world order must be substantiated through detailed institutional research.

In my assessment, this considerably improves the research programme. It creates opportunities to identify differences between institutions, explain counterexamples, and distinguish reforms that alter underlying power from those with narrower effects.

8. Critical assessment: how convincing is the world-state argument?

8.1 Its strongest achievement is connecting dispersed forms of authority

Chimni's framework makes it possible to examine legal developments together that might otherwise remain separated by academic specialization.

A researcher can ask how treaty obligations, financing arrangements, professional expertise, administrative standards, and domestic implementation interact. This helps identify governing power that is difficult to see when each institution is considered alone.

The resulting explanation can be valuable even where the final characterization as a state remains disputed. Demonstrating a durable structure of global authority would already be a substantial finding.

8.2 Statehood requires a threshold

Chimni anticipates objections involving consent, unilateralism, regionalization, NGOs, institutional benefits, and fragmentation in the 2004 essay's discussion on pages 24–28. ejil.org

My principal reservation concerns how to distinguish an emerging state from a powerful but incomplete international governing order.

A useful test would examine:

Dimension	Evidence that would strengthen a state-formation claim
Integration	Institutions can coordinate across policy fields and resolve overlapping claims.
Continuity	Authority survives major political changes and serious conflicts among participants.
Enforcement	Rules can be implemented reliably, including against particularly powerful members.
Resources	Governing capacity rests on durable and sufficiently autonomous material support.
Ultimate competence	Conflicts over who has authority can be settled through accepted institutions.

A state in formation need not already satisfy every condition. However, there must be evidence of development toward a more integrated political organization. Otherwise, "in formation" risks becoming a description that can be indefinitely maintained without a clear test.

8.3 Legitimate force and control of force must be distinguished

The UN Charter gives the Security Council substantial authority, while Article 51 preserves an inherent right of individual or collective self-defence under specified conditions. The Charter also envisages implementation of Council decisions through member states. Security Council

These legal arrangements require careful interpretation in any statehood argument.

Authority to authorize coercion, possession of coercive resources, and effective command over their use are different matters. A system can perform collective legitimation without possessing an integrated coercive apparatus.

Nor does unlawful conduct automatically resolve the issue. A powerful actor's disregard of rules might indicate a divided international order, or it might indicate the exceptional position of a dominant actor within a wider political system. The evidence must discriminate between those explanations.

8.4 Shared benefits are insufficient evidence of coordinated formation

A rigorous class analysis should identify the sequence connecting social interests to institutional outcomes.

For example, it should distinguish a deliberate attempt to constrain future governments from an arrangement that acquires that effect unintentionally. It should also examine who opposed the measure, which concessions were made, and whether the resulting rule substantially differs from the preferences of the most influential actors.

This matters for your original interest in implicit objectives. A pattern of outcomes may justify investigating a common political project. It cannot substitute for evidence about that project's organization and purposes.

The most persuasive studies would combine legal analysis with negotiating records, institutional histories, organizational connections, professional practices, and distributive evidence.

8.5 Interstate rivalry is a genuine challenge that must remain open

A transnational class hypothesis can accommodate some rivalry. Firms and governments may compete intensely while supporting common rules that sustain profitable activity.

But accommodation has limits. Persistent strategic conflict could fragment legal arrangements, weaken cooperation, and prevent the emergence of common authority.

The theory should therefore specify what degree and kind of conflict it expects. If coordination confirms global state formation, while fragmentation is also always treated as confirmation, the hypothesis becomes difficult to evaluate.

The same requirement applies to successful resistance. A major defeat for an institutional project should be examined as a possible constraint on global integration, rather than automatically incorporated into a story of continuing consolidation.

8.6 Mainstream criticism: legal equality and institutional agency

Christian Tomuschat directly challenges important elements of Chimni's diagnosis. He emphasizes the protection that sovereign equality, nonintervention, treaty-making capacity, and institutional membership offer weaker states. He also points to opportunities for negotiated reform and to benefits that developing countries can obtain through international economic arrangements. edoc.hu-berlin.de

This criticism is strongest where it demands differentiation and evidence of agency. An institution's history of unequal influence does not establish that every subsequent outcome reproduces that inequality.

However, the existence of legal equality does not settle questions about unequal resources and effective influence. Moreover, Chimni's own reform programme recognizes that international institutions and legal protections can benefit subordinated groups.

The substantive disagreement therefore concerns the overall character of the system, the depth of its constraints, and the prospects for transformation.

8.7 Marxist criticism: the relationship between legal form and capitalism

Robert Knox raises a different objection. He argues that Chimni insufficiently explains why law, as a distinctive form of social regulation, is so persistently connected to capitalist and imperial relations. Identifying multiple social influences does not fully specify the mechanism by which they become legal outcomes. Knox consequently questions the strategic significance Chimni assigns to the international rule of law. EJIL: Talk!

This disagreement matters for the democratic-world-state project. If the principal problem lies in who controls institutions and what policies they pursue, institutional reconstruction may achieve substantial change. If the legal form itself systematically reproduces particular relations of domination, changing institutional personnel and rules may encounter deeper limits.

The issue is not resolved by choosing the more radical vocabulary. Competing accounts must explain concrete cases of continuity, reform, and reversal.

8.8 Feminist criticism: integration requires explaining co-constitution

Ntina Tzouvala questions whether Chimni's integrated approach sufficiently explains how law helps constitute class, gender, and racial categories and their interconnections. Her criticism is that incorporating several categories into an account is insufficient without explaining their historically specific relationships. EJIL: Talk!

For world-state analysis, this means that a theory should investigate how the emerging order produces differentiated political subjects. It should examine who appears as an investor, worker, migrant, dependent person, expert, or legitimate representative, and how legal categories distribute authority among them.

That inquiry can make the analysis of global power substantially more precise than a general opposition between a ruling class and subordinated populations.

9. Overall judgment

Chimni is most convincing as a theorist of the legal organization of global hierarchy and as a proponent of its democratic transformation. His work provides concrete ways to investigate how international institutions change domestic policy space, how social interests become legal rules, and how formal participation can diverge from effective political influence.

The stronger claim that these developments constitute the emergence of a world state remains a proposition to be demonstrated through evidence of institutional integration, durable enforcement, and the organization of ultimate authority.

His scholarship also changes the normative question. It becomes insufficient to ask whether power is national or global. We must ask whether the people affected can understand, influence, challenge, and revise its exercise; whether they possess the material capacity to do so; and whether authority can address common problems while respecting meaningful political autonomy.

For your broader research project, I would therefore use Chimni in two connected ways: **as a major source of hypotheses about the formation of global governing power, and as a demanding critic of the conditions under which such power could become democratically legitimate.**

10. Principal works for a systematic reading

The following sequence moves from the institutional thesis to its social foundations, legal mechanisms, and normative development:

1. **"International Institutions Today: An Imperial Global State in the Making."** *European Journal of International Law* 15(1), 2004, pp. 1–37. The central statement of the state-formation thesis. ejil.org
2. **"Third World Approaches to International Law: A Manifesto."** *International Community Law Review* 8(1), 2006, pp. 3–27; originally published in 2003. The political and methodological standpoint. jnu.ac.in
3. **"Prolegomena to a Class Approach to International Law."** *European Journal of International Law* 21(1), 2010, pp. 57–82. The account of class formation and legal professionals. ejil.org
4. **"Co-option and Resistance: Two Faces of Global Administrative Law."** *NYU Journal of International Law and Politics* 37, 2005, pp. 799–827. The possibilities and limitations of procedural reform. iilj.org
5. **"A Just World Under Law: A View From the South."** *American University International Law Review* 22(2), 2007, pp. 199–220. The programme of global justice. peoplesacademy.net
6. **"Global capitalism and global democracy: Subverting the other?"** In *Global Democracy: Normative and Empirical Perspectives*, Cambridge University Press, 2011, pp. 233–253. His qualified support for global democratic institutions. Global Democracy
7. **"Capitalism, Imperialism, and International Law in the Twenty-First Century."** *Oregon Review of International Law* 14, 2012, pp. 17–45. The developing relationship between class divisions and interstate hierarchy. Chimni
8. **International Law and World Order: A Critique of Contemporary Approaches.** Second edition, Cambridge University Press, 2017. The broad theoretical synthesis; read alongside his December 2017 author's response. cambridge.org
9. **"Customary International Law: A Third World Perspective."** *American Journal of International Law* 112(1), 2018, pp. 1–46. The politics of general norm formation. Cambridge Core
10. **"The international law of jurisdiction: A TWAIL perspective."** *Leiden Journal of International Law* 35(1), 2022, pp. 29–54. Territorial authority and legal harmonization. Cambridge Core
11. **"The Status of the Individual in International Law: A TWAIL Perspective."** In *The Individual in International Law*, Oxford University Press, 2024, pp. 231–250. Formal rights and effective human agency. Oxford Academic
12. **"Critical Theory and International Organizations: The Need for an Integrated Approach."** In *Ways of Seeing International Organisations*, Cambridge University Press, 2025, pp. 16–37. A particularly useful later statement of the need for detailed institutional analysis.

Stephen Gill’ s work

Stephen Gill’s work is exceptionally relevant to this question because it explains how global capitalist power acquires durable institutional and constitutional forms. His central concern is the interaction of transnational capital, powerful states, international organizations, and institutions that increasingly place economic decisions beyond ordinary democratic revision. In the work he developed with A. Claire Cutler, this becomes an account of an uneven, de facto constitutional order for the world market. assets.cambridge.org

There are also passages in which Gill addresses the world-state question quite explicitly. With David Law, he considers whether a world confederation might serve internationally mobile capital. In a later essay, he examines the United States claiming the authority to act “as a global state.” These formulations require careful interpretation: they describe different possible organizations of global power, rather than successive stages in an established historical sequence. is.cuni.cz

My central assessment is that **Gill provides a powerful theory of the institutional foundations from which some forms of global state power might develop, while also explaining why capitalist globalization can preserve—and benefit from—the continued plurality of states.** His work therefore supports a more differentiated argument than the proposition that global economic integration necessarily produces a single world government.

The following analysis distinguishes his own arguments from the further conclusions one might draw about world statehood.

1. His theoretical starting point: global power is a relationship among social forces, institutions, and states

Gill approaches international relations through historical materialism and a distinctive interpretation of Antonio Gramsci. Three concepts are especially important.

- **Hegemony** involves leadership and consent, supported by material power. A dominant group sustains its position partly by presenting its project as serving wider social interests.
- **A historical bloc** brings together social forces, institutions, material interests, and ideas in a relatively durable political configuration.
- **The extended state** encompasses the relationship between governmental institutions and civil society. Political order depends on organizations and practices beyond the formal government apparatus.

In “Hegemony, Consensus and Trilateralism” (1986), Gill uses these concepts to reconsider an apparent puzzle: why an international economic order might persist even when the relative material predominance of its leading state appears to decline. The answer requires examining the wider social and institutional relationships through which that order is maintained. cooperative-individualism.org

Why this matters for a world-state analysis

A conventional institutional approach might begin by asking whether the United Nations, international courts, or another organization has acquired sovereign powers. Gill’s approach directs attention to a prior question: **which social forces already possess the capacity to establish the conditions under which governments make decisions?**

This changes the object of analysis. A finance ministry, an international financial institution, a business association, and a private financial market may belong to different legal categories while participating in a common pattern of governance.

Their relationship cannot be understood solely by locating each institution on an organizational chart. It also requires examining recruitment, professional outlooks, dependence on finance, shared policy assumptions, and the interests that particular institutional arrangements privilege.

Gill develops this perspective in “Gramsci, Modernity and Globalization,” originally presented in 1997. He explicitly discusses the internationalization or globalization of the state: transformations in production and finance alter state forms, political identities, and governmental priorities. The state is itself changed by these processes. His concept of a **G7 nexus** similarly encompasses public and private forces whose institutional composition differs across societies. Gramsci, Modernity and Globalization

The implication, in my interpretation, is that global political integration can proceed through changes *inside* national institutions. An agency can remain legally national while its operating priorities become increasingly connected to transnational markets and policy networks.

Nevertheless, the existence of such connections does not settle whether they collectively constitute a state. Gill’s theory helps identify the relationships; an additional argument is needed to establish their degree of institutional unity.

2. The Trilateral Commission: how common strategies are constructed among elites

The argument of *American Hegemony and the Trilateral Commission*

Gill’s major early book, *American Hegemony and the Trilateral Commission*, first published in 1990, examines attempts to organize cooperation among leading capitalist forces in North America, Western Europe, and Japan. He places the Commission within a wider effort to sustain an international order favorable to those forces and describes the accompanying transformation as the transnationalization of the state.

The book investigates membership, organizational arrangements, policy debates, and the interaction of governmental and nongovernmental elites. Its empirical basis includes interviews

conducted between 1978 and 1986, Commission publications, and documents supplied by participants.

Gill also acknowledges limits to his access. He did not obtain observer status at Commission meetings, although he attended a related Europe–Japan meeting. These methodological details matter when evaluating the strength of his conclusions. PDF Free Download

The book's distinctive contribution is to explain how common interests become politically organized. Businesspeople, officials, and policy intellectuals do not necessarily begin with an agreed global strategy. Forums can help them identify problems, develop a shared vocabulary, reconcile disagreements, and establish priorities.

From the perspective of an emerging world state, such activity could contribute to the formation of a transnational governing stratum. Yet the evidence establishes some propositions more directly than others. Interviews and policy documents can demonstrate shared outlooks and deliberate coordination. Establishing that a forum caused a particular governmental decision requires tracing the intervening political process.

Gill's earlier research also contains evidence of unsuccessful coordination: his 1986 article records a failed attempt to merge several elite organizational structures, including objections from Japanese participants. This is a useful reminder that transnational elite organization is an achievement to be explained, with failures as well as successes. cooperative-individualism.org

The importance of his 1990 qualifications

"Intellectuals and Transnational Capital" adds important precision. Gill examines the formation of strategic consciousness through elite education, recruitment, meetings, reports, and intellectual networks. He distinguishes relatively uncompromising market liberalism from approaches willing to use compensatory policies to stabilize capitalism.

He also qualifies the class argument. At this historical moment, he describes intersecting national establishments and international institutional leaderships, while questioning whether an international capitalist class exists *per se*. Domestic forces remain important determinants of state policy.

Especially relevant to your question, he observes that comprehensive institutions such as a world central bank had not been endorsed. The practical emphasis was strengthening existing organizations and coordinating national institutions. Influence over specific policies was often indirect. socialistregister.com

These qualifications make it inappropriate to portray Gill's early research as documenting an already unified global ruling class with a settled constitutional blueprint.

Explicit intentions and the management of democracy

A revealing primary document in this intellectual environment is the 1975 Trilateral report *The Crisis of Democracy*, by Michel Crozier, Samuel P. Huntington, and Joji Watanuki.

In his American chapter, Huntington diagnoses an "excess of democracy" and argues for moderating participation and restoring governability. The collective conclusion advocates

strengthening the authority of existing central governmental institutions. Brzezinski's introductory note, however, attributes the analysis to the authors; every recommendation should not be treated as unanimous Commission policy. The Trilateral Commission

For the present inquiry, this supports a specific interpretation: influential intellectuals were considering how to manage democratic pressures and reinforce governmental authority. It does not, by itself, demonstrate an intention to abolish states.

The distinction is consequential. **A project that strengthens national executives while limiting popular influence can contribute to global elite coordination without transferring sovereignty to a new worldwide institution.**

3. The structural power of capital—and why capital may prefer competing states

Gill's article with David Law, "Global Hegemony and the Structural Power of Capital" (1989), provides one of the most direct treatments of the problem.

Their account distinguishes direct political influence from structural power. Governments depend on investment and finance; the withdrawal or withholding of these resources can constrain policy even without coordinated lobbying. At the same time, states constitute markets and retain capacities to regulate capital.

The article then makes a striking suggestion. At pages 491–492, the authors consider whether internationally mobile capital might benefit most from a **world confederation retaining competition among states for investment**. On page 492, they ask whether a hegemonic state could substitute for a global Leviathan, or whether other international authorities could perform comparable functions more legitimately. They identify no unambiguously optimal arrangement. is.cuni.cz

These are conditional analytical possibilities. They are neither an endorsed political programme nor evidence that a particular organization had adopted such a plan.

The underlying tension is highly relevant. Capital may benefit from common rules that secure transactions across borders, while also benefiting from differences between jurisdictions. Coordination and competition can therefore be complementary.

A further inference follows. A sufficiently powerful world government could potentially coordinate taxation, labour protection, or financial regulation in ways that reduced opportunities to move between jurisdictions. Consequently, the interests of mobile capital cannot simply be assumed to favor maximum political centralization. The content and distribution of authority would matter as much as its geographical scope.

Gill's 1992 article, "Economic Globalization and the Internationalization of Authority: Limits and Contradictions," reinforces this distinction. Its central diagnosis is that economic globalization has not been matched by a corresponding internationalization of political authority. He examines efforts to address that discrepancy through formal organizations and private forums, including international financial institutions and transnational elite networks. ScienceDirect

For a theory of world-state emergence, this is a major insight: **political fragmentation may be part of the organization of global capitalist power, rather than simply an obstacle that globalization will eventually overcome.**

4. New constitutionalism: Gill's most important contribution to the legal dimension

4.1. What he means by constitutionalization

Gill's concept of **new constitutionalism** concerns durable legal and institutional arrangements that protect market freedoms, property, and particular forms of economic policy against subsequent political revision.

The constitutional analogy concerns the distinction between establishing the rules of political decision-making and making decisions within those rules. In "Constitutionalizing Inequality and the Clash of Globalizations" (2002), he examines how commitments concerning property, money, and public finance shape the field within which ordinary political competition takes place. Globalization

This is more far-reaching than a claim that business sometimes influences legislation. A legislative victory may be reversed after an election. An entrenched institutional arrangement changes the conditions under which future governments can act.

For example, consider the difference between a government choosing a particular monetary policy and accepting an institutional framework that removes monetary decisions from its direct control. The second decision reallocates authority over future decisions. Evaluating its political meaning therefore requires examining both the policy objective and the structure of accountability it establishes.

Gill and Cutler's 2014 formulation broadens this account to encompass interacting public and private powers, hard and soft law, and arrangements operating nationally, regionally, and globally. The relevant constitutional order develops unevenly; it does not depend on a single founding document. assets.cambridge.org

4.2. Three institutional functions

In his 2000 conference paper, "The Constitution of Global Capitalism," Gill distinguishes three connected functions:

Function	Institutional significance
Reconfiguring the state	Changing governmental institutions and commitments so that economic policy responds more strongly to capital mobility and investor confidence.
Constituting markets	Creating or extending property rights, privatizing assets, and establishing legally protected opportunities for accumulation.
Managing contradictions	Containing opposition, incorporating potentially disruptive groups, and introducing compensation or adjustments that help sustain the wider project.

His discussion includes constitutional reform, judicial arrangements, monetary institutions, budgetary procedures, external agreements, and policy conditionality. The paper consequently presents globalization as an active process of institution-building. Its concluding alternative emphasizes democratic constitutionalism and popular self-determination. stephengill.com

The third function prevents an overly simple reading. A governing project can accommodate concessions, institutional repairs, and selective social protection. To determine whether these represent a fundamental change, one must examine what happens to the underlying distribution of authority.

My interpretation is that this framework helps explain how a global economic order might acquire resilience without becoming institutionally uniform. Different jurisdictions can employ different combinations of commitments and compensatory measures.

4.3. European monetary integration

Gill's 1998 article on European governance, substantially revised in 2001 as "Constitutionalising Capital: EMU and Disciplinary Neo-Liberalism," applies the argument to Economic and Monetary Union.

He examines the reorganization of public and private authority through European integration, including efforts to reduce monetary instability while securing credibility with financial markets. He places these developments within a wider system of governance and considers alternatives to neoliberal policy. His discussion also recognizes that support for integration extends beyond financial elites and crosses class boundaries. Springer Nature Link

The legal mechanism can be illustrated precisely through Article 130 of the Treaty on the Functioning of the European Union. It protects the European Central Bank and national central banks, in the exercise of their relevant functions, against instructions from governments, Union bodies, or other bodies. EUR-Lex

This provision demonstrates an actual allocation of authority. Gill's further argument concerns its political and distributive significance.

Those levels should remain distinct. Institutional independence does not legally authorize investors to issue instructions to a central bank; the prohibition extends beyond governmental instructions. A claim about the structural influence of financial interests therefore requires evidence about mandates, institutional practices, policy assumptions, and economic dependence.

For the world-state question, Europe illustrates how authority can become supranational in one field while other functions remain organized differently. Such development may contribute to a more integrated political order, but its direction cannot be inferred from the geographical transfer of a single competence.

4.4. Privatization, services, and intellectual property

Gill's article in the legal journal *juridikum*, "Conceptualizing the Global Restructuring of Public Services: Privatization, TRIPS & GATS" (2005), connects constitutionalization to public services.

He examines how privatization and intellectual-property protection extend legally secured opportunities for accumulation, while international services liberalization and fiscal constraints affect public provision. A recurrent tension is between the mobility of capital and the territorial location of communities that must sustain services and everyday life.

His analysis draws attention to the interaction between creating private ownership and protecting the resulting arrangements against political reversal. gesellschaft

This is particularly relevant to global power because control over essential activities can change without those activities becoming the responsibility of an international public administration.

However, Gill's formulations sometimes need doctrinal qualification. His broad statement that NAFTA made expropriation of foreign investors illegal is imprecise. The treaty's Article 1110 permitted qualifying expropriation subject to conditions including public purpose, nondiscrimination, due process, and compensation. gesellschaft

Likewise, GATS should not be described as automatically requiring the privatization of all public services. The WTO expressly rejects that interpretation. wto.org

These qualifications preserve an important distinction: a legal framework may increase the costs or complexity of policy reversal without making every alternative legally impossible. The strength of Gill's political explanation must be assessed alongside the actual scope of the relevant legal obligation.

4.5. Private government and the investor as "sovereign"

In the 2002 article, drawing on Jean-Philippe Robé, Gill examines corporations as forms of private government constituted through property and contract law. His characterization of the investor or major property holder as an effective sovereign identifies whose interests the institutional project privileges.

He also expressly describes new constitutionalism as a contested strategic project, rather than a completed historical process. Globalization

For legal analysis, "sovereign" here is a functional characterization. It does not mean that a corporation possesses the same juridical status as a state or exercises unlimited public authority.

The productive research question is how private decision-making becomes collectively binding in practice, and which public institutions establish, enforce, or limit that capacity.

5. Disciplinary neoliberalism, market civilization, and surveillance

Gill's account extends beyond formal law.

Market civilization

In "Globalisation, Market Civilisation, and Disciplinary Neoliberalism" (1995), he describes a transformation in which market-oriented practices increasingly organize social relations,

expectations, and judgments of value. Market civilization encompasses both the expansion of accumulation and its cultural representations, alongside exclusion, hierarchy, and ecological shortsightedness.

Disciplinary neoliberalism connects structural economic power with forms of institutional and everyday discipline. Governments, organizations, and individuals adjust their conduct to competitive pressures and expectations. Gill emphasizes that these processes operate unevenly and with different intensities across societies. PDF

The relevance to state formation is partly indirect. Durable political order requires more than enforceable rules: people and institutions must learn how to act within it.

A global economic order becomes more deeply established when its requirements are incorporated into routine judgment. A government may anticipate financial reactions before formally considering a policy; an organization may assess its own activities through competitive benchmarks. These practices can reduce the need for direct commands.

This does not make every adjustment evidence of unified control. The analytical task is to identify how expectations are produced, how they are enforced, and whose purposes they serve.

The global panopticon

In "The Global Panopticon?" (1995), Gill examines surveillance across economic and political life. His examples connect the monitoring of workers, consumers, and borrowers with wider structures of finance and governance.

The argument concerns asymmetries in information and accountability: institutions may acquire extensive knowledge about those they govern while remaining less exposed to effective democratic scrutiny themselves. He also recognizes that information technologies can support resistance and democratic accountability.

His conclusion rejects the idea that emancipation requires replacing markets with a totalizing system of centralized planning. THE GLOBAL PANOPTICON.doc

For your question, this suggests a form of global discipline that can operate through numerous institutions. It does not require a single organization observing and directing everyone.

My assessment is that Gill's contribution here is strongest when surveillance is treated as a concrete relationship of power. Turning the panopticon into an image of complete global control would eliminate the contradictions and possibilities of resistance that his analysis explicitly retains.

6. The United States claiming to act as a global state

"The Contradictions of US Supremacy" (2005) contains Gill's most explicit formulation.

On page 24, he describes the assumption that the United States possesses the right to act as a global state: establishing rules of world order while selectively deciding which rules constrain

its own conduct. The same passage places this role within a hierarchy of states with the United States at its apex.

Gill identifies a contradiction between the protection of private property through limited government and the assertion of exceptional state powers. His deliberate use of **supremacy** emphasizes economic coercion and organized violence used to intimidate and divide opposition. He expressly acknowledges inconsistency, crises, and resistance within the strategy. socialistregister.com

The formulation admits several interpretations.

First, an existing state may claim worldwide prerogatives without becoming a universally recognized world government. Its global role would concern the geographical reach of its authority claims and interventions.

Second, a hegemonic state may provide some functions that a more integrated international public authority might otherwise perform. This connects with the earlier Gill–Law discussion of a substitute for a global Leviathan.

Third, such a system may remain dependent on the participation of other states, rather than developing a fully independent supranational apparatus.

Gill's *Power and Resistance in the New World Order*, particularly the 2008 chapter "Alternatives, Real and Imagined," retains this connection between transnational capital and the US state apparatus in its explanation of global restructuring. Springer Nature Link

My interpretation is that Gill's account provides substantial support for analyzing **global sovereign functions exercised through an unequal interstate order**. It does not establish that those functions have been consolidated into a common worldwide sovereign authority.

The difference is substantive. An imperial hierarchy may distribute obligations unequally and preserve exceptional powers at its centre. A world federation would require some further account of common authority, membership, competence, and the resolution of conflicts among its constituent units.

7. Social reproduction: the global order must also sustain human life

Gill's collaboration with Isabella Bakker substantially broadens the analysis.

Their edited book *Power, Production and Social Reproduction: Human In/security in the Global Political Economy* (2003) brings the conditions sustaining people and communities into the analysis of global production and power. The research programme challenges an economic perspective that treats those conditions as an external background to accumulation. Springer Nature Link

Care as a constitutional question

In “New Constitutionalism and the Social Reproduction of Caring Institutions” (2006), Gill and Bakker examine how economic agreements and governance frameworks reshape the provision of care.

Social reproduction encompasses the reproduction of human beings and labour power, together with the institutions and relationships through which communities are maintained. They argue that institutions previously oriented toward broadly available care increasingly operate under market values and private commercial pressures.

The constitutional issue therefore extends to the conditions under which human needs are recognized and met. Springer Nature Link

This has a direct implication for assessing an emerging global state. One should examine more than the institutions securing investment or enforcing obligations. One must also ask where responsibility lies for the consequences of economic decisions.

If authority to protect economic claims becomes internationalized while responsibility for care remains dispersed, a significant mismatch can emerge. The existence of that mismatch does not itself disprove state formation—states have historically varied greatly in their social responsibilities—but it identifies the kind of political order being constituted.

Their later qualification: variegated social reproduction

Bakker and Gill’s 2019 article, “Rethinking Power, Production, and Social Reproduction,” revisits their earlier framework through the concept of **variegated social reproduction**.

They emphasize historical, cultural, ecological, and institutional variation. Commodification and neoliberal transformation remain incomplete. The relationship between accumulation and the maintenance of human life develops through differing social practices, rather than one universally determining model. Isabella Bakker, Stephen Gill, 2019

This is an important qualification of any uniform world-state interpretation. The global reach of capital does not make its social foundations identical everywhere.

It also suggests a demanding research agenda: global institutional change must be studied through its effects on different communities, forms of work, care arrangements, and ecological conditions. A theory confined to elite coordination would miss these foundations of political durability.

8. Crises and institutional adaptation: integration has no automatic destination

Organic crisis and the problem of leadership

In *Global Crises and the Crisis of Global Leadership* (2011/2012), Gill links economic, ecological, social, and political disturbances through the idea of an organic crisis.

“Global leadership” refers to a constellation of institutions, interests, and ideas associated with powerful states and corporations. It does not designate one global office. His argument

questions whether the prevailing leadership can address the broader conditions of livelihood and social reproduction, rather than primarily stabilizing accumulation.

The concluding discussion calls for progressive constitutional and institutional alternatives. assets.cambridge.org

The conceptual significance is that crisis does not determine its own political resolution.

In my assessment, at least three outcomes remain analytically possible: established institutions may adapt; authority may become more coercive or insulated; or political forces may establish different priorities and institutions. None follows automatically from the existence of severe disruption.

This matters for theories that treat every crisis as another stage in an inevitable movement toward world government. Such a theory risks reading the outcome into the event before examining the political struggle.

The 2022 reassessment of the European Union

Gill and Thibault Biscahie return to these issues in "New Constitutionalism and the EU: Its Limits and Prospects beyond the COVID-19 Pandemic" (2022).

The article asks whether the European recovery initiative and movement toward shared financing represent a departure from constraints associated with Maastricht and subsequent fiscal arrangements. Its stated conclusion characterizes Next Generation EU as a pragmatic adjustment containing innovations, responding to the pandemic and unresolved tensions inherited from the euro crisis. It does not identify an established change of paradigm. tandfonline.com

For a world-state analysis, this illustrates why **the scale of public authority and its social purpose must be evaluated separately**.

More common fiscal capacity can increase political integration without necessarily democratizing economic decision-making. Conversely, a change in economic priorities can occur without a comparable increase in supranational authority.

Gill's framework becomes most useful when it helps investigate both dimensions, rather than treating either integration or state intervention as conclusive evidence of a particular political project.

9. His democratic alternative: the postmodern Prince and transformative political agency

Gill's critique is connected to an explicitly emancipatory programme, although the works considered here do not provide a detailed constitution for a centralized world state.

The postmodern Prince

In “Toward a Postmodern Prince?” (2000), written around the Seattle protests, Gill explores whether diverse movements might develop a common transformative capacity.

The Prince is a metaphor for collective political agency, drawing on Machiavelli and Gramsci. It does not refer to an individual ruler. “Postmodern” identifies changed political, material, and ecological conditions; Gill distinguishes this usage from philosophical relativism.

His hypothesis concerns the possible combination of labour, feminist, indigenous, ecological, and other struggles. He presents this development provisionally and acknowledges that organized protesters constitute only a small part of a much more heterogeneous global civil society. users.sussex.ac.uk

The relevance to world-state formation is the possibility of **global constituent politics**: political activity capable of creating new institutions and redefining the purposes of existing ones.

Yet constituent potential is not the same as constituted authority. Shared opposition can initiate political cooperation, but durable institutions require procedures for resolving disagreement, making decisions, and holding representatives accountable.

Praxis and the transformation of world order

Gill develops his normative position in “Towards a Radical Concept of Praxis” (2012). Praxis connects explanation with efforts to transform international relations toward justice, sustainability, and an ethically defensible world order.

He criticizes forms of intellectual “common sense” that naturalize US supremacy and prevailing inequalities. His alternative involves diverse forms of agency generating new knowledge and political possibilities. The examples in his own presentation span movements and initiatives at different geographical scales. Stephen Gill, 2012

This is an internationalist position. Democratic transformation cannot be reduced to restoring an earlier national arrangement, because the relationships producing the problem extend across borders.

At the same time, nothing in this argument requires treating all transfers of authority to international institutions as emancipatory. The relevant questions concern participation, substantive rights, accountability, and the purposes for which authority is exercised.

Reform and transformation

In the 2015 collection *Critical Perspectives on the Crisis of Global Governance*, Gill explicitly includes a range from critical theory to what he calls critical problem-solving. His concluding chapter explores institutional possibilities addressing exploitation, dispossession, health crises, and ecological damage. Springer Nature Link

My interpretation is that this leaves room for reforms within existing institutions as well as more extensive reconstruction. It also means that his normative project should not be converted into a constitutional blueprint that he has not supplied.

A democratic world state would be one possible institutional proposal requiring further justification. Gill's stated criteria concern the transformation of power relations and human conditions, rather than the mere creation of a higher governmental level.

10. The strongest criticisms and unresolved questions

10.1. Constitutional constraints may have more than one political significance

Gill is persuasive in directing attention to the distributional consequences of supposedly technical rules. However, a constitutional constraint can also protect against arbitrary executive action, corruption, unstable policy, or violations of rights.

The critical inquiry must therefore establish which alternatives are excluded, who benefits, and how accountable the institution remains. The fact that an arrangement restrains an elected government is insufficient, by itself, to establish that it serves transnational capital.

Gerard Strange's "The Left Against Europe?" (2006) develops a related criticism. He argues that new constitutionalism can offer a one-sided account of constitutionalism and insufficiently theorize regional integration. In particular, it may underestimate the capacities that regional institutions could provide for alternative political projects. Cambridge Core

This criticism should not be generalized into a claim that Gill's entire position is nationalist. His transnational resistance writings clearly complicate that description.

10.2. Western power can be overstated even in an analysis critical of the West

John M. Hobson and Alina Sajed directly criticize aspects of Gill's earlier work in their 2017 article on non-Western agency.

Their argument is that critical accounts can condemn Western domination while nevertheless assigning Western structures overwhelmingly determining power. They discuss Gill's accounts of state internationalization, disciplinary neoliberalism, and the global panopticon in this context. They acknowledge the importance of imperialism as an explanation while objecting to formulations that obscure how non-Western actors help constitute world politics. Oxford Academic

For your question, this is particularly relevant. "Global capitalist ordering" should not silently become a claim that all significant developments originate in a unified Western centre.

An adequate investigation must distinguish imposition, collaboration, appropriation, rivalry, and resistance. Gill's later attention to variation helps address this problem, but it does not remove the need for detailed empirical research.

10.3. Global resistance does not automatically generate a common political will

Matthew D. Stephen's "Alter-Globalism as Counter-Hegemony" (2009) directly evaluates Gill's postmodern Prince.

Stephen argues that diversity and shared opposition do not resolve disagreements about strategy, organization, leadership, or a transformative programme. His discussion of the World Social Forum identifies the difficulty of constructing a common political will among heterogeneous movements. researchgate.net

This is a major challenge for the democratic side of a world-state argument. A global field of political activity is not yet a global democratic constituency capable of authorizing institutions.

The unresolved questions concern representation, resources, decision procedures, minority protection, and the relationship between transnational organizations and the populations in whose name they act.

10.4. The theory must distinguish function, intention, and causation

My principal methodological qualification is that three propositions require different evidence:

1. An institution has effects favorable to particular economic interests.
2. Relevant actors deliberately designed or supported it to produce those effects.
3. Those actors intended it as part of a project to create global state power.

The first does not establish the second, and neither establishes the third.

A rigorous application of Gill's framework would combine institutional analysis with legislative histories, negotiating records, organizational documents, and evidence of implementation. It would also examine failures, exemptions, conflicting interests, and outcomes that contradict the proposed strategy.

Without this discipline, almost any development could be classified retrospectively as a contribution to the same global project. Gill's own qualifications about contingency and incomplete transformation provide reasons to resist that approach.

10.5. Constitutionalized power and statehood remain different analytical thresholds

A world state need not be unitary or highly centralized. Federal and otherwise dispersed arrangements are possible. Nevertheless, identifying a state requires more than finding common policy orientations and institutions that constrain governments.

The additional questions concern authoritative conflict resolution, the allocation of ultimate public powers, dependable enforcement, and the relationship among the institutions claiming authority.

Gill provides extensive conceptual resources for investigating these questions. His work does not eliminate the need to answer them.

11. What his work ultimately contributes to the world-state thesis

The strongest conclusion I would draw is that **Gill explains how a global economic order can acquire constitutional depth before acquiring a correspondingly integrated and democratic political organization**.

His research supports several distinct lines of investigation:

Possible development	What Gill helps explain
Transnationalization of existing states	National institutions become reorganized around cross-border economic relationships and policy commitments.
Coordination preserving competing jurisdictions	Common rules can coexist with—and reinforce—competition among states for investment.
Imperial exercise of global functions	A dominant existing state claims exceptional authority to establish and enforce rules internationally.
Democratic reconstruction of global authority	Transnational political forces attempt to establish different rights, priorities, and forms of accountability.

These possibilities can overlap, but they should not be treated as interchangeable.

For your broader inquiry into the legal mechanisms of global power, Gill's greatest contribution is the connection he establishes between **social forces, the reorganization of states, and constitutional commitments that shape future political choices**. His work offers a substantial foundation for investigating emerging global state power. It also supplies reasons to keep the outcome open: global constitutionalization may deepen while political authority remains fragmented, unequal, and contested.

Selected primary works for further study

The following sequence gives the clearest route through the argument:

1. **Gill, Stephen, and David Law. "Global Hegemony and the Structural Power of Capital" (1989), *International Studies Quarterly* 33(4), 475–499.** Especially pages 491–493 on confederation, international authority, and the state. Full article.
2. **Gill, Stephen. *American Hegemony and the Trilateral Commission* (1990). Cambridge University Press.** The principal empirical study of elite coordination. Publisher front matter.
3. **Gill, Stephen. "Intellectuals and Transnational Capital" (1990), *Socialist Register* 26, 290–310.** Particularly useful for the qualifications concerning class formation and institutional intentions. Full article.
4. **Gill, Stephen. "Globalisation, Market Civilisation, and Disciplinary Neoliberalism" (1995), *Millennium* 24(3), 399–423.** The central statement of the disciplinary framework. Publisher page.
5. **Gill, Stephen. "New Constitutionalism, Democratisation and Global Political Economy" (1998), *Pacifica Review* 10(1), 23–38.** A foundational statement of the constitutional argument. Publisher page.
6. **Gill, Stephen. "Constitutionalizing Inequality and the Clash of Globalizations" (2002), *International Studies Review* 4(2), 47–65.** Develops constitutional politics, private power, and contestation. DOI.

7. **Gill, Stephen. "The Contradictions of US Supremacy" (2005), *Socialist Register* 41, 23–45.** Essential for his explicit global-state formulation, especially page 24. Full article.
8. **Gill, Stephen, and Isabella Bakker. "New Constitutionalism and the Social Reproduction of Caring Institutions" (2006), *Theoretical Medicine and Bioethics* 27, 35–57.** Extends the constitutional analysis to care and human reproduction. Publisher page.
9. **Gill, Stephen. *Power and Resistance in the New World Order*, second edition (2008).** The broadest synthesis of his analysis of power and political alternatives. Publisher page.
10. **Gill, Stephen, and A. Claire Cutler, eds. *New Constitutionalism and World Order* (2014).** Read their introduction alongside Gill's chapter on market civilization. Publisher excerpt.
11. **Bakker, Isabella, and Stephen Gill. "Rethinking Power, Production, and Social Reproduction: Toward Variegated Social Reproduction" (2019).** Important for the later emphasis on variation and incomplete commodification. Publisher page.
12. **Gill, Stephen, and Thibault Biscahie. "New Constitutionalism and the EU: Its Limits and Prospects beyond the COVID-19 Pandemic" (2022).** A later reassessment of institutional adaptation and the limits of change. Publisher page.

Claire Cutler’ s work

A. Claire Cutler’s work is especially valuable for understanding how governing authority can develop across national borders through institutions that law classifies as private. Her central subjects include commercial contracts, corporate organization, business associations, arbitration, and the legal professions that create and administer transnational commercial rules. She examines how these arrangements acquire political significance while continuing to operate through national laws, courts, and international agreements. Academia

My assessment is that **Cutler provides a substantial foundation for a theory of the transnational organization of capitalist governing power**. Connecting that account to the emergence of a *global world state* requires a further argument about how these dispersed governing arrangements become an integrated political order.

That distinction makes her particularly relevant to your question. She helps us investigate developments that would remain difficult to see if we looked only for a world legislature, a global executive, or a formal transfer of sovereignty to a new international institution.

I will first explain her principal concepts and works, then examine the legal mechanisms she identifies, and finally assess how far they support a world-state interpretation.

1. What should “global state formation” mean when reading Cutler?

For this analysis, it is useful to distinguish three propositions:

Proposition	What would need to be demonstrated?
The emergence of global governing authority	Institutions make consequential rules and authoritative decisions across jurisdictions.
The emergence of a global constitutional order	Durable legal arrangements allocate powers, protect certain interests, and constrain the choices available to governments and populations.
The emergence of a global state	These arrangements become sufficiently integrated to constitute an overarching political organization, with a structure of ultimate authority and collective decision-making.

These propositions are related, but evidence for one does not automatically establish the others.

For example, a transnational institution may exercise substantial authority over investment disputes without possessing general responsibility for taxation, welfare, security, or democratic representation. Conversely, an emerging global state could retain national governments and considerable institutional diversity. The continued existence of states would therefore not, by itself, disprove global state formation.

The decisive question is **how governing powers are connected and who can authoritatively determine the relationship among them**.

This is the perspective from which I read Cutler below. Her research is particularly strong on the first two propositions. The third remains an interpretive possibility to be investigated, rather than a conclusion that her evidence makes unavoidable.

2. The public/private distinction: how political authority becomes difficult to recognize

The foundational argument of the 1997 article

In **"Artifice, Ideology and Paradox: The Public/Private Distinction in International Law"** (1997), Cutler challenges the assumption that the separation between public and private international law reflects a natural division of social life.

She treats that separation as a historical construction associated with the development of the bourgeois state and liberal market economies. Public authority became identified with territorially organized states, while commercial relations were represented as a sphere of private choice.

Her argument concerns both changing institutions and persistent ideas. Even as production and finance increasingly connect public and private actors, the distinction retains ideological force. It helps legitimate arrangements through which private actors exercise authority with public consequences. The article explicitly identifies an alliance of public and private authorities committed to capitalist expansion and to reducing national social and democratic constraints on commerce. tandfonline.com

The analytical implication is substantial. Before asking whether authority has moved from states to a global institution, we should ask whether legal classification has concealed where authority already operates.

Consider a hypothetical comparison. A ministry's decision about working conditions is readily recognized as public policy. A powerful purchaser's contractual requirements may also reorganize working conditions across many suppliers, but the initial legal framework through which those requirements are examined may be contract and commercial relations.

The classification affects the questions that become prominent: contractual consent, business necessity, and enforceability may receive more attention than representation, public justification, and the position of affected outsiders.

The Westphalian critique

Cutler develops the problem in **"Critical Reflections on the Westphalian Assumptions of International Law and Organization: A Crisis of Legitimacy"** (2001).

Her target is a conception of international order that places sovereign states at its centre and struggles to recognize private actors as participants in the constitution of political authority. She identifies a mismatch between effective corporate power and inherited categories of international legal analysis.

This produces a legitimacy problem: actors capable of shaping social outcomes may escape the forms of scrutiny normally associated with governing institutions. Her discussion also concerns the difficulty individuals encounter in challenging corporate power. This is a critique of state-centred conceptions of legal personality and authority; it should not be converted into the universal doctrinal claim that corporations or individuals possess no international legal rights. library.fes.de

For your inquiry, the important development is therefore partly a transformation in the visibility of power. A political order can change substantially while the legal vocabulary used to describe it continues to assign public authority almost exclusively to states.

3. Private authority: when commercial cooperation becomes government

Cutler's work also asks a prior conceptual question: **when does private economic activity become authoritative?**

The collection ***Private Authority and International Affairs*** (1999), edited with Virginia Haufler and Tony Porter, established a research programme around firms and business organizations that create rules for particular international issue areas.

Its framing leaves open different explanations. Private arrangements may supply useful collective goods, respond to gaps in public regulation, or seek to prevent governmental intervention. The volume investigates these possibilities through sectoral studies. Cutler's own contribution concerns maritime transport; other contributors examine fields including credit ratings and intellectual property. The collection should therefore be read as a collaborative investigation, with different arguments belonging to different authors. State University of New York Press

Her chapter **"Private International Regimes and Interfirm Cooperation"** (2002) sharpens the conceptual distinction. Cooperation acquires authority when rules and procedures obtain recognized, obligatory standing within an institutional arrangement.

She distinguishes the empirical question—whether private bodies are treated as authoritative—from the normative question of whether they ought to possess such authority. Her analysis also recognizes that governments may authorize, tolerate, or reclaim functions exercised privately.

Crucially, she does not propose a necessary progression from informal cooperation to increasingly centralized institutions. She explicitly warns that greater institutionalization need not mean stronger authority. cambridge.org

This gives us a more precise research question than simply asking whether corporations have become powerful.

We should investigate:

- Who establishes the applicable rules?
- Why do participants regard those rules as binding?
- What happens when a participant refuses to comply?
- Who can amend the rules?
- What position do affected outsiders occupy?

These questions distinguish recognized governing arrangements from isolated commercial transactions, ordinary lobbying, and economic influence more generally.

4. The central monograph: merchant law and the "mercatocracy"

The historical argument

Cutler's principal early monograph is ***Private Power and Global Authority: Transnational Merchant Law in the Global Political Economy*** (2003).

Its introductory account follows merchant law through different historical configurations: medieval commercial arrangements, incorporation into national legal systems during state formation, and contemporary transnationalization.

This history matters because commercial autonomy has taken different forms. Medieval merchant institutions should not simply be equated with modern capitalist freedom of contract. Nor should contemporary transnational commercial law be treated as a straightforward restoration of an earlier order.

The book examines **juridification, pluralization, and privatization**: the growing organization of relationships through law, the multiplication of sources of legal norms, and the expansion of private participation in governing arrangements. Contemporary preferences for commercial custom, flexible rules, and private dispute resolution coexist with continuing dependence on state enforcement. Cutler consequently treats the process as a reconfiguration of regulation and state functions. api.pageplace.de

For a theory of state formation, this historical perspective is valuable because it removes the assumption that there is one permanent relationship between commercial law and territorial political authority.

Who creates and sustains this order?

Cutler's term **"mercatocracy"** identifies the social actors involved in constructing transnational commercial authority.

In **"Locating 'Authority' in the Global Political Economy"** (1999), she connects corporate officers, commercial lawyers, public officials, and other experts to the production of

authoritative commercial knowledge. Drawing on Gramsci and Robert Cox, she examines the interaction of material capabilities, ideas, and institutions.

Legal professionals have an especially important role. They translate commercial objectives into contractual forms, institutional procedures, and apparently general legal principles. They also help legitimate those arrangements.

This does not require complete agreement among all participants. In the article's concluding discussion, Cutler expressly warns against overstating hegemony's totalizing character or overlooking fractures within national and transnational social formations. Academia

The world-state implication is therefore specific: professional and institutional coordination can produce substantial continuity across jurisdictions. Whether that coordination also constitutes an integrated political leadership remains a separate empirical question.

A useful investigation would trace who repeatedly participates in drafting, interpretation, adjudication, and reform—and examine where those participants disagree.

5. Law constitutes capitalist power

One of Cutler's deepest contributions is methodological. She asks us to examine how law helps create the economic relationships through which power is exercised.

Gramsci and the commodity form of law

In **"Gramsci, Law, and the Culture of Global Capitalism"** (2005), Cutler combines Gramscian analysis with discussions of the commodity form of law associated with Marxist legal theory, including Pashukanis and Isaac Balbus.

The central issue is the relationship between formal legal equality and material inequality. Contract law recognizes parties as legal subjects capable of exchanging rights and assuming obligations. That form can abstract from major differences in resources and bargaining position.

Law also helps constitute ownership, exchange, and the organization of production. Its significance therefore extends beyond the subsequent regulation of an already existing economy.

Cutler's Gramscian approach gives ideas and legal practices an active historical role. It also preserves a possibility of transformation: legal thought and practice can become sites of criticism and political action. researchgate.net

A hypothetical example illustrates the underlying analytical issue. If a resource becomes an asset that can be owned, transferred, pledged, and protected against interference, those legal capacities change what economic actors can do with it. Legal design helps determine what counts as an investment opportunity and who can claim its returns.

The question is consequently broader than whether powerful actors influence legislation. It includes **how legal categories create particular forms of power in the first place**.

The later statement of the disciplinary problem

Cutler returns to this issue in **"Blind Spots in IPE: Contract Law and the Structural Embedding of Transnational Capitalism"**, published online in 2023 and in the 2024 journal volume.

She identifies reciprocal disciplinary omissions. International political economy can treat law as secondary to economic power, while legal analysis can treat legal institutions as autonomous from political distribution.

Her focus is transnational contracts, dispute settlement, and production and value-chain arrangements. She argues that these legal forms help organize a transnational political and legal order that reaches into domestic societies. Making their constitutive role visible is part of an emancipatory research project. tandfonline.com

Applied to your question, this means that a global power structure need not first emerge economically and subsequently acquire a legal apparatus. Its economic and legal construction may occur together.

6. New constitutionalism and legal pluralism

Cutler's contribution to new constitutionalism

Cutler's collaboration with Stephen Gill is clearest in ***New Constitutionalism and World Order*** (2014). Her individually authored chapter is **"New Constitutionalism and the Commodity Form of Global Capitalism."**

The chapter examines legal arrangements that expand private appropriation into previously uncommodified activities, resources, and processes. It focuses on the creation of property rights and the enclosure of public domains.

A consequential part of the argument concerns the public enforcement of private interests. Commitments to constitutional legality and the rule of law can help authorize and normalize private governing arrangements. She also considers rights capable of challenging commodification.

This gives her contribution a distinctive emphasis within the wider new-constitutionalism project: **the legal constitution of property and appropriation**, alongside the insulation of economic commitments from political revision. New Constitutionalism and World Order

A constitutional interpretation is plausible when legal arrangements do more than settle particular disputes—when they durably establish who possesses decision-making powers and which interests governments must accommodate.

Nevertheless, identifying constitutional effects does not settle the organizational question of statehood.

Why plurality need not mean dispersed power

In **"Legal Pluralism as the 'Common Sense' of Transnational Capitalism"** (2013), Cutler challenges any easy association between multiple legal orders and democratic openness.

Plural arrangements can reproduce shared priorities. Her central example is the asymmetry between strongly enforceable commercial and investor rights and comparatively soft corporate responsibilities.

She also insists that transnational authority should not be imagined simply as another level situated above states. It operates through relationships connecting national institutions, communities, individuals, and transnational actors.

The article treats these arrangements as contested and incomplete. Legal pluralism can generate openings for alternative interpretations and political action as well as forms of discipline. opo.iisj.net

For the world-state question, this raises an important possibility: dispersed institutions may display substantial substantive coordination even where they lack a common organizational centre.

That possibility must be tested. Similar commercial priorities could reflect common interests, professional conventions, competitive pressures, explicit coordination, or some combination of these mechanisms.

7. Commercial arbitration: the connection between private decisions and public enforcement

Cutler's chapter **"International Commercial Arbitration, Transnational Governance, and the New Constitutionalism"** (2014) examines arbitration as an institution with constitutional significance.

She argues that commercial arbitration and investor–state arrangements articulate standards that can reach into domestic policy and constrain legislative autonomy. Their defenders present stability and predictability in trade and investment as public benefits. Cutler examines the private interests advanced through that justification and the possibilities for greater public participation. Oxford Academic

To evaluate this argument, it helps to distinguish the components of an ordinary transnational commercial arrangement.

Component	Legal function
Commercial contract	Establishes the parties' obligations and allocates particular risks.
Applicable rules and contractual standards	Supply substantive terms or principles for interpreting the transaction.
Arbitration agreement	Provides the parties' basis for submitting covered disputes to arbitration.
Recognition and enforcement arrangements	Connect the resulting award to the authority of national legal systems.

A concrete public instrument is the **1958 New York Convention**. Its framework supports recognition of arbitration agreements and enforcement of covered arbitral awards through national institutions. Article III requires recognition and enforcement subject to the Convention's conditions; Article V provides grounds for refusal. These include procedural defects and, under Article V(2)(b), incompatibility with the enforcing state's public policy. Enforcement is therefore legally supported but not unconditional. uncitral.un.org

A different type of instrument is the **UNIDROIT Principles of International Commercial Contracts**. UNIDROIT describes them as a non-binding restatement and provides model clauses to facilitate their use. They illustrate how an instrument can influence contractual practice without itself being legislation enacted by a global parliament. Their legal effect depends on the relevant circumstances of use. UNIDROIT

The political significance

Imagine companies located in different jurisdictions choosing contractual rules and an arbitral forum. A tribunal resolves their dispute, and a national court subsequently gives the award enforceable effect.

The arrangement combines several distinct sources of authority. Its operation cannot be understood by examining either the contract or the national court alone.

From a state-formation perspective, the crucial development is the **institutional connection between private ordering and public coercive capacity**. The relationship can allow commercial arrangements to operate across borders with considerable continuity.

But important distinctions remain. An arbitral tribunal's jurisdiction is limited by its legal basis. Its award does not acquire general legislative authority over everyone affected economically by the underlying transaction. Recognizing political consequences must therefore be accompanied by careful identification of legal powers.

8. Investment law: the redistribution and recovery of sovereign competences

Commercial arbitration and investor–state arbitration must also be distinguished. In investment disputes, the relevant legal framework can include public international treaties and state consent to adjudication, as well as contractual arrangements. Their constitutional significance may therefore concern the exercise of governmental powers particularly directly.

Incomplete agreements and future authority

In **"Human Rights Promotion through Transnational Investment Regimes: An International Political Economy Approach"** (2013), Cutler examines investment arrangements through, among other approaches, incomplete-contract theory.

Long-term agreements cannot specify every future contingency. The question becomes who determines the consequences of circumstances that were not fully anticipated.

States may accept constraints in pursuit of investment benefits, while investors seek protection against subsequent changes. Agreements, renegotiation, and third-party adjudication influence how future decision-making authority is allocated.

Cutler also identifies possibilities for incorporating human-rights concerns and recovering public policy space. The investment network has shared concepts and interpretive practices even where explicit organizational connections are absent. cogitatiopress.com

This illuminates a gradual mechanism of political transformation. An initial agreement may establish a framework within which later institutions determine the practical scope of public discretion.

The relevant question is therefore not exhausted by whether a state originally consented. We must also examine how authority develops through interpretation and implementation.

Two directions of transformation

"Transformations in Statehood, the Investor-State Regime, and the New Constitutionalism" (2016) is especially important for your inquiry.

The article identifies opposing movements: investment protection can restrict state autonomy, while resistance seeks to recover it.

Its legal examples pull in different directions. In discussing *Suez v. Argentina*, Cutler examines the rejection of automatic priority for water-related human-rights obligations over investment obligations. In *Sawhoyamaxa v. Paraguay*, she identifies an international human-rights judgment rejecting reliance on an investment treaty to justify failure to fulfil indigenous-rights obligations.

Her conclusion explicitly welcomes efforts to regain compromised state autonomy and supports activism at multiple levels. scholarworks.iu.edu

This is significant for a theory of global political development. International legal authority can reinforce commercial constraints, but it can also support public obligations and collective rights.

An adequate account of global constitutionalization must therefore identify **competing constitutional projects within transnational law**. Treating every expansion of international adjudication as evidence of the same political project would obscure that conflict.

9. Financial contracts and project finance: governing by allocating risk

In **"The Judicialization of Private Transnational Power and Authority"** (2018), Cutler extends her inquiry to investment agreements, derivatives, and project finance.

Her discussion of the **International Swaps and Derivatives Association** examines standardized contracts, professional organization, and efforts to secure favourable treatment within national law, including insolvency-related protections.

Project-finance arrangements provide another setting in which contracts, guarantees, and dispute mechanisms distribute authority and risk. Her discussion of Indonesian power projects illustrates tensions between contractual commitments and governmental responses to economic crisis.

A central proposition is that experts help construct the categories of risk they subsequently govern. The resulting public/private arrangements can place significant burdens on public institutions.

The article expressly states that transnational legality depends on national and international law. Its sectoral comparisons also show that the balance of public and private authority varies and remains contestable. scholarworks.iu.edu

The state-formation relevance lies in the allocation of responsibility.

For example, a hypothetical financing structure might allow private actors to select commercial terms while a public body guarantees some consequences of failure. The important political question concerns the relationship between **control over decisions and exposure to their costs**.

A system may give one set of actors considerable authority to structure transactions while placing responsibility for social disruption elsewhere. Studying only formal ownership or formal sovereignty would miss that distribution.

This also explains why the continued activity of national governments does not necessarily indicate an unchanged political order. Governments may remain active while their responsibilities, discretion, and obligations are reorganized.

10. Global value chains: contract as a governing institution

Contracts can organize the framework of economic activity

The collection ***The Politics of Private Transnational Governance by Contract*** (2017), edited with Thomas Dietz, develops a particularly concrete account of contractual governance.

In their introduction, Cutler and Dietz distinguish economic, institutional, and regulatory dimensions. Contracts organize transactions, help select the institutions governing those transactions, and can incorporate labour, environmental, and other requirements.

The introduction also recognizes the combination of decentralized rule creation with hierarchical elements, including public enforcement frameworks. Cutler contributes a chapter on contracts in global value chains and coauthors chapters on the investor–state regime and private military and security companies. The arguments of other contributors must be attributed separately. api.pageplace.de

A hypothetical supply relationship shows why this matters. A lead purchaser might specify production methods, inspection arrangements, information disclosure, and conditions for terminating purchases. Compliance with those requirements may influence many activities within the supplier.

The political questions include who designed the standards, whether the supplier could negotiate them, whether workers can challenge their implementation, and whether the purchaser's responsibilities match its effective control.

These effects do not mean that every outsider becomes legally bound by the contract. **Economic dependence, practical influence, contractual obligation, and public regulatory authority must be distinguished.** Their interaction is the object of investigation.

Can accountability reforms enlarge private authority?

With David Lark, Cutler addresses this question in **"The Hidden Costs of Law in the Governance of Global Supply Chains: The Turn to Arbitration"**, published online in 2020 and in the 2022 journal volume.

They examine arbitration as a response to gaps in corporate accountability. Their concern is that adding corporate-social-responsibility issues to investment law and arbitration may leave underlying power relations substantially intact.

Such reforms can expand the range of public questions decided within arbitral institutions without providing affected communities corresponding influence. The authors therefore ask about participation, transparency, accountability, and the distribution of authority within the proposed remedy. Get Access

Their related 2020 analysis in *Investment Treaty News* examines concrete developments. It notes that the *Urbaser* tribunal accepted jurisdiction over Argentina's counterclaim but rejected it on the merits, while Ecuador obtained an environmental counterclaim award in *Burlington*. They recognize differences between voluntary responsibility provisions and firmer obligations, while questioning the position of affected communities and the enlargement of arbitral discretion. Investment Treaty News

This is one of Cutler's most consequential contributions to the world-state question: **institutional expansion can occur through efforts to correct an institution's shortcomings**.

A reform may improve particular outcomes and simultaneously enlarge the institution's governing role. Whether that is democratically desirable depends on its design. The addition of socially valuable subject matter does not, by itself, answer questions about representation, jurisdiction, remedies, and review.

11. Resistance, sovereignty, and the later climate work

Reclaiming sovereignty across borders

Cutler's **"Reclaiming Sovereignty: Resistance to Transnational Authority and the Investor-State Regime"** (2021) focuses directly on efforts to recover control over investor protection.

Its framework distinguishes resistance against law, resistance through legal means, and resistance through redefinition. The chapter's abstract connects growing opposition to the possibility of **"transnational sovereignty."**

That formulation matters. Her inquiry concerns how political agency might be reconstructed under conditions in which authority already crosses borders. The available abstract supports this orientation, but does not establish a detailed proposal for a single global sovereign. Oxford Academic

My interpretation is that resistance need not reproduce the geographical form of the authority it opposes. Actors may cooperate internationally to recover local or national powers, or employ international rights to contest a particular transnational commercial regime.

Consequently, support for transnational political action cannot automatically be read as support for further concentration of governing authority.

Resilience and the decentralization of responsibility

In **"Deconstructing 'Resilience Talk' in Global Governance: Toward a Critical Political Economy Approach"** (2025), Cutler examines how resilience can become a governing ideal.

Her concern is that responsibility for confronting systemic problems may shift toward individuals and communities expected to adapt. She connects this discourse to international organizations, legal expertise, climate-related vulnerability, and the reproduction of existing economic relationships.

The chapter also recognizes that professionals may participate in these processes without fully appreciating their political consequences. Its conclusion calls for attention to distribution and for a more critical relationship between legal expertise and social forces. cambridge.org

This complicates a purely centralizing account of global power. The reach of a governing rationality can expand while responsibility for coping with its consequences becomes more dispersed.

A theory of global state formation therefore needs to examine both the concentration of decision-making capacity and the distribution of obligations to absorb failure.

Law and Capitalism: The Climate Under Fire (2026)

Cutler's new book, ***Law and Capitalism: The Climate Under Fire***, brings corporate organization, investment protection, and value-chain arrangements into an analysis of climate responsibility.

The publisher's description contrasts legally protected corporate positions with the vulnerability of people displaced by climate-related disruption. It presents the book as a critical political economy of corporate privilege and a search for transformative legal practice.

The epilogue's summary explicitly treats utopian thinking as a method for identifying possibilities within present contradictions. It does not offer a settled institutional blueprint and emphasizes the further development of civil-society resistance. **My discussion of this new book is based on the publisher's description and chapter summaries, rather than a complete reading of the volume.** cambridge.org

For your inquiry, the conceptual extension is clear: global authority must be evaluated partly through the relationship between legally protected capacities to accumulate benefits and obligations to answer for environmental consequences.

12. How strongly does Cutler support the world-state thesis?

The strongest interpretation

In my assessment, Cutler supports a powerful account of **selective global political integration**.

"Selective" matters here. Integration may become extensive in particular areas—commercial rights, contractual enforcement, investment protection—without producing equivalent integration of democratic participation, social provision, or environmental responsibility.

This is politically consequential even if it does not amount to a complete world state.

Her research suggests that we should investigate constitutional development through several relationships simultaneously:

- Private rule creation and public enforcement.
- Legal expertise and material advantage.
- Transnational commitments and domestic political discretion.
- Decision-making powers and responsibility for their consequences.
- Corporate rights and the capacities of affected people to obtain remedies.

Taken together, these relationships provide a research programme for examining how a global governing order can develop through existing legal systems.

What remains to be established

The stronger statehood thesis requires additional evidence about integration.

Do sectoral institutions follow a common hierarchy? Can conflicts among commercial, social, environmental, and security priorities be authoritatively settled within an overarching structure? Who can change the fundamental rules? Is there an emerging political organization responsible for the system as a whole?

These conditions need not already exist in completed form for state formation to be underway. But a developmental claim should identify a direction of change and explain the mechanisms connecting its parts.

A collection of powerful institutions does not become a state merely because their combined influence is extensive.

Explicit objectives and structural consequences

Your wider inquiry also concerns the intentions behind institutional change. Here it is essential to distinguish several levels of purpose.

Actors may explicitly seek legal harmonization, predictable enforcement, stronger investment protection, or insulation from particular political risks. Those projects can produce wider constitutional consequences. Establishing that the same actors intend a unified global political organization requires further evidence.

The most useful empirical approach would compare their public programmes, drafting interventions, institutional designs, professional networks, and responses to conflicts among their objectives.

Cutler's approach helps formulate that investigation. It should not substitute a presumed common intention for evidence about how coordination actually occurs.

13. Critical assessment: strengths and unresolved problems

A. Her major strength is making legally obscured authority visible

Cutler's work expands the range of institutions that political analysis must examine. It directs attention to the legal practices through which decisions become durable and enforceable.

This is particularly useful when influence is exercised through ordinary professional activity rather than a conspicuous constitutional event. A change in standard contractual language, jurisdiction, or enforcement arrangements may have constitutional significance even when its immediate form appears technical.

The corresponding research discipline is to demonstrate the effect, identify its beneficiaries, and distinguish it from merely possible consequences.

B. The threshold between power and authority needs empirical testing

A difficult issue remains: when does commercial influence become governing authority?

Market dependence may explain compliance without showing that an institution is regarded as legitimately entitled to rule. Conversely, recognized professional standards can possess authority without being backed by direct legal coercion.

A rigorous application of Cutler's framework should therefore distinguish sanctions, dependence, reputation, legal obligation, and institutional recognition. Otherwise, "private authority" risks becoming too broad to explain differences among cases.

C. Efficiency and domination can coexist

Standardization may reduce uncertainty and transaction costs. Such benefits do not resolve questions about distribution or democratic legitimacy, but neither should they be excluded in advance.

The relevant comparison is among concrete institutional alternatives. Who receives the gains from predictability? Who bears compliance costs? Could a different arrangement preserve useful coordination while improving participation or accountability?

Demonstrating that an arrangement benefits capital is only part of the analysis. One must also examine whether it supplies wider benefits and whether its political costs are necessary to obtain them.

D. Public/private distinctions remain necessary for some purposes

Peer Zumbansen's sympathetic review of the 2003 book provides a useful conceptual qualification. He reads Cutler as revealing the complex interaction of public and private law, state institutions, and social practices. His discussion resists resolving those relationships through a single concept that erases their differences. The boundaries remain problematic but analytically consequential. ejil.org

This matters for remedies. A national court, an international organization, a trade association, and a corporation may all participate in a governing arrangement, but their legal responsibilities and means of democratic control differ.

Showing their interdependence should help us specify those differences more accurately.

E. Reform should be assessed by changes in power, not by labels

Cutler's concern about reforms that extend existing institutions is persuasive, but it also presents a methodological challenge.

A reform should not be judged ineffective merely because it operates through law or retains part of an existing institutional framework. The decisive questions concern what changes: standing, substantive duties, disclosure, access to remedies, decision-making participation, enforcement, and the distribution of resources.

Equally, invoking human rights or sustainability does not demonstrate that meaningful redistribution has occurred.

This is a productive tension in the research programme: it demands criteria that distinguish institutional accommodation from changes that substantially alter governing relationships.

14. Overall judgment

The most defensible conclusions from this reading are:

Claim	Assessment
Private institutions can exercise transnational governing authority.	A central and extensively developed proposition in Cutler's work.
Commercial law can perform constitutional functions across existing states.	Strongly supported by her analysis of property, contracts, investment, and adjudication.
These arrangements necessarily converge into one global state.	A further developmental thesis that requires evidence beyond the institutional effects she identifies.

Claim	Assessment
Cutler advocates a centralized world state as the solution.	The works examined support resistance, accountability, democratic reconstruction, and transformative legal practice; they do not establish that institutional prescription.

Cutler's greatest contribution to your question is her explanation of how the legal foundations of political power can be reorganized without a single founding constitutional act.

Her work directs us toward the institutions that determine who may make rules, invoke rights, choose forums, impose costs, and obtain enforcement across borders. Whether those institutions are becoming parts of a global state should be investigated through their connections and conflicts, rather than inferred solely from their geographical reach.

The resulting question is demanding and precise: **who has the authority to change the transnational legal conditions under which national political choices are made—and who can hold that authority accountable?**

Selected reading order

For a sustained study of Cutler from this perspective, I would prioritize the following works:

1. ***Private Power and Global Authority: Transnational Merchant Law in the Global Political Economy*** (Cambridge University Press, 2003). The principal historical and theoretical synthesis. Publisher preview.
2. **"Locating 'Authority' in the Global Political Economy,"** *International Studies Quarterly* 43(1) (1999): 59–81. The strongest early statement connecting legal authority, social forces, and professional expertise. Article text.
3. **"Critical Reflections on the Westphalian Assumptions of International Law and Organization: A Crisis of Legitimacy,"** *Review of International Studies* 27(2) (2001): 133–150. Full article.
4. **"Legal Pluralism as the 'Common Sense' of Transnational Capitalism,"** *Oñati Socio-Legal Series* 3(4) (2013): 719–740. Full article.
5. **"Transformations in Statehood, the Investor-State Regime, and the New Constitutionalism,"** *Indiana Journal of Global Legal Studies* 23(1) (2016): 95–126. Repository record.
6. ***The Politics of Private Transnational Governance by Contract***, edited with Thomas Dietz (Routledge, 2017). Publisher preview.
7. **"The Judicialization of Private Transnational Power and Authority,"** *Indiana Journal of Global Legal Studies* 25(1) (2018): 61–95. Repository record.
8. **"Blind Spots in IPE: Contract Law and the Structural Embedding of Transnational Capitalism,"** *Review of International Political Economy* 31(3) (2024): 831–853; online publication 2023. Publisher record.
9. ***Law and Capitalism: The Climate Under Fire*** (Cambridge University Press, 2026). Her newest extension of this research programme. Publisher record.

David Schneiderman’ s work

David Schneiderman’s work provides one of the clearest legal accounts of how a global economic constitution can develop through existing states, treaties, courts, and arbitral institutions. His central concern is that international investment law can place durable limits on democratic economic policy while giving foreign investors unusually powerful means of enforcing those limits.

Your perspective of global state formation is particularly appropriate here because Schneiderman himself makes the connection. In his 2006 article **“Transnational Legality and the Immobilization of Local Agency,”** he explicitly compares economic globalization to state formation: the construction of a political and cultural order that narrows alternatives and presents particular economic arrangements as necessary or authoritative. Annual Reviews

Nevertheless, his work requires a distinction between **the formation of a global governing order** and **the formation of a unified world state**. He offers extensive arguments about the former. Whether these developments constitute a process leading toward a single overarching state remains a further analytical question.

My principal conclusion is this: **Schneiderman is best read as a theorist of the constitutional organization of transnational economic power, its dependence on national institutions, and the possibilities of democratic resistance to it.** His account is especially valuable because it examines concrete legal mechanisms through which economic priorities acquire authority over governmental action.

1. The foundational thesis: economic globalization acquires constitutional form

Constitutionalizing Economic Globalization (2008)

Schneiderman’s major early synthesis is ***Constitutionalizing Economic Globalization: Investment Rules and Democracy’s Promise***.

Its introduction distinguishes two related developments. **External constitutionalization** occurs when international arrangements establish constraints on domestic governmental action. **Internal constitutionalization** occurs through changes in national constitutional interpretation and institutional practice.

He describes an emerging **"supraconstitution"** and identifies features resembling constitutional precommitment: restrictions on governmental powers, commitments binding successor governments, obstacles to revision, and institutions that adjudicate compliance.

Constitutionalism serves two purposes in this analysis. It describes how power is organized, and it supplies standards for criticizing the democratic quality of that organization. National states remain central participants in constructing the arrangements.

The book is also expressly agnostic about whether democratic self-government can eventually be adequately institutionalized transnationally. Its practical orientation favours democratic institutions associated with states, at least over the medium term. assets.cambridge.org

The resulting constitutional question is more demanding than whether a treaty is legally binding. It concerns whether a network of commitments establishes a durable structure within which governments may act—and whether democratic publics possess adequate means to revise that structure.

A government may remain constitutionally competent to legislate while discovering that certain exercises of that competence generate substantial international legal consequences. Formal domestic authority and practical political freedom can therefore diverge.

The earlier formulation: a state-created system of self-restraint

In **"Investment Rules and the New Constitutionalism"** (2000), Schneiderman examines states' role in creating investment arrangements that constrain their own future conduct.

The article connects investment protection to the entrenchment of economic commitments beyond ordinary majoritarian control. South Africa supplies an important comparative problem: constitutional property arrangements negotiated domestically may differ from the protections demanded through international investment rules.

The central relationship is consequently between two constitutional projects: a domestic settlement concerning property and social transformation, and an international framework protecting foreign investment. Cambridge Core

From the perspective of global state formation, this suggests a process in which existing governments help construct an additional governing order. Authority need not be transferred in a single founding event. It can accumulate through a succession of commitments, interpretations, and enforcement practices.

The central institutional question becomes: **who controls the terms on which future governments can change economic policy?**

2. The legal mechanisms: how investment protection becomes governing authority

Schneiderman's argument becomes clearer when the relevant legal arrangements are separated.

2.1 Substantive standards establish limits on state action

The historical investment chapter of **NAFTA** provides a concrete example of the kinds of provisions involved:

Provision	Principal legal concern
National treatment	Treatment of covered foreign investors relative to domestic investors in like circumstances.
Minimum standard of treatment	Treatment consistent with the applicable international-law standard, including fair and equitable treatment.
Expropriation provisions	Conditions and compensation requirements for covered expropriations.
Transfer provisions	Restrictions on governmental interference with covered investment-related transfers.
Performance requirements	Limits on specified conditions that governments may impose on investment activity.

These are different legal obligations, with different requirements and exceptions. They should not be collapsed into a general guarantee against every governmental measure that reduces profitability. Investment

The political significance lies in their potential reach across policy fields. A dispute concerning economic treatment can implicate environmental regulation, public services, industrial policy, land use, taxation, or institutional reform.

The existence of such implications does not establish that every claim succeeds. It does establish why a regime formally concerned with investment can have constitutional consequences.

2.2 Adjudicators acquire powers resembling constitutional review

In **"Investment Arbitration as Constitutional Law: Constitutional Analogies, Linkages, and Absences"** (2020), Schneiderman argues that investment adjudication performs functions analogous to those of constitutional high courts.

Arbitrators interpret broadly framed obligations and evaluate the propriety of state conduct against them. Their work can therefore allocate practical authority between public institutions and protected investors.

The analogy concerns function. It does not mean that every investment tribunal possesses the jurisdiction, institutional position, or remedial powers of a national constitutional court. Oxford Academic

This distinction is essential. Under NAFTA Article 1135, for example, the principal remedies were monetary damages and restitution of property, with the state permitted to pay damages instead of restitution. The provision did not give tribunals a general power to invalidate national legislation. Investment

Yet compensation-based review can still affect legislative choices. A measure may remain valid domestically while producing international liability. The constitutional significance then arises

through the relationship between legal authority, fiscal consequences, and the anticipated cost of regulatory change.

2.3 Public institutions support international enforcement

The **ICSID Convention** provides another important component. Article 54 requires contracting states to recognize Convention awards as binding and enforce their pecuniary obligations as if they were final domestic judgments. Article 55 preserves applicable rules concerning immunity from execution.

This is a powerful enforcement framework, but it does not create an independent global coercive apparatus. It operates through national institutions and distinguishes recognition, enforcement, and execution. ICSID

Not all investment arbitration follows the ICSID Convention framework. Awards under other procedures may depend on different national and international enforcement arrangements. ICSID itself distinguishes the enforcement of UNCITRAL awards from Convention awards. ICSID

For your question, the important point is that transnational authority can become effective through the coordinated use of existing state capacities. The absence of a world police force does not make international legal constraints inconsequential.

2.4 Entrenchment is substantial but not necessarily irreversible

Treaty duration, termination provisions, and survival clauses affect how far commitments persist into the future. These provisions require examination treaty by treaty. The consequences of mutual termination can also differ from those of unilateral withdrawal; legal analysis of treaty reform therefore cannot assume that all investment protections are permanently beyond governmental control. UNCTAD Investment Policy Hub

A strong analysis should distinguish **difficulty of political revision** from **legal impossibility of revision**.

This distinction is central to Schneiderman's wider project. His critique of entrenchment is connected to an inquiry into how the institutions that created these constraints might also change them.

3. Internal constitutional transformation: globalization works through national legal culture

Schneiderman's distinctive contribution extends beyond external treaty obligations. He also examines how economic globalization influences national constitutional understandings.

Constitutional borrowing and the selection of available ideas

In **"Exchanging Constitutions: Constitutional Bricolage in Canada"** (2002), he examines judicial borrowing through the concept of *bricolage*: the use of materials available within an existing intellectual environment.

His argument is that dominant political culture influences which constitutional ideas become readily available and persuasive. He identifies a model organized around free exchange between buyers and sellers, associated particularly with American constitutional traditions of strong market protection.

He explores this tendency in Canadian federalism, Charter rights, and Aboriginal-rights decisions, while expressly acknowledging that it does not explain every case. Competition for capital supplies part of the wider political setting. digitalcommons.osgoode.yorku.ca

The institutional implication is important. Constitutional convergence may occur through professional interpretation rather than formal amendment or direct commands from international institutions.

A national judge may understand a decision as the development of domestic constitutional doctrine. At the same time, the reasoning may draw upon ideas circulating through a wider transnational legal and economic environment.

The empirical task is to demonstrate that connection rather than infer it merely from similar outcomes.

Property protection and democratic experimentation

In **"Property Rights and Regulatory Innovation: Comparing Constitutional Cultures"** (2006), Schneiderman asks how constitutional property protection affects communities' ability to adapt to changing circumstances.

He compares Canadian and American constitutional cultures while recognizing internal diversity and practical similarities. Canada's absence of a general entrenched Charter property right does not imply an absence of property protection: statutes, common-law principles, and other legal instruments remain important.

His concern is that international investment commitments may alter the balance between protection of existing economic positions and public capacity for regulatory innovation. academic.oup.com

The world-state relevance is the possibility of **convergence without constitutional replacement**. National constitutions can remain formally distinct while their interpretation and practical operation move toward common economic assumptions.

This is a different mechanism from the direct supremacy of a global constitution. It operates through the materials, expectations, and institutional habits of national legal systems.

4. State formation as a cultural and political project

Schneiderman's 2006 article on the immobilization of local agency makes the state-formation comparison especially explicit.

He argues that the legal organization of economic globalization tends to treat local economic regulation as suspect. Ideas of comparative advantage, consumer freedom, and the rule of law

help legitimate this order. Its stability nevertheless depends on national states' capacity to obtain and maintain consent.

He also criticizes theoretical approaches that marginalize local and national political agency, because they can obscure important resources for resistance. Annual Reviews

Here, state formation refers partly to the construction of an authoritative understanding of what government should do. An order becomes stronger when its priorities are treated as the normal conditions of responsible government and alternatives require exceptional justification.

Hayek's Dream: changing the kind of actor the state becomes

In **"Hayek's Dream: International Investment Law and the Denigration of Politics"** (2022), Schneiderman examines a more specific relationship between legal doctrine and political rationality.

He connects Hayek's programme of limiting governmental purposes—including an interest in multilevel federation—to developments in international economic thought. The article then examines investment disputes in which exercises of sovereign authority are treated less favourably than conduct framed as ordinary commercial activity.

His claim is expressly limited to a subset of awards. The principal example, *Biwater Gauff v. Tanzania*, also requires an important qualification: treaty breaches were found, but damages were not awarded because the investment lacked economic value. cambridge.org

The significance for global political development is that international law can influence **the expected character of state conduct**. Governments may be pressed to justify themselves as commercial counterparties even when they are responding to public responsibilities.

The article supports an inquiry into an articulated intellectual programme and legal practices congenial to it. It does not establish that every arbitrator consciously implements Hayek's programme, or that all those practices belong to one coordinated plan for a world government.

Three questions must therefore remain distinct: the content of an intellectual project, its influence on institutional design, and the intentions of particular decision-makers.

5. *Resisting Economic Globalization*: testing theories of global power against legal institutions

Schneiderman's ***Resisting Economic Globalization: Critical Theory and International Investment Law*** (2013) tests major critical theories against the operation of investment law.

Its principal interlocutors and questions are:

Thinker or approach	Schneiderman's central question
Hardt and Negri	Does their account underestimate states' continuing significance?
Gunther Teubner	Can autonomous legal systems adequately limit themselves?

Thinker or approach	Schneiderman's central question
Jürgen Habermas	Can North Atlantic institutions deliver the cosmopolitan reform expected of them?
Boaventura de Sousa Santos	What makes transnational resistance effective and sustainable?
Sheldon Wolin	How does investor protection relate to democratic exclusion?
Michel Foucault	When do apparent changes actually transform relations of domination?

The book's conclusion emphasizes states' capacity both to construct and to undo investment constraints. Its examples also show that changing the geographical origin of foreign capital does not necessarily change the governing relationships associated with it. Springer Nature Link

This is a consequential qualification to a straightforward narrative of global state formation. A legal order can become transnationally powerful while continuing to depend on institutions capable of resisting it.

The question is then whether those institutions have the political willingness, resources, and coordination needed to use their remaining powers.

Why autonomous legal correction may be insufficient

The distinct article **"Legitimacy and Reflexivity in International Investment Arbitration: A New Self-Restraint?"** (2011) provides a more concentrated examination of Teubner's approach.

Schneiderman considers whether investment law responds adequately to objections from outside the field. He examines shifts among protective doctrines, references to other international adjudicative practices, and the tentative incorporation of proportionality.

His conclusion is sceptical about the extent of self-correction. Responses remain largely controlled by the professionals administering the regime. More substantial change may require intervention and direction by states. Oñati Socio-Legal Series

This raises a general constitutional problem: **does an institution's willingness to hear criticism give those affected a meaningful capacity to change it?**

Consultation, doctrinal adaptation, and political accountability are different relationships. A regime can acknowledge external concerns while retaining authority to determine their relevance and weight.

For a world-state interpretation, this distinction matters because the expansion of responsive adjudication may strengthen an institution without creating corresponding democratic control over it.

6. Legitimacy, proportionality, and the professional community

Can borrowing constitutional methods legitimate global adjudication?

In **"Global Constitutionalism and Its Legitimacy Problems: Human Rights, Proportionality, and International Investment Law"** (2018), Schneiderman examines proposals to legitimate investment adjudication by adopting methods associated with constitutional and human-rights courts.

His analysis focuses on proportionality and the reception of that proposal among investment lawyers and arbitrators. He finds substantial reluctance to adopt approaches that would give competing public concerns greater weight.

The article therefore questions whether the importation of a constitutional technique can overcome the institutional priorities and professional commitments already present in the field. It should not be read as claiming that proportionality is uniformly applied throughout investment arbitration. researchgate.net

The broader analytical point is that legitimacy cannot be inferred from resemblance. An institution does not acquire the democratic standing of a constitutional court simply because it adopts some of that court's vocabulary.

The relevant questions concern its jurisdiction, appointment procedures, public responsibilities, standards of justification, and relationship to institutions capable of changing its mandate.

Professional defence of the regime

Schneiderman examines the profession more directly in **"The Paranoid Style of Investment Lawyers and Arbitrators: Investment Law Norm Entrepreneurs and Their Critics"**, published as a chapter in 2016.

He studies the defensive rhetoric used by some investment-law practitioners and scholars. The inquiry concerns why criticism is sometimes treated as misinformation or an attack on the legal order, even while those defending the regime express confidence in its legitimacy.

The chapter examines a tension between public assurance and professional anxiety about the system's future. cambridge.org

For global power analysis, professional communities matter because institutions require interpretation, recruitment, education, and justification. Their reproduction depends partly on people who regard their work as authoritative and socially necessary.

That observation also sets an evidentiary requirement. Claims about professional influence should be examined through teaching, appointments, publications, institutional roles, and patterns of participation. The existence of a professional community alone does not demonstrate uniform interests or complete coordination.

7. *Investment Law's Alibis*: colonialism, imperialism, debt, and development

Investment Law's Alibis: Colonialism, Imperialism, Debt and Development (2022) extends Schneiderman's analysis through the history and justification of unequal international relationships.

The book examines recurring arguments that present foreign economic power as improvement, depict local institutions as unreliable, and privilege the protection of profitability. It also studies legal enclaves, standards of justice, investment-related debt burdens, and the difficulty of recognizing Indigenous interests adequately.

Its method is attentive to transformed continuities rather than an uninterrupted historical identity. The constructive discussion includes earlier proposals for negotiated divestiture and greater attention to marginalized perspectives. assets.cambridge.org

What the imperial perspective adds

A world-state interpretation emphasizes the possible integration of political authority. An imperial interpretation asks how authority is distributed between powerful centres and subordinate or dependent populations.

These hypotheses can overlap, but neither entails the other.

A system might protect investors associated with powerful economies while preserving formally independent states. Its hierarchy could be durable without developing a unified political centre. Conversely, an integrated global organization could institutionalize significant inequalities among its members.

Schneiderman's later work therefore encourages us to examine the **distributional content of integration**, not only its organizational extent.

The debt question is especially revealing. When adjudicated obligations become claims against public resources, the political issue concerns whose expectations receive priority over competing social demands. But the practical effect of any award depends on its scale, enforcement, fiscal context, and the choices available to the government concerned.

A convincing global-power account should establish these effects rather than assume that every international award produces the same degree of political subordination.

8. The 2024 constitutional-court study: how national judges respond

Constitutional Review and International Investment Law: Deference or Defiance? (2024) examines tensions between national constitutional commitments and investment-related constraints.

Schneiderman organizes responses along a continuum: **hard deference, soft deference, soft defiance, and hard defiance**. His principal case studies generally concern accommodation or qualified resistance rather than complete rejection.

The comparative findings include strong deference in North American and Peruvian settings, and conditional constitutional approval in Colombia. Indonesia and Israel illuminate related conflicts over economic governance, although the relevant cases differ in legal form. The book examines how courts mitigate constitutional collision, often indirectly. api.pageplace.de

Why this matters for global state formation

This study moves the inquiry beyond the proposition that international institutions constrain governments. It asks how national constitutional institutions participate in processing those constraints.

Several possibilities follow:

- A court can normalize international obligations by treating them as constitutionally unproblematic.
- It can preserve some domestic discretion through limited qualifications.
- It can use national constitutional requirements to demand changes in an agreement.
- It can strengthen international economic reasoning by incorporating it into domestic doctrine.

These are analytically different routes. A study of global integration should identify which route operates in each setting.

The institutional configuration is especially significant because national courts may provide legitimacy to an international arrangement without formally becoming subordinate courts within a single hierarchy.

Their decisions can help connect different legal orders while preserving the appearance—and sometimes the reality—of constitutional autonomy.

This also prevents an overly simple account of judicial power. National judges do not necessarily defend democratic legislative freedom against external adjudicators. Nor do they uniformly facilitate external constraints. Their roles depend on doctrine, institutional position, political relationships, and the particular controversy.

9. *Rethinking Investment Law*: changing doctrine within the existing legal field

The collection ***Rethinking Investment Law*** (2023), edited with Gus Van Harten, demonstrates Schneiderman's continuing engagement with legal interpretation as a site of reform.

His individually authored chapter concerns **national treatment**. It examines the choice of comparators, permissible reasons for differential treatment, and standards of scrutiny.

Schneiderman argues that a rule commonly understood as a modest prohibition on discrimination can authorize intrusive review when interpreted through adverse effects on investors. He proposes greater attention to intentionally discriminatory conduct against foreigners.

The book is collaborative: its chapters on expropriation, fair and equitable treatment, and other subjects belong to different contributors. Oxford Academic

The broader significance is that the governing effect of a treaty depends partly on interpretation. Identical or similar language can support different allocations of discretion.

A legal regime should therefore not be treated as a fixed machine whose political effects follow automatically from its creation. Treaty drafting, interpretation, institutional practice, and political intervention can all influence its operation.

For your question, this introduces a distinction between **the expansion of international jurisdiction** and **the intensity of control exercised within that jurisdiction**. Either may change without the other changing to the same extent.

10. The 2026 Weberian turn: bureaucracy, authority, and belief

A Sociology of International Investment Law

Schneiderman's ***A Sociology of International Investment Law: Themes from Max Weber*** (2026) examines the regime through legitimacy, rationality, bureaucracy, professional authority, and development.

It questions whether formal legality sufficiently explains legitimate authority and whether claims of legal predictability adequately describe practice. It also examines investment adjudication as bureaucratic justice with substantive political commitments.

His professional ideal types include cold warriors, charismatics, and moralists. These are analytical devices rather than exhaustive classifications of practitioners. The development discussion likewise challenges any universal formula connecting legal reform with prosperity. academic.oup.com

This approach is particularly relevant to state formation because durable authority requires more than rules. It also requires personnel, organizational continuity, expectations of compliance, and beliefs about the rightfulness or necessity of the order.

A useful application would examine whether dispersed adjudicative institutions are becoming more integrated in recruitment, doctrine, professional incentives, and control over decision-making.

However, bureaucracy should not automatically be equated with statehood. Corporations and other organizations also develop bureaucratic administration. The state-formation question concerns the relationship between this organization of expertise and wider political authority.

Legal education as institutional reproduction

A related 2026 chapter, **"The Charismatic Educators of International Investment Law,"** specifically examines teachers who also write, advise, or practise within the field. Schneiderman presents education as a means of recruiting new generations into investment

law's professional ideals. He explicitly characterizes the empirical support for this discussion as modest. Springer Nature Link

The implication is a research direction rather than proof of complete professional unity. Teaching materials, institutional affiliations, career paths, and the interaction between scholarship and practice may help explain how governing assumptions persist.

Does nationalist backlash dismantle the order?

In **"Disenchanting International Investment Law?"**, published online on **9 October 2026**, Schneiderman questions whether economic-nationalist rhetoric demonstrates a successful countermovement against investment protection.

His argument is that foreign investment continues to attract political leaders and publics, and that discontent with globalization does not necessarily generate a willingness to democratize economic governance.

This is his contemporary interpretation, not an established description of every state's behaviour. Oxford Academic

The methodological lesson is useful: neither rhetoric of national control nor rhetoric of global cooperation is sufficient evidence about institutional change. The relevant tests concern actual legal commitments, adjudicative powers, policy discretion, and public accountability.

11. His democratic alternative: preserving the capacity to revise economic policy

Schneiderman's normative position is especially clear in **"Against Constitutional Excess: Tocquevillian Reflections on International Investment Law"** (2018).

He draws on Tocqueville's appreciation of democracy's capacity to experiment, make mistakes, and correct them. The problem is excessive entrenchment that prevents this process or raises its costs too far.

The argument seeks a better balance between legal stability and political revisability. It favours reducing additional transnational constraints and the influence of investment-law professionals, while giving greater weight to existing constitutional settlements. 12 Schneiderman_SYMP_Online

This position differs from an unrestricted defence of governmental discretion. Democratic innovation itself depends on institutions, rights, procedures, and conditions of political equality.

The central question is which constraints enable collective self-government and which make important economic arrangements excessively difficult to reconsider.

One can formulate the issue as a conflict between two kinds of continuity:

- Continuity of protected economic expectations.
- Continuity of a population's capacity to revise the policies governing its future.

A constitutional order must address both. Treating either as absolute would obscure the political choices involved.

12. Critical assessment: what his argument establishes—and what requires more evidence

A. Binding commitments are not inherently undemocratic

Joel Colón-Ríos and Martín Hevia raise a direct objection in their review essay **"What Makes the International Investment Rules Regime Undemocratic?"** (2009).

They argue that the existence of limits on future governmental action cannot by itself establish democratic illegitimacy. International agreements commonly create commitments. They also question whether Schneiderman attributes to new constitutionalism problems rooted in the exclusionary structure of representative democracy itself.

They find greater force in substantive criticism of the investment regime's injustices and consequences than in an objection based simply on constraint. papers.ssrn.com

This criticism helps refine the inquiry. The relevant assessment should examine the process of commitment, its substantive purposes, the distribution of benefits and burdens, and the possibilities of revision.

An earlier government's consent is relevant, but it does not answer every question about the democratic authority of a commitment extending far into the future.

B. The constitutional analogy needs precise limits

Schneiderman's analogy is illuminating because investment adjudication evaluates public conduct against higher-order obligations.

Its limits are equally important. Investment institutions may lack general jurisdiction, a common appellate hierarchy, a single legislature, or responsibility for the full range of governmental functions.

The analytical task is to identify the particular constitutional functions being exercised. The label should make institutional relationships clearer rather than imply powers that the institutions do not possess.

C. Legal exposure and actual political effects must be distinguished

A successful claim, a threatened claim, and a government's anticipation of possible liability are different forms of influence.

Demonstrating regulatory deterrence requires evidence about governmental deliberation and alternatives. A legal obligation may be significant without determining the eventual policy outcome.

Similarly, inconsistency in adjudication can have several effects. It may increase uncertainty and caution, create opportunities for strategic claims, or weaken the authority of the regime. Its political consequences cannot be inferred in only one direction.

D. National political institutions should not be idealized

If international constraints diminish, the resulting discretion may be exercised by democratic publics, executive officials, powerful domestic firms, or authoritarian governments.

Recovering national authority and democratizing its exercise are related but distinct tasks.

A persuasive alternative must therefore examine domestic representation, accountability, social power, and access to political decision-making alongside the international legal framework.

E. Imperial hierarchy and global state formation remain different explanations

Schneiderman's work provides substantial material for explaining uneven relations of power. It also identifies institutions that operate across borders.

To establish global state formation in the stronger organizational sense, additional evidence is needed about integration among those institutions: how conflicts are settled, who can change their mandates, and whether a common structure of ultimate authority is developing.

The absence of a completed world government does not disprove a process of formation. But a developmental claim should demonstrate a trajectory and the mechanisms connecting its stages.

13. Overall judgment from the perspective of a global world state

Schneiderman's contribution can be stated in four propositions.

First, global political integration can proceed through legal commitments concerning economic activity. Its constitutional significance may be considerable even when the institutions involved are described as specialized mechanisms for investment protection.

Second, existing states can actively construct the constraints that subsequently reorganize their freedom of action. State participation and transnational authority are therefore compatible.

Third, national constitutional institutions can help integrate, qualify, or resist those constraints. Global development takes place through conflicts within and among legal orders.

Fourth, institutional durability depends partly on professional organization and legitimating beliefs. His later Weberian analysis adds these mechanisms to the earlier focus on treaties and constitutional doctrine.

My assessment is that this supports a strong account of **an emerging global economic governing order with constitutional characteristics**. Calling it a global state is most useful when that term directs research toward the integration of governing functions. It becomes less

useful if it treats every international constraint as evidence of a single already coordinated sovereign project.

Schneiderman's work also points toward a possibility that deserves independent attention: **a durable international order may exercise extensive constitutional control over economic policy without assuming comprehensive responsibility for democratic representation, social welfare, or the consequences of that control**.

That possibility is politically significant in its own right. His central contribution is to make its legal construction visible and to ask whether the people governed by it retain an effective capacity to choose a different future.

Principal works for further study

The following sequence provides a useful route through the research programme:

1. ***Constitutionalizing Economic Globalization: Investment Rules and Democracy's Promise*** (Cambridge University Press, 2008). Publisher excerpt.
2. **"Transnational Legality and the Immobilization of Local Agency,"** *Annual Review of Law and Social Science* 2 (2006): 387–408. Publisher record.
3. ***Resisting Economic Globalization: Critical Theory and International Investment Law*** (Palgrave Macmillan, 2013). Publisher record.
4. **"Against Constitutional Excess: Tocquevillian Reflections on International Investment Law,"** *University of Chicago Law Review* 85 (2018): 585–608. Full article.
5. **"Investment Arbitration as Constitutional Law: Constitutional Analogies, Linkages, and Absences,"** in *The Oxford Handbook of International Arbitration* (2020): 421–447. Publisher record.
6. ***Investment Law's Alibis: Colonialism, Imperialism, Debt and Development*** (Cambridge University Press, 2022). Publisher excerpt.
7. **"Hayek's Dream: International Investment Law and the Denigration of Politics,"** *Leiden Journal of International Law* 35(4) (2022): 743–759. Full article.
8. ***Rethinking Investment Law***, edited with Gus Van Harten (Oxford University Press, 2023). Publisher record.
9. ***Constitutional Review and International Investment Law: Deference or Defiance?*** (Oxford University Press, 2024). Publisher preview.
10. ***A Sociology of International Investment Law: Themes from Max Weber*** (Oxford University Press, 2026). Publisher record.

Source basis: The analysis draws on original articles, accessible book text, publisher previews, and chapter abstracts. The accounts of the 2008, 2022, and 2024 monographs rely particularly on their introductory material and verified publisher chapter descriptions; they should not be understood as claims that every page of those volumes was available for inspection.

M. Sornarajah’ s work

Muthucumaraswamy Sornarajah’s work is highly relevant to your inquiry because it examines how legal protections for foreign investment can acquire governing authority over states. His distinctive contribution is to question both the political consequences of that authority and the legal processes through which it is established: treaty interpretation, international arbitration, the internationalization of state contracts, and claims that particular investor protections have become universally applicable law.

My central assessment is that **his writings support an account of attempts to construct a global economic order that constrains national governments, while also challenging the proposition that these attempts necessarily produce a unified world state**. Indeed, he has expressly disputed claims that international investment law already constitutes a coherent global regime. His later writings also recognize that the system may survive through adaptation and through support from emerging capital-exporting powers. academic.oup.com

The distinction matters. A worldwide network of enforceable economic disciplines, the exercise of public authority by international tribunals, and the formation of a politically integrated world state are related possibilities, but they are different propositions. Sornarajah provides substantial material for investigating the first two. Establishing the third requires an additional argument about the integration and ultimate authority of the institutions involved.

Below, I distinguish his documented arguments from my interpretation of their implications for global state formation.

1. His distinctive approach: questioning how governing rules become law

Sornarajah approaches foreign investment through public international law, development, and the historical experience of societies subjected to colonial and economic domination.

His major treatise, *The International Law on Foreign Investment*, first appeared in 1994 and reached its fifth edition in 2021. Its introductory materials insist that investment law must remain connected to general international law and state responsibility. They resist treating arbitration as a self-contained professional field whose central purpose is the protection of investors. The fifth-edition preface also emphasizes changing investment flows, resistance to expansive adjudication, and the possibility of competing normative arrangements. api.pageplace.de

Three questions run through his work:

1. **Who benefits from a legal rule?** The interests of investors, governments, local elites, and affected populations may diverge.
2. **How was the rule created?** A treaty obligation, an arbitrator's interpretation, and a proposition repeatedly asserted by commentators have different legal foundations.
3. **What makes the resulting authority legitimate?** Predictability for investors cannot, by itself, settle questions about development, public welfare, or democratic government.

The second question makes his contribution especially valuable for your project.

One can criticize a legally valid rule because it distributes power unfairly. Sornarajah also asks whether some asserted rules were validly established in the first place. In his 2011 chapter on the "descent into normlessness," he challenges interpretations that, in his view, confer something approaching legislative authority on arbitrators without a corresponding mandate. He presents the resulting legal order as contested by states and by other arbitrators. cambridge.org

From a state-formation perspective, this shifts attention from the existence of international institutions to their **claims of lawmaking competence**. The crucial development may occur when an institution originally authorized to resolve particular disputes starts determining general standards of acceptable government.

That is a more precise research question than simply asking whether national sovereignty is declining.

2. The historical foundation: political independence and control over economic relations

2.1. The internationalization of state contracts

A central historical problem in Sornarajah's work is the treatment of agreements between governments and foreign investors, especially long-term concessions.

In *International Commercial Arbitration: The Problem of State Contracts* (1990), he challenges the assimilation of such contracts to treaties. His discussion criticizes the selective invocation of *pacta sunt servanda*—the principle that agreements must be kept—while neglecting legal arguments for adjustment when circumstances change. He supports greater contractual flexibility and renegotiation. This is his doctrinal argument; it should not be mistaken for an established general rule that every change of circumstances entitles a state to rewrite an investment contract. trans-lex.org

The underlying institutional issue can be illustrated with a hypothetical mining concession.

A government grants a company the right to extract minerals for several decades. Later, another government changes taxation, environmental requirements, or the organization of the industry. Several legal questions then arise:

- Does domestic law determine the consequences of the change?
- Does the contract contain an undertaking concerning future legislation?
- Has the state accepted international arbitration?

- Does an investment treaty create additional obligations?
- Which institution decides how these different rules interact?

The movement toward external authority occurs when decisions about the concession become subject to legal standards and adjudication that domestic political institutions cannot readily revise.

The significance lies in the allocation of authority. A contract governing a particular investment can become the occasion for determining the permissible scope of future government.

2.2. Externalizing economic disputes after decolonization

Sornarajah revisits this history in "The Battle Continues: Rebuilding Empire through Internationalization of State Contracts" (2019). He argues that formal decolonization did not necessarily dismantle the legal structures of economic domination. Externalizing investment relations could preserve forms of control through ostensibly independent legal mechanisms. His account expressly includes alliances between external economic interests and elites in developing countries. academic.oup.com

The implication for your inquiry is substantial: **global economic authority can develop through the legal reconstruction of relations with formally sovereign states**.

The state remains responsible for infrastructure, social conflict, public order, and the consequences of development. Yet some decisions about the treatment of foreign capital are assessed elsewhere, under standards whose interpretation is partly outside its control.

This arrangement can be compatible with continuing state sovereignty in international law. It can also significantly alter what sovereignty enables a government to accomplish.

However, an imperial arrangement of this kind does not necessarily require a world state. Unequal relations among separate states may be sufficient to sustain it. A theory of global state formation must therefore explain why these relations should be understood as components of an integrated public authority, rather than as an enduring hierarchy within an international system.

2.3. Permanent sovereignty over natural resources

The historical counterclaim was that political independence must include meaningful control over economic resources.

An important legal reference is UN General Assembly Resolution 1803 of 1962 on permanent sovereignty over natural resources. It connects resource sovereignty to national development and the well-being of the population. It also addresses foreign investment, international law, and the good-faith observance of agreements. It therefore does not amount to an unrestricted authorization to disregard legal commitments. documents.un.org

This supplies a useful distinction when reading Sornarajah:

Sovereignty can be understood as the legal capacity of a government, or as an institutional means through which a population exercises control over its collective economic life.

Those meanings overlap, but they can diverge sharply. A government can invoke sovereignty while transferring resources to politically connected interests. Preserving governmental discretion therefore does not automatically secure popular self-determination.

That problem becomes increasingly explicit in his later work.

3. His direct constitutional argument: investment rules can reorganize state authority

One of the clearest sources for your precise question is Sornarajah's **2003 affidavit text prepared for the Council of Canadians and Canadian Union of Postal Workers litigation concerning NAFTA**.

In paragraph 59, he characterizes trade and investment agreements as having constitutional features because they bind future governments, are difficult to amend, and can be enforced politically or judicially. The accompanying references expressly invoke Stephen Gill and David Schneiderman. Paragraph 60 extends the argument to relations within federal states: international responsibility for provincial or municipal conduct can create pressure for central supervision of local decisions. His subsequent discussion treats NAFTA's expropriation provisions as potentially acquiring a quasi-constitutional role. These are his expert arguments, rather than judicial findings adopting them. April 23 2003 _VLP120…

This material suggests three analytically distinct transformations.

3.1. Entrenchment across political time

An international commitment can carry an earlier government's economic choices into the tenure of later governments.

Entrenchment is not inherently illegitimate. Constitutions themselves preserve commitments across elections. The question is what is entrenched, how it was authorized, and how it can be revised.

A commitment protecting people against torture and a commitment protecting particular economic expectations both limit future government, but their justifications and beneficiaries differ. Describing both as "legal certainty" does not resolve those differences.

For a theory of global state formation, the relevant issue is whether an expanding international order increasingly determines the economic choices that remain available to future political majorities.

3.2. International obligations can reshape domestic government

The effect need not stop at the state's external boundary.

Suppose a municipality restricts a project and the national government becomes exposed to an international claim. The central government then has a reason to monitor local permitting, planning, and regulatory decisions more closely.

My analytical point is that external legal discipline may generate internal centralization even where the international institution has no direct power to reorganize the country's constitutional structure.

Research would need to establish whether that pressure actually changes administrative practice, legislative arrangements, or the distribution of authority. The existence of international responsibility alone does not prove that all those consequences follow.

3.3. Review can influence policy without annulling legislation

It is essential to identify the legal mechanism accurately.

Under historical NAFTA Chapter 11, tribunals could award monetary damages and, in specified circumstances, restitution with an option for the state to pay damages instead. They did not possess a general power to repeal legislation. Investment

Nevertheless, liability can affect governing choices. A government may retain the legal ability to regulate while confronting a potentially substantial financial consequence.

Consider two questions:

- May the legislature enact a measure?
- Can the state afford the consequences if an international tribunal finds that the measure breaches an investment obligation?

The first concerns formal competence. The second concerns the practical exercise of that competence.

Sornarajah's constitutional critique is most persuasive when understood through this distinction. International economic authority may operate through financial responsibility and anticipatory adjustment, even while domestic institutions retain their formal powers.

4. The legal mechanisms: how particular disputes can become supervision of government

The institutional changes are easier to assess when the underlying legal mechanisms are separated.

Mechanism	Legal significance	Relevance to governing authority
Consent to investor–state arbitration	Qualifying investors can invoke an accepted dispute-settlement mechanism against a state.	A private actor gains a route for challenging state conduct internationally.
Fair and equitable treatment	Interpretation determines what standards of treatment the state owes the investor.	Questions about administrative conduct, assurances, and regulatory change become internationally reviewable.

Mechanism	Legal significance	Relevance to governing authority
Indirect expropriation	Certain interferences with investment may trigger compensation obligations without a formal transfer of ownership.	Property protection can affect the permissible consequences of regulation.
Most-favoured-nation treatment	Investors may seek more favourable treatment by reference to another treaty; the permissible scope is contested.	Particular bilateral commitments can potentially influence a wider network of legal relations.
Recognition and enforcement of awards	Monetary obligations can be enforced through participating states' legal systems.	International adjudication acquires practical force through domestic institutions.

The scope of these mechanisms depends on the relevant instruments and interpretations. ICSID Convention jurisdiction, for example, requires consent; membership in the Convention is not sufficient to confer jurisdiction over every investment dispute. Its enforcement provisions also preserve applicable rules on immunity from execution. The system therefore relies on state institutions and retains important legal limits. ICSID The controversy over using most-favoured-nation clauses to import substantive protections or procedural rights is itself a major doctrinal dispute, rather than an uncontested principle of universal protection. Oxford Academic

Sornarajah's concern is that the accumulation of interpretive decisions can enlarge the range of governmental conduct subject to these mechanisms.

His 2011 "Evolution or Revolution" chapter expressly links expansive interpretation to obligations extending beyond what states intended. It also identifies countervailing developments: tighter treaty provisions, restrictions on jurisdiction, reconsideration of participation, and resistance within arbitration itself. cambridge.org

The key analytical issue is the relationship between **jurisdiction over a dispute** and **authority to prescribe a model of government**.

An institution may begin with the first and gradually exercise aspects of the second. Yet this transition must be demonstrated through its decisions. It cannot simply be inferred from the existence of arbitration.

For example, a decision condemning discriminatory confiscation does not establish the same degree of international supervision as a decision closely evaluating whether a general regulatory reform departed from an investor's expectations. Both concern investor protection, but their implications for public authority differ.

A rigorous application of Sornarajah's critique therefore requires attention to the actual reasoning of awards, including decisions that restrict investor claims.

5. "Mutations of Neo-Liberalism": how particular economic rules claim universal authority

"Mutations of Neo-Liberalism in International Investment Law" (2011) is particularly important for understanding Sornarajah's response to projects of global legal integration.

He examines efforts to justify investment protection through four vocabularies: the **rule of law**, **global administrative law**, **customary international law**, and an allegedly consistent body of arbitral jurisprudence. His criticism is that these arguments can convert a disputed economic programme into a purportedly general legal requirement. He challenges both the normative identification of investor protection with good government and claims that treaties and awards establish sufficiently uniform law. docs.manupatra.in

5.1. The significance of changing legal vocabulary

There is an important difference between these two propositions:

A state has undertaken a particular obligation in a particular treaty.

Every state is subject to a general standard of economic governance.

Moving from the first to the second requires justification.

If the transition succeeds, a rule may cease to appear as a negotiated bargain and instead appear as part of the basic legal framework within which governments must operate. That change in status is central to constitutionalization.

The significance for your inquiry is that universal authority can be advanced through legal characterization. No single act establishing a world legislature is necessary for lawyers and institutions to begin treating particular standards as generally authoritative.

5.2. The dispute about multilateralization

A useful contrasting position is Stephan Schill's *The Multilateralization of International Investment Law* (2009). Schill examines how treaty structures, most-favoured-nation treatment, corporate organization, enforcement, and interpretation can produce multilateral characteristics within a formally bilateral system. His conclusion expressly connects multilateralization with universalization and constitutionalization. cambridge.org

Sornarajah's "The Case Against a Regime on International Investment Law" (2013) disputes the adequacy of this picture. He argues that investment law lacked the uniformity required for the regime claimed by its proponents, and that states' responses to economic crisis and regulatory constraints further weakened the prospect of a stable global arrangement. academic.oup.com

This disagreement poses an important methodological question:

How much legal coherence is necessary for an institutional network to exercise global governing power?

My assessment is that neither complete doctrinal uniformity nor complete fragmentation should be assumed. An order can be inconsistent yet influential. Conversely, similar treaty language does not establish a single authoritative legal system.

For world-state research, several forms of integration must be examined separately: common substantive principles, shared professional practices, coordinated enforcement, authoritative settlement of conflicts, and political control over institutional change.

5.3. Legal scholarship as a participant in institution-building

Sornarajah's critique also makes scholarship itself an object of inquiry.

Under Article 38 of the ICJ Statute, judicial decisions and qualified publicists' teachings are subsidiary means for determining rules of law. They are not equivalent to treaties or accepted customary rules merely because they are influential. INTERNATIONAL COURT OF JUSTICE

Nevertheless, academic arguments can help organize the interpretation of existing sources. A proposition may circulate between articles, counsel's submissions, awards, and subsequent commentary.

The analytical question is whether this circulation clarifies an existing obligation, develops it within an accepted interpretive framework, or attributes authority to a proposition that lacks an adequate legal foundation.

Sornarajah is especially useful here because he refuses to treat professional agreement as a sufficient answer to questions of legal validity and political authorization.

6. *Resistance and Change*: global authority as an unstable accomplishment

Resistance and Change in the International Law on Foreign Investment (2015) brings these concerns together.

The book's structure follows contractual internationalization, expansion of jurisdiction, expropriation, fair and equitable treatment, defences, efforts to rebalance treaties, and reform. Its overarching account connects expansive investor protection with neoliberal ideology and examines resistance from states, civil society, competing international obligations, and parts of the legal profession. Its concluding sections explicitly consider the relationship between public and private power, injustice, resistance, and institutional accommodation. assets.cambridge.org

The theoretical importance lies in treating legal consolidation as an achievement requiring continuing support.

6.1. Resistance can arise from the operation of the system itself

An international regime may become politically vulnerable when its practical effects reach constituencies that previously supported it or paid little attention to it.

In "Starting Anew in International Investment Law" (2012), Sornarajah emphasizes the significance of powerful capital-exporting states themselves confronting investor claims. He interprets changes in US treaty policy and changing capital flows as weakening earlier

assumptions about uniform investor protection. His point is that states' preferences can change as their positions within the investment system change. econstor.eu

This creates a difficulty for any linear theory of world-state emergence.

The states that help construct international constraints may later seek to narrow them. Their support is conditional on changing economic interests, domestic politics, and perceptions of exposure.

6.2. Institutional accommodation can preserve authority

Resistance does not always lead to abolition.

A challenged institution can alter procedures, recognize additional defences, clarify standards, or change its personnel. These adjustments may reduce opposition while preserving its central powers.

Three possible trajectories therefore need to be distinguished:

- **Retrenchment:** authority returns to domestic institutions or particular international mechanisms disappear.
- **Rebalancing:** international institutions remain, but the distribution of rights and obligations changes.
- **Consolidation through reform:** institutional legitimacy improves while the principal allocation of authority persists.

This distinction is my analytical extension of the expansion–resistance–accommodation problem. It prevents treating every reform as either the defeat or the triumph of global integration.

6.3. "Normlessness" is not the absence of enforceable law

Sornarajah's terminology can sound more categorical than the institutional situation warrants.

For analytical purposes, "normlessness" is best understood as a challenge to the existence of a stable, legitimate, and sufficiently coherent normative settlement. It need not mean that tribunals have ceased deciding disputes or that awards have ceased producing legal consequences.

Indeed, inconsistent law can still be coercively effective. The uncertainty may itself influence conduct.

This is one reason his critique can support an account of substantial global economic power while leaving the existence of an integrated global state unresolved.

7. The investment court debate: reform as a possible route to stronger global authority

Sornarajah addresses an unusually concrete institutional proposal in "An International Investment Court: Panacea or Purgatory?" (2016).

He argues that replacing arbitration with a permanent court could strengthen the authority of investor-protection rules without addressing their substantive deficiencies. His concerns include professional predispositions, distance from democratic control, and the possibility of greater doctrinal consolidation. He warns that:

"neoliberal principles will become set in stone beyond the power of democratic processes."

His alternative emphasis is on domestic adjudication and on reconsidering the need for the underlying treaty regime. ccsi.columbia.edu

This is among his most direct contributions to your question. It concerns an identifiable institutional change that could make international economic authority more permanent and integrated.

The proposal remains relevant to institutional research: UNCITRAL's March 2026 Working Group III materials included draft statutes for a permanent tribunal and a permanent appellate tribunal for international investment disputes. Those documents concern proposed arrangements and should not be described as establishing an already functioning world investment court. uncitral.un.org

However, Sornarajah's argument requires a qualification.

Greater institutional permanence and greater substantive preference for investors are separate variables. A permanent tribunal could, depending on its mandate, improve independence, constrain interpretive expansion, or give public obligations greater weight. Permanence alone does not determine those outcomes.

His strongest point is therefore conditional: if the underlying rights and interpretive assumptions remain substantially intact, procedural reform may make an unequal arrangement more authoritative.

For a world-state analysis, the decisive questions concern who determines the court's substantive mandate, who can revise it, whose claims it can hear, and how its authority relates to other institutions. The fact that an adjudicative body is permanent is only the beginning of that inquiry.

8. His alternative: sovereignty connected to global justice

8.1. The "Third World" is not simply a geographical bloc

Sornarajah's 2016 essay "On Fighting for Global Justice: The Role of a Third World International Lawyer" expressly broadens the category of the Third World to include poor people in developed countries.

He defines the relevant intellectual commitment through resistance to rules serving powerful interests and through the pursuit of poverty reduction, environmental protection, and human

rights. He also calls for attention to contemporary mechanisms of private power, rather than an exclusive preoccupation with historical injustice. tandfonline.com

This substantially changes how his defence of sovereignty should be read.

The relevant division is not simply between Western states and all other states. It also concerns social groups within countries, and relationships between domestic and international power.

A government's geographical location cannot establish that its economic policies serve emancipatory purposes.

8.2. International obligations can constrain investors and governments

"A Justice-Based Regime for Foreign Investment Protection and the Counsel of the Osgoode Hall Statement" (2012) gives a compact account of his alternatives.

He advocates public-interest regulatory space, greater weight for obligations toward the international community, and resistance to investment law's insulation from human rights and environmental concerns. He discusses domestic courts, negotiated contracts, insurance, treaty revision or withdrawal, and diplomatic protection as possible elements of a different arrangement. He also identifies cooperation between multinational enterprises and domestic elites as a source of injustice. cil.nus.edu.sg

These proposals should not be collapsed into a demand for unrestricted state power.

They concern the **purposes and accountability of authority**, including international authority. A state's freedom to protect its population and its freedom to mistreat that population are different matters.

There is also a doctrinal qualification. His proposed priority for wider public obligations is not an uncontested rule under which every measure labelled "public interest" automatically prevails. Treaty interpretation can take relevant international rules into account, while peremptory norms have a particular legal status. These are specific legal mechanisms, not a general permission to disregard investment commitments whenever a government invokes welfare. legal.un.org

8.3. *The Misery of International Law*: injustice can be produced through legality

The Misery of International Law: Confrontations with Injustice in the Global Economy (2018) is coauthored by **John Linarelli, Margot E. Salomon, and Sornarajah**.

The book broadens the inquiry across trade, investment, finance, and human rights. Its central concern is how lawful institutional arrangements can help produce economic injustice. It examines fragmentation and the separation of commercial disciplines from competing obligations, and asks how international law should answer to those affected by it. The authors identify differences in their methods; their preface even records disagreement about whether neoliberalism was retreating. The book should therefore not be attributed to Sornarajah alone or presented as a single shared theory of inevitable global development. api.pageplace.de

For your research, its most significant implication is that a global order can exercise constitutive power through the distribution of rights, duties, and remedies.

A legal system does more than restrain misconduct. It determines which interests become enforceable claims, which institutions hear them, and which costs remain with other people.

A study of global state formation should therefore examine the combined distribution of legal capacities across fields. Strong enforcement of commercial entitlements and weak remedies for affected populations may create an identifiable governing pattern even where the institutions remain organizationally separate.

Whether that pattern amounts to a state remains a further question. But its political significance does not depend on calling it one.

8.4. He does not reject every form of authority beyond the state

Two sources make this particularly clear.

In *The Settlement of Foreign Investment Disputes* (2000), Sornarajah considers whether disputes implicating international public policy and peremptory norms should be handled by a judicial institution representing the wider international community, mentioning the ICJ. api.pageplace.de

His 2024 article "Theorising Extraterritorial Jurisdiction: The Travails of TWAIL" distinguishes jurisdiction advancing hegemonic interests from jurisdiction protecting common interests. He calls for a theory capable of supporting the latter while limiting the former, and anticipates that emerging powers may themselves use extraterritoriality oppressively. repository.nls.ac.in

His position is consequently more demanding than a territorial rule under which international authority is always suspect and national authority always legitimate.

9. His later development: survival, multipolarity, and new centres of domination

An account of Sornarajah's work must take his changing assessment of the investment system seriously.

9.1. The stronger disintegration argument

In "Disintegration and Change in the International Law on Foreign Investment" (2020), he describes resistance as breaking down an inflexible structure of investor protection. He advocates accelerating change through obligatory investor duties and priority for public-interest regulation where investment treaties remain. The article combines a diagnosis of institutional change with a programme for further transformation. NUS Law

9.2. Recognition of institutional durability

His 2023 contribution to *Rethinking Investment Law*, "Containing the Pernicious Regime of Investment Arbitration," adopts a more guarded assessment.

On page 237 he writes:

"The system is unlikely to go away."

He then discusses China and India as expanding capital exporters whose interests may sustain protective arrangements and reproduce oppressive relationships. The chapter also distinguishes institutional adjustments from changes to substantive protections. Its discussion of the 2021 *Eco Oro* liability decision illustrates his concern that treaty provisions intended to preserve regulatory space can remain vulnerable to interpretation under other investment standards. DOKUMEN.PUB

This is a meaningful change in emphasis. His later position cannot fairly be reduced to the claim that injustice will automatically destroy the system.

Nor is the criticism permanently confined to Western capital. The geographical distribution of power can change while important legal relationships survive.

9.3. Multipolarity does not guarantee emancipation

"Sri Lanka as a Battleground for International Law" (2023) explicitly frames contemporary developments as a transition toward multipolarity. Sornarajah examines smaller states as sites of competition among external powers, while also criticizing domestic elites. He acknowledges the importance of international human-rights protection for people exposed to repression at home and envisages competing legal orders requiring difficult choices by smaller states. ouslj.sljol.info

This creates a particularly important distinction for your inquiry:

The internationalization of capitalist disciplines can continue even when geopolitical authority becomes more divided.

A greater number of powerful states need not weaken protections for outward investment. Conversely, their rivalry may obstruct the creation of a unified global political authority.

These developments can occur simultaneously. Multipolarity and transnational economic discipline are not mutually exclusive.

Continued institutional activity also cautions against assuming disappearance. UNCTAD's September 2025 report recorded 58 new treaty-based investor–state arbitrations initiated in 2024 and 1,401 known cases by the end of that year. These figures establish continued use; they do not by themselves settle questions of legitimacy or long-term stability. UNCTAD Investment Policy Hub

10. Critical assessment: what his work establishes, and what remains unresolved

10.1. A strong account of legal power, with a demanding burden of proof

Sornarajah is strongest when he identifies a specific interpretive move, institutional arrangement, or legal asymmetry.

Claims about hegemonic influence become more persuasive when connected to treaty drafting, jurisdictional reasoning, the selection of applicable law, remedies, and avenues of revision.

The weaker form of the argument would infer an improper decision merely from the nationality, professional background, or presumed ideology of a decision-maker. Those characteristics may be relevant to institutional analysis, but they cannot replace examination of the legal reasoning.

Similarly, a judgment favouring an investor does not establish capture; a judgment favouring a state does not establish that the system is balanced.

10.2. Resistance requires a theory of institutional persistence

Harm Schepel's review of *Resistance and Change* raises a serious objection: Sornarajah's account risks moving too readily from the injustice of a legal order to an expectation of its decline. Schepel questions whether the book adequately explains why an unjust arrangement would disappear. academic.oup.com

The objection matters because institutions can persist despite criticism. They may have organized beneficiaries, accumulated expertise, established procedures, and support from governments that oppose some outcomes but still value the system.

Sornarajah's 2023 recognition of durability helps address this problem. It directs attention toward adaptation and new constituencies of support.

A research programme based on his work should therefore study both the production of resistance and the mechanisms through which institutions absorb it.

10.3. Normative agreement does not determine an institutional alternative

Julia Dehm's review of the coauthored *Misery* identifies another difficulty: a powerful account of injustice can leave unresolved the practical question of how international law contributes to social transformation. The gap between diagnosis and strategy is significant. lse.ac.uk

For example, broad agreement on public welfare does not decide:

- which institutions should interpret that objective;
- how affected communities should participate;
- how domestic repression should be constrained;
- how investor misconduct should be remedied;
- how conflicting public interests should be resolved.

Sornarajah provides important principles and institutional options. He supplies less of a comprehensive constitutional design for the alternative global order.

10.4. The global-state interpretation needs an additional theory of integration

My overall assessment can be expressed as follows:

Proposition	Assessment in light of Sornarajah's work
Foreign investment law can constrain the exercise of national public power.	Strongly supported.
Arbitration and legal interpretation can contribute to governing standards beyond particular bargains.	A central object of his analysis, though the validity and scope of particular developments remain contested.
Public and private actors can cooperate in constructing international economic authority.	Strongly supported in his account.
Reform can make that authority more permanent and legitimate.	A significant possibility highlighted by his investment-court criticism.
A coherent, universal investment constitution has already been achieved.	He expressly challenges this proposition.
These developments necessarily culminate in one global state.	His account does not establish this; resistance and multipolarity complicate it.
Returning all authority to national governments would resolve the problem.	Inconsistent with his concern about domestic elites, repression, and wider international obligations.

A world state need not resemble a highly centralized national state. Nevertheless, the concept requires more than extensive constraints on governments. One would need to establish how institutions are integrated, how conflicts among them are authoritatively resolved, and where ultimate responsibility for collective decisions lies.

Sornarajah's work is therefore most productive for your project when treated as an investigation of **the construction, contestation, and reproduction of global economic authority**.

It shows how legal arrangements can place important aspects of economic government beyond ordinary domestic revision. It also shows why those arrangements should not be mistaken for a completed political unity. His distinctive contribution is to keep the questions of **power, legal validity, and justice** connected throughout the analysis.

Selected primary bibliography

The following works provide a focused reading sequence for the issues discussed above:

1. **M. Sornarajah, *The International Law on Foreign Investment*, 5th ed.** Cambridge University Press, 2021; first edition 1994. Publisher record.
2. **M. Sornarajah, *The Settlement of Foreign Investment Disputes*.** Kluwer Law International, 2000. Original preview.
3. **M. Sornarajah, "Mutations of Neo-Liberalism in International Investment Law."** *Trade, Law and Development* 3(1), 2011, pp. 203–232. Full text.
4. **M. Sornarajah, "A Justice-Based Regime for Foreign Investment Protection and the Counsel of the Osgoode Hall Statement."** *Global Policy* 3(4), 2012, pp. 463–466. Full text.

5. **M. Sornarajah, *Resistance and Change in the International Law on Foreign Investment*.** Cambridge University Press, 2015. Publisher record.
6. **M. Sornarajah, "On Fighting for Global Justice: The Role of a Third World International Lawyer."** *Third World Quarterly* 37(11), 2016, pp. 1972–1989. Publisher page.
7. **M. Sornarajah, "An International Investment Court: Panacea or Purgatory?"** *Columbia FDI Perspectives*, No. 180, 15 August 2016. Full text.
8. **John Linarelli, Margot E. Salomon, and Muthucumaraswamy Sornarajah, *The Misery of International Law: Confrontations with Injustice in the Global Economy*.** Oxford University Press, 2018. Original preview.
9. **M. Sornarajah, "Disintegration and Change in the International Law on Foreign Investment."** *Journal of International Economic Law* 23(2), 2020, pp. 413–429. Author's institutional record.
10. **M. Sornarajah, "Conclusion: Containing the Pernicious Regime of Investment Arbitration."** In David Schneiderman and Gus Van Harten, eds., *Rethinking Investment Law*, Oxford University Press, 2023, pp. 221–238. Publisher page.
11. **M. Sornarajah, "Sri Lanka as a Battleground for International Law."** *OUSL Journal* 18(2), 2023, pp. 129–160. Full text.
12. **M. Sornarajah, "Theorising Extraterritorial Jurisdiction: The Travails of TWAIL."** *National Law School of India Review* 35(2), 2024, Article 5. Publisher repository.

Source note: This analysis draws on original articles, the archived affidavit text, accessible book introductions and prefaces, and publisher chapter descriptions. Access to the books was uneven: the discussion of the 2015 monograph's organization rests on its detailed contents, preface, and publisher material, supplemented by Sornarajah's separately available articles. The interpretation in terms of global state formation is an analytical assessment of these sources, rather than a claim that he himself presents a comprehensive theory of an emerging world state.

Katharina Pistor' s work

Katharina Pistor's work is particularly valuable for your inquiry because it explains how economic power can acquire global reach through the legal institutions of existing states. Her distinctive contribution is to identify the ordinary legal mechanisms—property rights, corporations, collateral, contracts, conflict-of-laws rules, and financial support—through which this power is constructed.

She also addresses your central question explicitly. In *The Code of Capital*, she asks how global capitalism can function without a global state or a single global legal system. Her answer emphasizes the international recognition of arrangements created under selected domestic laws, particularly English and New York law. Consequently, her work provides both **a theory of the legal infrastructure of global economic power** and **a reason to examine carefully whether that infrastructure constitutes an emerging world state**. Coding Capital for the Globe

A world state need not be unitary: it could be federal or institutionally dispersed. The decisive question is whether its institutions possess a common capacity to settle conflicts and make authoritative decisions for the whole. Below, I distinguish Pistor's own arguments from my further interpretation of their significance for such a development.

1. Her intellectual trajectory: from legal transplantation to the constitution of economic power

Pistor's work becomes more intelligible when read as a developing research program. *The Code of Capital* emerged from earlier investigations into comparative legal systems, corporate governance, the limits of legal harmonization, and financial instability.

Legal standardization does not automatically create an integrated legal order

In "The Standardization of Law and Its Effect on Developing Economies" (2002), Pistor challenges the assumption that internationally promoted legal rules can simply be installed in national systems and produce the intended economic results. Effective law requires institutions and people capable of interpreting, applying, and adapting it. Even well-designed rules cannot substitute for this continuing process of domestic legal development. columbia.edu

This matters for global state formation because it distinguishes two developments that are easily confused:

- The adoption of similar legislative texts across countries.
- The emergence of a functioning, integrated structure of legal authority.

The first can occur without the second. Conversely, effective coordination may develop between countries whose substantive laws remain different. A study of global institutional development therefore has to investigate legal practice, enforcement, and adaptation, alongside legislation.

Her coauthored research with Daniel Berkowitz and Jean-François Richard, "Economic Development, Legality, and the Transplant Effect" (2003), provides an empirical foundation for this position. Their study of 49 countries finds that the reception and adaptation of transplanted law explain legal effectiveness more convincingly than the identity of the imported legal family alone. These are historical, observational findings, rather than a universal demonstration that transplantation succeeds or fails under particular conditions. columbia.edu

For your inquiry, this suggests a further research question: an imported legal framework might function poorly for ordinary citizens while operating effectively within particular international investment or financial transactions. General institutional weakness and effective protection of internationally mobile assets are logically compatible. Whether this occurs must be established in specific cases.

Capitalism can operate through different institutional arrangements

In *Law and Capitalism* (2008), coauthored with Curtis J. Milhaupt, Pistor examines corporate governance crises in the United States, China, Germany, Japan, Korea, and Russia. The book presents legal and economic development as an interactive process and emphasizes the different combinations of legal and nonlegal institutions supporting capitalist economies. press.uchicago.edu

The implication is substantial: **global economic integration need not produce convergence on one national institutional model**. Different systems may become interconnected while retaining distinctive structures of ownership, governmental intervention, and corporate control.

This complicates any linear account in which globalization first homogenizes national law and then culminates in a world state. Institutional diversity may remain a constitutive feature of the system.

Law constitutes economic relations

The coauthored article "Legal Institutionalism: Capitalism and the Constitutive Role of Law" (2017), written with Simon Deakin, David Gindis, Geoffrey Hodgson, and Kainan Huang, makes the theoretical position explicit. Modern capitalist institutions depend on the interaction of private practices, courts, and legislative institutions. Law forms part of society's structure of power; it does more than register an independently existing economic order. uhra.herts.ac.uk

This moves the analysis beyond a simple opposition between the state and the market. A corporation, a transferable debt claim, or an enforceable security interest already incorporates public authority into an economic relationship.

From this perspective, the growth of private economic power may involve an expansion in its effective use of state institutions.

2. Incomplete law: why interpretation and enforcement redistribute authority

“Incomplete Law” (2003), coauthored with Chenggang Xu, supplies an important institutional mechanism underlying Pistor’s later work.

Legislation cannot anticipate every future activity or contingency. Someone must therefore possess the authority to determine how existing law applies to new circumstances. The authors examine the allocation of residual lawmaking and enforcement powers, including differences between courts and regulators. Courts generally respond to disputes brought before them; regulators may possess powers to monitor conduct and intervene proactively. scholarship.law.columbia.edu

The relevance to global governance is an inference from their framework: **authority can move without a formal transfer of sovereignty**.

Suppose a legislature enacts a broadly worded rule governing financial institutions. Its practical consequences will depend on who interprets it, which transactions are investigated, who can initiate proceedings, and which remedies are available. A substantial redistribution of governing power can occur through changes in these institutional arrangements even while the legislature’s formal constitutional position remains intact.

This gives your broader research project a more precise object. Instead of asking only whether states have transferred powers to an international organization, one can examine:

- Who determines the meaning of incomplete rules.
- Who decides which conduct receives scrutiny.
- Who can obtain an authoritative interpretation.
- Whether those decisions remain accessible to democratic revision.

An international institution might gain considerable practical authority through these channels. Equally, private actors might shape the development of law through transactional design and selective litigation. Neither possibility should be inferred solely from the formal wording of a delegation.

3. Capital as a legally constructed set of advantages

Pistor’s central proposition is that the capacity of assets to generate and preserve private wealth depends upon their legal treatment. “Coding” refers to the construction of legal arrangements; it does not mean that all capitalist law appears in a single legislative code.

Her framework distinguishes **legal modules**—property, collateral, corporate, trust, bankruptcy, and contract law—from the **attributes** these modules can confer. Her “Core Themes” article restates this framework. The examples below are schematic illustrations. degruyterbrill.com

Attribute	Meaning	Illustrative legal effect
Priority	Some claims rank above others.	A secured creditor can receive payment before an ordinary unsecured creditor.

Attribute	Meaning	Illustrative legal effect
Durability	Legal advantages persist through time.	Asset partitioning can protect a pool of assets from particular owners' personal creditors.
Universality	Rights have effects beyond the original parties.	Property rights can bind third parties who never consented to their creation.
Convertibility	Gains can be preserved through conversion into safer assets.	Certain financial positions provide access to more secure assets, especially public money.

Their availability varies. Convertibility is not a general guarantee that every asset will be rescued, and universality does not mean that a single worldwide legislature exists.

Private wealth and aggregate production are different analytical questions

A simple hypothetical makes the distributive point clear. Assume a debtor has assets worth 100 and owes two creditors 100 each. Ignore administrative expenses and statutory preferences. Equal-ranking creditors might recover 50 each. If one creditor instead holds an effective security interest covering the assets, the distribution may become 100 to that creditor and zero to the other.

Nothing additional has been produced in this example. What has changed is the legally determined allocation of loss.

Pistor's "The Value of Law" (2020) develops the broader claim that law itself has pecuniary value, especially where assets consist largely of legally constructed claims. She challenges approaches that evaluate legal arrangements predominantly through economic efficiency while neglecting their public and constitutional foundations. Springer Nature Link

For the world-state question, this changes what we should investigate. A global distribution of power may be built through rules allocating priority, continuity, and protection against loss, even without an institution openly empowered to redistribute world income.

The corresponding democratic issue arises before taxation: **which claims does the legal system help establish, protect, and preserve in the first place?**

4. How national law acquires global reach

Pistor's "Capital's Global Rule" (2019) is among her most directly relevant writings for your question. It examines how private actors mobilize public coercive capacities through legal arrangements. Its argument challenges accounts of global governance that focus primarily on public delegation, international regulation, or reputational accountability. Those approaches can overlook the power exercised through ordinary private law. law.nyu.edu

The essential analytical distinction is between **where a legal arrangement originates** and **where its consequences can be enforced**.

Consider a hypothetical international business arrangement. Its corporate organization might be governed by one jurisdiction, its financing contracts by another, its dispute-resolution

process located in a third, and its productive assets situated elsewhere. Several states may contribute different elements of legal protection.

Such an arrangement is not necessarily outside state law. It can depend on numerous states recognizing different parts of it.

Recognition can matter more than substantive uniformity

Two states do not need identical contract or corporate laws to facilitate an international transaction. They may instead recognize arrangements created under each other's laws.

This is a different route to legal integration from writing one common substantive code. Its political significance depends on who has meaningful access to legal choice, which choices receiving states recognize, and which local obligations remain unavoidable.

The distinction also prevents an overstatement: choosing a foreign law does not automatically displace every mandatory rule applicable to a transaction, an asset, or an affected person. The governing conflict-of-laws rules and enforcement institutions remain consequential.

Arbitration illustrates the combination of private choice and public enforcement

The 1958 New York Convention provides a concrete institutional example. It requires recognition of qualifying arbitration agreements and foreign arbitral awards, subject to specified conditions. Article V preserves grounds for refusing enforcement, including public policy and non-arbitrability. wipo.int

The arrangement combines private selection of adjudication with public recognition and enforcement. Its international effectiveness comes from commitments undertaken by participating states.

My interpretation is that this supplies an important component of transnational governing capacity: private arrangements can receive authoritative support across borders. Yet the Convention does not itself create a general legislature, treasury, or executive for the world.

The institutional issue is therefore concrete. How extensive should recognition be? Which interests should an enforcing court consider? When should local public commitments prevail? These decisions determine how much practical autonomy internationally organized private actors acquire.

5. Organized institutional change: derivatives, collateral, and insolvency

Pistor's analysis is especially persuasive when it identifies a sequence of specific legal interventions.

Her account of the International Swaps and Derivatives Association, or ISDA, follows the development of standardized contractual arrangements, the identification of obstacles in national insolvency laws, and lobbying for legislative changes. Private drafting alone could not

guarantee the intended effects against other creditors. Public law had to support the arrangements. Coding Capital for the Globe

This is direct evidence of organized efforts to change institutions in ways that support international finance.

A relevant legislative example is the EU Financial Collateral Directive, adopted in 2002. It sought to improve the legal certainty of financial collateral arrangements, including by limiting the application of specified insolvency rules. Its treatment of close-out netting allows qualifying obligations to be terminated and reduced to a net balance despite insolvency proceedings, within the directive's scope and conditions. EUR-Lex

The political issue extends beyond technical simplification. Insolvency law determines how losses are distributed among parties who cannot all be paid. Strengthening one category of creditor's position can change the risks borne by others.

Nevertheless, the rationale for such legislation must also be considered. Netting and collateral arrangements can reduce exposures and increase predictability. A serious evaluation asks whether these benefits outweigh the distributional and systemic consequences of particular protections.

For your inquiry, this example supports three distinct propositions:

1. Particular private organizations deliberately pursue legal changes.
2. Those changes can strengthen internationally organized economic power.
3. Their cumulative effects may alter the relationship between public authority and private finance.

The additional proposition that these interventions form part of a project to establish a world state requires further evidence.

6. *A Legal Theory of Finance*: why enforceable rights can destabilize their own system

"A Legal Theory of Finance" (2013) extends Pistor's analysis from the construction of assets to the operation of the financial system.

Her starting points are fundamental uncertainty and fluctuating access to liquidity. Financial claims are legally constituted and interconnected. Commitments that provide security to individual parties can become collectively destabilizing when many actors simultaneously demand payment, additional collateral, or liquidation.

The resulting law–finance paradox is that credible legal commitments facilitate financial expansion, while their rigid enforcement under crisis conditions can threaten the system that sustains them. Pistor presents the theory as a framework requiring further empirical development. Theory

A hypothetical illustrates the mechanism. A lender requires extra collateral when an asset's price falls. The borrower sells assets to obtain it. Similar sales by other borrowers depress prices

further, triggering additional collateral demands. Each lender invokes a protective contractual right, but their combined actions intensify the crisis.

The legal arrangement has helped transmit and amplify the shock.

Elasticity and the distribution of financial power

In "Law's Elasticity" (2021), Pistor further examines the relationship between legal commitment and discretionary adaptation. She distinguishes elasticity from legal incompleteness and uses AIG-related events to explore how the force of legal obligations can be modified in finance. Cambridge Core

The distinction is conceptually useful:

- **Incompleteness** concerns what a rule has failed to specify.
- **Elasticity** concerns the extent to which an obligation's effective force can be adjusted.

The political question is who receives flexibility and who continues to face strict enforcement.

A necessary qualification: rescue can preserve contractual rigidity

Kathryn Judge's commentary on Pistor identifies a complication. Public liquidity support can allow an institution to meet its existing obligations, making their relaxation unnecessary. Her discussion of AIG shows how assistance may protect central financial actors while keeping private claims intact. CLS Blue Sky Blog

This strengthens the need for precision. Financial power cannot be measured simply by asking whose contracts are suspended. One must examine who receives liquidity, who bears losses, whose claims are preserved, and which public institution makes those decisions.

Nor does elasticity necessarily mean illegality. It may operate through legally authorized discretion, legislative revision, restructuring procedures, or newly created support arrangements.

7. Monetary sovereignty: the unequal public foundations of global finance

"From Territorial to Monetary Sovereignty" (2017) supplies one of Pistor's strongest contributions to the analysis of state power.

She argues that the capacity to control money becomes increasingly important in a system organized around credit. States can constrain their effective sovereignty by adopting another currency, assuming foreign-currency or foreign-law debt, or permitting financial exposures that they cannot independently support. Private financial distress can become a sovereign crisis when public authorities assume liabilities requiring resources they cannot provide themselves. scholarship.law.columbia.edu

This produces a hierarchy among formally sovereign states.

Two governments may possess similar constitutional powers within their territories, yet have very different capacities to respond to financial emergencies. One can provide the currency its financial system needs. The other must obtain it from an external authority.

Issuing one's own currency does not confer unlimited real resources or immunity from inflation, exchange-rate pressures, and political constraints. The narrower issue is the capacity to provide liquidity in that currency.

Central-bank networks and global authority

An institutional illustration is the 2013 decision by the Federal Reserve, European Central Bank, and central banks of Canada, England, Japan, and Switzerland to establish standing bilateral liquidity swap arrangements among themselves. The announcement expressly describes a network providing liquidity backstops across the participating jurisdictions. federalreserve.gov

The constitutional significance is my inference: institutions with territorial or regional political foundations can jointly exercise capacities whose consequences extend much further.

This is strong evidence for studying global public authority through monetary networks. It is weaker evidence for a completed world state. The existence of a network does not by itself establish a common fiscal authority, equal membership, or a universal entitlement to assistance.

Indeed, the location of ultimate support matters precisely because states remain differentiated.

8. Global network finance and the Vienna Initiative: coordination without institutional uniformity

Pistor's earlier financial-governance writings prevent her position from being reduced to a general denunciation of international coordination.

"Global Network Finance" (2009) examines relationships created when sovereign wealth funds and home governments acquired stakes in major financial intermediaries. She identifies the potential for governance arrangements connecting actors from different institutional systems. The argument emphasizes diversity and overlapping relationships rather than inevitable convergence on one model. scholarship.law.columbia.edu

This is relevant to the geographical framing of your original inquiry. A transnational financial network may include institutions from countries with different geopolitical interests. Their interdependence does not establish that they form one coherent governing group.

In "Governing Interdependent Financial Systems: Lessons from the Vienna Initiative," published in 2012 following a 2011 working paper, Pistor examines coordination among cross-border banking groups, public authorities, and international institutions. The central problem is the mismatch between international financial interdependence and predominantly national responsibilities. She discusses the value of an institution capable of connecting participants and supporting continuing cooperation. scholarship.law.columbia.edu

From a democratic perspective, a further question arises: does the representation of banks, governments, and international organizations adequately represent the populations affected by their decisions?

That is a question about the constitution of the coordinating forum. Effective crisis management and representative legitimacy are related but distinct achievements.

The 2026 extension: liquidity as an interaction of several public and private functions

The coauthored "The Political Economy of Liquidity Triangulation" (2026), with Dario Laudati, William D. O'Connell, and Matthias Thiemann, distinguishes sovereign debt management, public liquidity provision, and private liquidity provision. Its framework examines their interaction, distributional effects, and political contestation. The published abstract identifies case studies of the United States before the Federal Reserve's creation and Thailand during the 1997–98 Asian financial crisis. Oxford Academic

For your perspective, this encourages investigation of the relationships between functions rather than an assumption that they already belong to one governing center. Institutional development can arise from interacting pressures and conflicts.

9. Digital power: the possibility of governing capacities beyond both states and markets

"Rule by Data: The End of Markets?" (2020) broadens Pistor's inquiry.

Its stated argument treats processed data as a means of governing others on a scale potentially comparable to that of nation-states. She considers whether the informational capacities of large technology companies could support forms of economic organization that differ from both decentralized markets and centralized socialist planning. This is a prospective argument about a possible mode of governance. scholarship.law.columbia.edu

The relevance to world-state formation is considerable, although it introduces another distinction.

A digital platform might exercise extensive governing capacities over its users: determining participation conditions, organizing access to information, or shaping choices. These capacities need not amount to territorial sovereignty.

For a theory of global political development, the resulting questions would include whether public authorities become dependent on privately controlled information systems, whether platforms acquire durable rulemaking autonomy, and how their authority interacts with courts and governments.

The possibility is therefore broader than a straightforward transfer of power from national states to international public institutions. Governing capacities may also accumulate in organizations legally constituted as private corporations.

However, technological reach, political influence, and statehood remain different objects of analysis.

10. The 2025 book: why capitalism repeatedly escapes attempts to constrain it

The Law of Capitalism and How to Transform It (2025) develops Pistor's argument in a more explicitly transformative direction.

Where *The Code of Capital* concentrates on the legal construction of assets and wealth, the later book examines capitalism as a legal regime capable of reproducing itself despite repeated efforts at social constraint. Its publisher's account identifies democratic erosion and climate change as central motivations for transformation. Yale University Press London

In her 2026 conversation with Hagen Schulz-Forberg, Pistor identifies three reinforcing features:

1. Strong legal empowerment of individuals and corporations.
2. Decentralized access to concentrated public coercive power.
3. The availability of legal arbitrage across ambiguities and jurisdictions.

She argues that sophisticated legal actors can repurpose institutional arrangements. Consequently, durable transformation requires continuing normative commitments, including limits on the enforcement of private claims. Her proposed orientation draws on human capabilities and includes obligations affecting powerful private actors, including foreign corporations. University of California Press

The relevance to global institutional development

The central question becomes whether a new institution changes the conditions under which private power is exercised.

A new international regulator, court, or constitution might provide stronger public control. It might also create additional legal opportunities for those already best equipped to use it. Its geographical scale alone does not resolve this issue.

The same consideration applies to a possible world state. A common political structure would need substantive principles, procedures, resources, and forms of representation capable of governing private economic power. Its establishment would not automatically supply them.

Pistor's later approach therefore directs attention to the social purposes of legal institutions and the mechanisms through which those purposes are maintained over time.

11. Her reform proposals: democratizing legal adaptation and access to public power

"Legal Coding Beyond Capital?" (2022) contains some of Pistor's most concrete institutional proposals.

Responding to Martijn Hesselink's proposal for a progressive European private-law code, she argues that substantive principles require supporting changes in interpretation and enforcement. She proposes representative residents' committees, potentially selected by lottery, to address consequential adaptations of existing law; court referrals and direct petitions; and greater scrutiny of arbitration and foreign-law choices. She also discusses collective proceedings and constraints on mandatory arbitration. Her position favors pluralism in legal adaptation and questions the feasibility and desirability of centralizing that process. cambridge.org

This is a significant qualification to any reading of her as a straightforward advocate of higher-level constitutionalization. The quality of the decision-making process matters alongside the rank of its legal norms.

Her financial reform proposals address another inequality. In "The Law-Finance Paradox" (2013), she explores mechanisms through which ordinary borrowers could obtain adjustment or temporary relief under unforeseen circumstances. Flexibility should not be confined to institutions whose collapse would threaten the wider system. These are proposals for structured adaptation, not unrestricted debt cancellation. Pistor INET Hong Kong Instability Panel.docx

Together, these proposals suggest a distinctive conception of democratization: broaden participation in the continuing development of law and broaden access to the flexibility that the legal order already provides unevenly.

They also present a practical challenge. Participation must be organized so that technical expertise assists public judgment without determining it in advance.

12. What her work establishes—and what remains open—about an emerging world state

The strongest interpretation of Pistor for your project is that she identifies **mechanisms through which governing power is exercised globally through continuing national institutions**.

My assessment can be organized around four dimensions:

Dimension	What should be investigated	Relevance to state formation
Rule formation	Who constructs legally effective arrangements and controls their adaptation?	Identifies capacities resembling legislation and administration.
Recognition and adjudication	Which arrangements receive authoritative support across borders?	Reveals how separate jurisdictions become connected.
Financial support	Who can preserve claims and institutions during a crisis?	Identifies the location of exceptional discretionary power.
Collective control	Who can revise the system's priorities and impose obligations on powerful participants?	Tests whether an integrated political authority exists.

This framework allows the world-state hypothesis to be taken seriously without assuming its conclusion.

Global reach and institutional integration are separate variables

The reach of private rights can expand while public authority remains territorially divided. Alternatively, public authority can become more integrated while private rights become more constrained.

These possibilities should not be collapsed into a single scale running from "less globalization" to "more world state."

A convincing account of emergence would need to show how interconnected institutions acquire a durable ability to govern their collective operation: settle jurisdictional conflicts, allocate burdens, make decisions binding on powerful members, and maintain those decisions during serious disagreement.

Fragmentation may benefit powerful actors

Differences among jurisdictions can provide opportunities to select favorable arrangements. Consequently, some actors may prefer a combination of extensive recognition and continuing legal diversity.

This generates an important hypothesis: institutional fragmentation may be a stable condition of global economic power, rather than merely an unfinished stage on the road to political unification.

The hypothesis is testable. One could examine whether influential actors support international integration selectively—promoting recognition and enforcement while resisting common taxation, liability, or redistributive obligations.

That would identify the particular integration they seek.

Intentional projects and emergent structures require different evidence

Pistor's authorized account of the construction of global capital explicitly states that "there was no grand strategy." It describes the cumulative combination of legal arrangements developed in different circumstances. Coding Capital for the Globe

This does not exclude purposeful lobbying over particular rules. It also does not logically disprove emergent state formation: historical political structures can arise without an original comprehensive plan.

It does mean that three claims require different evidence:

- A group sought a particular legal advantage.
- Several advantages accumulated into a durable structure of domination.
- That structure acquired the common governing capacities of a state.

Documents showing the first should not automatically be treated as proof of the third.

Pistor also identifies limits to centralized solutions

In the published *A Legal Theory of Finance*, Pistor argues that a global financial regulator would face an impossible task, given uncertainty, interdependence, and the limitations of fixed regulatory commitments. Her discussion favors attention to adaptive mechanisms rather than confidence that a single regulatory structure can eliminate instability. Theory

This is a criticism of a particular institutional solution, rather than a comprehensive philosophical rejection of every possible world federation. Nevertheless, it places her at a distance from theories that treat further centralization as the necessary answer to global financial power.

13. Critical assessment: the strengths and limits of her contribution

Her strongest contribution is institutional specificity

Pistor helps explain how public power enters transactions that appear private. This makes it possible to investigate global economic authority through identifiable legal mechanisms rather than through general assertions about the power of capital.

Her approach also creates opportunities for concrete disagreement. Researchers can ask whether a claimed legal privilege exists, how it is enforced, who benefits, and what happens when it is withdrawn.

Legal construction does not exhaust the explanation of capitalism

The 2021 *Social & Legal Studies* symposium raises serious questions about explanatory scope. Anna Chadwick asks whether the emphasis on legal coding adequately explains production, labor, and capitalist social relations. Iagê Miola questions geographical and historical generalization from the legal centers of capitalism. Pistor's rejoinder acknowledges limits in the book's scope and emphasizes that law itself is a social relationship. eprints.gla.ac.uk

These objections matter for the world-state question. Explaining how wealth receives legal protection does not by itself explain the formation of a politically coherent ruling coalition, its control over productive resources, or its relationship to military and geopolitical power.

Pistor supplies a major component of such an explanation. Additional political-economic and historical research remains necessary.

Transformation requires an account of political agency

Hesselink's 2026 commentary asks whether existing constitutional principles and the capabilities approach possess sufficient resources to overcome capitalist law, and who could legitimately and effectively carry out that transformation. repository.law.miami.edu

Venzke's companion commentary questions whether lawyers who helped construct the existing order could remake it, and asks which political circumstances would enable such change. repository.law.miami.edu

These criticisms identify a tension in Pistor's later work. If unequal access to legal expertise helps reproduce the system, a transformative program must explain how actors seeking change acquire enough organizational capacity to alter that distribution.

The same problem confronts proposals for democratic global government. Institutional design must be connected to a credible account of who can establish and sustain it.

My overall judgment is that Pistor offers an exceptionally useful theory of the legal conditions of global capitalist rule. For a theory of an emerging world state, her contribution is more discriminating: she identifies capacities that operate internationally while showing why their global effectiveness can coexist with differentiated states, legal pluralism, and unequal monetary sovereignty. A further theory of state formation would have to explain how those capacities become subject to a common political authority—or why they remain organized through a hierarchy of interconnected institutions.

Selected primary reading

For your particular inquiry, I would prioritize the following works.

Capital, law, and global authority

1. **Pistor, Katharina.** *The Code of Capital: How the Law Creates Wealth and Inequality*. Princeton University Press, 2019. The central monograph. An authorized excerpt is available as "Coding Capital for the Globe".
2. **Pistor, Katharina.** "Capital's Global Rule." *Constellations* 26(3) (2019): 430–441. DOI: 10.1111/1467-8675.12434. Particularly relevant to private access to public coercive power.
3. **Pistor, Katharina.** "The Value of Law." *Theory and Society* 49 (2020): 165–186.
4. **Pistor, Katharina.** "Theorizing Beyond 'The Code of Capital': A Reply." *Accounting, Economics, and Law: A Convivium* 11(1) (2021): 65–80. Important for the theoretical questions raised by critics.

Finance and sovereignty

5. **Pistor, Katharina.** "A Legal Theory of Finance." *Journal of Comparative Economics* 41(2) (2013): 315–330. DOI: 10.1016/j.jce.2013.03.003.
6. **Pistor, Katharina.** "From Territorial to Monetary Sovereignty." *Theoretical Inquiries in Law* 18(2) (2017): 491–517.
7. **Pistor, Katharina.** "Law's Elasticity: An Inquiry into the Relation of Law and Power in Finance." *European Journal of Sociology* 62(2) (2021): 249–273. DOI: 10.1017/S0003975621000205.
8. **Pistor, Katharina.** "Governing Interdependent Financial Systems: Lessons from the Vienna Initiative." *Journal of Globalization and Development* 2(2), Article 4 (2012): 1–25. Distinguish the published article from the 2011 working paper.
9. **Laudati, Dario, William D. O'Connell, Katharina Pistor, and Matthias Thiemann.** "The Political Economy of Liquidity Triangulation." *Journal of Financial Regulation* (2026), fjag004.

Institutional development and transformation

10. **Milhaupt, Curtis J., and Katharina Pistor.** *Law and Capitalism: What Corporate Crises Reveal about Legal Systems and Economic Development around the World*. University of Chicago Press, 2008.
11. **Pistor, Katharina, and Chenggang Xu.** "Incomplete Law." *New York University Journal of International Law and Politics* 35(4) (2003): 931–1013.
12. **Pistor, Katharina.** "Rule by Data: The End of Markets?" *Law and Contemporary Problems* 83(2) (2020): 101–124.
13. **Pistor, Katharina.** "Legal Coding Beyond Capital?" *European Law Open* 1(2) (2022): 344–350.
14. **Pistor, Katharina.** *The Law of Capitalism and How to Transform It*. Yale University Press, 2025.
15. **Pistor, Katharina, and Hagen Schulz-Forberg.** "Coding the Legal Infrastructures of Capitalism—A Conversation with Katharina Pistor." *Global Perspectives* 7(1) (2026), article 163459.

Source note: This analysis draws on original articles, author abstracts, publisher extracts, and Pistor's published discussions. The treatment of the 2025 monograph uses its publisher's account and Pistor's subsequent explanation, rather than claiming a complete chapter-by-chapter reading. The discussions of the 2026 liquidity article and the recent Miami commentaries are limited to arguments established by their published abstracts.

Horatia Muir Watt' s work

Horatia Muir Watt's work is particularly valuable for understanding how global authority can emerge through the legal connections between existing states. Her central subject is private international law: the rules determining which courts may hear a dispute, which law governs it, and whether decisions made elsewhere will be recognized and enforced. She treats these rules as instruments that distribute power, shape economic organization, and determine whose interests receive legal protection. Her contribution therefore reaches well beyond the technical coordination of national legal systems. academic.oup.com

My assessment is that her work has **two distinct forms of relevance to global state formation**. It explains how existing legal arrangements help constitute globally effective private power. It also develops a positive project for reconstructing those arrangements around accountability, participation, recognition of difference, and, increasingly, ecological responsibility.

The relationship between these projects and a world state requires careful analysis. A world state could be federal or institutionally dispersed; the absence of a single central institution does not settle the question. What matters is whether dispersed authorities become parts of a common political order with an ultimately authoritative allocation of powers. Muir Watt illuminates several possible components of such an order, while her preferred jurisprudence places considerable weight on preserving the plurality of legal and cultural worlds.

1. Why private international law matters to the constitution of global power

Private international law usually appears at the point where a relationship crosses legal boundaries. Its familiar questions concern jurisdiction, applicable law, and recognition and enforcement. These are also the principal kinds of problems addressed by the Hague Conference on Private International Law. FAQ

Their political significance becomes clearer if we distinguish the immediate legal question from its institutional consequences:

Legal question	Typical legal mechanism	Potential consequence for global power
Which court may decide?	Jurisdiction, forum selection, procedural rules	Determines who can obtain a remedy and which institutions supervise transnational conduct

Legal question	Typical legal mechanism	Potential consequence for global power
Which law governs?	Connecting factors, characterization, party autonomy, mandatory rules	Allocates regulatory authority and determines which protections accompany cross-border activity
Will a foreign decision take effect?	Recognition, enforcement, public-policy review	Extends the practical authority of one legal order into another
Who may participate?	Standing, joinder, collective proceedings, treatment of third parties	Determines whether affected communities can challenge arrangements created by others

The final column is an analytical interpretation of these mechanisms. Its central implication is that **a rule selecting an authority can be as politically consequential as a rule prescribing substantive conduct**.

Consider an illustrative dispute involving a corporation headquartered in one country, production in another, and an arbitration clause designating a third. Before anyone decides whether the corporation behaved lawfully, legal rules may determine whether workers can sue, whether their claims must be separated, whether their country's protective legislation applies, and where a successful judgment could be enforced.

Those preliminary decisions shape the practical distribution of rights and obligations. A worldwide legislature need not have enacted a common labor code for a transnational allocation of regulatory power to emerge.

Muir Watt's early article, **"Choice of Law in Integrated and Interconnected Markets: A Matter of Political Economy" (2003)**, already treats conflicts involving economic regulation as questions of political economy. Its opening analysis challenges the assumption that private litigation can be detached from public policies concerning banking, securities, competition, environmental protection, and related fields. Choice of law helps determine the reach of these policies. cjel.law.columbia.edu

For your inquiry, this provides an important starting point: global legal power can develop through the rules connecting national institutions, even where the substantive laws of those institutions remain different.

2. "Beyond the Schism": recovering the political content of private law

Her foundational statement is **"Private International Law Beyond the Schism"**, published in *Transnational Legal Theory* in 2011 and available in a subsequent 2012 working-paper version.

The "schism" separates public international law, associated with sovereign authority and political questions, from private international law, presented as the technical administration of private relationships. Muir Watt argues that this division has obscured the governing effects of private-law techniques. Corporations, arbitral institutions, standard setters, and other private

actors can acquire substantial authority while the relevant legal discipline treats their activities as matters of autonomy or coordination.

The article's concluding conception of private international law as a constitution of transnational private governance has two dimensions: rules help establish private authority, and those rules can be redirected to impose responsibility. Her proposed orientation includes the participation of affected communities, responsibility corresponding to an actor's sphere of influence, and protection of shared planetary interests. iilj.org

The constitutional significance

Two meanings of "constitution" should be distinguished here.

First, legal rules can **constitute power**: they bring an effective governing arrangement into existence. Enforceable contractual authority, recognized corporate organization, and legally supported arbitration are examples of the kinds of arrangements at issue.

Second, legal rules can **constitutionalize power**: they subject its exercise to obligations, procedures, participation, and review.

These processes need not move together. An institution can become more effective internationally while remaining weakly accountable. Conversely, reform can increase its public obligations without creating a comprehensive global political hierarchy.

This distinction makes Muir Watt especially useful for studying institutional transformation. It directs attention to changes in the legal conditions under which power operates, rather than requiring every transformation to take the form of a new international organization.

Her 2008 editorial, **"Reshaping Private International Law in a Changing World,"** supplies a related qualification. It examines how jurisdictional arrangements can facilitate the displacement of regulation, while recognizing that regional coordination—particularly within the European Union—can provide institutions capable of addressing cross-border spillovers. The evaluation depends on the purposes and distributive effects of coordination, rather than on integration alone. Conflict of Laws

3. Party autonomy: how private choice acquires governing effects

Muir Watt's analysis of **party autonomy** is among her most concrete contributions to this subject.

Party autonomy allows parties, within legally recognized limits, to select the governing law or the forum for their relationship. Her concern is what happens when these permissions become organizing principles for transnational economic activity.

A. Autonomy is legally constructed

In **"'Party Autonomy' in International Contracts: From the Makings of a Myth to the Requirements of Global Governance" (2010)**, she challenges the presentation of private ordering as a naturally existing sphere whose legitimacy is self-evident.

The authority of contractual choices depends on legal institutions accepting them. Her analysis also addresses the tension between arbitration's contractual independence and the judgment-like effects claimed for arbitral awards, as well as the extension of contractual arrangements to people who did not negotiate them.

The conclusion is especially relevant to questions of institutional intention: she expressly credits legal theory and political will with helping construct accepted transnational principles and institutions. Yet she recognizes the legitimate benefits of predictable cross-border exchange and emphasizes that apparent consensus conceals conflicting interests. Her proposed response is greater transparency and accountability. columbia.edu

This establishes a meaningful form of deliberate institution building. It does not establish that all participants share one ultimate political objective. A government seeking commercial attractiveness, a business seeking predictability, and a lawyer developing a coherent doctrine can support the same legal mechanism for different reasons.

B. Selecting the adjudicator can affect the force of regulation

The earlier article **"Party Autonomy and Mandatory Rules in a Global World" (2004)**, coauthored with **Luca G. Radicati di Brozolo**, examines the interaction between substantive regulation and the choice of adjudicator.

A rule may be mandatory within one legal system, yet its practical effectiveness can change when a dispute moves to another court or to arbitration. Limited review at the enforcement stage may not fully restore the protection that the original regulatory system intended.

The authors consider jurisdictional competition and incentives to attract legal business. Their position is qualified: regulatory competition can offer benefits, while externalities, information problems, and vulnerable interests can justify constraints. No state's regulatory claim is automatically identical to the general interest. ila-hq.org

This is an important institutional mechanism. Formal legislative competence can remain intact while the practical capacity to apply legislation becomes dependent on choices made elsewhere.

C. Contract can organize authority beyond its immediate parties

Her 2021 chapter, **"A Private International Law Perspective on the Creation of Norms and Transnational Governance,"** returns to the legal foundations of contractual ordering. It challenges the picture of a spontaneous transnational private order growing in an otherwise empty legal space. Contractual arrangements operate through legal permissions and connections that enable economic actors to extend their activities beyond domestic constraints. cambridge.org

An illustrative implication is that a contract can affect more than the exchange between its signatories. If it allocates production risks, determines the forum for disputes, and channels

claims through particular institutions, it helps organize relationships involving employees, suppliers, communities, and public authorities.

From the perspective of global state formation, this suggests a significant possibility: **the organization of global authority can begin through legally supported choices by private actors**. Whether those arrangements become accountable institutions depends on additional rules about participation, responsibility, and review.

4. Inkreal: a concrete critique of expanding transnational judicial choice

A particularly revealing recent intervention is **"Inkreal: Jurisdictional Barrier-crossing in Domestic Cases: A Threefold Critique" (2024)**, coauthored with **Dominique Bureau**.

In *Inkreal*, Case C-566/22, the Court of Justice of the European Union held that Article 25 of the Brussels Ia Regulation could apply where parties established in one Member State selected the courts of another Member State, even though their relationship lacked another connection to that second state. The choice of the foreign court supplied the relevant international dimension. EUR-Lex

Bureau and Muir Watt question both the reasoning and the political economy of this result. Their French example shows how a choice between domestic venues might be restricted while selecting a court abroad receives protection under the European regime. They also raise concerns about the effective operation of mandatory substantive rules.

Their broader criticism is that legal reasoning presents an expansion of mobility and party autonomy as if it followed necessarily from legal logic. They argue that other interpretations were available and that the distributive implications deserved explicit consideration. Their discussion distinguishes the choice of court from the choice of substantive law; the concern is how their interaction affects regulation. EAPIL

For your question, this example has two implications.

First, a supranational court can reshape the boundary between domestic and international legal space through interpretation. That is an exercise of institutionally consequential authority.

Second, Muir Watt's position cannot be understood as unconditional support for expanding cross-border judicial power. She evaluates the political purposes and consequences of the expansion. The same scholar who seeks stronger transnational accountability can criticize a judicial development that enlarges private opportunities to select the governing institutional environment.

5. Corporate networks: making legal responsibility correspond to economic organization

A. The network as a legal category

In **"Governing Networks: A Global Challenge for Private International Law" (2015)**, Muir Watt asks what would follow if the **network** became a technical legal category in private international law.

She identifies three settings: relations between parent companies and subsidiaries, transnational supply or value chains, and commercial or investment arbitration. The proposed methodological innovation is connected to political questions of balance, responsibility, and accountability. Horatia Muir Watt, 2015

The analytical advantage can be illustrated through a hypothetical enterprise. A parent company determines production standards, a subsidiary operates a facility, and several contractors supply labor and materials. Economic control may extend across this organization, while each contract and corporation remains a distinct legal unit.

A court examining only isolated bilateral relationships may have difficulty identifying responsibility for the overall arrangement. Treating the network as legally relevant could make it possible to ask more precise questions about control, dependence, benefit, and the capacity to prevent harm.

This would not automatically require treating every participant as one legal person. The institutional question is how legal categories should respond to organized power that exceeds the boundaries of any single corporation or contract.

B. Vedanta: jurisdiction and the classification of parental responsibility

Her 2019 note, **"La saga juridictionnelle Vedanta (suite): le devoir de vigilance de la société-mère à l'égard des tiers,"** makes the issue concrete.

The underlying case, *Vedanta Resources PLC v Lungowe* [2019] UKSC 20, involved claims by Zambian residents concerning alleged pollution associated with a mine operated by a Zambian subsidiary. The litigation also targeted the English parent company. The Supreme Court's decision concerned jurisdiction and whether the claims could proceed; it did not determine final liability for the alleged environmental harm. supremecourt.uk

Muir Watt's particularly revealing contribution concerns **legal characterization**. Should the parent company's alleged duty be treated as an ordinary tort issue connected to the place of injury? Or should it be approached through the law governing the parent company, because the issue concerns corporate governance? She also considers the possible role of overriding mandatory rules, drawing an analogy with French vigilance legislation.

She expressly recognizes the preliminary nature of the litigation: identifying an arguable duty does not establish a breach or final liability. Cairn.info

The political implication is substantial. Classification helps determine which legal order may regulate a transnational enterprise. A change in the doctrinal category can alter regulatory reach without requiring the creation of a new worldwide legislature.

C. Substantive responsibility requires procedural institutions

In their 2021 article, **"Vers un régime de compétence adapté à la responsabilité environnementale des entreprises multinationales? Point d'étape post-Brexit," Christelle Chalas and Muir Watt** examine corporate environmental litigation through the BHP and *Okpabi* proceedings.

They emphasize the mismatch between transnational economic organization and jurisdictional or procedural arrangements. Questions include proceedings against complex groups, joinder, collective standing, environmental claims, access to evidence, and applicable law. Progress on jurisdiction does not dispose of these further obstacles. Cairn.info

This supplies a practical criterion for assessing global legal development: announcing a transnational obligation matters little unless someone has an institutional route for invoking it.

It also raises a question of political authority. If courts in a parent company's home country increasingly adjudicate injuries suffered abroad, they acquire a wider governing role. That development can improve access to justice while also requiring scrutiny of how foreign claimants, communities, and legal systems are represented.

6. Investment arbitration and human rights: reconnecting separated regimes

In **"The Contested Legitimacy of Investment Arbitration and the Human Rights Ordeal: The Missing Link" (2014)**, Muir Watt examines the relationship between investor protection and responsibility for harm.

Her argument does not assume that the host government necessarily represents everyone affected by an investment. Officials may favor an arrangement while particular communities bear its environmental or social costs.

Her proposed "missing link" concerns the investor's **home state**. She explores whether that state should bear obligations to control the overseas conduct of its economic actors, and whether corresponding obligations could operate through domestic courts. Litigation and interaction among regimes might then generate pressure on investment law from outside arbitration itself.

This is a proposed reconstruction of responsibility. It encounters obstacles associated with territoriality and the public/private distinction, and she acknowledges that contestation can also produce deadlock. researchgate.net

The institutional design is significant: different legal bodies can constrain one another without first being incorporated into a single judicial hierarchy.

One doctrinal distinction is essential. Such proposals should not be confused with a general authority of domestic courts to reconsider the merits of ICSID awards. Articles 53 and 54 of the ICSID Convention establish a specific structure of finality, recognition, and enforcement, with remedies governed by the Convention itself. ICSID

From a global constitutional perspective, the question is whether surrounding institutions can make a specialized regime answerable to interests that its internal procedures do not adequately represent.

This also changes how sovereignty enters the analysis. The relevant public authority need not always be the state where the injury occurs. Responsibility may attach to the state that provides the corporate actor's legal home or supports its international activity. The resulting structure redistributes responsibilities among existing states and courts.

7. Global governance, societal constitutionalism, and legal pluralism

A. An explicit scholarly project

The volume **Private International Law and Global Governance (2014)**, coedited with **Diego P. Fernández Arroyo**, places private international law within debates about global authority. Muir Watt's own introduction, **"The Relevance of Private International Law to the Global Governance Debate,"** presents competing and overlapping approaches involving state-centered ordering, regulatory competition, recognition, and pluralism. api.pageplace.de

The attribution matters: the volume contains distinct constitutional, federal, arbitral, and pluralist arguments by different contributors. Those arguments cannot all be treated as interchangeable statements of Muir Watt's position.

The later collection **Global Private International Law: Adjudication without Frontiers (2019)**—coedited with **Lucia Bíziková, Agatha Brandão de Oliveira, and Fernández Arroyo**—extends this project through comparative case analysis and contrasting commentaries. It is a collective examination of adjudication across legal boundaries. e-elgar.com

B. Three models of legal relations across borders

Her chapter **"Theorizing Private International Law" (2016)** distinguishes three explanatory models:

Model	Principal orientation	Question it brings into focus
Conflict	Sovereignty, state interests, collisions between norms	How should competing claims to govern be addressed?
Cooperation	Comity, harmony, mutual convenience	How can legal orders accommodate one another?
Competition	**Regulatory** arbitrage, legal products, judicial services	What follows when actors can choose among legal environments?

She treats these as sources of insight for a renewed theory, rather than as a predetermined sequence of historical stages. academic.oup.com

For the world-state question, the distinction prevents an overly simple equation between international connectedness and political unification. Cooperation can preserve separate authority. Competition can strengthen actors able to move between systems. Conflict can produce either new coordination or renewed fragmentation.

C. Constitutions beyond the state

Her 2018 article, **"When Societal Constitutionalism Encounters Private International Law: Of Pluralism, Distribution, and 'Chronotopes,'"** explicitly engages the problem of self-constituting power beyond classical forms of authority.

Its stated contribution is to connect private international law with transnational regime theory, understanding the discipline as a repository of ideas about how a legal order encounters the foreign. This creates a direct connection with constitutional analysis beyond the nation-state. Wiley Online Library

The further question is whether these partial constitutions become elements of a common political constitution or remain separate, interacting orders. That question cannot be answered simply by identifying constitutional features in individual regimes.

D. Pluralism requires a political assessment

In **"Jurisprudence Without Confines: Private International Law as Global Legal Pluralism" (2016)**, Muir Watt develops a pluralist orientation that challenges hierarchical legal monism.

She also recognizes that pluralism is politically ambiguous. It can preserve difference and resist domination, but it can also be used to justify colonial predominance. Multiple legal orders do not, by their mere coexistence, establish equality or justice. cilj.co.uk

This qualification is crucial. A corporation's ability to move among competing legal arrangements and a community's ability to preserve its normative institutions may both involve legal plurality, yet their consequences can be very different. The relevant analysis must examine the distribution of options, resources, and authority.

8. The ecological turn: rethinking what global law connects

Her later work expands the inquiry beyond the distribution of economic power to the assumptions through which law understands persons, communities, nature, and legal difference.

A. The Law's Ultimate Frontier

Her 2023 monograph, **The Law's Ultimate Frontier: Towards an Ecological Jurisprudence—A Global Horizon in Private International Law**, presents ecological jurisprudence as a broader inquiry than specialist environmental regulation.

Its stated architecture connects three pairs of concerns:

- **Epistemology and genealogy:** how legal knowledge and its histories are constructed.
- **Aesthetics and ontology:** how legal forms organize the worlds they encounter.
- **Economy and ethics:** how law supports economic power and how responsibility might be reconceived.

The introduction draws on philosophical and anthropological approaches to question inherited divisions, including distinctions between nature and culture and between internally ordered legal systems. api.pageplace.de

The significance for your inquiry is that global authority can depend on more than institutional competence. It also depends on the categories that institutions impose.

A globally authoritative court might permit diverse national laws while requiring every dispute to fit one conception of property, personhood, injury, or community. Formal pluralism would then coexist with a powerful uniformity at the level of legal understanding.

B. Alterity and the problem of translating other legal worlds

Her article **"Alterity in the Conflict of Laws: An Ontology of the In-Between" (2023)** provides a fuller accessible account of this approach.

"Alterity" concerns the otherness of foreign persons, norms, and ways of organizing the world. Muir Watt contrasts methods that project familiar categories outward with approaches more receptive to foreign normativity on its own terms.

She reinterprets characteristic conflicts techniques—such as characterization, adaptation, public policy, and recognition—as resources for encounters between heterogeneous legal worlds. Anthropological figures including the jaguar and the shaman challenge the assumption of a single authoritative observer and suggest legal work as translation among perspectives. Multiple attachments and hybrid legal outcomes also complicate exclusive accounts of community membership. d-nb.info

An illustrative example helps clarify the stakes. Imagine a dispute in which a corporation describes a river as an exploitable resource, while an Indigenous community understands its relationship to that river through collective obligations that cannot be reduced to individual ownership.

The initial legal classification can already favor one account. If the dispute must become a conflict between individual property rights, the community's position may be transformed before its merits are considered.

An ecological approach asks how legal procedures could encounter the relationship without predetermining its meaning through the forum's categories. This could affect standing, the description of harm, the evidence considered relevant, and the remedies that appear intelligible.

For global state formation, the implication is demanding: wider legal integration may require mechanisms of translation that do not simply extend the dominant legal culture's classifications.

C. Private international law as "ligature"

The 2024 chapter **"Private International Law as 'Ligature': Elements for a Post-Monist Jurisprudence"** develops an explicitly alternative project of global governance.

The metaphor of a ligature emphasizes law's connecting or mediating role. Its published abstract describes the interaction of monist and pluralist approaches and the position of law between inside and outside, foreign and familiar, global and local. Oxford Academic

The resulting conception of legal integration is relational: legal orders can be connected through institutions and practices without treating their differences as temporary defects awaiting elimination.

"Post-monism" here concerns how jurisprudence conceives the legal worlds it encounters. It should not automatically be translated into a complete constitutional position on federalism or world government. A federation could accommodate substantial legal diversity; an ostensibly decentralized order could impose highly uniform categories.

The institutional question remains how mediation acquires authority and how its limits are established.

D. Decolonising comparison

Her 2026 chapter, **"Decolonising the Comparative Metrics of (Private) International Law,"** extends this concern to the standards through which legal systems are compared.

Comparison can construct hierarchies by treating some societies as advanced and others as deficient or belated. Apparently neutral categories can therefore sustain a dominant legal worldview.

Her discussion contains an essential qualification: taking another culture seriously as a way of understanding reality does not require adopting institutions considered abhorrent or automatically recognizing all foreign laws and judgments. She distinguishes epistemic recognition from unconditional legal acceptance.

The conclusion emphasizes mediation, repair, hospitality, and the encounter between overlapping worlds, with attention to Global South and Indigenous alternatives. sciencespo.fr

This prevents her position from being reduced to unrestricted relativism. Nevertheless, a difficult institutional question survives: when serious recognition has occurred but an irreconcilable conflict remains, who decides, under what procedures, and with what possibility of challenge?

Her coauthored book with **Geoffrey Samuel**, **Producing Legal Knowledge: Comparative Methods, Models and Schemes (2026)**, continues the methodological inquiry into legal reasoning and its relationship with the social and human sciences. Its relevance lies in examining how legal knowledge is produced, rather than presenting a detailed institutional design for world government. e-elgar.com

9. How far does this amount to a theory of global state formation?

My interpretation is that Muir Watt's work supports three conclusions of different strength.

First: global authority is partly constituted through ordinary legal techniques

Her work provides a powerful framework for studying how jurisdiction, contractual autonomy, corporate organization, and recognition generate authority across borders.

The implication is that formal state sovereignty and global legal power can coexist. States may retain legislative institutions while their practical regulatory reach depends on a wider structure of courts, contracts, and connecting rules.

Second: she advances a project for transforming that authority

Her proposals have an affirmative political content. They seek to make legal authority more responsive to affected persons, dispersed responsibility, and different normative worlds.

Such reforms could enlarge the role of transnational adjudication. Courts might acquire responsibilities for conduct, communities, or relationships extending beyond their traditional territorial frame.

This makes her scholarship relevant to the emergence of new governing functions, including functions that can reasonably be described as constitutional.

Third: those developments do not by themselves establish a common world political authority

A useful distinction is:

Development	What would need to be demonstrated
Globally effective legal power	Decisions and arrangements have substantial cross-border effects
Constitutionalization of that power	Authority is organized and subjected to obligations, participation, and review
Formation of a world state	These institutions become integrated into a common political order with an authoritative allocation of powers

The first development is central to her diagnosis. The second is central to her normative project. The third would require additional institutional and historical evidence.

Her scholarship is therefore most persuasive as an account of **the legal constitution and possible reconstruction of global governance**. It supplies mechanisms relevant to state formation, while leaving open whether those mechanisms will become part of a common state structure, a durable pluralist order, or a more fragmented distribution of power.

10. Critical assessment: democratic authority, judicial power, and institutional incompleteness

A. The problem of juristocracy

A serious question for her project is whether reconstructing global governance through legal interpretation gives judges and legal professionals a constitutive political role without corresponding mechanisms of democratic authorization.

The problem is concrete. Decisions about characterization, jurisdiction, public policy, and recognition can determine the interests that receive protection. Once their political character is acknowledged, technical expertise alone cannot supply a complete account of their legitimacy.

An institutional assessment should therefore ask how affected communities enter proceedings, how legal representatives are held accountable to them, how competing public interests receive consideration, and how decisions can be revised.

These questions do not establish that adjudication is illegitimate. They identify what must accompany its expanded governing role.

B. Unequal geography of judicial authority

Corporate accountability litigation creates another tension. Access to a parent company's home-country courts may provide an indispensable remedy. Yet a system relying heavily on a small number of wealthy jurisdictions could also concentrate the power to define acceptable conduct, evidence, injury, and compensation.

Muir Watt's decolonial orientation makes this tension particularly significant. An adequate institutional design would need to address the representation of affected communities and the authority of their legal institutions, alongside the effectiveness of the forum providing the remedy.

The issue is not resolved merely by extending territorial reach.

C. Openness does not itself determine a just outcome

Guilherme Vasconcelos Vilaça's 2024 review, "Ecology, Jurisprudence, and Private International Law," develops a serious critique of her later jurisprudence.

He questions aspects of its historical opposition between monism and pluralism, and argues that openness and relationality do not themselves specify legitimate collective decision-making. He also presses the question of political agency: which institutions and actors translate ethical and epistemological commitments into action? His criticism is that the account identifies problems of legal power more clearly than it specifies the institutional conditions of its alternative. researchgate.net

This is a substantial challenge because a conflict eventually requires a decision. Hospitality toward difference can improve the quality of deliberation, but it does not automatically determine how incompatible claims should be resolved.

D. The strongest contribution and the principal limit

Muir Watt's strongest contribution is to make visible the governing significance of legal connections that are often treated as technical. Her work allows us to investigate institutional transformations before they acquire the recognizable form of a new political organization.

Its principal limit, from the perspective of global state formation, is that a jurisprudence of responsible connection does not yet provide a full theory of common political authority. It

leaves substantial work concerning representation, institutional competence, democratic revision, and the distribution of enforcement capacity.

She is therefore best understood as both an analyst of globally constituted legal power and an advocate of its pluralist reconstruction. Her work is highly relevant to the emergence of governing authority across states. The central unresolved issue is how the legal power required for that reconstruction can itself become politically answerable.

Selected primary works for further study

The following reading sequence moves from concrete economic mechanisms to constitutional theory and ecological jurisprudence:

1. **"Choice of Law in Integrated and Interconnected Markets: A Matter of Political Economy"** (2003), *Columbia Journal of European Law* 9, 383 ff. Original journal opening.
2. **With Luca G. Radicati di Brozolo, "Party Autonomy and Mandatory Rules in a Global World"** (2004), *International Law FORUM du droit international* 6(2), 90–96. Original journal issue.
3. **"'Party Autonomy' in International Contracts: From the Makings of a Myth to the Requirements of Global Governance"** (2010), *European Review of Contract Law* 6(3), 250–283. Complete author proof.
4. **"Private International Law Beyond the Schism"** (2011), *Transnational Legal Theory* 2(3), 347–428. Subsequent 2012 working-paper version.
5. **With Diego P. Fernández Arroyo, eds., Private International Law and Global Governance** (Oxford University Press, 2014). Publisher preview, including Muir Watt's introduction.
6. **"The Contested Legitimacy of Investment Arbitration and the Human Rights Ordeal: The Missing Link"** (2014), in Walter Mattli and Thomas Dietz, eds., *International Arbitration and Global Governance*, 214–240. Author-uploaded draft.
7. **"Governing Networks: A Global Challenge for Private International Law"** (2015), *Maastricht Journal of European and Comparative Law* 22(3), 352–369. Publisher record.
8. **"Jurisprudence Without Confines: Private International Law as Global Legal Pluralism"** (2016), *Cambridge Journal of International and Comparative Law* 5(3), 388–403. Complete journal issue.
9. **"When Societal Constitutionalism Encounters Private International Law: Of Pluralism, Distribution, and 'Chronotopes'"** (2018), *Journal of Law and Society* 45(S1), S185–S203. Publisher record.
10. **The Law's Ultimate Frontier: Towards an Ecological Jurisprudence—A Global Horizon in Private International Law** (Hart, 2023). Publisher preview.
11. **"Alterity in the Conflict of Laws: An Ontology of the In-Between"** (2023), *RabelsZ* 87(3), 433–464. Complete original article.

12. **“Private International Law as ‘Ligature’: Elements for a Post-Monist Jurisprudence”** (2024), in *Philosophical Foundations of Private International Law*, 278–300.
    Publisher record.
13. **“Decolonising the Comparative Metrics of (Private) International Law”** (2026), in Robert Schütze and Mathias Siems, eds., *Comparative International Law: Foundations and Critique*, 235–256.
    Complete author-hosted chapter.

Source qualification: This account draws on accessible original articles, author manuscripts, judicial decisions, and publisher material. For the 2023 monograph, I used its published preview alongside the complete “Alterity” article; the discussion does not imply access to every chapter. For several handbook contributions, the reconstruction is limited to their published abstracts. The working-paper and draft versions identified above should not be cited using the pagination of their final publications.

John Biggins and Colin Scott' s work

John Biggins and Colin Scott are especially relevant to your inquiry because they examine how globally effective governing institutions can be constructed through contracts, legislation, regulatory cooperation, and private decision-making. Their research on the International Swaps and Derivatives Association—ISDA—makes it possible to study these developments through identifiable legal mechanisms.

The central phenomenon is a redistribution of governing functions. Private organizations develop standards, contractual networks give those standards practical reach, public authorities recognize or rely on them, and specialized bodies interpret their meaning. These arrangements can exercise substantial authority across national boundaries. Scott's broader work places them within a theory of regulation involving public institutions, businesses, professional communities, and other organizations. researchrepository.ucd.ie

My overall assessment is that their work provides particularly strong evidence for **the formation of a transnational public–private regulatory order**. It also raises constitutional questions about the organization and accountability of that order. Whether its development amounts to the emergence of a world state depends on a further issue: whether these sectoral arrangements become integrated into a common, ultimately authoritative political structure.

A world state could itself be federal or institutionally dispersed. Consequently, decentralization alone cannot settle the question. The more useful approach is to examine the functions being organized, the sources of their authority, the connections among them, and the populations subject to their consequences.

1. Scott's starting point: regulatory power is distributed among institutions

Regulatory space and fragmented resources

An important theoretical foundation is Colin Scott's **"Analysing Regulatory Space: Fragmented Resources and Institutional Design" (2001)**.

Developing the regulatory-space approach associated with Leigh Hancher and Michael Moran, Scott examines the distribution of resources necessary for governing. These include formal legal authority, information, financial resources, expertise, and organizational capacity.

The institution holding statutory authority may lack knowledge possessed by regulated businesses. A private organization may lack coercive legal powers while controlling standards

or information on which public decisions depend. Institutional design must therefore address actual dependencies, rather than assuming that the formally designated regulator possesses effective control.

Scott also recognizes the limits of an excessively decentralized interpretation: some relationships remain hierarchical, and a theory of dispersed resources should not automatically become an argument against public steering. researchrepository.ucd.ie

For your question, this framework has a significant implication. Global authority need not develop by transferring every governmental competence to a new central institution. It can emerge through an increasingly durable division of functions among institutions that depend on one another.

But the converse matters equally: calling something a network does not establish that its members possess equal power. One participant may control an indispensable resource and thereby acquire a dominant position.

The meaning of the "post-regulatory state"

Scott's **"Regulation in the Age of Governance: The Rise of the Post-Regulatory State" (2004)** distinguishes standard-setting, monitoring, and the modification of behavior. These functions can be distributed across organizations and exercised through hierarchy, community, competition, or institutional design.

The title requires careful interpretation. Scott explicitly explains that the "post-regulatory state" denotes an analytical orientation—a way of questioning assumptions about control—rather than a new body politic replacing existing states. Law remains important in structuring procedures and connecting regulatory arrangements. He also warns that the language of "post" can misleadingly suggest inevitable or superior historical progress. researchrepository.ucd.ie

This is therefore a theory about how to identify and organize governing capacities. It does not announce a successor state at the global level.

His later chapter, **"The Regulatory State and Beyond" (2017)**, reinforces the need for a qualified reading. Scott revisits his earlier assessment of John Braithwaite's work and acknowledges that he had underestimated its recognition of capacities beyond government. The later discussion considers public, business, and civil-society capacities together, including their vulnerabilities to capture and coordination failures. press-files.anu.edu.au

2. ISDA: how a contractual framework becomes a governing institution

Biggins and Scott's principal financial case study concerns **ISDA and the over-the-counter derivatives markets**.

An over-the-counter derivative is, broadly, a financial contract negotiated between counterparties rather than entered into solely through an exchange's standardized trading arrangements. Such contracts require rules about payment, default, termination, collateral, and the consequences of changes affecting the parties.

ISDA's documentation supplies a widely used framework for these relationships. The Reserve Bank of Australia's account of the market describes the role of ISDA Master Agreements and associated protocols in organizing contractual rights and obligations, particularly following default, and notes their recognition and recommendation by regulators internationally. RBA

The institutional significance becomes clearer if we distinguish an individual contract from a common contractual system.

An individually negotiated agreement establishes rights between particular parties. A standardized contractual framework can also create:

- A shared vocabulary for describing transactions.
- Common expectations about legally significant events.
- Repeated procedures for calculating and settling obligations.
- Mechanisms for amending large numbers of contractual relationships.
- Specialized institutions for interpreting provisions used throughout a market.

These features can generate a form of governance because the framework helps organize a whole field of activity.

The analogy with legislation is functional. Standard terms can establish rules with broad practical reach, but their legal operation still depends on adoption, applicable law, and the relevant enforcement arrangements.

This distinction is essential to a world-state analysis. A globally influential contractual system can perform some coordinating functions associated with a legal order without possessing general legislative jurisdiction over the world's population.

3. Their 2012 article: the public legal foundations of private financial power

The first central joint article is **"Public-Private Relations in a Transnational Private Regulatory Regime: ISDA, the State and OTC Derivatives Market Reform" (2012)**.

Biggins and Scott challenge the description of pre-crisis derivatives markets as simply unregulated. Their argument concerns interactions between ISDA and public authorities, including legislative choices that supported the enforceability of financial contracts. They highlight exemptions protecting derivatives, including purely speculative transactions, from gambling-law restrictions.

Their normative position is qualified. They favor recognizing and appropriately using ISDA's expertise within a public–private regulatory relationship, while questioning some substantive rules produced through that relationship. Reconsidering the treatment of purely speculative derivatives is a stated priority.

The article emerged from a larger UCD research project conducted in 2010–2011, whose acknowledgements identify interviews as part of the research. Cambridge Core

The broader importance of this argument can be developed through two concrete mechanisms.

A. Netting and the restructuring of insolvency consequences

Close-out netting generally involves terminating covered transactions, valuing the resulting obligations, and combining them into a single net balance.

For example, suppose that, upon termination, covered transactions produce a claim of 100 for one party and an obligation of 90 in the opposite direction. Netting produces a balance of 10. This is a simplified illustration; actual outcomes depend on the contract, valuation provisions, and applicable law.

Whether this arrangement remains effective during insolvency is a legal question with consequences for more than the two counterparties. Insolvency law determines how claims, assets, and competing creditor interests are treated. UNIDROIT's work on close-out netting expressly addresses its operation in insolvency and its relationship with financial regulation. UNIDROIT

ISDA has also developed model legislation intended to support the enforceability of netting. Its **2018 Model Netting Act and Guide** presents model provisions and draws on the association's work with legislators and regulators across jurisdictions. International Swaps and Derivatives Association

The institutional sequence is significant:

1. An industry organization identifies a legal condition important to its market.
2. It develops contractual provisions and model legislative language.
3. National authorities decide whether and how to incorporate those provisions.
4. The resulting laws help sustain a transnational contractual system.

This is a mechanism of international legal coordination through private initiative and national legislation. Its distributive consequences require evaluation, but its existence cannot be adequately described as the mere absence of government.

B. Exemptions from gambling-law restrictions

The gambling-law issue concerns the legal classification and enforceability of speculative transactions.

A historical example is Ireland's **Netting of Financial Contracts Act 1995**. Alongside provisions supporting netting, its original framework protected covered financial contracts against invalidity based on the Gaming and Lotteries Acts. The relevant historical provision is reproduced in the Law Reform Commission's annotations to Irish insolvency legislation. lawreform.ie

The important point is not that every derivative should be classified as gambling. It is that law must decide which forms of contingent financial obligation deserve enforcement and under what conditions.

A legislative exemption changes the legal environment in which a market operates. It can remove an obstacle that private agreement alone could not overcome.

From your perspective, this offers a precise way to investigate institutional development: **global financial power may depend on repeated national decisions that give particular private arrangements legal effectiveness**.

4. The Determinations Committees: private decisions with public consequences

Their second major joint article is **"Licensing the Gatekeeper? Public Pathways, Social Significance and the ISDA Credit Derivatives Determinations Committees" (2015)**.

Its subject is the authority exercised by ISDA's Credit Derivatives Determinations Committees, usually called **DCs**.

Biggins and Scott argue that this authority derives from contractual networks and market position, reinforced by public regulatory support. They describe the resulting position through the analogy of **regulatory licensing**, while distinguishing it from an express statutory licence. They also separate their explanation from normative approval: identifying such authority does not establish that the committees should retain it. researchrepository.ucd.ie

A. Why determining a credit event is a governing function

A credit default swap, or CDS, provides for contractual consequences when a specified credit event occurs in relation to a reference entity or obligation. The determination therefore matters to the operation of the contract.

A common decision mechanism can reduce the possibility that different counterparties interpret the same event inconsistently. ISDA's 2009 **Big Bang Protocol** helped incorporate common determination and auction-settlement arrangements into CDS documentation; the subsequent **Small Bang Protocol** extended auction arrangements to restructuring events. International Swaps and Derivatives Association

This is institutionally more substantial than publishing a recommended form. The contractual framework incorporates a continuing mechanism for deciding questions that can affect numerous transactions.

The resulting authority has an adjudicative character: legal definitions are applied to events, with consequences for obligations. Its authority nevertheless remains rooted in the relevant contractual and legal arrangements.

B. The Greek restructuring illustrates the boundary between contractual and sovereign authority

On **9 March 2012**, ISDA announced that its EMEA Determinations Committee had unanimously determined that a restructuring credit event had occurred in relation to Greece. The determination concerned the contractual consequences of the restructuring for relevant CDS transactions. International Swaps and Derivatives Association

This did not make the committee a general court of sovereign bankruptcy. Its decision addressed a defined question within the derivatives framework.

Nevertheless, a private institution was interpreting events arising from a major public debt crisis and attaching financial consequences to them. That creates a politically significant connection between sovereign policy and private adjudication.

The distinction is between **legal competence** and **the reach of consequences**. An institution may possess a limited contractual competence while making decisions whose effects extend into wider public affairs.

C. Affected governments may lack corresponding procedural rights

Biggins and Scott trace the Greek determination through the exposure of **KA Finanz** to consequences for Austrian public support. They emphasize that the Austrian state did not possess corresponding participation or appeal rights within the DC process.

This example supports their concern about the mismatch between the interests affected by a decision and the interests formally represented in making it. researchrepository.ucd.ie

The committee did not thereby acquire a legal power to order Austrian taxation or expenditure. Public consequences arose through financial exposures and subsequent governmental decisions. That distinction preserves the legal accuracy of the analysis while leaving the political problem intact.

For a constitutional theory, contractual consent cannot automatically justify every effect imposed on outsiders.

D. Public regulation can reinforce the private decision mechanism

The interaction also operates through prudential regulation.

Article 216 of the EU Capital Requirements Regulation specifies conditions under which credit derivatives qualify as eligible credit protection. These include requirements concerning credit events and the identification of those responsible for determining whether such events have occurred. EUR-Lex

The general institutional mechanism is that public regulation can make a private arrangement more valuable by attaching regulatory consequences to contracts satisfying specified conditions.

An express grant of exclusive public authority is unnecessary for such support to matter. Contractual practices may become practically important because regulated institutions need arrangements that work within the public framework.

This helps explain why the term “licensing” is analytically suggestive while requiring doctrinal caution.

5. Biggins’s separate contribution: the continuing importance of national courts

John Biggins's sole-authored article, **"'Targeted Touchdown' and 'Partial Liftoff': Post-Crisis Dispute Resolution in the OTC Derivatives Markets and the Challenge for ISDA" (2012)**, examines the relationship between transnational financial ordering and state law.

Drawing particularly on Robert Wai's account of interlegality, Biggins explains how market actors seek predictable connections with English and New York law and courts. These are forms of selective reliance on state authority. Private dispute-resolution arrangements may provide greater autonomy, but national courts and insolvency rules remain consequential.

His case discussions show that judicial decisions can frustrate industry expectations. He also treats the possible growth of specialized financial arbitration as a contingent development, rather than an accomplished escape from public legal institutions. cambridge.org

The importance for global state formation is substantial.

First, the construction of a transnational regime can involve selecting and combining existing legal institutions. The relevant movement is therefore not necessarily from national law to a wholly separate global law.

Second, legal dependence does not eliminate private influence. An organization can rely on courts while exerting considerable influence over the documents those courts interpret.

Third, judicial independence becomes an empirical question. A court may confirm market expectations in one dispute and reject them in another. A persuasive theory must accommodate both outcomes.

This also complicates a simple account of juristocracy. The relevant legal power is distributed among judges, private committees, lawyers drafting standard terms, and institutions deciding which legal arrangements receive recognition.

6. Post-crisis reform: public intervention can deepen reliance on private institutions

A particularly important feature of their research is its treatment of the period following the global financial crisis.

Public reform need not simply displace private regulation. It can alter the roles private institutions perform.

The G20 reform agenda included reporting to trade repositories, central clearing of standardized contracts, trading on exchanges or electronic platforms where appropriate, and stronger requirements for non-centrally cleared transactions. The Financial Stability Board describes these measures as pursuing transparency, reduced systemic risk, and protection against market abuse. Financial Stability Board

The implementation of these objectives required detailed legal and operational arrangements.

A. Private protocols as instruments of public compliance

ISDA's **August 2012 Dodd–Frank Protocol** was designed to help market participants amend documentation in response to requirements under the United States' reform legislation. International Swaps and Derivatives Association

Similarly, the **2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol** provided a mechanism for amending agreements to reflect specified European regulatory obligations. International Swaps and Derivatives Association

The political significance lies in the distribution of tasks. Legislatures and regulators establish requirements; a private organization develops standardized methods for incorporating those requirements into contractual relationships.

This can reduce compliance costs and make public rules effective. It can also increase public dependence on the organization's legal expertise and coordinating capacity.

Those two effects can occur simultaneously. Assessing the arrangement therefore requires asking both whether it works and how its implementation choices are controlled.

B. The Resolution Stay Protocol: contracts supporting public authority across borders

Their 2016 chapter, **"Resolving the Gaps: Embedding ISDA in States' Responses to Systemic Risk,"** addresses this relationship. In his introduction to *Controlling Capital*, editor **Nicholas Dorn** describes their chapter through the role of the **2014 ISDA Resolution Stay Protocol** in addressing gaps in cross-border bank resolution. This characterization comes from the editor's account; the complete chapter was not available in the accessible preview. api.pageplace.de

The underlying institutional development is independently documented.

A resolution authority may need to suspend certain termination rights temporarily while dealing with a failing financial institution. Difficulties arise when contracts and counterparties cross jurisdictions and the foreign effectiveness of the resolution measure is uncertain.

The 2014 protocol enabled adhering parties to amend covered agreements so as to recognize specified cross-border resolution arrangements contractually. International Swaps and Derivatives Association

The FSB publicly welcomed the initiative in October 2014 as a means of improving the effectiveness of cross-border resolution actions. Financial Stability Board

This is one of the clearest examples relevant to your original research question. A privately coordinated contractual mechanism helped extend the practical reach of public regulatory action.

The process can be understood as the construction of a common regulatory capacity through the interaction of:

- National resolution powers.
- International coordination among public authorities.

- Private standard-setting.
- Contractual recognition by market participants.

That is a significant institutional development even without a common global insolvency sovereign.

7. Scott on private regulation of governments themselves

Scott's **"Private Regulation of the Public Sector: A Neglected Facet of Contemporary Governance" (2002)** is especially relevant to the question of power operating over existing states.

He examines private oversight based on delegation, contracts, and arrangements lacking a specific legal mandate. Sovereign credit ratings provide an example of regulatory effects arising through publication and market response: judgments can influence borrowing conditions without taking the form of a legally binding command.

Scott identifies concentrated private power affecting democratic governments. He also recognizes that different regulators may pull in different directions, illustrating this through contrasting European institutional and credit-rating assessments of Ireland.

His proposed responses include public oversight, participation, mutual scrutiny, and public networks capable of counterbalancing private ones. researchrepository.ucd.ie

This work helps distinguish three kinds of authority:

Form of authority	Mechanism	Relationship to the state
Formal public authority	Legislation, regulation, judicial decisions	Exercises legally established powers
Contractual authority	Agreed standards, conditions, decision procedures	Operates through legally recognized relationships
Practical regulatory influence	Information, assessments, market access, reputational effects	Can constrain public choices without issuing legal commands

The distinction is analytically important because a state may remain formally sovereign while some policy options become financially difficult or institutionally costly.

However, practical constraints do not automatically establish a single controller. Different private and public institutions may apply conflicting criteria, and governments may resist or selectively accommodate them.

A theory of global state formation must therefore investigate whether these pressures become coordinated into a durable political order or remain a field of competing authorities.

8. Constitutionalization: how should transnational private authority be legitimated?

A. The explicit constitutional project

In **"The Conceptual and Constitutional Challenge of Transnational Private Regulation" (2011)**, **Colin Scott, Fabrizio Cafaggi, and Linda Senden** explicitly examine the constitutional implications of private transnational governance.

They describe arrangements involving "global governance without global government" and develop a pluralist approach to constitutional control. Their position has a normative dimension: private regulation can contribute to public objectives, but its legitimacy and effects require examination.

They consider participation, procedures, legal review, private-law controls, competition, and mutual scrutiny. They also question whether electoral mechanisms should exhaust the possible forms of self-government, while recognizing the difficulty of identifying and involving dispersed affected interests. researchrepository.ucd.ie

This is an affirmative project for organizing and evaluating authority beyond conventional governmental structures.

Its constitutional ambition should be taken seriously. The aim is not merely to describe private influence. It is to identify conditions under which private governing arrangements can receive legitimate recognition and perform public functions.

The decisive question is whether the proposed forms of participation and control adequately represent those affected.

B. How norms become institutionally effective

Donal Casey and Colin Scott's "The Crystallization of Regulatory Norms" (2011) examines how norms become effective through institutional structures governing their transmission, implementation, and enforcement.

They distinguish the acceptance of an arrangement by relevant audiences from a demonstration of its moral or democratic justification. Their comparisons also show that legitimacy attached to participatory standard-setting does not automatically transfer to implementation through bilateral contracts. A supplier's experience of contractual control can differ sharply from the inclusive appearance of the institution that formulated the standard. researchrepository.ucd.ie

Applied to financial governance, this distinction exposes a potential gap between several propositions:

- Market participants find a standard useful.
- The standard is widely adopted.
- Public authorities rely on it.
- The standard is legitimate for everyone affected by it.

The first three propositions do not establish the fourth.

This is particularly important where the costs of failure extend to taxpayers, employees, depositors, or public services.

C. Accountability through interdependence and overlapping controls

Scott's **"Accountability in the Regulatory State" (2000)** develops two supplementary models of accountability.

Interdependence arises where actors need resources controlled by others and must explain or justify their conduct to maintain those relationships.

Redundancy means that several overlapping mechanisms scrutinize behavior, so that the failure of one does not necessarily eliminate accountability.

Scott treats these arrangements as additions to an adequate understanding of accountability, while recognizing problems including opacity and inadequate participation. researchrepository.ucd.ie

The application to transnational finance is straightforward in principle. A private regulator may depend on members, public recognition, legal enforceability, and reputational standing. Each relationship can potentially provide a point of control.

The normative difficulty is that dependence can be highly unequal. An institution might be very responsive to its largest commercial users while remaining weakly responsive to the wider public.

Consequently, multiple relationships should not be assumed to produce balanced accountability. Their actual distribution matters.

9. What their work contributes to a theory of global state formation

I would distinguish four contributions.

First: it identifies concrete mechanisms of institutional construction

Their work directs attention to model laws, standard contracts, protocols, specialized committees, prudential recognition, and public reliance on private expertise.

These are observable legal developments. They allow a research program to move from broad claims about globalization to specific questions about who designs rules, how those rules become effective, and whose interests they affect.

Second: it shows how governing capacities can be assembled across institutional boundaries

Rule-making, implementation, interpretation, and enforcement need not be concentrated in one organization.

A transnational arrangement can combine private drafting, national legislation, international public coordination, and domestic judicial enforcement.

The resulting capacity may be powerful even though none of its constituent institutions controls the whole arrangement.

Third: it explains why private authority can survive reform

A crisis may produce demand for stronger public control while simultaneously increasing the need for standardized information, contracts, procedures, and coordination.

If an established private organization supplies those resources, reform can change and sometimes strengthen its institutional role.

This is a plausible general mechanism derived from the cases. It should not be treated as an inevitable result of every financial crisis or regulatory intervention.

Fourth: it makes constitutional evaluation unavoidable

Once private arrangements perform governing functions, the question of legitimacy cannot be exhausted by the consent of their immediate users.

The relevant constitutional questions include membership, participation, transparency, conflicts of interest, review, and responsibility for consequences imposed on outsiders.

The relationship to state formation can be summarized as follows:

Function associated with political authority	Arrangement examined in this research	Further issue for a world-state interpretation
Rule-making	Standard terms, definitions, model legislation	Whether these become part of a common authoritative legislative structure
Adjudication	Determination committees, courts, specialized dispute resolution	How jurisdictions are allocated and final conflicts resolved
Administration	Protocols and organized implementation of public requirements	Whether implementation is politically accountable across borders
Enforcement	Contracts, public regulation, courts, market consequences	Who ultimately authorizes and controls enforcement
Constitutional control	Participation, review, mutual scrutiny	Whether affected populations possess effective political standing

Their studies establish the importance of the arrangements in the middle column. They do not by themselves establish the common political integration described in the final column.

The strongest interpretation is therefore that they analyze **institutional processes relevant to global state formation**, while also providing resources for understanding durable global governance that does not become a world state.

10. Critical evaluation

A. Reciprocal dependence may conceal unequal power

The public–private framework is stronger than an account assuming either complete state control or complete private autonomy. Nevertheless, the language of interaction can obscure asymmetry.

If public authorities need a private organization's expertise more urgently than that organization needs any particular authority, their dependence is not balanced. Likewise, governments may compete to accommodate financial activity even while retaining formal legislative discretion.

A critical use of Biggins and Scott should therefore examine the distribution of alternatives: who can refuse cooperation, at what cost, and for how long?

B. Institutional effectiveness and democratic justification remain different questions

A common decision mechanism may improve consistency and reduce transaction costs. Those benefits matter.

They do not settle whether affected nonparticipants have adequate protection. Nor does extensive market adoption necessarily demonstrate genuine choice where alternatives are expensive or poorly developed.

Their own distinctions concerning legitimacy provide a basis for this criticism. The empirical investigation must follow the arrangement beyond its immediate users.

C. Their framework benefits from a more explicit distributive analysis

Johan Horst's "Inequality, Law and Distribution in Transnational Financial Markets" (2022) develops a related argument and cites Biggins and Scott approvingly.

Horst emphasizes the distributive choices embedded in financial law. He argues that neither public oversight alone nor internal private self-regulation automatically provides adequate democratic participation, and considers how different approaches might be combined. ejil.org

Applied here, the question is whether better coordination changes who benefits and who bears losses, or primarily makes an existing distribution more stable.

That is an extension of the inquiry rather than a direct refutation of Biggins and Scott.

D. Courts offer one possible means of connecting private arrangements to public purposes

M. Konrad Borowicz's "Contracts as Regulation: The ISDA Master Agreement" (2021) supplies a more specific proposal.

He argues that widely used regulatory contracts should be interpreted with attention to clearly identified public regulatory objectives where ordinary enforcement would undermine those objectives. He seeks to preserve useful contractual arrangements while connecting them to their

public setting. This is a normative proposal, not a universally established rule of contract interpretation. academic.oup.com

The proposal shows how institutional reform might occur through an existing legal technique. It also raises a further issue for your inquiry: courts applying public objectives to market-wide contracts would themselves exercise a significant governing role.

Democratic questions are therefore relocated as well as addressed.

E. Evidence of organized legal change should be distinguished from evidence of a unified political project

Their studies identify purposeful activities: developing standards, promoting legal certainty, coordinating contractual amendments, and supporting regulatory implementation.

These activities can contribute to concentrations of global power. Establishing an overarching project to create a world state would require further evidence about coordination, common objectives, institutional integration, and the capacity to resolve conflicts among the participating authorities.

Their method is especially strong at identifying legal pathways and dependencies. It is less suited, on its own, to proving a comprehensive theory of global elite organization.

11. Subsequent developments show that the institutional questions remain active

The committees' governance has continued to evolve since the period examined in the principal articles.

In **July 2025**, ISDA published a charter for a Credit Derivatives Governance Committee, with responsibilities concerning feedback and changes to the structure and operation of the DCs. International Swaps and Derivatives Association

In **2026**, ISDA and that governance committee announced the selection of **S&P Global Market Intelligence** as the DC administrator. International Swaps and Derivatives Association

These developments should not be attributed retrospectively to Biggins and Scott's findings. They show that the organization of private financial adjudication remains an active institutional problem.

Their broader significance is that demands for legitimacy can generate additional levels of private governance. Whether those reforms sufficiently protect affected interests requires examination of their actual procedures and operation.

Overall assessment

Biggins and Scott's distinctive contribution is an account of how transnational authority is built through the interaction of private organization and public legal support.

They show why the state's continuing importance is compatible with substantial global private power. Their research also explains why private institutions may become more deeply embedded in public regulatory objectives after a crisis.

Scott's wider scholarship gives this account a constitutional dimension: dispersed authority should be evaluated through its procedures, dependencies, participation, and accountability. The resulting project is normatively significant because it considers how private governing capacities might be recognized and used for public purposes.

For a theory of an emerging world state, the most productive question raised by their work is therefore **how these sectoral governing arrangements might become politically integrated—and whether those subject to their consequences would acquire effective rights of participation and control**.

Their studies illuminate the institutions from which such a development could proceed. They also show why its direction remains contested.

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    Complete chapter.

Source qualification: The 2015 joint article, Biggins's 2012 article, and the principal Scott theoretical works were available in complete original or author-manuscript form. For the 2012 joint article, the accessible evidence comprised the publisher's abstract, references, and research acknowledgements; for the 2016 chapter, it comprised the publisher's contents and Dorn's introduction. The detailed explanations of the relevant financial mechanisms also draw on independently identified regulatory and institutional documents.

John Braithwaite and Peter Drahos' s work

John Braithwaite and Peter Drahos are particularly important for your inquiry because their work connects the construction of global regulatory power with concrete proposals for its democratic constitutional control. They explain how institutions acquire authority across national borders through treaties, domestic legislation, corporate organization, professional expertise, and administrative cooperation. Their proposals also include institutions above states, most notably a directly elected second United Nations assembly. Braithwaite's later writing expressly considers world government as a possible response to catastrophic global risks. www0.anu.edu.au

Their contribution is best understood by distinguishing three questions:

1. **How are governing functions becoming global?**
2. **Which actors control those functions, and through what legal mechanisms?**
3. **What constitutional arrangements could make global power answerable to the people affected by it?**

These questions are closely connected, but they do not have identical answers. An institution can exercise global governing power without belonging to a world state. Conversely, proposals for global representation, treaty approval, and oversight can have implications for state formation even when their authors do not present them as a complete world-state constitution.

I will therefore treat a global state broadly enough to include a federal or substantially decentralized political order. The decisive issue is whether dispersed institutions become parts of a common authoritative order, with an established allocation of powers and procedures for resolving conflicts among them. Mere geographical reach is a weaker criterion.

1. Their joint project: explaining how global regulation is constructed

Global Business Regulation

The central joint work is *Global Business Regulation* (2000). Its research combined approximately 500 interviews with documentary and historical investigation across numerous fields of business regulation. The authors followed networks of influence, moving between officials, corporate executives, professional specialists, and other participants. Their subsequent methodological interview describes repeated concentration on Washington, Brussels, and Geneva, accompanied by research elsewhere to check the accounts obtained in those centers. johnbraithwaite.com

The methodological significance is considerable. Instead of beginning exclusively with the formal powers of international organizations, this approach asks who conceived a regulatory project, supplied its technical content, recruited supporters, selected a negotiating venue, and secured implementation.

For your question, this helps distinguish **the formal location of authority from the practical production of authority**. A treaty may be negotiated by governments, yet its underlying design may originate among corporate advisers. A domestic rule may be adopted by a national agency, yet its model and evidentiary assumptions may come from an international professional network.

There is also an important finding that complicates a straightforward account of disappearing states. In their 2009 retrospective, Braithwaite states that their initial expectations about national decline proved substantially mistaken: the United States remained the most influential actor across the largest number of regulatory domains. The development involved additional forms of influence and an expanding regulatory order, alongside continuing state power. johnbraithwaite.com

My interpretation is that this shifts the world-state inquiry from state replacement to the reorganization of state capacities. A global order can develop through the selective internationalization of powerful states' institutions while other states become increasingly dependent on standards made elsewhere.

Three globalizations and three sovereignties

Their article "The Globalisation of Regulation" (2001) makes two useful distinctions. It separates the globalization of **firms, markets, and regulation**, and distinguishes **national, parliamentary, and citizen sovereignty**. These processes need not move together. Regulatory globalization can also occur through shared principles without complete harmonization of detailed rules. www0.anu.edu.au

This prevents several analytical shortcuts.

A national parliament may lose discretion because of international commitments, while citizens gain protection against domestic arbitrariness. Alternatively, national institutions may formally retain their powers while citizens lose effective influence over the standards those institutions apply.

The relevant evaluation consequently cannot rest on counting powers transferred upward. It must examine their content, beneficiaries, and means of control.

This is a major difference between an inquiry into **state sovereignty** and an inquiry into **popular self-government**. Braithwaite and Drahos make the second indispensable to assessing the first.

2. The mechanisms through which global authority develops

Their explanatory framework connects actors, principles, and mechanisms. Its principal mechanisms include coercion, rewards, modeling, reciprocal adjustment, nonreciprocal coordination, and capacity building; distinguishing military from economic coercion produces a seven-part list. Their account allows for both purposeful institutional construction and unintended consequences. johnbraithwaite.com

The importance of this framework is that it makes global power more concrete than a general assertion that globalization constrains governments.

Consider three illustrative institutional pathways:

- **A regulatory model spreads:** officials adopt an existing foreign template because it appears authoritative, reduces drafting costs, or satisfies influential market participants.
- **A negotiated commitment constrains future choices:** governments accept international standards that subsequently structure domestic legislation and administration.
- **Administrative dependence develops:** an institution formally retains responsibility, but increasingly relies on another institution's expertise, information, and judgments.

These are different mechanisms. They can reinforce one another, but they require different evidence and different remedies.

Economic power must be converted into regulatory influence

Drahos's "Regulatory Capitalism, Globalization and the End of History" (2014) emphasizes the difference between economic size and the capacity to set global rules. Influence requires coalition building, institutional access, and the ability to circulate convincing regulatory models. Many states consequently become recipients of standards in domains where they formally remain regulators. IP01-01_Drahos.doc

This gives the world-state perspective an important sociological qualification: **the institutions most capable of making global rules are not necessarily identical to the institutions possessing the largest material resources**. Lawyers, economists, administrators, and professional organizations help convert those resources into workable arrangements.

A theory centered on a transnational ruling group therefore needs to identify the organizational links through which its members act. Shared interests alone do not explain how a particular rule becomes enforceable.

Regulatory expansion has different distributive meanings

In "Ratcheting Up and Driving Down Global Regulatory Standards" (1999), Braithwaite and Drahos reject an inevitable race toward weaker regulation. Their account identifies upward movements in several safety and environmental fields alongside downward pressures elsewhere. They also explain how disasters, framework agreements, technical standards, purchasing relationships, and gatekeepers can support subsequent strengthening. Crucially, stronger intellectual-property protection illustrates why greater regulatory stringency need not improve public welfare. www0.anu.edu.au

For global state formation, this means that three dimensions must remain separate:

- The **reach** of authority.
- The **strength** of its requirements.
- The **distribution of benefits and burdens** it produces.

A globally enforced rule protecting concentrated ownership may be stronger than a national rule while reducing the practical freedom of those dependent on the protected resource. Institutional consolidation and emancipation are separate achievements.

3. Intellectual property: the clearest case of deliberate global institution building

The intellectual-property research provides their most direct account of organized actors transforming national preferences into international legal obligations.

From corporate strategy to international law

Drahos's "Global Property Rights in Information: The Story of TRIPS at the GATT" (1995) identifies the Intellectual Property Committee, established in March 1986 and including companies such as IBM and Pfizer, as part of the organized effort to place intellectual property within trade negotiations. The account links corporate coordination, specialized legal and economic expertise, and American trade pressure. It also argues that material power alone cannot explain the outcome: policy entrepreneurs had to formulate proposals and exploit institutional opportunities. prometheusjournal.co.uk

Information Feudalism: Who Owns the Knowledge Economy? (2002), written by Peter Drahos with John Braithwaite, develops the broader history. It follows corporate influence through bilateral pressure, multilateral agenda formation, and negotiations over the international protection of knowledge. The book also examines how descriptions of unauthorized use as "piracy" helped present contested demands for stronger protection as apparently straightforward claims of justice. johnbraithwaite.com

The institutional sequence can be reconstructed as follows:

Commercial interests become a regulatory proposal; the proposal becomes a state negotiating objective; negotiation produces international obligations; domestic legal institutions implement and enforce those obligations.

This is a reconstruction of the governing logic, rather than a claim that every stage had one controller. Its significance is that private actors can shape rules extending far beyond their contractual counterparties.

A firm that successfully changes the legal conditions under which all potential competitors operate acquires a different kind of advantage from a firm that simply negotiates a favorable contract.

What TRIPS legally changed

The legal structure matters. The Agreement on Trade-Related Aspects of Intellectual Property Rights, or TRIPS, establishes obligations concerning the availability, scope, and enforcement

of intellectual-property protection. For patents, Article 27 addresses patentable subject matter, subject to specified qualifications and exceptions; Article 33 requires an available protection term extending at least twenty years from filing. Its enforcement provisions address domestic remedies, while Article 64 connects disputes between WTO members to WTO dispute settlement. wto.org

TRIPS also preserves legally significant room for variation. Article 1.1 allows members to determine appropriate implementation methods within their legal systems, and Article 31 permits compulsory licensing and government use under stated conditions. It would therefore be incorrect to describe TRIPS as abolishing national patent policy or categorically prohibiting compulsory licensing. general provisions

From the global-state perspective, the important feature is the **interaction between internationally established obligations and domestically exercised public power**. National institutions need not disappear for their discretion to be reorganized around transnational commitments.

The meaning of "information feudalism"

The book's feudal analogy concerns dependence and privileged control over knowledge. It describes an incomplete and contested development in which access to economically and socially important information becomes concentrated. Its proposed responses include stronger public-interest oversight, more meaningful participation in patent governance, and protection of knowledge's public availability. johnbraithwaite.com

The analogy is illuminating, but its relationship to a world state is complex.

A system of powerful private holders exercising authority across borders could become part of a global state. It could also remain a fragmented order in which governments enforce overlapping privileges without establishing common political responsibility.

Indeed, "feudalism" directs attention to an arrangement in which **public coercion supports particularized powers without corresponding universal citizenship**. That can help explain why a globally integrated economy might possess extensive governing capacities while lacking an equally integrated structure of public accountability.

4. Drahos's deeper jurisprudential argument: property as a form of sovereignty

A Philosophy of Intellectual Property, originally published in 1996 and reissued by ANU Press in 2016, supplies a conceptual foundation for this analysis.

In Chapter 7, Drahos develops the idea that intellectual property constitutes a form of sovereignty over abstract objects. Building on arguments about property as a relationship among persons, he examines how control over necessary knowledge can generate dependence and threat power with potentially global reach. This power depends on legally sustained structures; concentrated ownership is not an analytical inevitability. press-files.anu.edu.au

The central jurisprudential insight is that a property right is not merely a protected relationship between an owner and an object. It also determines what other people may do.

For example, a legally protected invention can structure the options available to manufacturers, researchers, and users. Ownership affects permission, negotiation, exclusion, and the distribution of income.

My reading is that Drahos supplies a bridge between private-law analysis and theories of global political authority. One can examine governing power without limiting the inquiry to offices formally classified as public.

Nevertheless, a property holder's authority is legally bounded and institutionally dependent. Calling that authority a form of sovereignty identifies its social and political effects; it does not by itself establish that the holder possesses comprehensive jurisdiction comparable to a state.

Instrumentalism and the duties attached to privileges

Chapter 9 develops an instrumental approach: intellectual-property privileges should serve justified public purposes, carry corresponding duties, and remain open to revision in light of their effects. Drahos does not propose indiscriminate abolition. He questions treating existing entitlements as sufficient reasons for their own continued expansion. press-files.anu.edu.au

This provides a constitutional principle for evaluating global knowledge governance:

The allocation of private authority must remain answerable to the purposes that justify allocating it.

Applied internationally, that principle raises questions about who defines those purposes, who assesses the evidence, and who may revise the rules. The normative argument thus leads directly back to institutional design.

5. Patent offices: administrative integration beneath formal sovereignty

Drahos's *The Global Governance of Knowledge: Patent Offices and their Clients* (2010) examines a particularly revealing institutional setting. Based on research across 45 countries, it presents patent offices as participants in a global governance network shaped heavily by multinational users. The book's account emphasizes the influence of the European, American, and Japanese offices and proposes recovering the public purposes of the patent system. The Australian National University

The detailed mechanisms are especially clear in his related original articles.

Technocratic trust and administrative dependence

The working paper "'Trust Me': Patent Offices in Developing Countries" examines how technical assistance, training, databases, and examination practices build confidence in the systems of larger offices. Smaller offices can consequently become increasingly dependent on

foreign searches and decisions. Drahos distinguishes processing applications efficiently from determining whether the resulting privileges serve wider public interests. www0.anu.edu.au

"Cooperation, Trust and Risk in the World's Major Patent Offices" (2009) identifies corporate demands, shared workloads, and examiner exchanges as drivers of cooperation. Administrative convergence can advance even when broader legal harmonization is difficult. Yet its conclusion explicitly warns against allowing technical trust to surrender independent examination authority to a global administrative system. researchgate.net

This is one of the most important findings for your inquiry. **Drahos both diagnoses integration and proposes limits on it.** He cannot accurately be presented as endorsing every institutional development that moves authority beyond national control.

The distinction is also legally concrete. The Patent Cooperation Treaty facilitates international applications, but decisions on patent grants remain with national or regional offices. There is no universal patent grant issued through the PCT itself. wipo.int

Its significance for possible state formation

My interpretation is that the patent-office studies identify an administrative route through which a global order could acquire cohesion without initially changing its constitutional labels.

Formal discretion can survive while the practical capacity to exercise independent judgment declines. If an office lacks its own expertise, information infrastructure, or willingness to disagree, its nominal authority may overstate its actual independence.

But cooperation can also reduce costs and improve decisions. The appropriate inquiry is therefore empirical: does an office retain the ability to test, reject, or adapt the work it receives?

For a world-state hypothesis, this is a more revealing question than whether documents continue to bear national institutional names.

6. Braithwaite's regulatory capitalism: markets and expanding governing capacity

Braithwaite's *Regulatory Capitalism: How It Works, Ideas for Making It Work Better* (2008) distinguishes neoliberal political programs from the institutional arrangements that develop around them. Privatization and market expansion can generate additional regulation, including private regulatory systems and oversight of those systems. The resulting order involves interacting public and private capacities. johnbraithwaite.com

The practical point can be illustrated with a hypothetical privatization. A government transfers an activity to private operators but establishes licensing conditions, monitoring, disclosure obligations, contractual requirements, and complaint procedures. Direct public provision declines while the quantity and complexity of governing activity increase.

For the world-state inquiry, this suggests looking beyond the proportion of activity performed by governments. The more important questions concern who sets the conditions of action, who monitors compliance, and who can compel correction.

Meta-regulation and the allocation of authority

"Meta-regulation" describes regulation directed at regulatory arrangements themselves: for example, requiring organizations to establish, maintain, and justify their internal controls.

This can create powerful institutions because authority over the design of a regulatory system influences many subsequent decisions. Nevertheless, authority over one system does not automatically confer authority over the entire global order.

The distinction helps avoid treating every coordinating body as a sovereign. A network may have considerable power within its own domain while remaining unable to resolve conflicts with other networks.

Drahos and Martin Krygier's introduction to *Regulatory Theory* (2017) makes the broader methodological point: regulation has multiple sources, and network analysis helps track connections across formal institutional boundaries. They distinguish organizational sites of governance from the relationships connecting them. press-files.anu.edu.au

7. Responsive regulation: how governing capacity can be assembled across borders

The original institutional program

Ian Ayres and John Braithwaite's *Responsive Regulation: Transcending the Deregulation Debate* (1992) develops a regulatory program combining persuasion, stronger interventions, participation, and forms of delegated responsibility. Its principal components include regulatory pyramids, tripartism, enforced self-regulation, and partial-industry intervention. Oxford Academic

The familiar pyramid should be understood dynamically. Regulators normally begin with dialogue and less coercive measures, escalate when those fail, and reduce intervention when reform occurs. Braithwaite's own account also emphasizes supportive measures: strengthening successful practices and helping organizations improve their capacity to comply. John Braithwaite

The institutional importance lies in combining capacities that are often discussed separately.

An inspector, an internal compliance officer, an organized workforce, an industry association, and a court may contribute different kinds of information and pressure. The design problem concerns how their contributions interact, including what happens when one fails.

Enforced self-regulation

Enforced self-regulation is particularly relevant to the distribution of public functions. Its core involves privately formulated rules that receive public ratification and enforcement. Braithwaite's later treatment in *Macrocriminology and Freedom* restates that connection between organizational self-regulation and public authority. press-files.anu.edu.au

From the standpoint of state formation, such arrangements can extend governing capacity by requiring regulated organizations to perform part of the regulatory work themselves.

They also create an accountability problem: the organization being regulated participates in producing the standards by which its conduct is assessed. Public approval can become substantive scrutiny or merely formal endorsement. That distinction matters more than whether the arrangement is classified as public or private.

Tripartism as a legally empowered counterweight

Ayres and Braithwaite's "Tripartism: Regulatory Capture and Empowerment" (1991) proposes three significant capacities for public-interest organizations: access to regulatory information, participation in negotiations between firms and regulators, and equivalent standing to bring proceedings under the relevant regulatory statute. The authors also recognize that these rights require resources, expertise, and an organized constituency. johnbraithwaite.com

This goes beyond inviting comments. It changes who can obtain information, challenge negotiated arrangements, and activate enforcement.

Its relevance to global governance is substantial. A regulatory network containing business and public officials may become more accountable if affected groups possess enforceable procedural powers. Yet adding an NGO does not automatically provide democratic representation.

The design must answer who selects the organization, whom it represents, how it receives funding, and how others can contest its position. Otherwise, an expanded negotiating circle can remain socially narrow.

Extending responsiveness internationally

In "Responsive Regulation and Developing Economies" (2006), Braithwaite examines how weaker regulators might escalate by recruiting additional actors, rather than relying solely on stronger sanctions of their own. Proposed partners include foreign regulators, international bodies, and connected civic organizations. He credits Drahos's contribution to this networked approach. The article also acknowledges that existing networks favor powerful countries and corporations and that weak courts can obstruct some enforcement strategies. johnbraithwaite.com

My interpretation is that this provides a practical mechanism for constructing transnational enforcement capacity within existing institutions.

It also creates a dependency problem. If protection depends on whether an influential foreign regulator agrees to intervene, the weaker community has not necessarily acquired a secure right to protection. Effective assistance and accountable authority must be evaluated separately.

8. Republican constitutionalism and their proposals for institutions above states

Freedom from domination as the governing criterion

In “Relational Republican Regulation” (2013), Braithwaite insists that responsive regulation must retain its republican purpose. Flexible regulatory techniques can themselves become instruments of domination if detached from safeguards against arbitrary power. He also accepts that the national focus of the 1992 book limited its treatment of global transactions. johnbraithwaite.com

The republican concern is broader than whether an authority interferes frequently. It concerns whether people remain exposed to power they cannot adequately control or contest.

A benevolent regulator may therefore remain problematic if affected people possess no reliable means of challenging its decisions. The same applies to a corporation, professional association, NGO, or international organization.

Braithwaite’s *Regulatory Capitalism* accordingly combines electoral representation, public contestation, and deliberation. Elections remain necessary across different institutional levels, but cannot by themselves control all the places where governing decisions occur. johnbraithwaite.com

The directly elected UN assembly and related reforms

The most explicit institutional proposals appear in Chapter 26 of *Global Business Regulation*, especially pages 607–609. They contemplate:

- A second UN assembly elected directly by the world’s people.
- Committees overseeing bodies such as the WTO, IMF, and ITU and hearing citizens’ complaints.
- Possible standing for those committees before international courts.
- A global constitutional convention.
- Assembly consent as a condition of treaty validity.
- Tripartite participation in treaty enforcement and revision.
- Constitutional allocation of negotiations to designated bodies, limiting strategic movement between forums.

These are proposals and possibilities for constitutional debate, rather than descriptions of established institutional powers. Global Business Regulation

Why these proposals matter for the world-state perspective

My interpretation is that these ideas contain recognizably federal and constitutional possibilities.

A directly elected global assembly would introduce a basis of representation different from representation through national governments. Treaty approval would give it a role in determining which international commitments acquire authority. Oversight committees would create relationships of answerability between specialized global bodies and a more general representative institution.

The proposed allocation of negotiating subjects is especially significant. If powerful actors can freely move a question to whichever institution offers them the best outcome, common

constitutional control remains fragile. An authoritative allocation of jurisdiction would begin to constrain that freedom.

That is a step toward a political order whose institutions are related by constitutional rules rather than simply by bargaining.

Nevertheless, the proposals leave major questions unresolved: representation by population and by state, the division of competences, the status of nonparticipating states, financing, judicial review, enforcement, and constitutional amendment.

Thus, they offer substantial elements of global constitutional design, while leaving the completeness and ultimate character of the resulting political order open.

Their skepticism about world government

The 2001 article questions the feasibility of replacing existing state power with world government, emphasizing the resources retained by powerful states. That skepticism coexists with its proposal for a directly elected second UN assembly. www0.anu.edu.au

These positions can be reconciled. One may doubt that a supreme global government can be established in a single political transformation while favoring institutions that gradually establish representation, scrutiny, and constraints across existing bodies.

The important interpretive question is whether those institutions remain auxiliary checks or eventually acquire constitutive authority over the wider system.

9. Public goods and Indigenous knowledge: whose interests should global institutions serve?

Drahos's "The Regulation of Public Goods" (2004) extends the analysis beyond ownership. It examines how legal and institutional arrangements affect the production, availability, and distribution of collective benefits. Providing a public good does not necessarily ensure that everyone can use it; access may depend on skills, infrastructure, and regulatory choices. Power also shapes whose access receives priority. www0.anu.edu.au

For a global state, this introduces a substantive test. Institutional capacity should be assessed partly by its ability to secure access to knowledge, health, and ecological protection, rather than solely by the effectiveness with which it enforces existing entitlements.

A political order can be highly capable of protecting exclusion while remaining weak at providing shared benefits. Calling that order "global" tells us little about its public purposes.

Intellectual Property, Indigenous People and their Knowledge (2014) adds another dimension. Drawing principally on Australian fieldwork, Drahos examines extractive property arrangements and the possibilities of Indigenous developmental networks. He also warns that the stronger proposition that states are invariably incapable of supporting Indigenous development exceeds what his cases establish. assets.cambridge.org

The implication for your question is that **national sovereignty cannot be assumed to exhaust the relevant claims to self-government**. Peoples within states may face domination from national institutions themselves.

A proposed global constitution would therefore need to determine how different communities become participants in governance, including communities whose political standing is poorly represented by existing state boundaries.

10. Later developments: changing global leadership and explicit openness to world government

Drahos and the changing geography of rule-making

Drahos's 2014 discussion of the BRICS asks whether growing economic power translates into regulatory leadership. He identifies challenges to established rule-makers while stressing the importance of coalitions and institutional strategies. His analysis therefore does not treat Western regulatory predominance as an unchanging structural fact. IP01-01_Drahos.doc

This matters for a historical theory of global state formation. A system initially shaped by Western states and corporations might subsequently become more plural, develop competing centers, or acquire different leadership. Its origins do not determine its eventual constitutional form.

Survival Governance and China

In *Survival Governance: Energy and Climate in the Chinese Century* (2021), Drahos argues that redirecting innovation at the necessary speed and scale requires strong state capacity. Drawing on more than 250 interviews in 17 countries, the book examines major political economies and identifies China as an improbable but comparatively plausible leader of a transformation involving cities, technological innovation, and international networks. His accompanying interview emphasizes experimentation and the political obstacles confronting alternative leaders. Oxford Academic

This is a conditional strategic argument. It should not be treated as proof of China's present ecological performance or as a prediction of a Chinese world state.

It does, however, expose a productive tension in Drahos's work. Concentrated capacity can enable rapid coordination, while concentrated power can undermine contestation. A convincing institutional solution must explain how the former can be secured while limiting the latter.

Braithwaite's 2024 discussion of world government

Braithwaite's *Simple Solutions to Complex Catastrophes: Dialectics of Peace, Climate, Finance, and Health* (2024) addresses world government explicitly.

At pages 112–113, he considers earlier arguments by Einstein, Oppenheimer, and Russell for replacing interstate anarchy with world government and writes: **"They may have been right."** He suggests that world government might better organize responses to climate change, pandemics, and inequality, while regarding it as harder to achieve than cooperation and

coalition building. Page 371 returns to the possibility that world government could be necessary for survival. link.springer.com

This passage should receive real weight in interpreting his position. It establishes conditional normative openness, although it does not supply a comprehensive constitutional blueprint or predict inevitable political unification.

It also belongs to Braithwaite's individual work. It should not automatically be attributed to Drahos.

11. How far does their work support the emergence of a global world state?

The following distinctions summarize **my assessment of the institutional implications**, rather than terminology uniformly adopted by the authors.

Dimension	What their work helps establish	What a stronger world-state interpretation still needs
Global rule-making	Standards can acquire authority across many legal systems.	An authoritative relationship among different regulatory domains.
Global administration	National agencies can participate in integrated professional and technical systems.	Common responsibility for administrative decisions and conflicts.
Enforcement	Public and private capacities can be combined across borders.	Reliable jurisdiction and accountability when partners disagree or refuse action.
Constitutional control	Representation, oversight, contestation, and jurisdictional allocation can be designed globally.	An accepted constitutional settlement establishing these powers.
Political membership	People affected by global decisions can claim participation beyond their national electoral channels.	Institutions specifying representation, equal standing, and binding collective decisions.

Their strongest contribution

Their strongest contribution is to show that global political power can be constructed through relatively ordinary legal and administrative changes.

The creation of a treaty obligation, the organization of a professional network, the adoption of an examination practice, or the allocation of enforcement rights may appear limited in isolation. In combination, such changes can alter who governs important areas of social life.

This supports taking gradual, decentralized state formation seriously. A world state need not begin with a document announcing its existence.

The strongest limitation

The evidence does not establish that all these arrangements converge on one ultimate political authority.

Drahos's 1995 TRIPS article explicitly anticipates multiple hegemonic orders organized around particular issues, with different alliances rather than necessarily identical controllers. prometheusjournal.co.uk

A comprehensive world-state thesis must therefore explain how sectoral orders become constitutionally connected. It cannot simply infer that connection from the existence of global influence in several sectors.

Intentional construction and an overarching project

Their research provides substantial evidence of purposeful efforts to build particular regulatory regimes. It identifies actors, organizations, strategies, and legal instruments.

A stronger claim—that the relevant actors shared a comprehensive intention to create a universal state—requires additional evidence. Coordinated pursuit of stronger patent protection, for example, establishes an intentional institutional project. It does not alone establish agreement about global citizenship, taxation, public administration, military authority, or constitutional supremacy.

This distinction preserves the force of their findings. The documented projects are politically important without attributing an additional common purpose that their evidence does not demonstrate.

The unresolved democratic problem

Their institutional proposals face a difficult challenge: effective participation requires money, knowledge, time, organization, and access. Formally equal opportunities to contest decisions may coexist with profoundly unequal capacities to use them.

Furthermore, the groups most effective within regulatory networks may become permanent intermediaries. Their expertise can make participation possible while also distancing governance from the wider public.

The constitutional problem is therefore twofold: constrain dominant actors and make the institutions that constrain them answerable themselves.

My overall judgment is that Braithwaite and Drahos offer both a sociology of emerging global governing capacities and a program for their republican constitutional transformation. Their work makes the possibility of a dispersed global state analytically credible, and some of their proposals would establish meaningful institutions above states. At the same time, their evidence leaves political unification contingent, their normative arguments require continuing protection against domination, and their later trajectories do not resolve into a single agreed model of world government.

Selected primary reading

The joint foundation

1. **John Braithwaite and Peter Drahos, *Global Business Regulation* (Cambridge University Press, 2000).** The central empirical and theoretical work. Chapters 20–26 are especially relevant, with the constitutional proposals concentrated at pages 607–609.
2. **Peter Drahos and John Braithwaite, "The Globalisation of Regulation", *Journal of Political Philosophy* 9(1) (2001): 103–128.** The most convenient account of the distinctions among globalizations and sovereignties.
3. **Peter Drahos with John Braithwaite, *Information Feudalism: Who Owns the Knowledge Economy?* (Earthscan, 2002).** The principal account of corporate organization and the global legal protection of knowledge.
4. **John Braithwaite and Peter Drahos, "Ratcheting Up and Driving Down Global Regulatory Standards", *Development* 42(4) (1999): 109–114.** Important for understanding institutional accumulation without assuming a uniform direction or public benefit.

Drahos's jurisprudence and administrative studies

5. **Peter Drahos, *A Philosophy of Intellectual Property* (1996; ANU Press reissue, 2016).** Chapters 7 and 9 are particularly important for sovereignty, private power, and the duties attached to privileges.
6. **Peter Drahos, "Global Property Rights in Information: The Story of TRIPS at the GATT", *Prometheus* 13(1) (1995): 6–19.** Especially useful for the relationship among American power, corporate strategy, and issue-specific hegemonic orders.
7. **Peter Drahos, *The Global Governance of Knowledge: Patent Offices and their Clients* (Cambridge University Press, 2010).** Read alongside "Cooperation, Trust and Risk in the World's Major Patent Offices," *Science and Public Policy* 36(8) (2009): 641–647.
8. **Peter Drahos, *Intellectual Property, Indigenous People and their Knowledge* (Cambridge University Press, 2014).**
9. **Peter Drahos, *Survival Governance: Energy and Climate in the Chinese Century* (Oxford University Press, 2021).**

Braithwaite's regulatory and constitutional program

10. **Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (Oxford University Press, 1992).**
11. **Ian Ayres and John Braithwaite, "Tripartism: Regulatory Capture and Empowerment", *Law & Social Inquiry* 16(3) (1991): 435–496.**
12. **John Braithwaite, "Responsive Regulation and Developing Economies", *World Development* 34(5) (2006): 884–898.**
13. **John Braithwaite, *Regulatory Capitalism: How It Works, Ideas for Making It Work Better* (Edward Elgar, 2008).**
14. **John Braithwaite, "Relational Republican Regulation", *Regulation & Governance* 7(1) (2013): 124–144.**

15. **John Braithwaite, *Simple Solutions to Complex Catastrophes: Dialectics of Peace, Climate, Finance, and Health* (Palgrave Macmillan, 2024).** For the explicit world-government discussion, see pages 112–113 and 371.

Source note: The detailed patent-administration analysis above is supported by Drahos's accessible original articles as well as the official description of his 2010 book. The account of *Survival Governance* uses the publisher's substantive summary and Drahos's own interview. The publicly available author-hosted text of *Information Feudalism* is identified in Drahos's bibliography as uncorrected proofs.

Yves Dezalay and Bryant G. Garth’ s work

Yves Dezalay and Bryant G. Garth provide an especially valuable account of the social processes through which transnational legal authority is constructed. Their central subjects are the lawyers, universities, foundations, professional organizations, and public institutions that produce internationally authoritative legal expertise—and the struggles through which that expertise becomes a resource for governing states and economies. Their approach connects legal globalization with the reproduction of elites and competition between imperial powers. Request PDF

From the perspective of your question, my assessment is that **their work supplies a powerful explanation of several possible foundations of a global state, while leaving the emergence of an integrated world state unproven**. It explains how legal authority can become transnational, how national institutions can be reorganized around internationally dominant models, and how a relatively small set of professional institutions can influence the terms on which political and economic conflicts are resolved.

The most productive reading therefore asks when these developments amount to **the internationalization of state power**, when they constitute **imperial or oligarchic governance**, and when they might become **processes of state formation at a global level**. Those possibilities overlap, but distinguishing them makes the analysis more precise.

1. What would their work have to demonstrate to establish an emerging world state?

A world state need not resemble a single, highly centralized national government. It could develop through a federation, a division of governmental functions among institutions, or a constitutional arrangement that continues to operate through existing states.

Consequently, the continued existence of national governments does not settle the question. Neither does the absence of a single worldwide administrative headquarters.

For this inquiry, I would distinguish three levels:

Level	What would be developing?	What would establish the connection to state formation?
A transnational professional field	Shared credentials, professional networks, expertise, and standards of authority	Evidence that these resources give their holders durable governing influence

Level	What would be developing?	What would establish the connection to state formation?
A transnational system of governance	Institutions that make rules, adjudicate disputes, and constrain public and private actors	Evidence that their decisions have stable effects across jurisdictions
An emerging global state	An overarching political order connecting these governing functions	Durable arrangements for allocating authority, resolving conflicts of competence, and securing compliance with common decisions

Dezalay and Garth themselves supply a crucial starting point. In *Dealing in Virtue*, they state: "A legal field is not the same as a legal order." Their discussion on pages 16–17 distinguishes a social space of positions and struggles from the established institutions operating within it. An international legal field can exist before, or without, an established international legal order. Arbitration

That distinction does not make their research irrelevant to world-state formation. It identifies a potentially earlier stage: the creation of the professional relationships and forms of authority through which institutions might subsequently be built.

It also prevents a premature inference. A network of internationally influential lawyers is evidence of transnational power. Establishing that it constitutes the personnel of an emerging global state requires a further account of its relationship to political authority.

2. Their theoretical approach: how social advantages become legal authority

Law within a wider field of power

Their 2011 article, "State Politics and Legal Markets," presents their approach particularly clearly. They examine the relationships among **knowledge, state politics, and economic or social power**. Lawyers are situated within these relationships, bringing both the interests of the groups they serve and their own professional interests. The objective is to explain their participation in constructing states and economies. Request PDF

This matters because the political importance of lawyers cannot be inferred simply from what legal doctrine says. One must also ask who possesses the authority to interpret that doctrine, who obtains influential appointments, and whose expertise institutions recognize.

Their approach is strongly influenced by Pierre Bourdieu. Its characteristic question concerns the conversion of different resources into one another.

The conversion of capital

In "The Economy of Legal Practice as a Symbolic Market" (2009), they connect legal practice with inherited relationships, educational authority, political investment, and economic

resources. The following table translates that framework into more accessible terms. econstor.eu

Resource	Typical form	Possible conversion into authority
Family and social capital	Connections to established professional, business, or political families	Access to clients, mentors, appointments, and influential institutions
Learned capital	Legal knowledge, scholarship, prestigious qualifications	Recognition as an expert capable of defining legitimate solutions
Political capital	Government experience and relationships with public authorities	Credibility and influence in private practice or institutional reform
Economic capital	Wealth and organizational resources	Support for education, professional expansion, and institutions claiming public authority
Symbolic capital	Reputation for competence, independence, or public service	Acceptance of an actor's interventions as authoritative

Their argument makes professional independence a sociological problem. Legal authority needs resources and connections, but its credibility may depend on appearing sufficiently distant from the interests that support it. Their historical account also challenges the assumption that lawyers are inherently committed to political liberalism: legal expertise has served many forms of government. econstor.eu

Lawyers as brokers across two boundaries

Their introduction to *Lawyers and the Rule of Law in an Era of Globalization* describes lawyers as brokers between social relationships and legal categories, and between national settings and internationally circulating expertise. These movements can run in several directions: importers can become exporters, while competing agendas operate within both exporting and importing countries. api.pageplace.de

For a theory of global state formation, this suggests an important mechanism. Authority can be reorganized without an overt transfer of sovereignty if the people who interpret national problems increasingly depend on internationally recognized credentials, professional standards, and institutions.

However, the same mechanism can equip national actors to resist external pressure. Brokerage creates opportunities for influence in both directions.

3. *Dealing in Virtue*: constructing transnational adjudicatory authority

Their first major joint monograph, *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order* (1996), examines the formation of an international arbitration field through almost 300 interviews conducted in eleven countries.

They trace competition and accommodation among established European academic arbitrators, younger specialists, American litigators, and large law firms. Increasingly elaborate procedures altered the expertise rewarded by arbitration. Conflicts arising from decolonization and natural-resource disputes also became occasions for constructing transnational legal authority: opposing parties' investments in representation helped consolidate the practice through which they contested one another. Arbitration

Why this is more than the expansion of a professional market

My interpretation is that arbitration matters to your question because it concerns the institutional location of judgment.

Once parties organize their disputes around a specialized transnational forum, several political questions arise:

- Who can constitute the tribunal?
- Which forms of argument count as legally relevant?
- What expertise is required to participate effectively?
- Which institutions can enforce or challenge the resulting decision?

These are questions about governing authority, even where the immediate subject is a commercial transaction.

One can therefore understand the construction of arbitration as a contribution to a wider legal order: it establishes an arena in which claims are translated into decisions with consequences across borders.

The role of existing states

The underlying legal mechanism remains essential. Under the New York Convention, contracting states recognize arbitration agreements and provide for recognition and enforcement of foreign arbitral awards. Articles II and III establish the central obligations; Article V provides grounds on which recognition or enforcement may be refused. National legal systems thus help give practical effect to transnational adjudication. New York Convention

This arrangement can support two different interpretations.

From a functional perspective, a governing activity has become transnational while relying on states for enforcement. That could be compatible with an emerging distributed political order.

From another perspective, it is a specialized arrangement among states and private parties, whose authority remains bounded by particular legal commitments.

The distinction turns on institutional integration. A dispute-resolution system does not become a state merely because its decisions cross borders. It becomes relevant to state formation when its authority connects with a broader, durable allocation of public power.

The significance of conflict within the system

A further analytical implication is that disagreement need not weaken an institutional order. Opponents may strengthen a forum by treating it as the appropriate place to pursue incompatible claims.

For world-state research, this is more revealing than simply looking for agreement among elites. The question becomes whether conflicts increasingly occur **within common authoritative arrangements**, and whether those arrangements acquire the capacity to reproduce themselves.

That is a plausible route from professional competition to institution building. It is not, by itself, proof that the process culminates in a world state.

4. *The Internationalization of Palace Wars*: transforming states through imported expertise

The Internationalization of Palace Wars: Lawyers, Economists, and the Contest to Transform Latin American States (2002) shifts the analysis toward Argentina, Brazil, Chile, and Mexico. Drawing on more than 300 interviews, it examines how foreign credentials, contacts, and ideas become resources in domestic struggles.

The book's central proposition is that the content and reception of exported expertise depend on conflicts within both exporting and importing countries. Its introduction treats law as an entry point into the larger organization of state power. Imported legal techniques cannot be understood independently of institutions such as law faculties, which participate in reproducing governing elites. 9780226144269, 9780226144276

What "palace wars" means

The term directs attention to competition over the commanding positions of a state: who possesses authoritative expertise, who can advise governments, and which institutions become credible sources of policy.

From this perspective, globalization does not necessarily operate by placing a new organization above an otherwise unchanged national state. It can operate by changing the balance of power **inside** the state.

A foreign qualification, for example, can become valuable because it allows a domestic challenger to dispute the competence of an established elite. Conversely, established elites can acquire international resources to preserve their position.

The analytical consequence is substantial: the political meaning of an import depends partly on the struggle into which it enters.

Economists and the construction of authoritative policy

Their 1998 article on the Washington Consensus asks how a recently constructed economic orthodoxy came to be presented as an authoritative professional consensus. Its opening links changes in academic economics with changes in the prescriptions of international financial institutions, questioning how much autonomy those institutions possessed in relation to the surrounding intellectual and political environment. Persée

For your inquiry, the crucial issue is the conversion of political choices into apparently necessary technical prescriptions.

If an internationally validated body of expertise determines what governments regard as economically possible, national political choice can narrow without a world legislature issuing commands.

But this is still analytically different from world-state formation. The immediate mechanism is authority over the definition of competent government. Whether that develops into common political authority depends on how expertise connects to binding institutional decisions.

Mexico: concrete institutional restructuring

Their detailed Mexican study, published in a revised Spanish version in 2006 from an earlier research paper, is particularly useful. It examines internationally credentialed economists, changes in legal careers, and the development of specialized institutions alongside ordinary courts.

The analysis distinguishes human-rights, electoral, and agrarian institutions from corporate transactional arrangements. It also identifies an unequal distribution of benefits: economic elites obtained effective intermediaries, while disadvantaged groups did not necessarily acquire comparable legal representation. The relevant discussion appears especially on pages 244–253. esdocs.com

This illustrates why "more law" is an insufficient description of political change.

The appropriate questions are which institutions gain authority, which groups can use them, and which older channels of influence become less effective. An expansion of specialized legal institutions can simultaneously strengthen particular rights, improve commercial coordination, and reorganize access to state power.

Their edited collection *Global Prescriptions* (2002) broadens this inquiry into the production, export, and reception of legal orthodoxy. As an edited volume, it contains distinct arguments by multiple contributors; its contents should not all be attributed to Dezalay and Garth themselves. University of Michigan Press

5. American legal hegemony: from influential individuals to durable institutions

Law, Lawyers, and Empire

Their chapter "Law, Lawyers, and Empire" (2008) traces the role of elite corporate lawyers in American foreign policy. Its account links law firms, government, universities, and philanthropic institutions.

Its most important finding is a paradox: the particular influence of the older Foreign Policy Establishment declined while the legal approaches associated with it became more institutionalized and relatively autonomous. Specialized legal practices increasingly occupied

spaces previously governed through the broader personal authority of elite lawyer-statesmen. researchgate.net

This is highly relevant to the emergence of a global political order.

A project can acquire durability when it becomes embedded in institutions that no longer require continuous direction by its original sponsors. Professional specialization, established procedures, and recognized qualifications can allow an institutional arrangement to survive changes in personnel.

That possibility also changes how one should investigate intentionality. Searching only for continuing personal coordination among prominent figures can miss an order that reproduces itself through ordinary recruitment and institutional practice.

At the same time, institutional survival does not prove political unification. The relevant legal practices might reproduce American influence, the authority of particular professions, or a wider international order. These outcomes must be distinguished empirically.

Human-rights authority and its social foundations

"From the Cold War to Kosovo" (2006) follows successive generations of human-rights organizations: the International Commission of Jurists, Amnesty International, and Human Rights Watch. The authors describe the development of substantial legal autonomy alongside an increasing structural orientation toward American power and issues that could gain credibility in the United States. Annual Reviews

This argument concerns the conditions under which international moral and legal authority becomes effective.

An organization can retain independence in its decisions while operating within a wider environment that influences which problems attract funding, professional attention, and political recognition. Independence in individual cases and structural dependence are different dimensions.

The distinction also helps avoid reducing human-rights practice to an instrument of domination. In "Constructing Law out of Power" (2001), Dezalay and Garth explicitly recognize that foundation-supported human-rights organizations and lawyers helped challenge authoritarian regimes in Latin America and create conditions for democratization. Oxford Academic

The implications for a global state

Human-rights institutions are relevant to global state formation because they provide claims about authority that extend beyond a government's relationship with its own citizens.

Nevertheless, several institutional futures can follow from such claims. They may support stronger international supervision, reform within national states, regional constitutional arrangements, or a more comprehensive global political order.

The existence of a universal vocabulary does not determine which future emerges.

A world-state interpretation therefore needs to show how universal claims become connected to common procedures, institutions, and political responsibilities. Dezalay and Garth help identify the social groups capable of making that connection, while also revealing the inequalities involved in doing so.

6. Their most direct treatment of a global legal order: the 2012 Fordham article

The work most directly relevant to your question is **"Corporate Law Firms, NGOs, and Issues of Legitimacy for a Global Legal Order"** (2012).

It opens with Warren Christopher's 1995 foreign-policy vision connecting international economic institutions with democracy and human rights. This is an explicit political project that the authors examine.

Their central question concerns whether the economic and political sides of transnational justice can become connected. They investigate the circulation of people, expertise, and legitimacy between corporate practice and public-interest institutions. Economic law appears comparatively well entrenched; the connections with political and human-rights authority are less secure.

On page 2336, they emphasize that arbitration's strength developed through multiple forums without a single transnational institutional structure. Their conclusion nevertheless stresses that wider integration remains contingent: divisions between the two sides, excessive proximity to powerful interests, and competing hegemonies can undermine it. researchgate.net

Why the connection between the two sides matters

My reading is that this article approaches a central problem of constitutional formation: how specialized powers might become parts of a more general order.

An arrangement for commercial transactions can function with a relatively narrow constituency. A broader political order confronts additional questions about the justification of authority, the treatment of people affected by its decisions, and the relationship between economic power and public obligations.

That does not mean a state must be equitable or democratic in order to count as a state. It means that comprehensive political authority raises problems that a specialized commercial system can leave unresolved.

The article is therefore valuable in two ways. It identifies possible channels of integration, and it identifies reasons why integration might fail.

Professional connections and political accountability

Connections among corporate lawyers, universities, and public-interest organizations could help form a common governing profession. They might also provide practical channels through which different kinds of claims become intelligible to one another.

However, professional connectedness is not equivalent to public accountability.

A legal elite may become more internally integrated while remaining socially distant from the people affected by its decisions. Consequently, one must examine two separate developments: integration among institutions and access to those institutions by wider populations.

A global legal order could advance in the first respect while remaining profoundly deficient in the second.

Why large professional organizations do not automatically form a unified elite

Their 2004 article on the confrontation between the Big Five accounting firms and Big Law provides a useful qualification. Examining multidisciplinary practices and debates surrounding the Enron period, they emphasize professional credibility and the difficulties created by proximity to economic power. Different models of legal practice and different sectors of the bar experienced the challenge differently. Cambridge Core

The world-state implication is that integration encounters professional boundaries as well as national ones.

Even actors serving overlapping economic interests can disagree over who may supply authoritative services, what organizational arrangements are legitimate, and which ethical standards should govern practice. These conflicts may produce compromises, divisions of labor, or enduring fragmentation.

Their research thus suggests that any emerging global governing elite would have to be constructed through these conflicts. Its unity cannot simply be assumed from the international reach of its members.

7. *Asian Legal Revivals*: law can sustain empire and contribute to independence

Asian Legal Revivals: Lawyers in the Shadow of Empire (2010) extends the inquiry to Asian settings, drawing on more than 350 interviews. Its organization follows colonial legal formation, the challenges posed by authoritarian and developmental regimes, and later attempts to rebuild the authority of lawyers. press.uchicago.edu

For this book, a particularly useful accessible source is the American Bar Foundation's report of Garth's contemporaneous presentation. He contrasts stronger colonial investment in legal institutions in India and the Philippines with weaker investment in Indonesia and Korea. He also explains how local elites could use imperial legal education and connections to lead independence movements, subsequently occupying positions in the new states. americanbarfoundation.org

Why this complicates a linear world-state interpretation

The analytical implication is that the international circulation of law does not have a predetermined direction.

Legal expertise may help integrate a territory into an imperial order. It may subsequently help its inhabitants claim independence. It may then provide the credentials of the elite governing the independent state.

The relevant continuity can be the authority of legal intermediaries, even while the political structure changes profoundly.

This is one of the strongest reasons to distinguish **the reproduction of elites** from **the reproduction of one particular political order**. The same families, institutions, or professional forms may survive through political transformations that substantially alter sovereignty.

For a world-state thesis, this means that evidence of continuity among legal elites must be combined with evidence about the political institutions they sustain.

Colonial history and the limits of institutional transplantation

Their comparative approach also makes the history of national institutions indispensable.

A reform may formally reproduce an institution found elsewhere, yet operate differently because the surrounding relationships differ. Professional authority depends on its connections to political and social power, and those connections cannot be created by copying a legal text alone.

From this perspective, national differences are not merely temporary imperfections in an otherwise uniform globalization process. They are part of the explanation of how international legal projects acquire their actual shape.

8. *Law as Reproduction and Revolution*: the historical depth of legal elite formation

Their 2021 book, *Law as Reproduction and Revolution: An Interconnected History*, places contemporary developments within a much longer history, moving from European learned law through American legal education and corporate practice to Asian transformations.

Combining Bourdieu with a critical engagement with Harold Berman, they examine how challenges to established legal elites can renew elite hierarchies. They reject inevitable convergence. On page 9, they emphasize that contemporary change often depends on domestic importers using global opportunities to challenge local establishments.

The Asian comparisons reveal different outcomes, including stronger reform in South Korea than Japan. The China chapter—coauthored with **Zhizhou Wang**—examines internationally oriented legal expertise that can also serve Chinese state strategies. webfiles.ucpress.edu

Revolution as a means of reproduction

The title identifies an important possibility: institutional change can alter the basis of elite recruitment without eliminating elite domination.

A hereditary or tightly connected professional establishment may face challengers equipped with superior academic credentials. Those challengers can open previously restricted opportunities. Yet access to the new qualifications may itself depend on substantial resources.

The question is therefore not exhausted by asking whether selection becomes more meritocratic. One must also ask who can acquire the forms of merit that institutions reward.

For the global-state perspective, this suggests a possible transformation in the composition of governing groups. Their members might increasingly obtain authority through qualifications recognized across borders, while the acquisition of those qualifications remains socially selective.

The significance of competing imperial centers

The China discussion raises a further conceptual difficulty for a simple Western world-state narrative.

Internationally acquired legal skills can be used to pursue national projects that compete with the influence of the institutions where those skills were acquired.

This creates a distinction between the diffusion of professional techniques and the diffusion of political allegiance. Similar techniques may facilitate cooperation, but they can also improve the capacities of rival states.

A globally recognizable legal profession could therefore coexist with increasing competition over the political order in which that profession operates.

9. Legal education in India: a concrete mechanism of institutional change

Their 2018 article, **"Battles Around Legal Education Reform: From Entrenched Local Legal Oligarchies to Oligopolistic Universals. India as a Case Study,"** provides particularly concrete institutional analysis.

It examines national law schools, the growth of corporate careers, and internationally trained challengers. The National Law School of India University's original public-interest orientation encountered the expanding attractions of corporate practice. Established lawyers and judges retained influence through institutional governance, appointments, and professional regulation. Organizations such as Vidhi and Jindal Global Law School offered alternative routes supported by international qualifications and domestic resources.

The authors conclude that the challengers also possessed significant advantages of class, education, language, and family background. The transformation remained incomplete. escholarship.org

Why education belongs in an analysis of political authority

Legal education determines more than the content of professional instruction. It helps determine who can become a recognized interpreter of institutions and which kinds of knowledge appear relevant to governing.

An internationally influential educational model may reshape recruitment long before any formal constitutional change occurs.

That makes universities possible contributors to global political integration. A common educational pathway can produce shared professional assumptions, mutual recognition, and access to international careers.

Yet the Indian example also indicates why this process can remain divided. International academic credentials and national authority need not coincide. A graduate may possess expertise valued by global firms while still lacking access to influential domestic courts or professional networks.

The resulting struggle concerns the relative value of different qualifications and relationships. It may create an internationally connected counter-elite without transferring final political authority outside the state.

This is a precise example of how their work identifies mechanisms that a world-state theory would need to investigate, while refusing to assume the institutional outcome in advance.

10. Europe as an intermediate test

Their 2013 chapter, **"Elite European Lawyers? The Common Market as New Golden Age or Missed Opportunity,"** examines a setting where legal markets and political integration can be studied together.

They question expectations that European integration would automatically restore lawyers to a dominant position in state power. Although corporate lawyers had gained opportunities, broader professional and political ascendancy depended on alliances and institutional conditions. The emergence and strength of a European legal field remained an empirical question. cicc-iccc.org

Europe is useful here because it allows a more demanding test than observing international professional networks alone.

One can ask whether transnational careers produce a distinct governing group, whether institutions recognize shared sources of authority, and whether professional integration corresponds to political integration.

The lesson for a possible global state is methodological. Researchers should compare the strength of connections among professional actors with the strength of the institutions through which they exercise authority.

Those two processes may advance at different speeds.

A common legal market could become highly developed while political authority remains divided. Conversely, political institutions could acquire substantial powers without producing a socially unified legal elite.

Neither possibility should be ruled out by definition.

11. What their work supports—and what requires further evidence

A strong account of the social foundations of global governance

The most persuasive application of their research to your question concerns the formation of a transnational constituency for legal authority.

International qualifications, professional recognition, and institutions can create groups whose opportunities depend on the continued authority of transnational legal arrangements. Such groups may have reasons to expand those arrangements, defend their credibility, and translate new disputes into their professional language.

This is a plausible mechanism through which global governing capacities can develop cumulatively.

It does not require every participant to pursue the same ultimate political objective. Institutional expansion can result from intersecting projects: professional advancement, commercial coordination, human-rights protection, domestic reform, and geopolitical influence.

Explicit projects and cumulative consequences

Their work makes it possible to distinguish three kinds of intention:

1. **A stated project of international institution building**, such as the foreign-policy vision examined in their 2012 article.
2. **A more limited professional or political project**, such as strengthening arbitration, importing a model of legal education, or developing a particular field of rights advocacy.
3. **A broader institutional consequence** that emerges from the interaction of several projects.

The distinction is essential. Evidence for the first or second does not automatically establish a shared intention to create a world state. Conversely, the absence of such a shared intention would not rule out cumulative processes of state formation.

The strongest interpretation in terms of an emerging state

The strongest version of that interpretation would argue that these developments gradually create:

- A professional group capable of operating across jurisdictions.
- Institutions exercising governmental functions beyond national boundaries.
- Common standards for judging legitimate authority.
- Recruitment and educational systems that reproduce the personnel of the wider order.
- Increasingly durable connections among its different governing functions.

Dezalay and Garth offer substantial material for investigating the first four propositions. The fifth—the integration of functions into a common political order—is the decisive additional problem.

Why conflict does not settle the issue

Their emphasis on elite competition should not be used to dismiss the world-state hypothesis automatically. Existing states also contain intense conflicts among professional groups, political factions, and economic interests.

The relevant distinction is between conflict **within an authoritative political framework** and conflict among actors who remain free to reorganize or abandon that framework.

Accordingly, a persuasive world-state interpretation would have to show how conflicts among transnational institutions and powerful states become subject to durable common arrangements.

Their research gives us a sociology of many actors who could construct such arrangements. It does not substitute for a legal and institutional account demonstrating that the arrangements have emerged.

12. Critical assessment of their approach

The strength of studying elite careers

Their approach exposes relationships that formal institutional descriptions can overlook.

It draws attention to recruitment, family background, educational pathways, professional reputation, and movement between public and private positions. These help explain why some reforms become influential, why certain experts receive a hearing, and why apparently universal models acquire authority.

It also provides a way to investigate global power without assuming that organizations bearing similar names function identically.

The danger of selecting only internationally connected elites

The corresponding limitation is that research centered on elite careers can overestimate the extent to which legal development follows elite projects.

Frank Munger's 2012 critical essay argues that their studies provide an invaluable starting point but give insufficient attention to alternative pathways of legal development pursued by local activists inside and outside states in the Global South. digitalcommons.nyls.edu

For your question, this becomes a problem of inference: internationally mobile elites are particularly visible evidence of globalization, but they cannot stand for the entire legal and political order.

A stronger empirical test would examine where their projects encounter sustained resistance, which institutions remain inaccessible to them, and how their successes affect populations outside elite networks.

Can the framework understate conviction and political innovation?

Sida Liu's review of the 2021 book raises a related objection. He argues that elite reproduction receives more attention than grassroots change and principled opposition to inherited privilege. He also challenges the centrality of American influence in the interpretation of China and suggests that Hong Kong can be understood through processes of decolonization and hybridization. These are critical interpretations, rather than settled refutations of the authors. Cambridge Core

The underlying issue is whether the concept of reproduction becomes too encompassing.

If both resistance and accommodation can always be interpreted as ways in which elites reproduce themselves, the explanation risks becoming difficult to test. Research must specify what would count as a substantive break: changes in recruitment, shifts in who benefits, altered institutional responsibilities, or the displacement of established groups.

The need for complementary constitutional analysis

A further limitation follows from their chosen object of study.

Elite networks and career trajectories cannot by themselves establish:

- The legal priority of one institution over another.
- The scope of binding jurisdiction.
- The authority to resolve conflicts between legal regimes.
- The conditions under which states must comply with common decisions.
- The relationship between governing power and the people subject to it.

These require doctrinal, institutional, and constitutional investigation alongside sociology.

My overall judgment is that Dezalay and Garth are indispensable for explaining how a global legal order acquires people, expertise, institutional support, and credibility. Their work shows how political authority may be internationalized through transformations within existing states. It also helps explain why globally connected elites can reproduce hierarchy across major political changes.

The further claim that these processes constitute the emergence of a global state is a serious interpretation, but it needs an additional demonstration: that the governing capacities they describe are becoming parts of a sufficiently integrated political order. Their greatest contribution to that inquiry is to make the mechanisms of possible integration—and the forces opposing it—concrete.

Selected reading guide

For your particular research question, I would prioritize the following works.

Work	Principal value for the inquiry
Dezalay and Garth, *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order* (University of Chicago Press, 1996)	Construction of transnational adjudication; competition among legal elites; distinction between field and order
Dezalay and Garth, *The Internationalization of Palace Wars: Lawyers, Economists, and the Contest to Transform Latin American States* (University of Chicago Press, 2002)	International expertise as a resource in struggles over national state power
Dezalay and Garth, "Law, Lawyers, and Empire," in *The Cambridge History of Law in America*, vol. 3 (2008), pp. 718–758	Transformation of American elite influence into specialized and durable legal institutions
Dezalay and Garth, *Asian Legal Revivals: Lawyers in the Shadow of Empire* (University of Chicago Press, 2010)	Colonial legacies, national variation, and the relationship between legal authority and political independence
Dezalay and Garth, "Corporate Law Firms, NGOs, and Issues of Legitimacy for a Global Legal Order," *Fordham Law Review* 80 (2012), pp. 2309–2345	Their most direct investigation of possible integration into a broader transnational legal order
Dezalay and Garth, "Battles Around Legal Education Reform," *UC Irvine Journal of International, Transnational, and Comparative Law* 3 (2018), pp. 143–167	Concrete mechanisms connecting educational reform, corporate practice, and competing national elites
Dezalay and Garth, *Law as Reproduction and Revolution: An Interconnected History* (University of California Press, 2021)	Historical synthesis of legal revolutions, imperial competition, and elite reproduction

For direct reading, the 2012 article's institutional record, the complete 2018 India article, and the open-access 2021 book are particularly useful starting points.

Two critical companions are **Frank Munger, "Globalization through the Lens of Palace Wars," *Law & Social Inquiry* 37 (2012), pp. 476–499**, and **Sida Liu, "Legal Elites and the Fading History of Global Legal Imperialism," *Law & Social Inquiry* 48 (2023), pp. 693–698**. They help test whether the observed internationalization of elite legal careers adequately explains the wider transformation of political authority.

Anne-Marie Slaughter’ s work

Anne-Marie Slaughter is especially relevant to your inquiry because she develops an explicit programme for organizing global governing authority through existing national institutions. Her work explains how courts, regulatory agencies, ministries, and other public bodies can become components of an international political order while continuing to operate inside national legal systems.

The constitutional ambition is substantial. In “Disaggregated Sovereignty” (2004), she envisages networks performing legislative, administrative, and judicial functions associated with world government, and discusses a possible “global transgovernmental constitution.” These are her own formulations, although she gives them a distinctive, decentralized meaning. slaughter.scholar.princeton.edu

From the perspective of an emerging world state, the central question is therefore whether these arrangements gradually acquire enough common authority, institutional coherence, and political independence to constitute a global state, even without replacing national governments.

My assessment is that **Slaughter provides a particularly important account of how the institutional foundations of global public authority could develop within and between existing states**. Her writings also reveal tensions that could prevent this authority from becoming a world state, or could instead produce a system dominated by a selective coalition of powerful countries.

To examine this properly, we need to distinguish three things throughout: the institutions she describes, the institutions she recommends, and the conclusions we can draw about their possible contribution to global state formation.

1. The theoretical foundation: opening the state to institutional analysis

Slaughter’s early work challenges the treatment of states as internally undifferentiated actors. Her 1993 article, “International Law and International Relations Theory: A Dual Agenda,” establishes an interdisciplinary programme in which international legal arrangements are investigated through theories of political behaviour, while law helps explain how international relations actually operate. slaughter.scholar.princeton.edu

Domestic institutions become part of international order

In “International Law in a World of Liberal States” (1995), she develops a model centred on individuals, social groups, and the institutions that represent and regulate them. Domestic political organization helps explain international behaviour: courts, legislatures, and administrative bodies possess different interests, relationships, and capacities.

Liberal institutions are particularly important in this model because their relative independence permits direct relationships with foreign counterparts. Slaughter presents this as a hypothetical model requiring empirical investigation, and acknowledges the troubling resemblance between liberal/nonliberal distinctions and earlier hierarchies of allegedly civilized and uncivilized states.

The article’s concluding discussion is constitutionally ambitious. It envisages a **transnational polity** organized through overlapping institutions and mutual restraints. Drawing on Daniel Deudney’s concept of *negarchy*, she considers an order in which power is constrained through institutional competition and cooperation across borders. ejil.org

The significance for your question is considerable. Once national institutions become participants in a wider political system, the boundary between domestic constitutional organization and international organization becomes less decisive.

A global political order could develop by establishing relationships among already existing centres of public authority. The question would then concern how these institutions are connected, whose decisions they recognize, and which obligations govern their conduct.

This also changes the unit of analysis. Instead of asking only whether “the state” gains or loses power, we must ask whether particular parts of it gain power over other parts—and whether those gains depend on foreign or supranational support.

2. *A New World Order*: the institutional architecture

The disaggregated state

“The Real New World Order” (1997) introduces the argument in particularly accessible form. Slaughter describes states separating functionally into institutions that cooperate directly across borders. Examples include financial regulators, law-enforcement bodies, judges, and legislators.

She presents these connections as a means of restoring governing capacity under conditions of economic and social interdependence. The article also openly identifies their usefulness for spreading democratic accountability and the rule of law, including through cooperation with particular institutions inside countries whose overall political systems are not liberal democracies. slaughter.scholar.princeton.edu

“Disaggregation” here does not mean the territorial dissolution of a country. It means that international activity increasingly occurs through several institutional channels, each with its own professional relationships and policy concerns.

This matters because a foreign ministry's representation of a single national position is only one possible way of organizing a state's external relations. A networked arrangement gives greater scope to sectoral institutions and their international partners.

Horizontal and vertical networks

A New World Order (2004) develops the distinction between **horizontal networks**, connecting national counterparts, and **vertical networks**, connecting national institutions with genuinely supranational bodies. It also distinguishes information exchange, enforcement cooperation, and harmonization.

Vertical arrangements are especially consequential because they can connect delegated international authority to domestic implementation. Slaughter nevertheless preserves a major role for states, including their capacity to coordinate their institutions and act collectively as national governments. assets.press.princeton.edu

The implications can be organized as follows. The final column is my analytical assessment.

Institutional relationship	Immediate operation	Relevance to possible global state formation
Information networks	Officials exchange knowledge and policy models	Establish common administrative understandings
Enforcement networks	Authorities assist one another across jurisdictions	Extend the practical reach of public power
Harmonization networks	Participants coordinate rules and standards	Reduce substantive differences between national systems
Vertical judicial networks	Domestic institutions implement supranational decisions	Connect higher authority to existing enforcement machinery
Legislative networks	Representatives coordinate legislation and oversight	Potentially connect national democratic processes to wider governance

A particularly important distinction follows: **the international location of a decision and the national location of its enforcement need not coincide**.

For a theory of global state formation, this is a major insight. A developing global order might rely on national courts, agencies, and administrative resources for much of its practical operation. The continued existence of national institutions would not, by itself, demonstrate that effective governing authority remained exclusively national.

At the same time, these institutional relationships have different political implications. Exchanging information is compatible with considerable national independence. Implementing an authoritative supranational judgment involves a stronger relationship. Any assessment of global state formation must examine those differences.

3. Regulatory networks: how information becomes governing power

The significance of apparently informal cooperation

“The Accountability of Government Networks” (2001) distinguishes networks operating within international organizations, under executive agreements, and outside overarching formal arrangements. Their accountability problems differ according to their institutional origins and mandates.

Slaughter rejects the assumption that bodies lacking formal legislative powers must be politically inconsequential. Their recommendations, policy templates, and compilations of accepted practice can shape domestic decisions by providing authoritative reference points.

She also recognizes two different accountability questions: whether officials remain answerable to their domestic institutions, and whether the network adequately considers people outside those institutions’ national constituencies. Unequal influence between developed and developing countries makes the second question particularly difficult. repository.law.indiana.edu

The constitutional issue is that policy can become standardized before it reaches a legislature.

Consider a hypothetical regulatory proposal developed by an international group of officials. Its participants return home with a common model, a professional consensus supporting it, and expectations that their countries will implement it. Domestic lawmaking may remain formally intact, but the range of options perceived as responsible or feasible has already narrowed.

This does not establish that every international standard circumvents democracy. It shows why the legal form of the final domestic act is insufficient to identify where the policy was actually shaped.

Global information agencies

Slaughter’s 2003 article, “Global Government Networks, Global Information Agencies, and Disaggregated Democracy,” moves toward concrete institutional design.

Drawing on European arrangements, she proposes global information agencies that could coordinate officials, assemble and distribute knowledge, and connect public and private participants. Such agencies might also issue factual records concerning citizen complaints, enabling public scrutiny without possessing general coercive jurisdiction.

She assigns actual decisions primarily to national officials. She also argues that elected representatives remain essential, proposing stronger networks of legislators to exchange information, coordinate legislation, and scrutinize other governmental networks. slaughter.scholar.princeton.edu

These proposals suggest a possible route by which an international administrative structure could acquire durability: recurring meetings become supported by permanent information systems, secretariats, monitoring procedures, and recognized standards.

The difficult question is who controls this infrastructure. The institution that defines a problem, selects the relevant evidence, and measures successful performance can exercise considerable influence over subsequent political choices.

Slaughter's proposals therefore matter both as mechanisms for improving cooperation and as possible foundations of a more integrated global administration.

4. Courts: the strongest account of authority developing across national boundaries

Slaughter's judicial writings provide some of the most direct evidence for your inquiry. They examine several distinct processes through which legal authority can become transnational.

4.1 Judicial communication and professional identification

"A Typology of Transjudicial Communication" (1994) differentiates horizontal, vertical, and mixed relationships among courts. It also distinguishes the forms and purposes of communication. This supplies an analytical vocabulary for relationships extending from the exchange of legal arguments to interaction within more structured adjudicative arrangements. slaughter.scholar.princeton.edu

In "A Global Community of Courts" (2003), Slaughter develops the idea of judges participating in a wider professional enterprise. She examines constitutional borrowing, cooperation in transnational litigation, and relationships between domestic and supranational tribunals.

Her examples include the coordination of cross-border insolvency proceedings, where courts can negotiate practical divisions of responsibility. She also recognizes conflict, scrutiny of other courts' competence, and legitimate legal diversity.

The concluding vision emphasizes dialogue, checks and balances, and persuasive authority. She suggests that this community might approximate a formal global legal system, while preserving fidelity to multiple legal orders. jura.uni-hamburg.de

From the perspective of political development, professional identification can matter before a formal constitutional settlement emerges. Judges may begin to regard foreign colleagues as participants in a common enterprise and foreign judgments as relevant contributions to their own reasoning.

Nevertheless, a shared professional outlook does not itself establish a superior legal authority. A constitutional court can learn from another court while retaining responsibility for interpreting its own constitution. The stronger question concerns when cooperation creates obligations, jurisdictional commitments, or enforceable limits on domestic political institutions.

4.2 Designing effective supranational adjudication

Laurence Helfer and Slaughter's "Toward a Theory of Effective Supranational Adjudication" (1997) directly examines how international tribunals acquire practical influence.

Their explanation emphasizes relationships with domestic courts, lawyers, private litigants, and other constituencies. They investigate judicial independence, the quality of reasoning, awareness of relevant audiences, and incremental decision-making. A tribunal can increase its effectiveness by building support among actors capable of implementing or politically defending its judgments.

Their institutional recommendations include greater interaction between the UN Human Rights Committee and European human-rights tribunals. They also preserve room for divergence based on treaty language, institutional purpose, and local circumstances, explicitly resisting the mechanical extension of a single political model to every treaty provision. mpil.de

This is a significant mechanism of institutional development. An international tribunal can acquire influence through the activity of domestic actors who find its decisions useful for protecting rights, advancing claims, or strengthening their institutional position.

In such a process, authority grows through repeated legal relationships. Governments may find themselves constrained by institutions they originally helped create, because domestic actors now possess their own interests in maintaining those institutions.

4.3 Private access, domestic enforcement, and centralization

The most explicit statement appears in Robert Keohane, Andrew Moravcsik, and Slaughter's "Legalized Dispute Resolution: Interstate and Transnational" (2000).

They identify three central dimensions:

- **Independence:** the adjudicator's separation from the governments involved.
- **Access:** the ability of individuals and other nonstate actors to initiate proceedings.
- **Embeddedness:** the connection between international adjudication and domestic implementation.

At page 487, they expressly advance the conjecture that transnational judges can use these characteristics to **"centralize political authority in international institutions."** They also examine how legal arrangements mobilize beneficiaries and increase the costs of reversing commitments. These are hypotheses requiring empirical investigation, rather than a claim of inevitable progression. slaughter.scholar.princeton.edu

For your question, private access is especially important. It allows disputes to enter an international process without requiring a government to sponsor each claim diplomatically. Domestic implementation then connects the result to institutions already capable of exercising public power.

The resulting arrangement can create a continuing relationship between individuals and an international legal authority. That is constitutionally more significant than occasional cooperation between governments.

The decisive issue becomes whether this relationship remains limited to a particular treaty regime or contributes to a broader political system with an increasingly autonomous capacity to define and enforce obligations.

5. Sovereignty reconstructed as participation, capacity, and responsibility

"Sovereignty and Power in a Networked World Order" (2004) supplies the conceptual justification for these institutional changes.

Slaughter combines the Chayeses' conception of sovereignty as participation in effective international institutions with arguments connecting sovereignty to responsibilities toward populations. She distinguishes the inability to govern effectively in isolation from the problem of grave abuses within states.

The article also envisages distinct international rights and obligations for legislative, executive, and judicial institutions. Such arrangements could strengthen rights-respecting institutions against oppressive or corrupt counterparts. She presents this as a means of increasing states' capacity to protect and provide for their populations, while retaining national mechanisms for resolving conflicting interpretations.

Her treatment of the responsibility to protect is historically qualified: in 2004, she explicitly describes it as an emerging principle rather than already established law. paperzz.com

The constitutional tension in this redefinition

There are two different values here.

One is **effective capacity**: can public institutions protect people, regulate economic activity, and respond to problems?

The other is **political independence**: can a political community determine the purposes for which those institutions act?

These values can move together, but they can also diverge. International participation may increase a regulator's effectiveness while reducing the range of policies its national government can independently pursue.

Consequently, a claim that networks strengthen sovereignty must specify which aspect of sovereignty is being strengthened. Increased administrative effectiveness does not automatically preserve the same degree of autonomous political choice.

This distinction is central to the world-state question. Integration may appear as an improvement in national governing capacity while simultaneously making the exercise of that capacity dependent on a wider institutional order.

6. "The Future of International Law Is Domestic": governing through national institutions

Slaughter and William Burke-White's "The Future of International Law Is Domestic (or, The European Way of Law)" (2006) is among their clearest statements of institutional purpose.

They identify three functions for international law:

1. **Strengthening** domestic institutions by improving their capacity.
2. **Backstopping** domestic institutions and groups seeking compliance with international obligations.
3. **Compelling** domestic action where international requirements demand it.

They expressly move from description to prescription. They also acknowledge dangers, including weakened domestic institutions, restrictions on democratic experimentation, unequal bargaining power, and governments' manipulation of international mandates.

Their concluding qualification is equally significant: they do not expect the world to reproduce the European Union's degree of political and economic integration. They nevertheless advocate extending the method through which international law transforms domestic institutions. Harvard International Law Journal

Why this matters for global state formation

The most important analytical implication is that international government can expand through changes in the purposes and obligations of domestic institutions.

An existing administrative body might acquire responsibility for implementing externally established requirements. A domestic court might become a venue through which internationally protected rights are asserted. A legislature might organize its policy choices around obligations whose authoritative interpretation occurs elsewhere.

Under such conditions, the persistence of domestic institutional forms tells us relatively little about the distribution of effective authority.

However, the same mechanisms can support different political outcomes. They might stabilize cooperation among independent states, establish a limited supranational regime, or contribute to a more general constitutional order.

To distinguish those outcomes, we must investigate the scope of the obligations, the institutions entitled to interpret them, the possibilities of political revision, and the authority available when national and international decisions conflict.

7. Constitutional principles for a global governing order

Slaughter's constitutional proposals are designed to address the problems created by internationally active public institutions.

"Disaggregated Sovereignty" develops five organizing principles:

Principle	Intended constitutional role
Global deliberative equality	Fair opportunities to participate and contest proposals
Legitimate difference	Protection for defensible national and institutional diversity
Positive comity	Active consideration of, and cooperation with, other jurisdictions
Checks and balances	Restraints on power through institutional counterweights
Subsidiarity	Justification for placing decisions farther from citizens

She presents these as informal norms capable of guiding evolving networks, distinguishing them from a formally enacted global constitution. Her discussion nevertheless draws explicitly

on constitutional arrangements, including American checks and balances and European subsidiarity. slaughter.scholar.princeton.edu

The constitutional significance is that relations among internationally active institutions become a subject of normative organization. Their interactions are no longer assessed solely in terms of whether particular governments find cooperation useful.

But several difficult questions remain.

First, **who authoritatively interprets these principles?** If each institution interprets subsidiarity for itself, the principle may guide deliberation without settling disputes. If an international body acquires the final authority to interpret it, that creates a stronger constitutional hierarchy.

Second, **what establishes the legitimacy of the participants?** Equality among participating officials does not necessarily amount to equality among the people affected by their decisions.

Third, **how are common purposes selected?** Checks and balances constrain the exercise of power, but do not by themselves establish which political community is entitled to determine its objectives.

These questions mark the distance between constitutional principles for cooperation and the constitution of a political entity capable of governing as a whole.

8. Security, intervention, and explicit constitutional proposals

Slaughter's work on security adds a more forceful dimension to her account of global order. It deserves separate examination because it involves authority over coercion and the conditions under which sovereignty protects states from outside action.

8.1 "An International Constitutional Moment"

In "An International Constitutional Moment" (2002), Slaughter and Burke-White propose supplementing the UN Charter's prohibition on interstate force with an additional foundational prohibition on deliberate attacks against civilians.

They seek to connect humanitarian law, international criminal law, antiterrorism law, and individual responsibility. They also acknowledge that the proposed principle could advantage technologically sophisticated states and governments confronting insurgents, and call for safeguards and reciprocal application against state perpetrators. slaughter.scholar.princeton.edu

The significance is constitutional in a substantive sense. They propose reorganizing international order around an additional foundational object of protection: the civilian individual.

This can contribute to a political order in which persons have a more direct relationship to international authority. Yet a universal principle protecting individuals does not settle who may enforce it. The legitimacy of the enforcing institutions remains an independent question.

8.2 “A Duty to Prevent”

Lee Feinstein and Slaughter’s “A Duty to Prevent” (2004) extends the discussion to unchecked rulers acquiring or using weapons of mass destruction.

They emphasize preventive measures, including measures short of force, and propose shifting responsibilities toward suspected states. Their preferred sequence begins with the Security Council but allows consideration of regional bodies and, after unsuccessful good-faith efforts, coalitions or unilateral action under restrictive conditions.

The proposal is explicitly sensitive to practical power differences: they distinguish North Korea from China when considering where the duty could usefully apply. These are proposed principles for action; they do not themselves establish lawful exceptions to Charter requirements. slaughter.scholar.princeton.edu

This reveals a potential asymmetry between the universality of a governing norm and the selectivity of its enforcement.

A global authority that constrains weaker states while accommodating major powers may become an important system of international rule. Whether it constitutes a common political order—or an unequal structure of supervision—requires further analysis.

Her 2005 essay, “Security, Solidarity, and Sovereignty: The Grand Themes of UN Reform,” provides a counterweight. It examines the connection between human security, greater collective responsibility, and multilateral restraint, including the importance of Security Council procedures for coercive action. slaughter.scholar.princeton.edu

8.3 The proposed Concert of Democracies

The 2006 Princeton Project report, *Forging a World of Liberty Under Law*, co-directed by Slaughter and G. John Ikenberry, contains unusually concrete institutional proposals.

Its proposed Concert of Democracies would include non-Western democracies as well as established Western allies. Membership would require commitments concerning elections, enforceable civil and political rights, nonaggression among members, and protection responsibilities.

A crucial distinction appears in Appendix A. The initial draft charter preserves UN obligations and the Security Council’s primary responsibility. Separately identified possible amendments, conditional on unsuccessful Security Council reform, envisage relevant military and collective-security decisions by a **two-thirds majority**. The report proposes seeking UN authorization first, while treating Concert authorization as an alternative basis of legitimacy if the Council remains blocked. almendron.com

This is significant evidence of an explicit project to construct collective political authority.

Majority decision-making on questions of force could move participating states beyond arrangements requiring unanimous approval of every action. At the same time, the proposed decision-making community is selective.

From your perspective, this presents two possible interpretations. It could be understood as a partial institutional foundation for a wider constitutional order. It could also develop as a coalition exercising authority globally without being politically accountable to the world's population generally.

The difference concerns the identity of the governing community, not merely the geographical reach of its actions.

9. From government networks to a broader networked world

Slaughter's later work broadens the range of relevant actors and increasingly treats network design as a general strategy of political organization.

9.1 American power through network centrality

"A Grand Strategy of Network Centrality" (2012) makes the geopolitical purpose explicit. Slaughter argues that the United States should occupy central positions in networks important to its interests. This involves mapping relationships, identifying influential connections, mobilizing partners, and creating conditions in which others can act.

She also considers a central coordinating role for NATO within wider security relationships. Leadership need not involve American participation in every network or direct control of every initiative. s3.amazonaws.com

This provides an important corrective to any assumption that decentralization necessarily distributes power equally.

A network can have no single command hierarchy and still contain strategically privileged positions. Institutions that control access, information, resources, or coordination may exert disproportionate influence.

For global-state analysis, this raises a distinction between **institutional centralization** and **concentration of effective power**. The latter can occur even when formal organizational structures remain dispersed.

9.2 Law as an instrument for connecting actors

In "Filling Power Vacuums in the New Global Legal Order" (2013), Slaughter distinguishes power exercised through command from power exercised through convening, connecting, and mobilizing others.

She assigns lawyers an important role because legal reasoning can translate diverse problems into relationships of rights and obligations. Lawyers can also help coordinate governmental, corporate, and civic actors. 03_slaughter

The broader implication is that legal professionals can help constitute the relationships through which global governance operates. Their work may establish decision procedures, participation

rights, institutional boundaries, and obligations before any overarching political constitution exists.

That makes legal organization relevant to the emergence of authority itself, as well as to the regulation of authority already established.

9.3 *The Chessboard and the Web*

The Chessboard and the Web: Strategies of Connection in a Networked World (2017) develops a strategy for acting within both interstate power politics and wider networks.

Its organizational categories include resilience networks, task networks, and scale networks. Its later chapters address network power, leadership, and grand strategy. The underlying proposition is that different problems require different patterns of connection, involving officials, businesses, civic organizations, and other actors. Google Books

A related 2016 essay contains an unusually direct statement: **"A global polity and society is emerging."** Slaughter associates this development with expanding networks, while also discussing destructive networks, political conflict, and the continuing importance of interstate relations. cidob.org

The term *polity* matters. It suggests more than disconnected cooperation, but does not establish a completed state. A political community can develop shared practices and expectations while remaining divided over its institutions and sources of authority.

For your inquiry, the relevant possibility is that social and institutional integration might precede a comprehensive legal settlement. The opposing possibility is that expanding networks remain permanently plural, competitive, and politically fragmented.

9.4 Coordinated hubs and a more inclusive order

In "Opening Up the Order" (2021), Slaughter and Gordon LaForge propose connecting governmental and nongovernmental participants through identifiable problem-solving hubs.

They envisage international organizations helping coordinate these arrangements, more systematic assessment of results, and potentially a common organization for evaluating performance. The proposed evolution includes fewer, larger hubs within a broader networked structure. They also acknowledge that nongovernmental arrangements can be opaque and unaccountable, and envisage a system without central control. strategicstudyindia.com

This proposal raises a further constitutional issue: **who defines successful performance?**

A metric may appear administrative, but its selection embodies priorities. Decisions about which outcomes count, which organizations deserve funding, and which participants demonstrate competence can influence the distribution of governing power.

In her 2024 discussion of a multialigned world, Slaughter places additional emphasis on wider partnerships and a lighter American role, including allowing others to lead particular initiatives. This qualifies any interpretation of her entire career as advocacy of exclusive American direction. VPM

10. The major criticisms

Three criticisms are especially useful for assessing whether Slaughter's proposals facilitate legitimate global public authority, technocratic domination, or a developing form of world government.

Philip Alston: the agenda and the excluded

In "The Myopia of the Handmaidens" (1997), Philip Alston challenges both the priorities and the distribution of influence in Slaughter's early network account.

He argues that its agenda gives insufficient attention to poverty, distribution, and social needs, while giving substantial prominence to problems of particular concern to powerful states. He also questions whether informal networks adequately represent excluded populations and whether her account understates corporate power. ejil.org

The lasting analytical point is that **effective global coordination does not establish that the coordinated agenda serves a global public**.

A system may develop considerable regulatory capacity in some areas while leaving other needs institutionally weak. Any claim about a global state should therefore examine the distribution of its governing capacities and the populations whose interests they protect.

Slaughter's later emphasis on inclusion, public accountability, and broader partnerships addresses parts of this problem. It does not remove the need to examine who controls resources and agenda-setting in particular arrangements.

José Alvarez: the limits of liberal generalization

José E. Alvarez's "Do Liberal States Behave Better?" (2001) challenges the empirical foundations and normative implications of Slaughter's liberal theory.

He argues that liberal states do not consistently exhibit the distinctive legal behaviour attributed to them. Their courts may resist international obligations, defer to national executives, or avoid contentious questions. Cooperation and legal influence also occur in settings that do not fit a simple liberal/nonliberal distinction. ejil.org

This criticism matters because a theory of institutional development requires evidence of durable patterns, including resistance and failure.

The existence of successful European arrangements cannot establish that equivalent relationships will develop globally. Political incentives, institutional independence, legal traditions, and social support require separate investigation.

Kenneth Anderson: the possibility of de facto federalization

Kenneth Anderson's extensive 2005 review, "Squaring the Circle?", directly addresses the constitutional tension.

He argues that national officials' participation in international networks can gradually weaken democratic sovereignty even where national institutions retain formal powers. At page 1301, he describes a possible outcome as **"a world of de facto federalized global governance."**

His criticism concerns the stability of Slaughter's attempt to combine global governing effectiveness, national democracy, and continuing domestic accountability. The federalization claim is Anderson's critical inference, rather than Slaughter's declared institutional endpoint. digitalcommons.wcl.american.edu

Anderson's argument is particularly relevant to your question because it does not depend on the appearance of a centralized world government. It concerns a possible transformation in the relationship between national political communities and a wider system of authority.

The disagreement is therefore substantive: can the democratic institutions of separate states continue to control an increasingly integrated governing order, or does effective integration eventually require a new basis of political authority?

11. How far does Slaughter's work support the world-state interpretation?

The strongest interpretation

In my assessment, the strongest argument for reading Slaughter through the lens of emerging global statehood combines several mechanisms:

- National institutions acquire continuing transnational responsibilities.
- International adjudication develops relationships with individuals and domestic implementing bodies.
- Common standards influence national administration and lawmaking.
- Constitutional principles are proposed for relations among the participating institutions.
- Collective bodies are envisaged with authority over matters extending to security and force.

Taken together, these mechanisms provide a plausible account of how some public powers might become organized as parts of a wider political system.

Their importance lies in their cumulative effect. A single regulatory network need not have constitutional significance. A durable combination of administrative standards, adjudication, domestic implementation, participation rules, and collective political decisions could have considerably more.

What would establish a transition toward statehood?

The relevant test should accommodate a decentralized or federal world state. Requiring all public power to move into one centralized institution would exclude important possibilities from the outset.

I would instead investigate five questions.

First, does common authority become independent of agreement in each individual case? A system becomes more politically integrated when its institutions can make authoritative decisions despite the opposition of particular participating governments.

Second, is there a sufficiently coherent allocation of powers? A collection of effective sectoral regimes may remain a collection. State formation requires some durable relationship among their competencies.

Third, can conflicts over authority be settled within a recognized common framework? Persistent disagreements are compatible with constitutional government. What matters is whether participants recognize procedures and institutions through which those disagreements can be addressed.

Fourth, how are resources and enforcement organized? These can remain decentralized. But a developing state would need sufficiently reliable access to them to sustain its authority.

Fifth, what political community authorizes and can revise the system? National electorates, a coalition of governments, professional networks, and humanity as a whole are different possible sources of legitimacy. They cannot simply be treated as interchangeable.

Slaughter's work illuminates possible developments under each heading, but does not demonstrate that they have converged into a single global political entity.

Three possible outcomes

Her institutional mechanisms are compatible with at least three trajectories.

One is **durable cooperation among states**, with extensive coordination but continuing national control over fundamental political choices.

A second is **partial constitutional integration**, in which certain fields become subject to sufficiently autonomous common authority while other fields remain predominantly national.

A third is **a broader global political order**, potentially possessing features of statehood, if common authority, resources, constitutional organization, and political legitimacy become sufficiently integrated.

A further complication cuts across all three: the order might be formally inclusive but substantively dominated by a small set of states and institutions. Its global reach would then exceed the breadth of its political representation.

12. Overall assessment

Slaughter's contribution to your inquiry is unusually substantial because she connects **legal mechanisms, institutional design, and political strategy**.

Her judicial scholarship explains how international authority can acquire domestic supporters and implementing institutions. Her network theory describes how existing public bodies can exercise governing functions across borders. Her sovereignty writings justify new relationships

of participation and obligation. Her constitutional proposals seek principles for organizing those relationships. Her security and strategic writings show how these ideas intersect with collective coercion and American leadership.

The most defensible conclusion is that **Slaughter supplies both an account and a programme for constructing dispersed global public authority**. Some of her proposed mechanisms could contribute to a developing world state understood in federal or decentralized terms. Others could sustain a permanently plural international order or an unequal system centred on powerful states.

Her explicit preference for retaining national institutions is therefore insufficient to settle the issue. Equally, the existence of global networks is insufficient to establish global statehood.

The decisive question is whether these institutions remain instruments through which separate political communities cooperate, or gradually become components of a common political authority whose decisions those communities can no longer independently determine. Slaughter's work makes that question concrete enough to investigate institution by institution.

Selected reading guide

The following works provide the strongest route through the argument. The dates refer to original publication.

Work	Principal importance for your inquiry
"International Law in a World of Liberal States" (1995), *European Journal of International Law* 6:503–538	The early conception of a transnational polity and institutional restraints on power
Helfer and Slaughter, "Toward a Theory of Effective Supranational Adjudication" (1997), *Yale Law Journal* 107:273	Concrete mechanisms through which international tribunals acquire domestic support and effectiveness
Keohane, Moravcsik, and Slaughter, "Legalized Dispute Resolution: Interstate and Transnational" (2000), *International Organization* 54:457–488	Explicit hypotheses concerning the centralization of political authority
"The Accountability of Government Networks" (2001), *Indiana Journal of Global Legal Studies* 8:347–367	Informational power and domestic versus external accountability
"A Global Community of Courts" (2003), *Harvard International Law Journal* 44:191–219	Judicial coordination, professional identity, and the limits of global legal unity
***A New World Order* (Princeton University Press, 2004)**	The general architecture of horizontal and vertical government networks
"Disaggregated Sovereignty" (2004), *Government and Opposition* 39:159–190	The constitutional principles proposed for global government networks
"Sovereignty and Power in a Networked World Order" (2004), *Stanford Journal of International Law* 40:283–327	Sovereignty reconstructed around capacity, participation, and responsibility

Work	Principal importance for your inquiry
Slaughter and Burke-White, "The Future of International Law Is Domestic" (2006), *Harvard International Law Journal* 47:327–352	The explicit programme of strengthening, supporting, and directing domestic institutions
***The Chessboard and the Web* (Yale University Press, 2017)**	The later expansion from governmental networks to wider strategies of connection

For the most direct debate about a possible transition toward world government, I would place the **2000 dispute-resolution article**, **"Disaggregated Sovereignty"**, and **Anderson's 2005 critique** beside one another. Together they bring the mechanisms of authority formation, the proposed constitutional safeguards, and the possibility of de facto federalization into particularly clear focus.

Benedict Kingsbury, Nico Krisch, and Richard B. Stewart’ s work

Their work is especially relevant to your question because it examines how governing authority is being organized, exercised, and legally disciplined beyond the nation-state. Their shared project—*global administrative law*, usually abbreviated as **GAL**—also contains an expressly constructive dimension: it seeks to improve the institutions and legal practices through which global governance operates. It therefore concerns both the analysis of existing power and the development of an institutional framework for its exercise. iilj.org

The central issue is that **legal controls on global power can simultaneously help constitute and consolidate that power**. Requirements of participation, reason-giving, and review can protect people against international institutions. They can also make those institutions more effective, more acceptable, and more capable of exercising authority over national administrations.

Nevertheless, the three authors must be distinguished. Kingsbury develops a conception of **public legal authority beyond the state**; Stewart concentrates on **institutional design, regulatory capacity, and the protection of disregarded interests**; Krisch increasingly develops **pluralist alternatives to an overarching constitutional order**. These differences are fundamental to assessing their relationship to global state formation.

My assessment is that their scholarship supplies important elements of a legal architecture for global government, understood broadly as the exercise of governing functions. Whether that architecture constitutes an emerging **global state** requires a further inquiry into political integration, institutional hierarchy, and the organization of power.

1. What would count as evidence of an emerging global state?

It would be too restrictive to identify a world state only with a single government, parliament, supreme court, and centralized bureaucracy. A state can be federal, institutionally divided, and internally conflictual. It can also be authoritarian: **the absence of democratic legitimacy does not, by itself, establish the absence of statehood**.

For this analysis, three developments should be distinguished.

Development	Principal characteristic	Relationship to a world state
International cooperation	Governments coordinate their conduct through agreements and institutions.	Cooperation alone does not establish a new political entity.
Global public authority	Institutions make consequential decisions, establish standards, supervise implementation, or review governmental conduct across borders.	Such authority can perform functions associated with government.
Global political integration	These authorities become sufficiently interconnected to sustain a durable political order, including arrangements for allocating powers and handling conflicts.	This is where a stronger argument about global state formation becomes possible.

These are analytical distinctions, not a rigid checklist. Existing states do not possess perfectly settled competences or unlimited resources. Conversely, international treaties already bind states beyond their immediate preferences, so legal bindingness alone cannot distinguish international organization from statehood.

The more revealing questions are:

- Who can define or expand an institution's competence?
- Who settles conflicts between economic, security, environmental, and social objectives?
- How are implementation, financing, and enforcement secured?
- Can the arrangement sustain its authority when powerful participants oppose particular outcomes?
- Do its institutions collectively form a political order, or remain a collection of overlapping arrangements?

GAL illuminates several of these questions. It does not resolve all of them, and its three founders differ over how far institutional integration should proceed.

2. The shared project: treating global governance as administration

2.1. The significance of the "global administrative space"

In their 2006 introduction, Krisch and Kingsbury describe a **global administrative space** in which the conventional separation between domestic and international affairs becomes unreliable. National officials may participate in making international standards and then implement them domestically. International institutions may determine matters affecting individuals directly. Formally nonbinding standards may strongly condition national choices. Consequently, the accountability of global governance cannot be assessed solely by asking whether states originally consented to establish an institution. ejil.org

The significance for your question is considerable. A national ministry can remain legally national while functioning within a wider system of administration. Its officials may acquire

commitments, professional expectations, and institutional relationships that affect how they use domestic powers.

From a state-formation perspective, this suggests a possible transformation **within existing state machinery**. Global authority need not replace national administrations with an entirely new bureaucracy. It can operate through them.

But this possibility must be investigated empirically. Participation in international cooperation can strengthen national administrative capacity, restrict it, or do both in different respects.

2.2. Five institutional forms

The foundational article, *The Emergence of Global Administrative Law* (2005), distinguishes five overlapping forms:

Form	Illustrative institutions or arrangements
Formal international organizations	The UN Security Council and World Bank
Transgovernmental networks	The Basel Committee and cooperation among national regulators
Distributed administration	National authorities implementing global regulatory arrangements
Hybrid public–private arrangements	ICANN, in the article's original classification
Private regulatory institutions	ISO and other international standard setters

These are analytical types, rather than separate levels of a world government. Their inclusion within a common framework is nevertheless consequential: it brings public organizations, national agencies, and private regulators into the same inquiry about governing authority. iilj.org

Private status, on this approach, does not end the inquiry. The relevant question becomes whether an institution exercises a regulatory function with sufficiently important public consequences to warrant public-law disciplines.

2.3. The legal mechanisms

Kingsbury and Stewart identify a recurring set of mechanisms:

Mechanism	What it enables
Transparency	Access to relevant rules, information, and decision-making records
Participation	Opportunities for affected interests to influence decisions
Reason-giving	Explanation and justification of institutional choices
Review	Examination of decisions by courts, tribunals, or other reviewing bodies

They also distinguish different purposes these mechanisms can serve: maintaining organizational discipline, protecting rights, and promoting democratic values. Those purposes overlap, but they are not identical. iilj.org

For example, a review mechanism can make an international institution more faithful to the instructions of its most powerful members. That may improve administrative accountability while doing little for people adversely affected by its policies. Alternatively, procedural rights may allow those people to challenge both the institution's administration and its dominant members.

Administrative legality therefore has no single political direction. Its effects depend on who can invoke it, against whom, under which standards, and with what remedies.

2.4. The constructive ambition is explicit

The founding article expressly includes identifying, designing, and helping build transnational structures capable of performing administrative-law functions. It also acknowledges that describing global governance as administration may stabilize and legitimate it, privilege existing powerholders, and reinforce Northern or Western legal conceptions. These acknowledgments appear on printed pages 27–28. iilj.org

This is especially relevant to your original concern about institutional developments that facilitate global power.

The constructive dimension does not have to be inferred from concealed intentions. It appears in the programme itself. What requires further argument is the proposition that constructing global administrative institutions amounts to constructing a **global state**.

3. Benedict Kingsbury: the legal construction of global public authority

3.1. "Publicness" and the concept of law

Kingsbury's principal jurisprudential contribution is *The Concept of "Law" in Global Administrative Law* (2009).

He adapts H. L. A. Hart's emphasis on social practices, legal sources, and recognition, while adding the requirement of **publicness**. Institutions claiming legal authority should be assessed through public-law commitments such as legality, rationality, proportionality, and rights protection. Publicness can also affect the weight other institutions should give their decisions. Kingsbury nevertheless acknowledges that GAL lacks a common rule of recognition identifying one unified legal system; he leaves eventual greater unity open rather than treating it as accomplished. iilj.org

The important move is that the legal character of global authority cannot be explained exclusively through a chain leading back to a sovereign command.

This has a potentially constitutive effect. Consider an institution whose standards already influence commercial or governmental conduct. A public-law reconstruction can do two things simultaneously:

1. Demand that the institution justify its decisions and respect affected interests.
2. Provide a vocabulary through which its standards become recognizable as exercises of legal authority.

The second effect matters for global state formation. A governing institution becomes more durable when others treat its decisions as deserving legal consideration, rather than merely as advice or bargaining positions.

3.2. The unresolved relationship between publicness and a public

The difficult question is **which public** gives this authority its normative foundation.

Ming-Sung Kuo's response to Kingsbury argues that publicness does not adequately solve the problem of democratic legitimacy. Identifying entities that exercise public power is different from identifying the people entitled to constitute and control them. Kuo is particularly concerned that relationships between institutions can be organized through legal techniques while the underlying question of the relevant political public remains unresolved. academic.oup.com

This criticism identifies a possible gap between legal institution-building and political community-building.

An international regulator might become transparent, procedurally fair, and legally sophisticated without becoming an institution whose governing mandate affected populations can collectively authorize or revise. Public-law language may improve its conduct while leaving the allocation of authority substantially intact.

For your inquiry, this is a central distinction: **the creation of a global public-law framework can precede—and potentially substitute for—the formation of a global political public**.

3.3. International organizations: administrative law can enable expanded action

In their 2009 article on international organizations, Kingsbury and Lorenzo Casini examine emergency action, human rights, field operations, public–private partnerships, and regulatory instruments outside ordinary treaty-making. They explicitly give GAL both a critical role and a role in enhancing the effectiveness and legitimacy of beneficial institutional activities. Their discussion of the WHO's response to SARS is particularly revealing: they regard rapid action positively despite uncertainty about express powers, while emphasizing oversight and the risks of institutional expansion. iilj.org

The world-state relevance lies in the relationship between **capacity and authorization**.

An institution confronted with an urgent problem may act beyond what its founding instrument clearly anticipated. Subsequent legal reasoning can regularize that action through interpretations of institutional purpose, procedural safeguards, and review.

My interpretation is that such developments can contribute to the growth of governing capacity without a comprehensive constitutional decision. Yet there are several possible outcomes. Emergency action might remain exceptional; it might stimulate clearer limits; or it might become the basis for a broader institutional role.

The relevant question is therefore whether administrative law merely disciplines a particular intervention or helps establish a continuing competence.

3.4. Investment arbitration as a form of public governance

Kingsbury's work with Stephan Schill, *Investor-State Arbitration as Governance* (2009), extends this approach to investment disputes.

They argue that arbitral decisions do more than resolve individual cases: awards influence expectations concerning state administration and the reasoning of later tribunals. They examine proportionality as a method for addressing conflicts between investor protection and public purposes, while proposing that arbitral tribunals themselves be subject to public-law disciplines. Their assessment remains qualified: investor-driven case selection, limited political oversight, and other institutional constraints complicate the system's claim to legitimate public governance. iilj.org

This work is particularly significant because it concerns a possible transformation of an adjudicative mechanism into a more general source of regulatory standards.

The institutional consequences can extend beyond the parties to a dispute. Governments anticipating review may shape future legislation or administrative decisions around the standards tribunals articulate. The legal profession's treatment of awards as relevant guidance can reinforce that effect even without a formal doctrine making every earlier award binding precedent.

From your perspective, the key issue is the emergence of a transnational capacity to evaluate national public choices. Public-law reconstruction can moderate that capacity while also making it more credible.

It would nevertheless be premature to identify such a system with a global judiciary in the full political sense. Its jurisdiction, initiating parties, available issues, and surrounding institutions remain highly selective.

3.5. Donaldson and Kingsbury: expertise can survive procedural reform unchanged

A particularly important qualification appears in Megan Donaldson and Kingsbury's *Ersatz Normativity or Public Law in Global Governance* (2013).

They examine World Bank, OECD, and UNCITRAL prescriptions concerning national infrastructure regulation. These instruments can promote particular models of the economy and the state despite their formally nonbinding character. Their critique of GAL is direct: procedural participation may leave dominant expertise and economic assumptions intact, while avoiding the constitutional question of which institutions should decide. They note that fundamentally

divergent NGO submissions during an OECD consultation were largely left aside in the final document. iilj.org

This is a substantial internal criticism of administrative reform.

Suppose a consultation permits arguments about how a privatization programme should be implemented, but the institutional framework already treats privatization as the appropriate objective. Participation then occurs within a prior political settlement that participants cannot effectively contest.

The constitutional issue concerns the authority to establish that settlement. Who decided that the relevant institution should determine the permissible policy alternatives? Who can require it to reconsider its governing assumptions?

This analysis supports a more exact version of the concern about global power: **procedural openness can coexist with a restricted range of admissible political choices**.

3.6. Infrastructure and an encompassing "public of publics"

Kingsbury's later infrastructure work broadens the inquiry beyond formal institutions. In his 2019 *Infrastructure and InfraReg* article, physical and digital infrastructures appear as arrangements that can implement, obstruct, or reshape law and create dependencies. He calls for longer-term deliberation involving publics, while recognizing that international institution-building can stall and that technological developments may reduce traditional international law's relative influence. iilj.org

This adds a material dimension to the world-state question. Governing capacity can arise through control over systems on which populations depend, even when the constitutional status of that control is obscure.

In *Infrastructures and Laws: Publics and Publicness* (2021), Kingsbury and Nahuel Maisley investigate the mismatch between legally recognized constituencies and people connected through infrastructure. They consider a thin encompassing **"public of publics"**, with representative arrangements accommodating distinct publics whose circumstances are intertwined. They also recognize that centralized regulation can be captured and that preserving democratic jurisdictional separation has value. iilj.org

This is one of the more suggestive passages for a theory of broader political integration. It envisages relationships among publics acquiring a public character themselves.

However, the proposed public is deliberately thin. It should be read as an exploration of inter-public ordering, rather than as a complete design for a sovereign world polity.

4. Richard B. Stewart: regulatory capacity, institutional reform, and disregard

4.1. Moving administrative law beyond its domestic constitutional setting

In *U.S. Administrative Law: A Model for Global Administrative Law?* (2005), Stewart examines domestic administrative-law experience as one resource for global institutional design, to be supplemented by other traditions.

He distinguishes approaches operating through national controls from those establishing disciplines within global arrangements. He also confronts administration without independent judicial review: transparency and participation may improve responsiveness, although they supply weaker protections than a developed system of legal remedies. His argument expressly resists assuming that American or European institutional development will reproduce itself globally. iilj.org

The two approaches have different implications for sovereignty.

Stronger domestic scrutiny can reconnect international regulatory activity to national political institutions. Requirements imposed within global arrangements can instead subject national officials to additional external standards.

The combination is especially important. A global regime may use national courts and administrative procedures to secure implementation, while those same institutions provide opportunities to contest global decisions. The direction of authority cannot be read from the geographical location of the reviewing body alone.

4.2. The problem of "disregard"

Stewart's major 2014 study, *Remedying Disregard in Global Regulatory Governance*, identifies both unequal consideration within institutions and a broader imbalance between strong regimes serving trade, investment, and production and weaker protections for vulnerable populations and social interests.

His institutional framework distinguishes:

Category	Relevant power
Decision rules	Authority to participate in making the decision
Accountability mechanisms	Entitlement to demand an account and obtain sanctions or remedies
Other measures promoting regard	Transparency, submissions, reason-giving, and reputational or market pressure

He reserves accountability for a structured relationship between decision-makers and identifiable account-holders, distinguishing electoral, hierarchical, supervisory, fiscal, and legal forms. Consultation alone does not establish such a relationship. iilj.org

This is analytically valuable because "accountability" often conceals the distribution of actual power.

An affected community may receive information and submit objections without having any right to compel reconsideration. A funding government may, by contrast, possess considerable influence through the ability to withhold resources.

Calling both relationships participation or accountability would obscure precisely what matters.

For the world-state question, Stewart supplies a way of studying the internal organization of an emerging administrative order: who votes, who funds, who supervises, who can litigate, and who can merely request attention.

His concept also exposes a limit of institution-by-institution reform. Improving the procedures of an investment institution does not automatically establish an effective institution protecting people displaced by investment. The distribution of institutional capacity across policy fields remains a political question.

4.3. The WTO: an explicit proposal to strengthen administrative authority

Stewart and Michelle Ratton Sanchez Badin's 2011 WTO article distinguishes three dimensions of GAL:

- **Vertical:** procedural requirements applied to national administrations.
- **Internal:** comparable requirements for the WTO's own administrative bodies.
- **Horizontal:** consideration of other standard setters' procedures when deciding whether to recognize their standards. Paperity

Their institutional proposal is especially relevant here. They advocate greater administrative lawmaking by WTO bodies and propose judicial deference to their treaty interpretations, conditional on public input and reasoned justification. Stewart's earlier draft expressly connects these changes to enhancing the independence and authority of WTO administrative bodies. The proposal uses the then-prevailing American *Chevron* doctrine as an analogy; it must be understood as a dated reform proposal. Oxford Academic

This is more than a programme of external restraint.

A rule requiring courts to defer to procedurally qualified administrative interpretation reallocates governing authority. It identifies an institutional decision-maker whose judgments should receive special weight.

The resulting development could be understood as a form of constitutional differentiation within a global regime: political representatives, administrative bodies, and adjudicators acquire more distinct functions.

Yet sectoral constitutional differentiation still leaves unresolved how trade authority relates to other kinds of authority. Strengthening one regime may increase overall integration, or intensify conflict between regimes.

4.4. Global cooperation can strengthen states and weaken domestic control

In *State Regulatory Capacity and Administrative Law and Governance Under Globalization*—available as a 2016 working paper and published as a 2017 chapter—Stewart examines how international cooperation enhances regulatory capacity while increasing delegation and its associated control problems.

He explicitly treats regulatory power as a source of geopolitical rivalry. Powerful jurisdictions can pursue economic, ideological, and strategic objectives through regulatory cooperation, while weaker jurisdictions may implement standards they had little influence in shaping. He also emphasizes that international commitments can strongly condition subsequent domestic procedures even where officials act under existing national statutory authority. iilj.org

This provides an important correction to a simple picture of states losing power to a global level.

Different components of a state can experience different changes:

- The executive may gain international influence.
- A specialist agency may gain expertise and regulatory reach.
- The legislature may lose practical influence over policy formation.
- Citizens may find that the decisive negotiation occurred before domestic consultation began.

These are analytical possibilities arising from the institutional structure, rather than a claim that every case follows the same pattern.

For global state formation, the implication is that state power may be **reorganized**, rather than simply transferred. Some states and some parts of states may become central participants in a wider governing order.

4.5. Incremental reform and possible systemic effects

Stewart's 2015 assessment is unusually candid. He describes evaluation of GAL's normative performance as underdeveloped and warns against overly optimistic assessments. He distinguishes effectiveness, public-regarding decisions, rights protection, and democratic values as different standards of success.

At the same time, he proposes work extending beyond procedures to constitutive arrangements and new institutions addressing regulatory gaps. He suggests that accumulated incremental reforms might eventually have systemic effects, making GAL an exemplary or even obligatory model across global administration. Oxford Academic

This is one of the clearest passages supporting a qualified integration thesis.

The mechanism would be cumulative. Particular institutions adopt procedures; other institutions recognize and reproduce them; legal expectations become more general; departure from those expectations becomes harder to justify.

My interpretation is that this could produce a common public-law infrastructure without a single constitutional founding moment. But Stewart presents systemic transformation as a possibility, not as an established historical trajectory.

5. Nico Krisch: global authority without a necessary constitutional centre

5.1. Accountability to competing constituencies

Krisch's *The Pluralism of Global Administrative Law* (2006) starts from a politically important observation: global institutions may already be highly accountable to powerful members, funders, or organized stakeholders. The problem concerns **to whom** they are accountable.

He distinguishes national, interstate, and cosmopolitan constituencies, and examines how their claims compete. His discussion of genetically modified organisms considers interactions among WTO, European, and biosafety arrangements. He favours opportunities for challenge and accommodation without necessarily giving every constituency a veto or establishing one final hierarchy. He also acknowledges unequal capacities to contest decisions. ejil.org

This approach differs from both exclusive national sovereignty and comprehensive global constitutionalism.

The central political difficulty is that the relevant community is contested. National citizens, other states, and affected individuals beyond national borders can each advance plausible claims to consideration.

For your question, Krisch's significance is that he refuses to assume that the growth of global authority should culminate in one authoritative settlement of those competing claims.

5.2. *Beyond Constitutionalism*: the objection concerns final ordering

In *Beyond Constitutionalism* (2010), Krisch distinguishes limited constitutional restraints from a comprehensive framework organizing the entire field of public power.

His discussion expressly recognizes that such a framework need not create a centralized world government. It would nevertheless require authoritative rules governing relationships among different public powers. His objection concerns the difficulty of justifying that settlement amid profound political diversity and the danger that constitutionalization could entrench particular actors' institutional preferences. researchgate.net

This qualification is essential. His argument cannot be answered simply by proposing a federal rather than centralized world state.

A federal constitution still establishes authoritative relationships among institutions, even if it distributes competences widely. Krisch's preferred pluralism leaves some foundational relationships unsettled so that competing claims can continue to challenge one another.

That position also makes his work relevant to resistance against global domination. If no global institution possesses an unquestionable entitlement to determine the boundaries of all others, opposing institutions may retain room to resist.

5.3. The sanctions example: review through competing legal orders

The relationship between UN sanctions and European fundamental-rights protection illustrates the institutional issue.

In the 2008 *Kadi* judgment, the European Court of Justice reviewed the European measure implementing Security Council sanctions. It distinguished that review from reviewing the Security Council resolution itself, and annulled the European measure as it affected the applicants because fundamental-rights requirements had not been met. curia.europa.eu

The Security Council subsequently established an Ombudsperson through Resolution 1904 in 2009 to assist with delisting requests; the office provides an independent and impartial channel within the relevant sanctions regime. Security Council

These developments permit different interpretations.

An administrative-law reading emphasizes procedural protection against global coercive measures. A constitutionalist reading emphasizes rights-based limits on public power. A pluralist reading emphasizes how challenge from another legal order can induce accommodation without establishing one universally accepted supreme court.

For a world-state hypothesis, the example is therefore ambiguous. It reveals both global governing capacity and resistance to a unified hierarchy. Legal control develops through institutional interaction, but the political meaning of that interaction remains contested.

5.4. "The Decay of Consent": authority can develop outside conventional international law

In *The Decay of Consent* (2014), Krisch examines antitrust, climate change, and terrorism financing.

His conclusion is more precise than the title might initially suggest. International law retains much of its consensual character, while governance increasingly moves toward informal and unilateral arrangements in which consent is less important and hierarchy can be pronounced. The argument concerns the displacement or bypassing of consent-based mechanisms, rather than the disappearance of consent from international law altogether. nico krisch

This matters greatly for your initial concern about powerful actors.

A formally voluntary arrangement can be difficult to resist where access to markets, finance, or cooperation depends on conformity. But the political interpretation requires care. Such dependence could support an account of hegemonic ordering among states, a developing global administrative system, or an emerging state-like structure.

The existence of hierarchy is important evidence about power. It does not, without further analysis, settle which of these institutional forms best describes that power.

5.5. "Liquid authority": dispersed power can be substantial

In *Liquid Authority in Global Governance* (2017), Krisch broadens the concept of authority beyond commands to include relations of deference and recognition.

Authority may be dispersed among competing institutions, shift over time, and operate through informal standards. Its liquidity does not make it insignificant. It can also make power harder to identify and contest, while encouraging reliance on expertise or problem-solving

performance as sources of legitimacy. Krisch therefore questions accountability models that assume a clearly identifiable ruler or a stable chain of delegation. Cambridge Core

This is a particularly important contribution to analysing global power.

A search for a single commanding centre may miss consequential authority exercised through several interconnected decisions. Conversely, identifying these effects does not establish that the participating institutions collectively constitute a state.

The analytical task becomes relational: how do institutions reinforce each other's decisions, which actors receive deference, and where can an effective challenge enter the process?

This approach also prevents fragmentation from being treated automatically as a temporary stage on the way to centralized government.

5.6. "Entangled legalities": integration through connections between norms

Krisch's 2022 article, *Entangled Legalities in the Postnational Space*, develops this inquiry further.

He distinguishes rules receiving external norms, overarching norms claiming to coordinate different legalities, and practices that connect norms across institutional boundaries. The Financial Stability Board's Compendium of Standards provides an example: it links standards from public and private, formal and informal sources in an effort to create greater integration, without producing a conventional unified legal system. researchgate.net

The significance is that legal integration can occur through the construction of relationships between norms. It need not take the form of one legislature producing one comprehensive body of law.

For your inquiry, this identifies a concrete area for investigation: the rules and practices determining which external standards are incorporated, recognized, or given practical effect.

In his 2022 response to critics, Krisch acknowledges that his account depicts powerful relations without an organizing centre. He also concedes that this reduces the reach of the accountability techniques developed in GAL: numerous interacting targets make responsibility difficult to allocate. He treats the existence of a coherent legal system as something to investigate empirically. www.iconnectblog.com

This later work qualifies the initial project. Holding individual institutions accountable may be insufficient where the most consequential effects arise from their interaction.

6. The principal critical objections

6.1. Chimni: GAL may become the administrative law of an imperial global order

B. S. Chimni's *Co-option and Resistance* (2005) directly addresses the interpretation you are exploring.

He argues that GAL must be understood in relation to substantive international law, institutional power, and the influence of transnational capital. On page 803, he explicitly treats its emergence as possible evidence of a nascent global state. His objection is that procedural improvements can legitimate unjust institutions if their substantive structure remains unchallenged.

He nevertheless identifies conditions under which GAL can assist resistance, including effective social movements, access to information, and the financial and technical resources required for meaningful participation. iilj.org

The strongest implication of this criticism is methodological: a study of administrative procedures needs a theory of the political order those procedures serve.

A transparent decision can remain exploitative. An institution can give reasons for implementing a deeply unequal distribution of rights. Legal regularity and substantive justice must therefore be assessed separately.

6.2. Harlow: universal principles can privilege legal elites

Carol Harlow's *Global Administrative Law: The Quest for Principles and Values* (2006) questions the universality of the proposed principles and the political consequences of their expansion.

She emphasizes the advantages that sophisticated procedural systems can confer on well-resourced litigants and institutions. Her concern about **juristocracy** addresses the possibility that expanding adjudication will reduce space for democratic political choice. She favours diversity and subsidiarity rather than assuming that a progressively unified set of principles is desirable. ejil.org

This criticism directs attention to the allocation of interpretive authority.

A legal principle does not apply itself. Someone must determine what transparency requires, whose interests qualify for participation, and how proportionality should be assessed. Expanding the domain of legal principles can therefore expand the power of the actors authorized to interpret them.

6.3. Somek: is every form of regulatory coordination law?

Alexander Somek challenges the breadth of GAL's legal characterization. Informal coordination, benchmarking, and managerial supervision may be consequential without constituting law in the relevant sense. Calling them administrative law can obscure the distinction between legally constituted authority and organized conduct permitted by existing legal frameworks. academic.oup.com

This objection matters for claims about an emerging global legal state. The analysis must show how a standard acquires legal significance, who recognizes it, and what consequences follow from noncompliance. Influence and legal authority should not simply be treated as interchangeable.

6.4. Institutional alternatives must also be compared

There are criticisms in the other direction.

Gregory Shaffer questions whether Krisch's pluralist prescription generalizes too readily from European experience and underestimates states' continuing importance. He argues for context-sensitive comparison, including circumstances in which hierarchy may be preferable. ejil.org

David Zaring, responding to Stewart, asks whether broader participation always improves specialized regulation. Additional procedures can create delay, strengthen organized interests, or obstruct cooperation without corresponding benefits. cambridge.org

These objections prevent either pluralism or participation from becoming a universal remedy. A fragmented order can be oppressive; a more integrated institution can sometimes constrain oppression. The assessment must compare feasible arrangements and their distributional consequences.

7. What does this scholarship establish about global state formation?

7.1. It identifies several mechanisms through which global authority can consolidate

The following is my analytical synthesis of the works discussed:

Mechanism	Potential contribution to political integration
Recognition of institutions as public legal authorities	Makes their decisions eligible for legal respect and scrutiny
Procedural rights extending beyond national citizenship	Creates relationships between global institutions and affected individuals
Review and conditional recognition between institutions	Connects previously separate regulatory arrangements
Implementation through national administrations	Gives global standards access to existing governing machinery
Generalization of public-law expectations	Makes institutional conduct more regular and potentially more durable
Regulation through infrastructure	Embeds authority in systems on which populations depend

These mechanisms help explain how a wider governing order could develop through ordinary legal and institutional changes.

They do not require a single founding conference or a public declaration that a world state is being created. Institutional consequences can exceed the intentions of individual participants.

7.2. The authors' explicit objectives remain different

The evidence supports three differentiated assessments.

Kingsbury makes the strongest jurisprudential contribution to recognizing and organizing dispersed global power as public legal authority. His later work also explores relationships among publics that could support broader political integration. At the same time, it exposes the unresolved foundations of that authority.

Stewart offers the most detailed programme of institutional engineering. His work sometimes expressly seeks stronger global administrative capacity, coupled with safeguards and institutions protecting neglected interests. He recognizes that incremental reforms might eventually produce more general systemic effects.

Krisch provides the most sustained challenge to treating this development as necessarily culminating in an overarching constitutional order. He accepts the reality of postnational authority while investigating—and sometimes defending—forms of contestation that leave final authority unsettled.

The differences should not be flattened into a common intention to establish a global state. They are differences over the appropriate organization of power itself.

7.3. Administrative legalization does not settle the statehood question

A system can acquire extensive public-law procedures while remaining fragmented. Different institutions may enforce incompatible priorities. Powerful states may use international arrangements selectively. Private organizations may gain governing influence without becoming components of a coherent public political order.

Equally, fragmentation does not by itself disprove a developing state-like order. A global arrangement could be uneven, socially selective, and politically hierarchical. Its lack of democratic institutions would then be a problem of its political character, rather than decisive evidence that it is not a state.

The stronger state-formation claim therefore depends on showing how these institutions collectively organize authority: how their competences interact, how conflicts are handled, and how their decisions are sustained.

7.4. The decisive democratic question concerns authorship of the governing order

GAL is particularly effective at identifying questions about the **exercise** of authority:

- Was the decision explained?
- Were affected interests heard?
- Was the institution consistent?
- Could its conduct be reviewed?

The world-state perspective also requires questions about the **constitution** of authority:

- Who selected the decision-making institution?
- Who established its objectives and membership?
- Who can change the distribution of powers?
- Which population can collectively redirect the governing order?

These questions need not receive the same answer. People can acquire rights as subjects of global administration without acquiring equivalent powers as authors of the institutions governing them.

The most defensible overall conclusion is that Kingsbury, Krisch, and Stewart illuminate—and sometimes seek to improve—the legal construction of governing authority beyond the state. Their work provides substantial evidence of global administrative organization and concrete proposals for its development. Its transformation into a global state remains a further, contested political possibility. The central tension is that law can make global power answerable while also making it more authoritative, durable, and difficult to displace.

Selected primary reading

The following works provide the clearest route through the argument. Several citations above link to accessible author versions; their pagination can differ from the published versions.

The shared programme

1. **Benedict Kingsbury, Nico Krisch, and Richard B. Stewart**, "The Emergence of Global Administrative Law," *Law and Contemporary Problems* **68** (2005), starting at 15. The foundational institutional map and research programme.
2. **Nico Krisch and Benedict Kingsbury**, "Introduction: Global Governance and Global Administrative Law in the International Legal Order," *European Journal of International Law* **17(1)** (2006), 1–13. Especially useful on the breakdown of the domestic/international distinction.

Kingsbury

3. **Benedict Kingsbury**, "The Concept of 'Law' in Global Administrative Law," *EJIL* **20(1)** (2009), 23–57.
4. **Benedict Kingsbury and Lorenzo Casini**, "Global Administrative Law Dimensions of International Organizations Law," *International Organizations Law Review* **6** (2009), 319–358.
5. **Benedict Kingsbury and Stephan Schill**, "Investor-State Arbitration as Governance: Fair and Equitable Treatment, Proportionality and the Emerging Global Administrative Law," IILJ Working Paper **2009/6**.
6. **Megan Donaldson and Benedict Kingsbury**, "Ersatz Normativity or Public Law in Global Governance: The Hard Case of International Prescriptions for National Infrastructure Regulation," *Chicago Journal of International Law* **14(1)** (2013), 1–51.
7. **Benedict Kingsbury and Nahuel Maisley**, "Infrastructures and Laws: Publics and Publicness," *Annual Review of Law and Social Science* **17** (2021), 353–373.

Stewart

8. **Richard B. Stewart**, "U.S. Administrative Law: A Model for Global Administrative Law?," *Law and Contemporary Problems* **68** (2005), 63–108.
9. **Richard B. Stewart and Michelle Ratton Sanchez Badin**, "The World Trade Organization: Multiple Dimensions of Global Administrative Law," *International Journal of Constitutional Law* **9(3–4)** (2011), 556–586.

10. **Richard B. Stewart**, "Remedying Disregard in Global Regulatory Governance: Accountability, Participation, and Responsiveness," *American Journal of International Law* **108** (2014), 211–270.
11. **Richard B. Stewart**, "The Normative Dimensions and Performance of Global Administrative Law," *I•CON* **13(2)** (2015), 499–506.
12. **Richard B. Stewart**, "State Regulatory Capacity and Administrative Law and Governance Under Globalization," in Nicholas R. Parrillo, ed., *Administrative Law from the Inside Out* (Cambridge University Press, 2017), 474–500.

Krisch

13. **Nico Krisch**, "The Pluralism of Global Administrative Law," *EJIL* **17(1)** (2006), 247–278.
14. **Nico Krisch**, *Beyond Constitutionalism: The Pluralist Structure of Postnational Law* (Oxford University Press, 2010). Chapter 2 is particularly important for distinguishing comprehensive constitutional ordering from centralized world government.
15. **Nico Krisch**, "The Decay of Consent: International Law in an Age of Global Public Goods," *AJIL* **108(1)** (2014), 1–40.
16. **Nico Krisch**, "Liquid Authority in Global Governance," *International Theory* **9(2)** (2017), 237–260.
17. **Nico Krisch**, "Entangled Legalities in the Postnational Space," *I•CON* **20(1)** (2022), 476–506.

Anne Peters' s work

Anne Peters's work provides an explicit programme for constituting, legitimating, and limiting public authority beyond the nation-state. It is therefore highly relevant to your inquiry into the legal foundations of an emerging global political order. Her central concern is how constitutional principles—human rights, democracy, the rule of law, and increasingly social solidarity—can govern powers that national constitutions can no longer adequately control. In her own account of her research, constitutionalism serves both the creation and the limitation of international and transnational authority. mpil.de

My assessment is that **her programme could contribute substantial elements to a future global political constitution, including elements usable within a world federation. But her preferred order does not require a world state, and her scholarship does not establish that one is inevitably emerging.**

The distinction needs careful examination. Merely observing that Peters retains nation-states would be insufficient: a world federation could retain constituent states. The more consequential questions concern the allocation of final authority, the position of individuals, the relationship between courts, the democratic authorization of international institutions, and control over coercion and resources.

I will examine these questions through her principal writings and then assess the strongest criticisms of her approach.

1. What Peters means by global constitutionalism

Peters distinguishes between identifying constitutional features in existing international law and advocating its further constitutional development. The first is an interpretive and partly empirical undertaking; the second is a normative programme.

In her encyclopedia treatment of *Global Constitutionalism*, the relevant principles include human rights, democracy, separation of powers, the rule of law, and solidarity. These need not be collected in one document or administered by one institution. Constitutional norms can be dispersed across treaties, institutional arrangements, and judicial decisions. She explicitly presents this project as proceeding "without asking for a world state." Constitutionalization is also partial, reversible, and compatible with continuing differences between legal orders. mpil.de

Three concepts should consequently remain separate:

Concept	Central question
Global governance	Who exercises power over problems and activities crossing national borders?
Global constitutionalism	By what principles should that power be constituted, justified, and constrained?
Global state formation	Are these powers becoming integrated into a common political order with institutions capable of making and enforcing authoritative decisions?

These are analytical distinctions, rather than three inevitable historical stages.

A constitutionalized international organization can remain a specialized institution. Conversely, a powerful global institution can exercise governmental functions while possessing weak constitutional safeguards. A hypothetical world state could also be authoritarian. Therefore, neither constitutional improvement nor democratic deficiency, considered alone, settles the question of statehood.

The particularly interesting possibility in Peters's work is that **constitutional integration might advance through dispersed institutions without an explicit decision to establish a single global polity**. Courts, national constitutional provisions, international organizations, and individual rights could together change the structure of authority. Whether their cumulative development would eventually constitute a state is a further question.

2. Compensatory constitutionalism: why constitutional control should follow power

The foundational argument

Her 2006 article, **"Compensatory Constitutionalism: The Function and Potential of Fundamental International Norms and Structures,"** supplies a central justification for the project.

The argument begins with a mismatch. National constitutions organize and constrain public power, but important decisions increasingly arise from international arrangements that domestic constitutional procedures cannot fully control. Peters proposes that constitutional norms and structures at the international level can compensate for this loss. She does not require a formal world constitution. Instead, fundamental international norms can perform constitutional functions within an interconnected legal order. Conflicts with domestic constitutional law should be assessed substantively rather than resolved by automatically dismissing the international norm. Cambridge Core

From the perspective of state formation, this is a consequential argument because it changes the presumed location of constitutional authority.

If a national constitution is treated as the exclusive framework for legitimate government, the transfer of decision-making outside the state appears constitutionally suspect. If constitutional authority can operate across several levels, that transfer becomes potentially legitimate—provided that appropriate safeguards accompany it.

This reasoning can support different institutional outcomes. It might justify stronger international controls over an already powerful institution. It might also justify restoring national parliamentary supervision over decisions made internationally. Constitutional compensation therefore does not, by itself, prescribe centralization.

Nevertheless, a critical question remains: **when should constitutional control be extended internationally, and when should a decision-making power be returned to domestic politics?** Demonstrating that national control has weakened does not automatically settle which remedy is preferable.

Constitutional interpretation as a constructive activity

In **"The Merits of Global Constitutionalism"** (2009), Peters openly treats constitutionalism as an academic and political agenda. Constitutional principles can reinforce one another: judicial review requires democratic justification, while democracy requires rights and legal constraints. She calls this mutually supporting development constitutionalist "bootstrapping."

She also acknowledges objections: constitutional language can exaggerate weak institutional developments, promise legitimacy that institutions do not deserve, and reflect scholarly aspirations more than political practice. Her response is to defend a moderate, plural, multilevel constitutionalism that does not depend on a centralized global government. scholarworks.iu.edu

There is a potentially constitutive effect here. Describing an international institution as exercising public authority can help normalize expectations that it should decide certain matters. Demanding that it give reasons and respect rights can strengthen the conception of that institution as a legitimate governing body.

But this remains a possible effect requiring investigation. An argument that authority deserves recognition under specified conditions is not evidence that the argument has actually increased that institution's power.

Peters herself recognizes this distance between scholarship and political implementation. In **"Are We Moving towards Constitutionalization of the World Community?"** (2012), she emphasizes that constitutionalization has been advanced especially by academics and some courts, with much weaker engagement from governments and treaty-makers. Her account includes opposing tendencies and structural deficiencies rather than a straightforward progression toward constitutional unity. academic.oup.com

3. Humanity as the foundation of sovereignty

The reversal of justificatory priority

Perhaps Peters's most fundamental contribution is **"Humanity as the A and Ω of Sovereignty"** (2009).

Her argument makes the needs, rights, interests, and security of human beings the justification for sovereignty. Sovereignty consequently derives its normative value from the purposes it serves. It is not an independently sufficient answer to every external demand.

The article nevertheless distinguishes statehood from sovereignty and cautions against withdrawing sovereign protection merely because a government lacks democracy or legitimacy. Non-intervention continues to protect peoples and international stability. Peters also rejects the claim that existing law generally authorizes humanitarian military intervention without Security Council approval.

Some proposals are far-reaching: she argues that human-rights compliance could, in principle, justify conditioning General Assembly voting rights. That is her constitutional argument, not a description of an established general membership rule. ejil.org

The significance for your inquiry lies in the **relocation of the ultimate justification of political authority**.

If sovereignty is justified by humanity, governments cannot conclusively determine the legitimacy of their own conduct merely by invoking sovereign status. Their actions become answerable to standards whose relevance extends beyond their territorial jurisdiction.

This can support a global constitutional order. However, a hierarchy of justifications does not automatically produce a hierarchy of institutions. Even if human welfare has normative priority, several questions remain:

- Who authoritatively determines what human welfare requires?
- Which institution may decide that a government has failed?
- What procedures protect against selective or self-interested judgments?
- Who may enforce the resulting decision?

These questions become especially difficult when actors invoking humanity possess unequal military, financial, or institutional power.

From protected persons to political authors

Peters's 2009 rejoinder to critics makes the political direction of her argument unusually explicit. Individuals should acquire opportunities to participate in international governance and to advance claims that influence legal development. She proposes extending the participatory logic of Article 25 of the International Covenant on Civil and Political Rights beyond domestic government, including to international organizations.

Her stated ambition is to complete the humanization of sovereignty by "transforming it into popular sovereignty." This is a proposed development of international law, not a claim that Article 25 already supplies a generally accepted right to vote in international institutions. ejil.org

That formulation reaches beyond improving the treatment of individuals. It concerns the source of political authorization itself.

For a theory of world-state formation, this is an important conceptual opening. A people, or several overlapping peoples, could become a source of authority for institutions previously justified principally through interstate agreement. Yet the institutional form of that authorization remains unsettled: universal human standing does not itself establish a single global constituent people.

4. *Beyond Human Rights*: the individual as a subject of international law

The breadth of the project

In **Beyond Human Rights: The Legal Status of the Individual in International Law** (2016), Peters examines individual rights and obligations across fields extending beyond conventional human-rights law: consular relations, investment, refugee protection, humanitarian law, criminal responsibility, and others.

She argues for an international legal personality of individuals that cannot be understood simply as a discretionary concession from states. She also distinguishes fundamental human rights from ordinary international individual rights. Her proposals include a presumption of direct effect for sufficiently specific and unconditional international norms, while retaining domestic institutions as the principal means of enforcement.

The book's conclusion is not that individuals already possess full global citizenship. Their limited participation in making international law leaves a substantial gap between holding entitlements and governing collectively. mpil.de

For analytical purposes, four questions should be distinguished:

Position of the individual	What it establishes
Legal personhood	Capacity to hold rights and duties
Substantive entitlement	Possession of a particular legal claim
Procedural standing	Ability to bring that claim before an institution
Political citizenship	Participation in authorizing and making collectively binding decisions

A global legal order might substantially develop the first three while leaving the fourth weak.

That would be a significant transformation of interstate law. Individuals could have legal relationships extending beyond their national governments. But it would not yet establish democratic global citizenship or a world state.

Integration through domestic institutions

In her 2016 response to critics, **"Simple International Rights, Global Constitutionalism, and Scholarly Methods,"** Peters recognizes renewed state importance and insists that stronger international rights do not eliminate the need for capable states. She also distinguishes rudimentary constitutional elements from ordinary international law and addresses the need for legality and foreseeability when individuals acquire international duties.

Her programme does not envisage replacing national criminal and civil systems wholesale with international institutions. Rather, international law should influence the rights, duties, and remedies administered through existing legal institutions. mpil.de

This suggests a particularly important mechanism of integration: **national courts and administrations can become the means through which international obligations operate upon individuals**.

The institutional result need not be a large new global bureaucracy. A transnational legal order can operate through institutions that remain nationally organized.

The decisive political question then becomes one of accountability. A domestic official implementing an international obligation might be answerable simultaneously to national constitutional requirements and to external legal commitments. Integration can consequently occur through changing the obligations of existing state institutions, rather than through replacing them.

Why personhood is not necessarily empowerment

Tara J. Melish's detailed review of *Beyond Human Rights* challenges the practical value of abstract legal personality when exercisability and enforcement are excluded from its definition. She also questions whether classifying some claims as ordinary rather than human rights might weaken protection for marginalized groups. Her criticism directs attention to the concrete ability to exercise rights, not simply their conceptual location within a legal hierarchy. Cambridge Core

This is highly relevant to the political economy of a global order.

An investor with resources, legal representation, and access to a specialized tribunal may be more effectively empowered than a person formally possessing internationally recognized social rights. The shared description "individual subject of international law" does not reveal this difference.

Peters and Tom Sparks's joint introduction to **The Individual in International Law: History and Theory** (2024) reinforces another qualification: state sovereignty and humanity do not stand in a simple zero-sum relationship. Weakening states does not automatically improve individuals' position. States remain central to the conditions under which international rights can become effective. api.pageplace.de

5. Dual democracy: states and individuals as constituencies

Two channels of political authorization

Peters develops **"Dual Democracy"** in *The Constitutionalization of International Law* (2009), the book coauthored with Jan Klabbers and Geir Ulfstein. The chapter is Peters's contribution; the book's other chapters should not all be attributed to her.

Her model combines two channels:

1. **A state-mediated channel:** democratic governments represent their populations internationally, with states retaining meaningful control over international institutions.
2. **An individual channel:** people gain opportunities to participate beyond their governments.

In her own subsequent presentation, proposals include parliamentary assemblies for major international organizations, initially consultative but potentially acquiring stronger powers; transnational consultations and referendums; and other direct participatory procedures.

The resulting institutions would have a dual constituency: states and individuals. Peters does not require a homogeneous global people to exist before participation begins; institutions and political identification can develop together. EJIL: Talk!

The federal resemblance is evident, although it is an analytical comparison rather than proof of her commitment to world federalism. Federations also confront the relationship between constituent political units and individual citizens.

The difficult question concerns conflicts between the two channels. A decision supported by a global majority might conflict with the democratically expressed wishes of a particular population. Conversely, a state veto might prevent a decision supported by large numbers of people elsewhere.

No simple voting formula eliminates this problem. Equal votes for states and equal votes for persons express different principles of equality.

Domestic foreign-relations law remains essential

In **"Foreign Relations Law and Global Constitutionalism"** (2017), Peters examines how constitutional standards should apply to external affairs. International agreement among governments does not necessarily supply sufficient democratic legitimacy: governments may be undemocratic, bargaining positions unequal, and delegations of authority broad.

She therefore supports stronger domestic constitutional control, including earlier parliamentary involvement in international negotiations and opportunities for civil-society participation. Constitutional scrutiny should extend to the processes through which states exercise power internationally. Cambridge Core

Here, the distinction between legal validity and democratic legitimacy matters. A treaty can be validly concluded under international law while remaining democratically problematic.

This also shows why Peters's project cannot be reduced to transferring authority upward. Strengthening domestic parliamentary control can constrain international executives and institutions. Whether a particular reform centralizes or disperses power depends on its institutional design.

Civil society does not become a substitute legislature

In **"Membership in the Global Constitutional Community,"** Peters supports NGO access, fair accreditation, reasoned refusals of participation, and involvement in legal proceedings. But participation should generally provide a voice rather than an equal legislative vote. She recognizes the disproportionate influence of organizations from the global North.

Her treatment of business is similarly qualified. Public responsibility should not simply be transferred to corporations, and regulators should remain sufficiently independent from

regulated actors. At the same time, she rejects subjecting private actors indiscriminately to the complete set of constitutional obligations applicable to public authorities. EJIL: Talk!

Steven Wheatley's response to *Dual Democracy* identifies the underlying difficulty: institutional participation does not automatically create a political community, and the boundaries of the relevant constituency remain contested. Different democratic processes may generate conflicting claims to authority. EJIL: Talk!

For the world-state question, this is central. Peters supplies proposals for transnational political participation, but the existence of participation does not yet establish a common political order capable of settling disputes over who should decide.

6. Courts, legal hierarchy, and constitutional integration

International law does not automatically prevail in every conflict

In **"Supremacy Lost: International Law Meets Domestic Constitutional Law"** (2009), Peters challenges the adequacy of a simple hierarchy between international and domestic constitutional law.

She examines constitutional openness to international law, interpretation consistent with international obligations, and the role of human-rights treaties in constitutional adjudication. Her normative preference is to assess the substantive importance of competing norms rather than decide every conflict solely by their domestic or international origin. researchgate.net

This approach has two possible consequences.

First, it can protect important domestic constitutional commitments against an insufficiently justified international demand. Second, it can enable international rights or principles to reshape domestic constitutional interpretation.

The absence of an automatic hierarchy therefore does not imply the absence of integration. Integration can result from the interpretive obligations imposed on courts.

The unresolved issue is who determines the constitutional importance of competing claims. A method that moves authority away from a formal rule of priority may increase the significance of judicial judgment.

Coordination without a global supreme court

In **"The Refinement of International Law: From Fragmentation to Regime Interaction and Politicization"** (2017), Peters examines interactions among specialized legal regimes. Comprehensive institutional hierarchy has not emerged, and proposals to place the International Court of Justice above other international tribunals have not succeeded.

Her account considers harmonizing interpretation, interaction between regimes, and constitutional tolerance. She also values politicization: conflicts can expose disputed priorities and permit weaker interests to mobilize. Constitutional development need not eliminate legal diversity or political disagreement. mpil.de

Her defence of proportionality adds another connecting method. In **"A Plea for Proportionality"** (2021), she defends the sequence of identifying legitimate aims, suitability, necessity, and balancing, rather than reducing adjudication to an undifferentiated cost-benefit calculation. The preliminary stages help preserve the special status of rights. Oxford Academic

From a state-formation perspective, common methods of justification could make different courts operate more coherently. But methodological convergence does not give one court final authority over all others.

A concrete example: Security Council sanctions

Peters's 2013 discussion of the *Al-Dulimi* Chamber judgment illustrates the practical stakes. Individuals affected by Security Council sanctions could face an accountability gap: the implementing state invoked its international obligations, while the international institution relied on national implementation.

Peters argues for responsibility at both levels. She also considers exceptional refusal to implement unlawful Council decisions, while retaining a presumption of legality and recognizing the possibility of legitimate, proportionate restrictions on rights in pursuit of peace. EJIL: Talk!

This combines global governing authority with distributed legal control. It also demonstrates why stronger review is not simply opposition to global governance: review may be necessary to make that governance defensible.

7. International organizations as constitutional actors

Constitutions can empower institutions as well as restrain them

In **"Constitutional Theories of International Organisations: Beyond the West"** (2021), Peters distinguishes successive approaches to organizational constitutions.

An earlier approach treated founding instruments primarily as constitutions allocating institutional powers. A subsequent approach emphasized human rights, democracy, and the rule of law. A further development should address social inequality, participation, and the demands of the global South. She acknowledges that liberal constitutional approaches could contribute to entrenching neoliberal arrangements. papers.ssrn.com

The first of these approaches matters particularly for your question. Treating a founding treaty as an institution's constitution can encourage interpretation in terms of the institution's purposes and continuing responsibilities. An organization can consequently be understood as possessing an institutional identity that extends beyond the immediate preferences of individual member governments.

That is a route toward greater public authority. Whether it becomes a route toward statehood depends on how extensive that authority becomes and how conflicts with member states are resolved.

Her 2025 chapter **"International Organisations"** retains this constitutional approach while calling for transnational social solidarity, contestatory democracy, and responsiveness to the global South. Its stated programme develops the constitutional qualities of organizations rather than supplying a single institutional design for global government. The Cambridge Handbook of Constitutional Theory

International organizations influence national constitutions

Especially relevant to your original inquiry is **"International Organizations as Constitution-Shapers: Lawful but Sometimes Illegitimate, and Often Futile"** (2023).

Peters examines mechanisms including accession requirements, financial conditionality, constitutional advice, governance standards, and United Nations constitutional assistance. These activities can influence national institutions without replacing national constitution-making altogether.

Her assessment distinguishes legality, legitimacy, and effectiveness. Formally lawful assistance can remain politically questionable, particularly under unequal bargaining conditions, and the adoption of constitutional texts does not ensure effective implementation.

She also addresses explanations that attribute constitutional assistance uniformly to the interests of transnational capital. She considers such criticism necessary but rejects an undifferentiated account of every intervention as serving the same capitalist project. escholarship.org

The conceptual significance is considerable. External authority can shape the conditions under which domestic political power is constituted. The international sphere then influences more than ordinary governmental policy: it affects the rules through which national political authority is organized.

Yet external influence over constitution-making is not identical to a global constituent power. The degree of influence, the recipient's capacity to refuse, the diversity of institutional actors, and the durability of the resulting arrangements all require separate investigation.

8. Collective security: movement toward a global executive?

Responsibility changes the meaning of institutional discretion

In **"The Security Council's Responsibility to Protect"** (2011), Peters explicitly constructs a thought experiment. Assuming that the responsibility to protect becomes a fully binding legal principle, what obligations would follow for the Council and its members?

She explores duties to authorize or undertake sufficiently robust action, then emphasizes a procedural obligation to justify inaction. The article therefore should not be read as simply documenting an already settled duty to intervene militarily. sonar.ch

For your inquiry, the conceptual change is the movement from discretionary privilege toward publicly justified office.

A body understood merely as a forum for great-power agreement can decline to act because its members have not reached agreement. A body understood as responsible for protecting a political community faces a different expectation: failure to act may itself require justification.

This resembles an aspect of executive responsibility, even where the proposed legal consequence remains procedural.

The precise limits of the veto argument

In **"The War in Ukraine and Legal Limitations on Russian Vetoes"** (2023), Peters argues that a veto shielding the vetoing state's own manifest aggression can be legally defective. She draws on Article 27(3) of the UN Charter, good faith, the prohibition of abuse of rights, and other fundamental norms.

A crucial limitation is that Article 27(3)'s obligatory abstention concerns decisions under **Chapter VI and Article 52(3), rather than Chapter VII coercive decisions**. Her argument therefore does not generally remove the permanent members' veto over military enforcement.

She also acknowledges that the practice she examines had not adopted her proposed legal conclusions. repository.law.umich.edu

The proposal remains institutionally significant. It seeks to make a permanent member's procedural privilege answerable to legal standards. But its significance should be assessed at its actual scope, rather than inflated into the creation of an executive capable of overriding every great power.

The Council's authority remains politically dependent

In **"Power, Procedures, and Periphery: The UN Security Council in the Ukraine War"** (2024), Peters treats the Charter as plausibly constitutional for the world community while recognizing the Council's dependence on political will.

She also rejects an uncomplicated account of the Council as an instrument of Western hegemony: its functioning depends on non-Western permanent members as well. Both paralysis and excessive activism are constitutional problems. More extensive authority over individuals requires stronger legal constraints. cambridge.org

Her work thus supports studying the Council as an institution exercising globally significant public authority. It does not eliminate the difference between that authority and an autonomous global executive possessing reliable control over the resources necessary to implement its decisions.

9. The social constitution: confronting global economic power

The limits of a constitutionalism centred on markets and formal rights

Peters's later work directly addresses the political-economic concerns running through your questions.

In **"Global Constitutionalism: The Social Dimension"** (2018), she argues that the familiar combination of human rights, democracy, and the rule of law requires an explicit social dimension. Constitutionalism should strengthen responsibility across borders for people's material welfare. She presents this as a correction to a neoliberal tendency under which transnational investors can become especially privileged subjects of the global order. cambridge.org

Her subsequent presentation identifies legal action against poverty and inequality, broader social rights, stronger enforcement, and social impact assessment and due diligence. Possible duties may extend across borders and involve additional actors. The programme expressly does not envisage a centralized global welfare bureaucracy. mpil.de

This matters because it prevents an adequate interpretation of her work from stopping at formal legal integration. Her normative assessment also asks which interests the integrated order protects.

A system that makes investment protection effective while leaving subsistence, health, or labour protection institutionally weak would fail a serious social constitutional standard.

A reformist programme with material limitations

In **"Against a Deconstitutionalisation of International Law in Times of Populism, Pandemic, and War"** (2022), Peters recognizes the imbalance between internationally protected mobile capital and predominantly national social protection. She engages contributions to Gill and Cutler's *New Constitutionalism and World Order* in discussing this problem.

Her response includes stronger social rights, corporate and investor responsibilities, solidarity, and greater sensitivity to colonial legacies. She also states the limits of the strategy: it is reformist, does not overturn capitalism, and does not establish an international apparatus capable of levying taxes and distributing money. repository.law.umich.edu

This admission is important for assessing global state formation.

A social constitution can prescribe responsibilities without possessing the institutions necessary to realize them. Effective redistribution requires decisions about who pays, who benefits, how obligations are assessed, and how compliance is secured. Those decisions also require political authority and administrative capacity.

The absence of a global treasury does not, by itself, prove that no form of global statehood could exist. But it reveals a substantial distance between a programme of international social obligations and the capacities associated with a functioning welfare state.

There is also a political choice here. Strengthening national fiscal and administrative capacity may sometimes be more effective than creating another international mechanism. Peters's continued reliance on states leaves that possibility open.

10. The strongest criticisms of Peters's programme

Participation can legitimate an institution without democratizing its purposes

Christian Volk's **"Why Global Constitutionalism Does not Live up to its Promises"** (2012) directly addresses Peters's democratic proposals.

He acknowledges her attention to democracy but argues that participation can become a means of improving established institutions' decisions rather than enabling people to contest their basic purposes. Accreditation and professionalized participation may favour organizations willing and able to operate within existing institutional frameworks. More radical opposition may remain outside. CV Endversion KONTROLLE

The relevant distinction is between being heard and possessing the power to change the agenda.

Consultation might improve information and expose errors while leaving the distribution of decision-making authority largely intact. A global institution could thus acquire greater legitimacy without becoming substantially more responsive to people who challenge its underlying policies.

Peters's later emphasis on politicization and contestatory democracy makes it unfair to portray her mature position as wholly indifferent to political conflict. It does not, however, demonstrate that the proposed institutions resolve the problem Volk identifies. mpil.de

Constitutionalism can reproduce economic power through its categories

Christine Schwöbel-Patel's contribution to the 2018 volume coedited by Peters examines the connection between constitutionalism and political economy. Her criticism focuses on the division between public and private power. Treating markets as a distinct private sphere can insulate major economic decisions from political contestation.

She also asks whether expanding constitutional dialogue between Europe and East Asia might reinforce shared market assumptions or instead open opportunities to challenge colonial and economic hierarchies. WRAP: Warwick Research Archive Portal

This criticism reaches deeper than asking whether international organizations behave transparently.

The prior question is whether the legal structure has already assigned crucial decisions to owners, investors, and private institutions. Improving participation in public bodies may have limited effects if those bodies cannot alter the underlying distribution of economic power.

Peters's social programme addresses this concern, but its reformist character leaves a continuing tension between protecting rights within the existing order and changing the institutions that generate inequality.

Universal standards remain vulnerable to selective enforcement

Peters's **"The Double Effect of 'Double Standards'"** (2025) acknowledges international law's decentralized structure, unequal power, and limited capacity to secure consistent enforcement. She also argues that criticism of double standards can contain a constructive demand for coherence and fairness.

Her position distinguishes the existence of objectionable selectivity from a general conclusion that legal standards should be abandoned. verfassungsblog.de

The implication for constitutionalism is demanding: universal standards must constrain the actors invoking them.

Otherwise, constitutional language can provide a vocabulary through which powerful actors supervise weaker ones without accepting equivalent scrutiny. A convincing global constitutional order would therefore require institutions and political practices capable of making reciprocity effective.

11. Does Peters's work support the emergence of a world state?

The answer depends on the strength of the claim being assessed.

First: it clearly supports an explicit project of constitutional integration

Peters deliberately develops arguments that can alter the foundations, constituencies, and limits of authority beyond the state.

Her contribution is substantial because constitutional integration concerns more than coordinating policy. It can change who has rights, whose interests justify institutions, what governments must explain, and how disputes between legal orders are assessed.

Calling this merely administrative improvement would understate its ambition.

Second: it supplies possible components of global state formation

Several elements could operate within a future world federation: international individual rights, institutions accountable to both states and persons, constitutional constraints on collective security, and judicial techniques connecting different legal orders.

But the same elements could also support a durable arrangement of overlapping states and institutions without a final sovereign centre. Their presence does not determine the eventual constitutional form.

To investigate state formation empirically, I would ask:

- Can a common institution conclusively determine the boundaries of its own authority?
- Are major political disputes increasingly settled within one accepted constitutional framework?
- Can common institutions mobilize resources and secure implementation independently of particular governments' preferences?
- Do people and organized political movements treat those institutions as places where they can contest and determine collective purposes?
- Are exceptional powers subject to effective, reciprocal constraints?

These are questions for institutional and political research, not conclusions that follow from adopting constitutional vocabulary.

Third: her later work challenges any account of inevitable progress

In **"International Law and its Scholarship in the Time of Monsters"** (2025), Peters describes a risk of increasing authoritarianism, geopolitical subordination of law, and the weakening of international law's capacity to restrain imperial power. Her proposed scholarly response includes renewed normative criticism, multiple perspectives, and universality developed through broader participation. This is a diagnosis of endangered public authority, rather than a confident prediction of progressive constitutional unification. MPG.PuRe

Two trajectories must therefore remain distinct. Global governing power might become stronger while constitutional restraint becomes weaker. Alternatively, constitutional safeguards might improve without political authority becoming substantially more centralized.

My overall judgment is that Peters offers a theory of global public authority whose constitutional implications are potentially profound, while leaving the ultimate political form open. Her work helps make authority beyond the state legally intelligible and normatively defensible. It also supplies standards for resisting that authority when it becomes arbitrary, exclusionary, or socially destructive.

For your broader investigation, the most fruitful question is consequently how these legal arguments operate in practice: which institutions adopt them, whose capacities they strengthen, which powers become harder to contest, and whether affected people acquire effective political agency. Her writings establish an explicit constitutional ambition. Demonstrating a coordinated project for world-state construction would require additional evidence about political organization, institutional adoption, and material power.

12. Selected reading guide

The following works provide the strongest route through the argument. The dates and venues also help distinguish Peters's earlier programme from its later social and political revisions.

1. **"Compensatory Constitutionalism: The Function and Potential of Fundamental International Norms and Structures"** (2006), *Leiden Journal of International Law* 19(3), 579–610.
   The foundational justification for constitutional control beyond national institutions. Cambridge Core
2. **"The Merits of Global Constitutionalism"** (2009), *Indiana Journal of Global Legal Studies* 16(2), 397–411.
   A concise defence of the programme and engagement with its limitations. scholarworks.iu.edu
3. **"Humanity as the A and Ω of Sovereignty"** (2009), *European Journal of International Law* 20(3), 513–544, together with the rejoinder at 569–573.
   Essential for sovereignty's normative foundation and the move toward popular authorization. ejil.org
4. **The Constitutionalization of International Law** (2009), with Jan Klabbers and Geir Ulfstein, Oxford University Press.

Especially Peters's chapters **"Membership in the Global Constitutional Community"** and **"Dual Democracy."** Oxford Academic

5. **Beyond Human Rights: The Legal Status of the Individual in International Law** (2016), Cambridge University Press.
   The extensive treatment of individual rights, duties, personality, and enforcement. mpil.de
6. **"The Refinement of International Law: From Fragmentation to Regime Interaction and Politicization"** (2017), *International Journal of Constitutional Law* 15(3), 671–704.
   Crucial for understanding her approach to plurality and coordination. mpil.de
7. **"Foreign Relations Law and Global Constitutionalism"** (2017), *AJIL Unbound* 111, 331–335.
   Connects international authority to domestic constitutional procedures. Cambridge Core
8. **"Global Constitutionalism: The Social Dimension"** (2018), in *Global Constitutionalism from European and East Asian Perspectives*, 277–350.
   The major statement of her social constitutional agenda. cambridge.org
9. **"Constitutional Theories of International Organisations: Beyond the West"** (2021), *Chinese Journal of International Law* 20(4), 649–698.
   Connects institutional constitutionalism with neoliberalism, social reform, and the global South. papers.ssrn.com
10. **"Against a Deconstitutionalisation of International Law in Times of Populism, Pandemic, and War"** (2022), *Journal of Constitutional Justice* 9(2), 135–192; English text at 135–164.
    Particularly valuable for her self-criticism and acknowledgement of material limits. repository.law.umich.edu
11. **"International Organizations as Constitution-Shapers: Lawful but Sometimes Illegitimate, and Often Futile"** (2023), *UC Irvine Journal of International, Transnational, and Comparative Law* 8, 61–106.
    The closest fit to your original question about concrete institutional changes within existing legal systems. escholarship.org
12. **"The War in Ukraine and Legal Limitations on Russian Vetoes"** (2023), *Journal on the Use of Force and International Law* 10(2), 162–172.
    A focused example of constitutional argument directed at a major institutional privilege. repository.law.umich.edu

For the book-length works and some chapters, this discussion uses Peters's own detailed summaries, publisher abstracts, and accessible previews alongside the published articles. The institutional proposals above have been distinguished from established legal rules and from my interpretation of their implications for global state formation.

Ernst-Ulrich Petersmann’ s work

Ernst-Ulrich Petersmann is particularly relevant to your question because his work presents an explicit programme for reorganizing public authority beyond the state. His proposals extend from giving individuals stronger rights under international economic law to reconstructing the United Nations through a new constitutional agreement. His writings therefore provide evidence of a deliberate project of international constitutional integration. scholarlycommons.law.northwestern.edu

The relationship between that project and a **global world state**, however, requires careful analysis. Petersmann seeks an international order in which governments, international organizations, courts, and private actors operate within connected constitutional constraints. He generally envisages authority distributed among several levels and institutions. His later work expressly accommodates constitutional pluralism, and his recent writings increasingly address geopolitical fragmentation. api.pageplace.de

My central assessment is that **Petersmann offers a legal programme for building stronger constitutional authority across borders, including mechanisms that could contribute to state formation, without supplying a consistent blueprint for a single sovereign world government.**

To explain this assessment, I will distinguish three questions throughout:

- **What does he explicitly propose?**
- **How would those proposals redistribute governing authority?**
- **How far would that redistribution amount to the emergence of a world state?**

1. The intellectual foundations: constitutional government, economic freedom, and public authority

A practitioner developing a constitutional programme

Petersmann’s career combines academic work with legal advisory and dispute settlement experience in GATT and the WTO. This institutional experience matters: his work addresses the interpretation of treaties, the design of remedies, the responsibilities of international adjudicators, and the domestic implementation of international obligations. His official academic profile documents this combination of scholarship and institutional practice. European University Institute

Consequently, his writings can be read at two levels. They are arguments about the legitimacy of international law, and they are proposals for changing how existing institutions operate. Nevertheless, a distinction remains between a practitioner's academic programme and the official policy of the organizations in which that practitioner has worked.

Ordoliberalism and the legal organization of markets

A central strand of Petersmann's thought is **ordoliberal constitutionalism**. In his account, competitive markets depend on a legal framework that restrains both governmental arbitrariness and distortions produced by private power. His retrospective discussion of "Geneva ordoliberalism" places figures such as Jan Tumlir and Frieder Rössler within an intellectual tradition concerned with rules governing trade, government failure, and constitutional constraints. He distinguishes this tradition from approaches that place greater reliance on private self-regulation or discretionary power politics. Cambridge Core

For the world-state question, the implication is significant: **protecting a market order can require extensive public authority**. Rules securing competition, restricting discrimination, or protecting rights must be interpreted, administered, and enforced. Limiting a government's discretion can therefore enlarge the authority of another institution, especially a court.

It would consequently be misleading to measure this programme only by asking whether it produces "more state" or "less state." The more precise question is **which institutions gain authority over which decisions**.

The Kantian dimension

Petersmann also draws on a Kantian connection between constitutional government, peaceful international relations, and the rights of individuals interacting across borders. His 1998 article treats domestic, interstate, and cosmopolitan law as connected dimensions of a legitimate legal order. repository.law.umich.edu

One should be cautious about concluding that this automatically means rejecting a world state. In his 1997 discussion, Petersmann questions the consistency of requiring hierarchical legal institutions domestically while considering them unnecessary internationally. His engagement with Kant leaves room for substantial institutional integration. scholarlycommons.law.northwestern.edu

The underlying problem is enduring: if legal institutions are needed to prevent domination within states, what institutions are needed to prevent domination in relations that cross state boundaries?

2. The foundational argument: international economic law can perform domestic constitutional functions

His foundational monograph is *Constitutional Functions and Constitutional Problems of International Economic Law* (1991).

Its central diagnosis is that governments possess extensive powers over foreign economic relations that domestic constitutional safeguards inadequately control. Organized interests can

obtain discriminatory restrictions through political processes. International economic rules can counter these failures through transparency, nondiscrimination, individual freedoms, and effective domestic remedies.

The author's summary expressly envisages improving constitutional control over trade policy through international rules, domestic legislation, and judicial protection **without formally amending national constitutions**. The relevant discussion appears especially at pp. XLVI–LI. api.pageplace.de

Why this is constitutionally consequential

The key innovation is to treat an international economic commitment as something capable of reorganizing the relationship between citizens and their own government.

Consider a hypothetical import restriction.

Where a treaty operates only between governments, an affected person may have to persuade another government to initiate international proceedings. If a clear treaty provision also supplies an enforceable individual entitlement, the affected person can challenge the restriction through domestic legal institutions.

The resulting transformation has several dimensions:

1. **The individual acquires an additional legal position against government.**
2. **Domestic courts gain a further standard against which to examine public action.**
3. **An international commitment becomes part of the practical framework of domestic government.**
4. **Changing national policy may require addressing obligations that cannot be revised by an ordinary domestic majority alone.**

The judge may remain a national judge, applying procedures established by national law. Nevertheless, the standards constraining government now arise partly from an international legal order.

This is one of the most important mechanisms for your broader inquiry: **constitutional change can occur through the interaction of existing legal systems, without establishing an entirely new governmental apparatus at the outset.**

Constitutional protection or constitutional entrenchment?

The same mechanism permits different evaluations.

From the perspective of an individual subject to an arbitrary restriction, an additional remedy can strengthen freedom and legality.

From the perspective of a political majority seeking to change economic policy, the international commitment may entrench a previous settlement and transfer decisions to institutions more difficult to influence electorally.

These evaluations are not mutually exclusive. A legal arrangement can protect individuals and narrow democratic policy choices simultaneously. The substantive content of the rules, the available exceptions, and the allocation of interpretive authority determine how the balance works.

Sovereignty becomes a question of justification

Petersmann develops this issue in *State Sovereignty, Popular Sovereignty and Individual Sovereignty*, initially an EUI working paper in 2006. He asks how the sovereign equality of states can be reconciled with human dignity, inalienable rights, and popular sovereignty. His answer involves constitutional protection of individuals and constitutional restraints on power at several levels. papers.ssrn.com

The conceptual move is substantial. State sovereignty ceases to be a sufficient justification for governmental action. It must be assessed in relation to the persons whose interests government is supposed to serve.

But that move creates another problem: **who authoritatively determines what those interests and rights require?** A theory that weakens the justificatory authority of states must explain the legitimacy of the institutions empowered to judge them.

3. European integration as a model—and the limits of the WTO analogy

European integration supplies Petersmann with an example of international agreements acquiring constitutional significance through individual claims and judicial interpretation. His 1998 account emphasizes how litigants, national courts, and European courts helped transform treaty commitments into effective legal constraints. Private efforts to protect particular interests could simultaneously advance integration. repository.law.umich.edu

This mechanism is important because constitutional development need not begin with a unified political movement demanding a new state. Numerous disputes over concrete rights can cumulatively change the structure of authority.

Why the WTO mattered

Petersmann also interpreted the creation of the WTO as a major institutional transformation. The Uruguay Round combined a broad package of agreements with an integrated dispute settlement system. His 1997 work on UN reform explicitly presented that transformation as a source of lessons for institutional reform beyond trade. Cambridge Core

The broader inference is that **a treaty package can change the institutional framework within which states exercise power**. Compulsory adjudication can reduce a government's ability to determine unilaterally whether it has complied with its commitments.

That is a real transfer of authority, even where the institution receiving it has limited subject-matter competence.

Existing WTO law remains more limited than his constitutional programme

Several distinctions are essential:

- **Individuals and companies cannot themselves initiate WTO disputes.** Access belongs to WTO members, although private actors may seek governmental support for their concerns. Page 1
- **WTO adjudicators are legally constrained by the negotiated agreements.** Articles 3.2 and 19.2 of the Dispute Settlement Understanding prohibit adding to or diminishing the rights and obligations those agreements contain. wto.org
- **An international obligation and its domestic legal effect are different questions.** Establishing an international violation does not itself determine every consequence within a national legal system.

The WTO therefore cannot simply be described as an already functioning global constitutional court for individual economic rights. Petersmann's proposals are relevant precisely because they seek to strengthen connections that existing arrangements leave incomplete.

4. His explicit proposal for reconstructing the United Nations

This is the part of Petersmann's early work most directly relevant to the possibility of a world political order.

A new constitutional agreement

On p. 469 of *Constitutionalism and International Organizations* (1997), Petersmann proposes:

- A **new UN charter**, initially accepted by constitutional democracies.
- Stronger human-rights protection and **compulsory ICJ jurisdiction**.
- An integrated treaty package supported by national judicial protection of individual rights.
- Temporary coexistence between the new framework and the existing UN.
- Leadership by the United States and European Union.
- Accession incentives involving access to certain World Bank and UN-convention benefits.

The institutional analogy was the transformation of GATT into the WTO. scholarlycommons.law.northwestern.edu

These are concrete proposals for constitutional institution-building. They concern membership, adjudication, rights, institutional benefits, and the political coalition expected to initiate reform.

The strategy for overcoming resistance

The existing UN Charter makes amendment dependent on adoption and ratification requirements that include all permanent members of the Security Council. This gives those states a decisive position in formal Charter reform. United Nations

Petersmann's proposed alternative was to negotiate another constitutional instrument among willing states, rather than make the entire project depend on universal acceptance at the beginning.

His 1998 formulation adds the incorporation of existing human-rights conventions, stronger enforcement, an integrated membership package, and financial or development incentives. It also acknowledges that European direct effect and primacy may exceed what is acceptable or desirable worldwide. repository.law.umich.edu

Analytically, this resembles a strategy of **constitutional integration through an initial group whose institutional advantages encourage subsequent enlargement**.

However, negotiating a new agreement would not by itself eliminate obligations under existing treaties or authorize disregarding the rights of states that remained outside it. The proposal is a strategy for institutional reconstruction, not proof that every implementing measure would already be legally available.

The geopolitical implications

The accession incentives deserve particular attention.

If important institutional benefits depend on joining the new framework, constitutional integration is supported by material pressure as well as normative persuasion. States formally retain a choice, but the costs of remaining outside may differ dramatically.

This raises several questions:

- Who determines whether a state qualifies as a constitutional democracy?
- Who defines the constitutional conditions of membership?
- How much influence do later entrants have over rules established by the founding group?
- Could access to development resources become an instrument for securing acceptance of a particular legal order?

These are implications of the proposal's structure. They do not require attributing concealed motives to its author.

The explicitly transatlantic programme

Petersmann returned to the issue in his 2001 chapter, *Globalization and Transatlantic Regulatory Cooperation: Proposals for EU-US Initiatives to Further Constitutionalize International Law*. Its argument explicitly assigns the United States and Europe a role in using their economic and political influence to strengthen international constitutional rules, human rights, and the rule of law. Oxford Academic

This is direct textual evidence of a proposed transatlantic constitutional strategy.

It does not establish that Western governments collectively adopted the strategy, or that all relevant institutions subsequently developed because of it. Establishing those propositions

would require negotiation records, institutional histories, and evidence tracing particular proposals into adopted legal changes.

An integrated international judiciary

His 1999 article, *Proposals for Strengthening the UN Dispute Settlement System*, develops the judicial dimension. It considers broader non-state access, individual claims, cooperation between domestic and international courts, preliminary-ruling arrangements, and stronger supervision of compliance. It also discusses the ICJ's possible development into a supreme interpretive court, while recognizing obstacles created by its state-centred jurisdiction.

Yet Petersmann warns, at p. 151, against treating the UN as though it already possessed the institutional structure of domestic constitutional government. His proposed judicial integration remains distinct from a complete system of world legislation and administration. mpil.de

The distinction remains concrete: under the ICJ's existing Statute, only states may be parties in contentious cases. INTERNATIONAL COURT OF JUSTICE

From a state-formation perspective, these judicial proposals would help transform dispersed legal obligations into a more interconnected public legal order. They would not, by themselves, supply a world government capable of determining and implementing policy across all major fields.

5. Integrating human rights and economic law: the 2002 "Global Compact" proposal

In *Time for a United Nations "Global Compact" for Integrating Human Rights into the Law of Worldwide Organizations* (2002), Petersmann proposes closer integration between human-rights obligations and the activities of economic institutions.

This proposed compact should be distinguished from the UN initiative addressed primarily to business. Petersmann's proposal concerns the legal and institutional responsibilities of worldwide organizations. It includes stronger interinstitutional cooperation, assessment of human-rights effects, and reporting to human-rights bodies.

His argument already encompasses social adjustment and protection of vulnerable persons. Economic liberalization, in this account, requires an accompanying framework of rights and public responsibilities. ejil.org

Why this could constitutionalize global governance

Specialized institutions ordinarily address questions through their respective mandates. A constitutional approach asks them to justify their actions by reference to broader principles applying across institutional boundaries.

The potential transformation is considerable:

- Economic rules become connected to general standards of legitimate public authority.
- Institutional specialization becomes subject to duties of coherence.

- Individuals acquire a stronger position as persons to whom governance must be justified.
- Adjudicators may gain a larger role in reconciling competing legal regimes.

The crucial unresolved question is whether shared principles can provide that coherence without creating a hierarchy dominated by whichever institutions possess the strongest enforcement mechanisms.

His response to the charge of prioritizing market rights

Petersmann's rejoinder to Philip Alston is indispensable here. He expressly denies proposing an unrestricted, freestanding human right to trade or automatically subordinating social rights to property and market freedoms. He defends a broad conception of personal liberty, balanced with other rights through legislation and administration. He also rejects assigning the WTO primary responsibility for human-rights enforcement and denies that the EU supplies an ideal model for universal transplantation. ejil.org

A fair assessment must therefore examine the institutional consequences of his proposals while preserving the distinction between those consequences and his stated intentions.

The existence of social rights in a programme does not settle how effectively they would be protected. Equally, concern about unequal enforcement does not justify describing the programme as if social rights were absent.

6. Courts, citizens, and the redistribution of constitutional authority

Citizens as the ultimate principals

In *Judging Judges* (2008), Petersmann challenges approaches that understand international adjudicators chiefly as agents of member governments. He argues that citizens must also be understood as the democratic principals of governance and that courts have responsibilities concerning justice, rights, and public goods.

The article nevertheless explicitly calls for greater judicial deference in worldwide economic adjudication than in the European setting, recognizing differences in constitutional traditions and regulatory discretion. academic.oup.com

The constitutional significance lies in the change of reference point. A court's legitimacy is assessed partly by its service to persons and principles, rather than exclusively by its responsiveness to governments.

This can justify stronger review of governmental conduct. It can also produce a difficult separation between the people invoked as the source of legitimacy and the procedures through which those people actually control judicial authority.

The "Solange" model

In *Human Rights, International Economic Law and "Constitutional Justice"* (2008), Petersmann develops a model of cooperation among courts inspired by European practice.

The central idea is conditional deference: one court respects another legal order **as long as** that order adequately protects relevant constitutional rights. Courts maintain their own constitutional responsibilities while cooperating with other jurisdictions.

Petersmann proposes extending lessons from this method beyond Europe to economic, environmental, and human-rights adjudication. ejil.org

This is a sophisticated alternative to a simple judicial hierarchy. It envisages constitutional integration through interaction among institutions that retain distinct sources of authority.

Its potential strength is that no single institution necessarily has an unrestricted final word. Its weakness is that persistent disagreements may remain unresolved, while judges acquire substantial responsibility for determining whether other institutions deserve deference.

Interpretation and jurisdiction remain different

In his 2008 rejoinder to Howse, Petersmann distinguishes the law an adjudicator is empowered to apply from other international rules relevant to interpreting that law. He also defends proportionality, constitutional pluralism, stronger environmental and competition regulation, and domestic judicial remedies against governmental violations of international economic obligations. ejil.org

That distinction prevents an overly expansive interpretation of his position. Considering human-rights law when interpreting a trade obligation does not automatically give a trade tribunal general jurisdiction to decide every human-rights dispute.

Nevertheless, interpretation can still redistribute authority. The selection of relevant principles, the framing of competing rights, and the intensity of review can materially change the range of policies governments are permitted to pursue.

Legal scholarship and civil society as agents of change

Petersmann's 2006 article on human rights and WTO constitutionalism recognizes that governments were unlikely to agree readily on a WTO declaration linking trade and human rights. It therefore examines initiatives by the International Law Association and the formation of constituencies supporting global public goods. Cambridge Core

This identifies another route to institutional transformation: scholarly interpretation, professional association initiatives, civil-society advocacy, and litigation can prepare or promote constitutional changes that governments have not yet expressly negotiated.

The important analytical question is how such initiatives acquire authority. Persuasive scholarship, judicial adoption, governmental acceptance, and formal treaty amendment are distinct processes. They should not be treated as interchangeable.

7. Public goods and multilevel constitutionalism: the mature programme

The 2012 book

International Economic Law in the 21st Century: Constitutional Pluralism and Multilevel Governance of Interdependent Public Goods broadens the organizing problem.

The concern is now the inadequate protection of interdependent public goods through monetary, financial, trade, environmental, and related governance. Petersmann connects these failures to deficiencies in legal, judicial, and democratic accountability. Individuals should have a stronger position in governing and enforcing the legal arrangements that affect them, while legitimately different constitutional approaches must be respected. Bloomsbury

This gives his programme an enabling dimension. Constitutionalism must help institutions accomplish collective purposes, as well as prevent abuses of power.

Why public goods do not automatically imply a world state

The need for cross-border cooperation does not establish that every policy should be governed by the same institution.

Climate protection, financial stability, and the administration of a local public service involve different scales, forms of expertise, and relationships between affected persons. The appropriate division of responsibility may consequently differ.

Petersmann makes this point explicitly in his companion article on "democratic ownership," published in the *Polish Yearbook of International Law*, volume 31. At p. 33, he advocates sector-specific multilevel regulation and rejects unitary global governance as the appropriate ideal. He also insists that newly created public and private powers require constitutional controls. journals.pan.pl

A world-state interpretation therefore has to distinguish **the integration of constitutional principles** from **the concentration of governmental functions**. The former can advance while the latter remains limited.

The 2017 book: explicitly stronger vertical integration

In *Multilevel Constitutionalism for Multilevel Governance of Public Goods* (2017), Petersmann describes constitutionalism as constituting, limiting, regulating, and justifying authority. He envisages overlapping forms of citizenship and self-government, supported by parliamentary participation and judicial remedies.

The opening chapter expressly describes a transformation from horizontal interstate relations into stronger **vertical integration law** connecting individuals, governments, and international institutions. He considers functional constitutionalization possible even where global democracy or a world republic remains utopian. api.pageplace.de

This passage is particularly revealing. Calling his programme merely “coordination” would understate its ambition. Vertical integration changes the legal relationship between those who govern and those who are governed.

At the same time, vertical relationships can exist in a legally plural order. Their existence does not establish a single authority competent to settle every constitutional conflict.

Safeguards against centralized domination

His 2016 working paper on local engagement emphasizes limited delegation, subsidiarity, and proportionality. At printed p. 9, these principles protect local and national communities against abuses of supranational power and support objections to a world state or global governance becoming despotic without multiple constitutional checks. The original working paper is available here.

The argument is directed particularly against unchecked concentration. It supports a system in which authority is justified by its functions and remains constrained by other institutions.

This also explains why retained national institutions are integral to his project. They are potential participants in international constitutional enforcement and potential safeguards against abuses at higher levels.

8. Sustainable development and institutional reform in the 2022 book

Transforming World Trade and Investment Law for Sustainable Development applies this programme to the Sustainable Development Goals and related governance problems.

The introduction acknowledges that the 2030 Agenda is legally non-binding and does not specify the precise rights, obligations, instruments, or priorities necessary for implementation. Petersmann proposes stronger implementation through legislation, judicial remedies, treaty interpretation, and institutional cooperation. He also recognizes that European constitutional solutions may not be politically feasible worldwide. api.pageplace.de

The distinction between common objectives and institutional agreement is crucial. States can agree that poverty, environmental degradation, or threats to health should be addressed while disagreeing fundamentally about:

- The distribution of costs.
- The appropriate roles of markets and government.
- The powers of international organizations.
- The scope of judicial review.
- The domestic policy choices that should remain available.

Petersmann’s constitutional architecture is therefore a proposed means of implementing shared objectives; agreement on those objectives does not itself establish consent to that architecture.

In his own 2022 account of the book, he discusses interim WTO appellate arbitration, climate regulation, reform of investment adjudication, judicial comity, proportionality, and more

participatory and deliberative democracy. These proposals combine institutional strengthening with limits on judicial excess and criticism of one-sided investor protection. International Economic Law and Policy Blog

For the world-state question, this is evidence of a programme extending well beyond protecting market access. It seeks a wider public order capable of addressing environmental, social, and economic interdependence. The difficulty is that the existence of common problems does not resolve disagreements over the constitutional distribution of power.

9. The 2025–2026 writings: integration under conditions of fragmentation

The recent writings materially qualify any linear account in which Petersmann envisages the world steadily converging on a single constitutional structure.

Judicial deference in a plural world

In *Trade and Human Rights Debates: Judicial Deference in the Multipolar Re-ordering of UN and WTO Treaty Systems*—EUI LAW Working Paper 2025/16—Petersmann argues that WTO exceptions can protect collective human-rights interests without expressly translating them into individual-rights claims.

At pp. 19–20, he treats constitutional pluralism as an enduring condition. Divergent rights interpretations, national and regional margins of appreciation, and security concerns can justify judicial restraint and narrower understandings of adjudicative mandates. See the original paper, especially pp. 12–14 and 19–20.

Judicial deference was already present in his earlier work. The recent argument gives it particular practical significance under conditions of sharper political disagreement.

European institutional capacity

In *European, UN and WTO Crises Governance*—EUI LAW Working Paper 2026/2—he examines crises as pressures for institutional adaptation. His discussion includes stronger coordination, collective financing, regulatory capacity, strategic autonomy, and international coalitions, while recognizing the importance of limited competences and further delegation. See especially pp. 11–12 and 21–25.

My interpretation is that this part of the programme comes closer to **regional governmental consolidation**. It concerns the capacities needed to sustain a European constitutional order in competition with other political and economic systems.

Regional consolidation, however, can occur alongside global fragmentation.

“Second-best” trading systems

His August 2026 paper, *Order and Disorder in International Trade*, advocates preserving prospects for WTO reform while pursuing plurilateral agreements and a European-centred

network where universal agreement is unavailable. He envisages variable coalitions remaining embedded in broader UN and WTO obligations.

The proposed coalitions respond to what he characterizes as authoritarian and hostile American power politics; they do not presume a unified Western constitutional project. See EUI RSC Working Paper 2026/33, especially pp. 9–19.

The contrast with the earlier proposal for joint US–European leadership is substantial. It shows that his preferred routes to constitutional integration depend on changing political circumstances.

Institutional reversals also matter empirically. The WTO's own account records that its Appellate Body is unable to review appeals because of vacancies. Constitutional adjudication has therefore proved vulnerable to continuing political dependence. Dispute settlement - Appellate Body

10. The principal criticisms: whose rights, whose authority, whose constitutional settlement?

Philip Alston: economic policy cannot simply become a human right

Alston's 2002 reply challenges the movement from a claim that economic freedom can benefit human welfare to a claim that particular economic entitlements possess the status of universal human rights.

He acknowledges Petersmann's support for social rights. His concern is that enforceable market claims could acquire institutional strength while other human-rights obligations remained comparatively ineffective. He also questions the extrapolation from European arrangements to generally applicable international law. ejil.org

This is a criticism about the **constitutional status of a contested economic settlement**.

A policy can be valuable without being constitutionally indispensable. If its legal protection becomes difficult to revise, the burden of justification shifts from those defending the policy to those seeking alternatives.

Petersmann's reply answers important claims about his intentions. It does not, by itself, demonstrate that economic and social rights would enjoy comparable institutional protection.

Robert Howse: the starting point of judicial review matters

Howse's 2002 criticism is especially concrete. If trade freedoms become fundamental individual rights, social or environmental measures may be assessed as restrictions requiring justification. Why should the framework not instead begin with governments' obligations to realize social rights and ask how trade rules must accommodate them?

He also warns against assuming that all WTO exceptions impose an identical necessity test. The applicable treaty provision matters. His argument therefore concerns the legal structure of review, not merely disagreement about the desirability of trade. ejil.org

Consider two possible formulations of the same dispute:

- A regulation interferes with economic freedom and must be justified.
- A regulation implements a public obligation, and economic rules must be interpreted compatibly with that obligation.

Both formulations permit balancing. They can nevertheless place different burdens on governments, litigants, and courts. **The constitutional starting point influences the distribution of governing authority.**

Howse's 2008 reply further complicates the debate. He does not categorically oppose domestic enforcement of international economic obligations. He treats standing and remedies as institutional choices whose benefits and costs require examination. He also recognizes that judicial proceedings can expose arrangements previously dominated by governmental and business insiders to wider scrutiny. ejil.org

Consequently, "more adjudication" cannot automatically be equated with either emancipation or corporate domination. The effects depend on access, applicable law, remedies, transparency, and standards of review.

Jeffrey Dunoff: constitutional language can itself claim authority

Dunoff's *Constitutional Conceits* argues that WTO constitutional discourse is a political and disciplinary intervention. Describing an institution's rules as constitutional can elevate them above ordinary political contestation and competing international regimes.

He considers an expansionist interpretation of constitutional rhetoric as one possible explanation, rather than as proven collective intent. His alternative emphasizes political participation, distributive effects, and continuing contestation over the regime's purposes. ejil.org

This provides an essential methodological warning for your inquiry: **constitutional scholarship may participate in creating the authority it describes**.

A scholar's claim that an institution possesses constitutional functions is evidence of an argument about its status. Establishing that the institution actually possesses the claimed authority requires additional legal and institutional analysis.

The deeper unresolved problems

Three further problems emerge from assessing these debates.

First, equal rights of access do not guarantee equal practical influence. Litigation requires resources, organization, expertise, and a legally recognizable claim. A programme of individual empowerment must be evaluated against the actual distribution of those capacities.

Second, constitutional protection and collective self-government are different achievements. A person can obtain a remedy without having meaningful influence over the rules governing everyone. Conversely, a national majority can act democratically while imposing costs on foreigners who had no voice in its decision.

Third, public-goods language does not determine distributive justice. Agreement that a stable economic or environmental order benefits society leaves open who finances it, who bears adjustment costs, and who receives protection.

These issues do not refute Petersmann's programme. They identify the institutional evidence needed to assess its democratic and distributive consequences.

11. How far does this amount to a programme for a world state?

For this assessment, I would reserve **world state in the strong sense** for a global public order possessing sufficiently integrated authority to determine and implement binding decisions across major fields, including mechanisms for settling conflicts over its own competences.

Such a state could be federal. The survival of national governments would therefore not disprove its existence. Nor would the absence of democratic government prove that no state existed: statehood and democratic legitimacy are different questions.

With that definition, Petersmann's work supports several conclusions.

It supplies mechanisms relevant to state formation

His proposals connect individuals directly to transnational norms, strengthen compulsory adjudication, constrain unilateral governmental discretion, and establish common standards for reviewing public authority.

These mechanisms could contribute to a wider constitutional polity. Their significance is particularly clear where domestic institutions become responsible for enforcing commitments generated beyond the domestic political process.

The proposed new UN goes further still by addressing membership, institutional incentives, and a common adjudicative framework.

It does not supply all the institutions of a global sovereign

To establish the emergence of a world state, one would need answers to questions such as these:

Question	Why it matters
Who settles conflicts of constitutional authority?	A network of courts may cooperate without having a final mechanism for resolving incompatible claims.
Who possesses general policymaking competence?	Strong sectoral institutions do not necessarily constitute a government capable of addressing problems across policy fields.
Who controls common revenue and expenditure?	Enforcing restrictions differs from financing collective provision and redistribution.
How are decisions implemented against powerful resistance?	Legal authority can remain dependent on the actors it is intended to constrain.

Question	Why it matters
How are governing institutions politically controlled?	Rights, accountability procedures, and representative authorization perform different functions.
How are constitutional rules revised?	An order's capacity for legitimate adaptation matters as much as the strength of its existing restraints.

Petersmann gives much more developed answers concerning rights, adjudication, interpretation, and multilevel accountability than concerning a unified global capacity to legislate, finance, administer, and enforce policy.

The strongest interpretation is constitutional integration with an open political outcome

His work is best understood as a programme to make international governance more constitutionally organized and more effective within domestic legal systems.

That programme could produce different political outcomes:

- A relatively coherent global constitutional order.
- A continuing plurality of interacting legal orders.
- Stronger regional constitutional blocs.
- Uneven integration in which some rights and institutions acquire much more authority than others.

His recent writings make the latter possibilities especially important.

Petersmann therefore helps explain how authority can develop above and through existing states. His work also demonstrates why that development cannot simply be equated with the inevitable emergence of one global state. The decisive research task is to trace which proposed connections become effective institutions, how they redistribute authority, and whether their fragmented powers become part of a common governmental order.

12. A focused reading guide

For your particular question, I would read the following in this order:

1. **"Constitutionalism and International Organizations"**, *Northwestern Journal of International Law & Business* 17 (1996–97), 398–469. Start with the concluding new-UN proposal on p. 469. Repository record.
2. **"How to Constitutionalize International Law and Foreign Policy for the Benefit of Civil Society?"**, *Michigan Journal of International Law* 20 (1998), 1–30. Particularly useful for the connection between individual claims, European integration, and UN reconstruction. Original article.
3. **"Proposals for Strengthening the UN Dispute Settlement System"**, *Max Planck Yearbook of United Nations Law* 3 (1999), 105–156. Read the concluding institutional proposals alongside his qualifications concerning state analogies. Full text.
4. **The 1991 monograph**, *Constitutional Functions and Constitutional Problems of International Economic Law*. The author's introduction and summary provide a clear account of the foundational programme. Publisher preview.

5. **The 2002 human-rights debate**, beginning with Petersmann's "Global Compact" article, followed by Alston, Howse, and Petersmann's rejoinder. This is the essential exchange on economic constitutionalism and human rights.
6. **The 2008 articles and rejoinders**, especially *Judging Judges* and *Human Rights, International Economic Law and "Constitutional Justice"*. These clarify the judicial mechanisms and the limits Petersmann accepts.
7. **The 2012 and 2017 monographs**, for the mature account of public goods, constitutional pluralism, and vertical integration.
8. **The 2022 book and the 2025–2026 working papers**, for sustainable development, judicial deference, geopolitical fragmentation, and the movement toward selective constitutional coalitions.

Source basis: this analysis draws on original articles and rejoinders, official working papers, and publisher introductions, summaries, contents, and available previews of the monographs, supplemented by Petersmann's related full-text publications.

Joel P. Trachtman’ s work

Joel P. Trachtman is directly relevant to your inquiry because he explicitly examines—and, in important respects, advocates—the development of global governmental authority through international law. His central book on the subject, *The Future of International Law: Global Government* (2013), begins with a remarkably direct proposition:

“International law is the precursor of international government, and international government is nothing more than an intensification of international law.” assets.cambridge.org

The most productive interpretation of his work is that it offers **a theory of how international cooperation can develop into institutions capable of exercising governmental powers**. Its principal mechanisms include delegation, changes in decision procedures, international adjudication, coordination between legal regimes, and the creation of political constituencies that support international commitments.

However, the relationship between this programme and a **world state** requires careful analysis. Trachtman’s concept of government is broad, and his institutional approach leaves considerable room for divided authority. A global governmental order could consequently become extensive without acquiring the unified constitutional structure, political membership, fiscal capacity, and ultimate authority associated with a state.

I will distinguish three things throughout: what Trachtman expressly argues, the institutional implications of those arguments, and the further evidence that would be needed to establish actual world-state formation.

1. The central distinction: global government and a world state

In the introduction to his 2013 book, Trachtman deliberately avoids setting a quantitative threshold at which international law suddenly becomes government. Even limited international rules perform governmental functions in his terminology. Increasing their scope, strength, and institutional organization intensifies something already present. He also expects states to remain important participants in the system. assets.cambridge.org

This definition has a major analytical consequence: **the existence of “global government” in Trachtman’s sense does not, by itself, demonstrate the existence of a global state.**

For assessing the latter possibility, I would distinguish the following arrangements:

Arrangement	Characteristic form of authority	Relevance to state formation
International cooperation	Governments coordinate or undertake specified commitments.	Cooperation can remain dependent on continuing national political support.
Global governmental authority	Common institutions can interpret, administer, enforce, or develop rules with some independence from individual governments.	Particular governmental functions have moved beyond exclusively national control.
A world state, including a federal one	A common constitutional order organizes ultimate public authority, its relationship with constituent governments, and its accountability to a political community.	The separate governmental functions become parts of an integrated political order.

These are working distinctions for this analysis, rather than categories Trachtman consistently uses in precisely this form.

A federal world state would not require the disappearance of national governments. It would require an authoritative settlement of their relationship with common institutions. Conversely, a large number of international organizations could exercise considerable power while remaining constitutionally fragmented.

Two questions therefore guide the assessment:

1. How does international law acquire the capacity to govern?
2. Under what conditions would those capacities become sufficiently connected to constitute a common state?

Trachtman provides a much more developed answer to the first question. His writings also identify several mechanisms through which the second development could occur, but they do not establish that it must occur.

2. The foundations: sovereignty as an allocation of authority

2.1. Sovereignty is something to evaluate institutionally

An early statement appears in “Reflections on the Nature of the State: Sovereignty, Power and Responsibility” (1994). Trachtman treats sovereignty as an allocation of power and responsibility. When authority moves, the questions are where it goes, what purposes the change serves, and how citizens can hold its new recipient accountable.

His discussion of the European Parliament is especially significant. Giving it greater authority can change the relationship from cooperation among national executives into one in which a supranational institution answers more directly to people. The relevant change concerns the source and structure of public authority, rather than simply the amount of national discretion surrendered. scholarlycommons.law.case.edu

For your inquiry, this provides an important starting point. A treaty can alter the constitutional relationship between citizens and governing institutions even when the participating states continue to exist.

Consider two hypothetical arrangements. In the first, national ministers agree on a common policy and remain exclusively accountable through their domestic institutions. In the second, a common legislature acquires authority to revise that policy and citizens participate in choosing that legislature. Both involve international coordination, but the second establishes an additional relationship of political authorization.

The significance for world-state formation lies in that relationship. Transferring regulatory competence and creating a new political community are different developments; they may eventually reinforce one another.

2.2. The analogy between international organizations and firms

Trachtman develops his institutional approach extensively in "The Theory of the Firm and the Theory of the International Economic Organization: Toward Comparative Institutional Analysis" (1997).

Drawing on institutional economics, he examines why actors sometimes replace repeated bargaining with an organization. Negotiation costs, uncertainty, incomplete agreements, and difficulties securing commitments can make continuing institutions useful. Their internal procedures then become part of the problem: competence, voting, delegation, and adjudication must be assessed together.

The analogy also raises the opposite question: if organization has advantages, why should all activity not be placed within one enormous organization? Comparative analysis must account for the costs of centralization as well. His examples remain exploratory, and he acknowledges the difficulties of empirical measurement. scholarlycommons.law.northwestern.edu

This is a particularly useful framework for examining a possible world state.

Imagine several countries managing a shared resource. They could negotiate a new agreement whenever circumstances change. Alternatively, they could establish an institution authorized to monitor conditions and adjust agreed requirements.

The second arrangement reduces the need for repeated negotiations. It also creates new risks: officials may pursue their own objectives; common decisions may fit some societies poorly; and participants may disagree about whether the institution has exceeded its mandate.

The institutional question is therefore comparative. It concerns whether a particular transfer of authority improves the overall arrangement after accounting for those costs.

Applied globally, the same reasoning can support substantial common powers in one field and decentralized authority in another. It cannot establish the desirability of one comprehensive state merely by demonstrating that international cooperation is sometimes beneficial.

2.3. What "economic" analysis means in his work

The Economic Structure of International Law (2008) develops this approach across jurisdiction, custom, treaties, international organizations, interfunctional relations, and adjudication.

In the author's explanation of the book, economic analysis evaluates the relationship between institutions and valued outcomes. It does not independently select the values that should prevail. Environmental protection, human rights, and local autonomy can enter the analysis alongside commercial interests. He expressly distinguishes the efficient allocation of governmental authority from the efficient operation of markets. Opinio Juris

Consequently, it would be inaccurate to reduce his position to "international institutions should maximize commercial freedom."

The deeper normative issue concerns **how institutions identify, aggregate, and respond to individuals' interests**. Even if the method accepts environmental, social, and moral concerns, it still must explain whose preferences count, how conflicting preferences are compared, and whether political influence corresponds to the importance of the interests involved.

That is where an economic theory of institutional design encounters constitutional politics.

His earlier "The International Economic Law Revolution" (1996) also resists a single comprehensive institutional architecture. Its concluding image is a varied collection of arrangements adapted to different problems. This early preference for institutional diversity should be read alongside, rather than erased by, his later advocacy of global government. worldtradelaw.net

3. Why international law is expected to acquire more governmental functions

In his own account of the progression from the 2008 book to the 2013 book, Trachtman identifies globalization, technological change, demography, and democratization as developments that can increase demand for international legal cooperation. The earlier institutional analysis becomes the basis for a theory about future changes in the functions of law. Admissions Blog

His lecture "The Changing Function and Structure of International Law," delivered in 2014 and published in the 2014–2015 volume of the *Journal of Transnational Law & Policy*, identifies several functional reasons for cooperation:

- **Externalities:** activities within one jurisdiction impose consequences elsewhere.
- **Economies of scale and scope:** joint action can sometimes provide capabilities more effectively.
- **Public goods:** individually rational conduct may fail to supply benefits that depend on collective contributions.
- **Regulatory competition:** mobility and cross-border interaction can undermine particular domestic regulatory choices.

He expressly recognizes that these arguments do not justify international regulation of every social function. law.fsu.edu

The relevance to a world state becomes clearer when we distinguish agreement on an objective from the continuing administration of that objective.

Suppose governments agree to manage a transboundary environmental problem. They must still decide how to measure contributions, verify information, allocate costs, respond to new evidence, and handle noncompliance. Each additional task creates a possible demand for an institutional function.

A comparatively simple agreement can therefore generate questions that resemble the familiar problems of government:

- Who may revise the rules?
- Who determines whether they have been followed?
- Who implements the consequences?
- Who controls those exercising these powers?

This supplies a plausible route from international commitments to governmental institutions.

But the existence of those questions does not settle their answers. Governments might establish a common agency, retain bargaining through periodic negotiations, create competing regional arrangements, or accept continuing coordination failures.

The functional argument identifies pressures for institutional development. A theory of state formation must additionally explain which political actors convert those pressures into durable authority.

4. International law reorganizes political coalitions

This additional political mechanism is developed in “International Law and Domestic Political Coalitions: The Grand Theory of Compliance with International Law” (2010).

Trachtman argues that adherence and compliance depend on domestic coalitions. An international commitment can bring together those who benefit from their own government’s performance and those who benefit from reciprocal performance abroad. It can also strengthen the constituencies supporting a policy and make reversal more difficult. He presents Mexico’s entry into NAFTA and China’s WTO accession as possible illustrations of this commitment strategy. chicagounbound.uchicago.edu

Consider a simplified trade example. A domestic producer might oppose a reduction in import protection. Exporters, however, might support that reduction if it secures access to another country’s market. An agreement connects decisions that would otherwise be debated separately.

Once the agreement operates, the exporters acquire an interest in continued domestic compliance because their foreign opportunities may depend on it. International law has changed the domestic political situation in which the next government makes its decisions.

The implication for your broader inquiry is substantial: **international authority can grow through the reorganization of national politics, without first creating a unified global political community.**

Professional interests and support for international law

The same article explicitly models a "Pro-International Law Lobby." International lawyers may support stronger law because of public purposes, professional conviction, or anticipated gains in influence, income, and prestige. Trachtman treats these as possible explanations and recognizes opposing constituencies as well. He also makes the welfare implications conditional on how well domestic politics represents people's interests. chicagounbound.uchicago.edu

This is an unusually direct connection to your original concern about powerful groups and the legal profession.

It suggests a research programme with concrete questions: Which professional groups promote particular institutional reforms? What powers would those reforms create? Which constituencies benefit from enforcement? How does the distribution of political influence change after adoption?

His formulation does not determine in advance whether public commitment or professional advantage predominates. It makes those possibilities available for empirical investigation.

A later chapter coauthored with Anne van Aaken, "Political Economy of International Law: Towards a Holistic Model of State Behavior" (2016), broadens the relationship further. Law can shape incentives and channels of influence, and can also reorder values and interests. Thus, his later political economy should not be characterized as assuming that all relevant preferences remain permanently fixed. papers.ssrn.com

5. Constitutionalization: creating, limiting, and connecting authority

5.1. The three functions identified with Jeffrey Dunoff

In their introductory chapter to *Ruling the World? Constitutionalism, International Law, and Global Governance* (2009), Jeffrey L. Dunoff and Trachtman distinguish three constitutional functions:

Function	Institutional purpose
Enabling constitutionalization	Establishing or strengthening the capacity to produce international law.
Constraining constitutionalization	Limiting the authority exercised by international institutions.
Supplemental constitutionalization	Addressing gaps in domestic constitutional protection associated with globalization.

Their approach is principally taxonomic. It does not treat every increase in constitutionalization as desirable, and it can accommodate constitutional pluralism. A function missing from one organization might be supplied elsewhere in the wider institutional arrangement. assets.cambridge.org

This is important because “constitutionalization” can otherwise conceal several different developments.

Establishing an international rule-making body increases institutional capacity. Subjecting that body to rights protections limits its capacity. Connecting domestic and international institutions may preserve a protection that neither could supply adequately alone.

For world-state analysis, these functions should be assessed together. A common institution with extensive competence but weak constraints is different from an institution whose competence is embedded within a broader constitutional settlement.

Nor does the use of constitutional language necessarily imply that the settlement is complete. It may identify a particular function performed within an otherwise fragmented order.

5.2. The multiple constitutions of the WTO

In “The Constitutions of the WTO” (2006), Trachtman distinguishes economic, interfunctional, political, legal or judicial, human-rights, and redistributive dimensions. He also discusses rules governing relations among constitutional orders—what he calls “tertiary rules.”

These concerns extend beyond the content of trade obligations to the allocation of authority between legal systems and institutions. The article expressly disavows a general prescription that constitutionalization should always increase. ejil.org

The relationship between constitutional orders is especially significant for state formation.

Suppose one institution prioritizes a commercial obligation while another applies an environmental commitment. A world state would require some constitutional way of allocating the authority to resolve that conflict. A plural international order might instead rely on negotiation, reciprocal adjustment, or unresolved competition.

Consequently, the decisive issue is not simply whether international rules are called constitutional. It is whether there is an authoritative and legitimate arrangement for determining the relationships among the powers they establish.

6. The possible transition from adjudication to legislation

6.1. A conjectural constitutional sequence

The 2006 WTO article proposes a sequence in which perceived protectionism stimulates stronger adjudication; the resulting imbalance creates demands for legislation; and legislative capacity creates demands for parliamentary control. Trachtman explicitly presents the sequence as conjectural. ejil.org

This is one of the most important mechanisms in his work for your question.

The logic can be reconstructed as follows. International adjudicators may find national measures inconsistent with international commitments. Governments and affected constituencies may then seek common legislative solutions that allow legitimate regulatory

objectives to be pursued across jurisdictions. Creating that legislative capacity raises a further issue: how should the people affected control it?

The potential development is substantial because institutional reform in one branch can create demands for reform in another.

Yet the sequence contains political choices at every stage. Dissatisfaction with adjudication could produce stronger legislation, narrower judicial authority, renegotiated obligations, or withdrawal from a commitment. The possible transition toward more complete government is one outcome requiring explanation.

6.2. Moving beyond individual state control

In "Constitutional Economics of the World Trade Organization" (2009), Trachtman treats movement beyond individual state vetoes as a decisive form of enabling constitutionalization. He also observes that an institution established for one purpose can make further uses of that institution easier. Ruling the World?

Here the world-state implications become particularly concrete.

A government may consent to a specific obligation while preserving control over whether to accept the next obligation. Alternatively, it may authorize a common institution to make future decisions under agreed procedures, including decisions that the government subsequently opposes.

The latter arrangement involves a different relationship to authority. The initial agreement establishes a continuing decision process; it does not require that every participant approve every later outcome.

This does not automatically create a state. It does, however, create a form of public power that cannot be reduced to repeated voluntary concurrence on each substantive decision.

6.3. The components of meaningful delegation

"The Economic Structure of the Law of International Organizations" (2014) provides a particularly useful test. Trachtman identifies three elements of delegation:

- authority over a subject;
- independence from individual state control;
- bindingness.

Independence from an individual member differs from independence from the membership collectively. He also emphasizes that formally available exit can carry substantial practical costs. chicagounbound.uchicago.edu

For assessing institutional development, this is more informative than simply counting organizations.

A majority vote that produces a recommendation does not establish the same authority as a majority vote that produces a binding rule. An institution with a broad mandate but no effective

implementation may exercise less power than one with a narrower mandate that operates through reliable domestic enforcement.

The relevant inquiry concerns the interaction among legal competence, practical independence, and the consequences of decisions.

6.4. A division of global governmental responsibilities

A striking passage in the 2009 chapter contemplates the WTO becoming a "ministry of efficiency for the world," with a separate "ministry of redistribution" located in the World Bank, UNDP, or another institution. He also explicitly distinguishes constitutional economics, which compares institutional arrangements, from economic constitutionalism that entrenches liberal economic commitments. Ruling the World?

This passage envisages a possible division of governmental labour across international institutions.

Its significance is that an institution primarily concerned with economic integration need not itself supply all the social and political functions required to sustain the resulting order. Those responsibilities could be assigned elsewhere.

My reading is that this opens a route toward a **distributed global governmental system**. Whether it would become a state would depend on how the institutions were connected: who determined their budgets, reconciled their policies, authorized redistribution, and resolved jurisdictional disputes.

The metaphor of ministries identifies the possibility of complementary functions. It does not establish that an integrated global cabinet or constitutional executive already exists.

7. Courts, domestic legal effect, and relations between regimes

7.1. Trachtman's approach does not give courts an unlimited mandate

In "'Trade and …' Problems, Cost-Benefit Analysis and Subsidiarity" (1998), Trachtman compares ways of addressing conflicts between trade and other regulatory objectives. His analysis considers nondiscrimination, proportionality, balancing, and other evaluative techniques, while examining their institutional and normative difficulties. He does not treat trade values as inherently superior.

The choice concerns both the level of government and the institution that should make the decision, including the allocation between adjudication and legislation. ejil.org

This matters because different legal tests allocate different kinds of discretion.

A relatively specific rule may settle much of the political choice in advance. A broad standard may require adjudicators to assess competing purposes in individual disputes. An international legislature could instead negotiate a common regulatory framework.

From a world-state perspective, interpretive doctrines can consequently perform institutional work. They help determine where future decisions will be made.

But the expansion of adjudication cannot itself establish that a complete constitutional order has emerged. Courts depend on mandates, remedies, and political arrangements that must be examined separately.

His 1996 article already warns that excessive juridification can immobilize political processes. It treats supremacy, preemption, direct effect, and judicial review as institutional choices. worldtradelaw.net

One distinction deserves emphasis: a finding that a state has breached an international obligation and the direct displacement of domestic law are separate questions. Their connection depends on the legal arrangements through which the international obligation operates internally.

7.2. Fragmentation can be managed in several ways

In "Fragmentation, Coherence and Synergy in International Law" (2011), Trachtman examines coordination among specialized regimes. Fragmentation is not necessarily harmful. Where conflicts or opportunities for joint benefits arise, possible responses include institutional coordination, rules governing relationships between regimes, judicially applied standards, and compensation across policy fields. Differences in enforcement strength can also subordinate one regime in practice. papers.ssrn.com

This helps identify an important alternative to comprehensive world-state formation.

International legal relations could become more organized through many specific settlements without acquiring one supreme decision centre. Conversely, increasingly demanding coordination could create pressure for institutions capable of making decisions across policy fields.

The decisive empirical question is whether coordination remains a negotiated relationship between autonomous regimes or develops into a common authority over their relationship.

8. Concrete programmes: migration, digital platforms, and sustainable trade

8.1. Migration: detailed legal integration with institutional questions left open

The International Law of Economic Migration: Toward the Fourth Freedom (2009) translates his approach into relatively concrete legal possibilities.

Its illustrative draft agreement considers scheduled commitments differentiated by occupation or skill, including quotas and duration limits. It also addresses employment treatment, public services, and social-security coordination. It does not require the conferral of voting rights or access to public office.

The organizational discussion considers a new migration body or existing institutions, with possible monitoring, assistance, and dispute-settlement functions. However, the appendix expressly presents a negotiating checklist; its central organizational clauses remain unfinished. research.upjohn.org

The combination is revealing. Important aspects of migration policy could become internationally governed while political citizenship remained nationally organized.

For world-state analysis, labour mobility and common political membership must therefore be distinguished. Internationally protected economic or social rights could reshape the position of individuals across borders without establishing a common electorate.

The unfinished institutional design is equally significant. Specifying potentially negotiable rights and commitments is further advanced than selecting the authority that would govern their future development.

8.2. Digital platforms: pressures across territories and policy fields

"Platforms and Global Governance: Globalization on Steroids" (2023) examines how platforms intensify cross-border interactions. Trachtman identifies problems between territorial jurisdictions and between specialized regulatory fields, arguing for greater attention to the relationships among them. academic.oup.com

A hypothetical platform transaction illustrates the difficulty. Its participants, data, payment system, and service provider might fall under different jurisdictions. The transaction could simultaneously raise questions concerning privacy, competition, consumer protection, taxation, and trade.

Common rules could make such activity easier to govern. But several institutional outcomes remain possible: an overarching authority, coordinated sectoral bodies, or competing regulatory systems.

The example reinforces the demand for governance while leaving the architecture of that governance open.

8.3. Sustainable trade: an expressly legislative programme

In his 2023 statement on "Remaking Trade for Sustainable Development," Trachtman distinguishes interpreting existing WTO obligations from changing those obligations. He presents the integration of sustainability concerns as an urgent task of international legislation and treaty-making, with clear limits to what adjudicators should accomplish through interpretation. International Economic Law and Policy Blog

His coauthored work with Jan Yves Remy and Daniel C. Esty, "Remaking Trade for a Sustainable Future," develops the research setting for the Villars Framework 2.0. This is a collaborative programme for reforming the relationship between trade and sustainability. academic.oup.com

For your inquiry, these contributions demonstrate an effort to shape future international legal arrangements. They also show why it is necessary to examine the means of reform. A negotiated

expansion of international regulation raises different questions of authorization from an expansion achieved through judicial interpretation.

The existence of a reform programme is evidence of intended institutional change. Its adoption, implementation, and effects require separate examination.

8.4. The ambition extends beyond commercial regulation

His 2014 lecture also advocates stronger arrangements addressing matters such as international debt restructuring, tax coordination, and security. It calls for institutions able to make some rules without unanimity and with democratic participation by citizens. It envisages supplementing states through a division of powers. law.fsu.edu

These proposals are closer to the substantive responsibilities of government. Nevertheless, coordinating taxation does not itself establish an autonomous treasury, just as proposing security functions does not supply a settled constitutional command structure.

9. Democracy, consent, and the possibility of elite control

9.1. Binding commitments as an exercise of autonomy

In "The Antiglobalisation Paradox—Freedom to Enter into Binding International Law Is Real Freedom" (2013), Trachtman challenges Dani Rodrik's account of tensions among integration, democracy, and national autonomy.

His contractual argument is that governments can exercise autonomy by exchanging commitments that improve their position. Binding international law need not be understood simply as the removal of national freedom. He also argues that domestic democratic authorization can legitimate international commitments without requiring international institutions to reproduce every domestic democratic mechanism. Wiley Online Library

This argument identifies something real about collective action: the ability to bind oneself can enlarge what one can accomplish with others.

However, constitutional evaluation must distinguish the decision to enter an arrangement from continuing control over its development.

A government might democratically authorize a treaty whose original terms are reasonably clear. Over time, an institution could interpret those terms expansively, exercise delegated discretion, or develop rules for circumstances that the original participants did not anticipate.

The question then becomes whether the initial authorization supplies sufficient legitimacy for the later exercise of power.

9.2. Accountability must correspond to the authority exercised

The 2009 WTO chapter recognizes that movement beyond unanimity changes the accountability problem. Trachtman considers more direct accountability and human-rights constraints appropriate responses to more independent institutional power. Ruling the World?

This qualification prevents his argument from being reduced to the proposition that national consent permanently resolves every democratic issue.

My assessment is that a satisfactory account would have to examine at least four relationships:

- whether governments adequately represented their populations when entering the arrangement;
- whether those affected can participate in later decisions;
- whether representatives can revise institutional policies and powers;
- whether dissenting minorities retain meaningful protection.

These relationships become more demanding as international institutions acquire greater discretion.

A world government whose decisions merely maximize an estimated aggregate benefit could still be democratically deficient. Constitutional legitimacy also concerns who may speak, decide, contest, and demand justification.

9.3. He explicitly acknowledges elite use of international institutions

The 2014 article on international organizations recognizes that governments and organized interests may use delegation to advance preferred policies at the public's expense. International arrangements can help officials conceal responsibility, avoid accountability, or collude. Trachtman also notes that powerful states can play disproportionate roles in institutional design and operation. chicagounbound.uchicago.edu

These passages are highly pertinent to the perspective underlying your questions.

They mean that his framework permits two very different explanations of the same institutional reform: improved provision of collective benefits, or an improvement in the position of actors whose interests are imperfectly aligned with the public.

The explanations can also coexist. An institution might produce useful cooperation while distributing authority or benefits unequally.

The appropriate investigation would therefore connect legal design to political evidence: negotiating positions, access to officials, professional involvement, enforcement patterns, opportunities for participation, and the distribution of gains and losses.

His analysis makes such investigation possible. It does not establish a unified transnational strategy merely from the existence of expanded international authority.

10. The strongest criticisms of his world-government argument

10.1. Functional need does not ensure institutional creation

John R. Morss's review essay, "Resources for a Future: Towards an Articulation of Global Governance" (2014), directly challenges the inference from growing needs to growing cooperation.

Morss argues that desirable cooperation does not materialize simply because good reasons support it. He also questions whether functional explanation can become circular when institutional growth is explained by needs that the institutions themselves are said to generate. He acknowledges that Trachtman is aware of problems in earlier functionalist theories. law.unimelb.edu.au

This is the central weakness of any strong prediction of world-state emergence based on the benefits of coordination.

An institutional arrangement might generate a substantial collective gain while remaining politically unattainable. Particular participants may bear concentrated losses. Officials may value discretion more than the anticipated benefits. Actors may disagree about future implementation or distrust the distribution of authority.

A persuasive causal account must identify how these obstacles are overcome. Otherwise, it explains why reform might be useful more successfully than why reform will happen.

10.2. Preferences and institutional effects require empirical specification

Niels Petersen's "How Rational Is International Law?" (2009), reviewing Trachtman alongside Andrew Guzman, recognizes the explanatory value of economic analysis but questions its capacity to supply a complete theory.

Predictions depend on understanding preferences, their formation, and their change. Petersen also explicitly credits Trachtman with taking competing objectives seriously and calls for stronger empirical research. ejil.org

For evaluating global governmental development, this matters at two levels.

First, the benefits ascribed to an institution must be demonstrated rather than assumed. Second, the political actors who demand it must be identified independently of the institutional outcome.

A theory becomes difficult to test if successful delegation is always explained by a preference for cooperation and unsuccessful delegation by a preference for autonomy. It needs evidence that permits those preferences and their effects to be assessed before—or independently of—the outcome.

Trachtman's coalition analysis improves the framework by opening the state to examination. It also increases the amount of political evidence needed to validate particular predictions.

10.3. Constitutional language can itself redistribute authority

Jeffrey Dunoff's "Constitutional Conceits: The WTO's 'Constitution' and the Discipline of International Law" (2006) disputes Trachtman's constitutional characterization of the WTO.

Dunoff argues that constitutional discourse can invest international arrangements with an authority they have not independently acquired. It may present politically contestable choices as matters already settled at a higher legal level. He emphasizes meaningful participation and public legitimacy, while recognizing that constitutional arrangements can also open political debate. ejil.org

This criticism is especially relevant to the possible role of legal scholarship in global institutional development.

Scholarly description can have political effects. If officials, judges, or professional communities accept an institution as constitutional, they may approach its authority differently.

But that possible effect must also be investigated empirically. The existence of constitutional scholarship does not demonstrate that its categories have become accepted law or effective governing authority.

The disagreement between Dunoff and Trachtman also shows why their subsequent edited volume should be treated as a site of debate, rather than as a uniform programme.

10.4. Gains from cooperation do not settle distribution

My further criticism concerns the distance between institutional productivity and justice.

Suppose an agreement increases aggregate welfare. That does not show whether its gains reach those bearing its costs, whether compensation is enforceable, or whether the distribution reflects unequal negotiating power.

A global governmental system could make international decisions more effectively while giving weakly represented populations inadequate influence over those decisions.

The relevant constitutional problem is therefore not solved by showing that there is a cooperative surplus. It includes the authority to decide how that surplus is distributed and who can contest the settlement.

10.5. Increasing authority does not necessarily converge on one state

A second unresolved issue concerns the form of the eventual order.

Expanded common authority could produce an integrated federal system. It could also produce a durable division among overlapping institutions, competing regional systems, or specialized regimes with unequal enforcement capacities.

The 2006 article's statement that the WTO will never be a state concerns that particular organization. It cannot reasonably be treated as a rejection of all global government. Equally, an expansion of WTO-related constitutional functions cannot establish that the entire international system is becoming one state. ejil.org

A convincing world-state account needs evidence of integration among governmental capacities, not simply growth within several separate fields.

11. Overall assessment: how far does Trachtman support the world-state thesis?

Trachtman offers a substantial intellectual programme for the construction of global governmental capacity. His work makes clear how changes within legal arrangements can alter the location of public power.

The most consequential changes identified in this analysis concern the transition:

- from specified commitments to continuing rule-making institutions;
- from individual government control to collective decisions that can bind dissenters;
- from separate legal regimes to arrangements governing their interaction;
- from nationally organized constituencies to political interests sustained by international commitments;
- from limited integration to demands for legislation, accountability, and redistribution.

These mechanisms are relevant to the possible emergence of a world state because they concern the acquisition and organization of governmental functions.

My judgment, however, is that his work provides **a stronger theory of expanding global government than an established explanation of world-state formation**. To complete the latter explanation, one would need to show how fragmented powers acquire a common constitutional relationship, how that relationship gains durable political support, and how the system obtains the capacity to implement its decisions.

For the broader question that initiated your series, Trachtman is particularly valuable in two respects. He provides explicit arguments for institutional development beyond the state, and he supplies analytical tools for examining the interests that may drive it.

The central unresolved issue is therefore both causal and constitutional: **who will create these powers, whose purposes will they serve, and through what institutions will the people subject to them exercise continuing political control?**

A focused reading order

The following sequence concentrates on the works most useful for investigating that issue:

1. ***The Future of International Law: Global Government*** **(Cambridge University Press, 2013).**
   Begin here for the expressly future-oriented global-government thesis. cambridge.org
2. ***The Economic Structure of International Law*** **(Harvard University Press, 2008).**
   The methodological foundation; the author's accompanying explanation helps clarify the meaning of economic analysis. Opinio Juris
3. **"The Theory of the Firm and the Theory of the International Economic Organization: Toward Comparative Institutional Analysis,"** ***Northwestern Journal of International Law & Business*** **17 (1997), 470–555.**
   The fullest early institutional framework. scholarlycommons.law.northwestern.edu

4. **"The Constitutions of the WTO,"** ***European Journal of International Law*** **17(3) (2006), 623–646.**
   Essential for the multiple dimensions of constitutional authority. ejil.org
5. **Jeffrey L. Dunoff and Joel P. Trachtman, eds., Ruling the World? (Cambridge University Press, 2009).**
   Concentrate on their introductory chapter and Trachtman's "Constitutional Economics of the World Trade Organization." assets.cambridge.org
6. **"International Law and Domestic Political Coalitions: The Grand Theory of Compliance with International Law,"** ***Chicago Journal of International Law*** **11(1) (2010), 127–158.**
   Particularly important for political and professional interests. chicagounbound.uchicago.edu
7. **"The Economic Structure of the Law of International Organizations,"** ***Chicago Journal of International Law*** **15(1) (2014), 162–193.**
   A precise framework for examining delegated authority. chicagounbound.uchicago.edu
8. ***The International Law of Economic Migration: Toward the Fourth Freedom*** **(W. E. Upjohn Institute, 2009).**
   A concrete application, including an illustrative treaty and alternative organizational possibilities. research.upjohn.org

Source note: This account draws on full-text articles, the relevant constitutional chapters, and selected sections of the migration book. For the 2008 and 2013 monographs, the discussion relies on publisher materials, available excerpts, and Trachtman's own explanations, supplemented by articles developing their arguments. The evaluations of what would constitute a world state are my analysis, distinguished above from his express claims.

Antoine Vauchez’ s work

Antoine Vauchez’s work is particularly valuable for understanding how governing authority can develop beyond individual states through legal interpretation, professional networks, independent institutions, and changes within national administrations. His contribution concerns the social processes that make such authority possible: who constructs it, which resources they use, how it becomes legitimate, and why some institutional projects succeed while others remain marginal.

My assessment is that he should be read as **a historical sociologist of transnational political authority and an advocate of democratizing European public power**. In the works examined, I did not find an explicit programme for a universal world state. Indeed, his research challenges the assumption that European integration necessarily represents an unfinished transition toward a superstate. At the same time, his collaborative reform proposals explicitly envisage additional European parliamentary and fiscal powers. These positions are compatible: rejecting an inevitable historical destination does not preclude advocating particular forms of supranational government. blenderlaw.com

For your question, therefore, three levels require separate examination:

1. **His empirical findings:** how legal and professional practices help construct authority across national boundaries.
2. **His political proposals:** what forms of European government he wishes to strengthen, constrain, or democratize.
3. **The world-state interpretation:** what additional conclusions can reasonably be drawn from these findings and proposals.

The third level is my analytical reconstruction. It should not automatically be attributed to Vauchez himself.

1. What would count as evidence of an emerging world state?

A preliminary distinction is necessary because “global world state” can refer to substantially different developments.

Possible meaning	What would need to be demonstrated
A worldwide state, potentially federal	A durable constitutional organization of authority across the world, with binding allocation of competences, public institutions, and effective means of implementing decisions.

Possible meaning	What would need to be demonstrated
Global governmental functions	Institutions making or enforcing consequential rules across national boundaries, even where these institutions do not form a single constitutional system.
A transnational governing elite	Professional and social groups able to influence several national and international centres of decision-making.
An international economic order with constitutional effects	Legal arrangements that durably constrain public choices or privilege particular economic relationships across jurisdictions.

These developments can overlap, but none automatically establishes the others. A federal world state would not require every decision to be centralized. It would, however, require more than the existence of influential international courts, common professional standards, or interconnected law firms.

This distinction helps identify the particular strength of Vauchez's approach. His research directs attention to the processes through which institutions acquire authority and become connected. It also asks whether the resulting order has the coherence and social reach that its constitutional language appears to promise.

The central analytical question becomes:

When does the coordination of institutions through legal professionals produce an integrated political authority, and when does it sustain a durable system of overlapping, partially autonomous powers?

Vauchez supplies important evidence for investigating that question. His work does not settle it in advance.

2. His intellectual approach: authority grows through relationships among professions and institutions

2.1 The significance of the "weak field"

A foundational text is "The Force of a Weak Field: Law and Lawyers in the Government of the European Union" (2008).

Drawing on the sociology of social fields, Vauchez examines European law as a professional space whose participants remain dependent on resources acquired elsewhere: national universities, administrative careers, diplomatic influence, political connections, and established legal professions. Its boundaries are comparatively porous.

"Weak" therefore concerns the field's limited autonomy. Precisely because lawyers move among otherwise separate worlds, they can connect institutions and reconcile competing ways of describing European government. His hypothesis is that these intermediaries occupy a particularly consequential position in a polity lacking a state that permanently organizes relations among its constituent interests. blenderlaw.com

The implication for your inquiry is substantial. Transnational authority need not be constructed by people who have left national societies behind. National credentials and institutional connections may be the very resources that make a person authoritative internationally.

A senior official, for example, may possess several kinds of standing simultaneously:

- Administrative knowledge acquired in a ministry.
- Professional recognition as a legal specialist.
- Access to international institutions.
- Academic authority through teaching and publication.
- Relationships with commercial clients or organized interests.

The political significance lies in the connections among these positions. A study limited to a person's formal office at one moment could miss much of the influence that person can exercise.

2.2 Legal expertise as an activity that shapes political possibilities

Vauchez develops this approach in his introduction to *Lawyering Europe: European Law as a Transnational Social Field*, coedited with Bruno de Witte in 2013.

He examines legal entrepreneurship through the characteristic practices of the profession: opinions, scholarly writing, conferences, litigation, and the interpretation of institutional history. Legal innovation must generally be presented through recognizable professional forms. An intervention can therefore change the direction of a political order while appearing as an authoritative explanation of what its law already requires.

He also emphasizes the continuing importance of national recruitment, education, and professional organization. The European legal space does not simply reproduce a consolidated national profession on a larger geographical scale. api.pageplace.de

My interpretation is that this offers a powerful method for studying institutional changes within existing legal frameworks. The investigator should examine both the formal instrument and the professional process surrounding it.

For instance, when a treaty provision receives an expansive interpretation, relevant questions include: who developed that interpretation, which organizations circulated it, which institutions adopted it, and how alternatives lost credibility? These are distinct from—but complementary to—the doctrinal question of whether the interpretation is legally defensible.

3. His international-law research: authority beyond states has a longer history

Vauchez's relevance is not confined to extrapolating from the European Union. His collaborative research with Guillaume Sacriste directly investigates the international legal world of the 1920s.

3.1 Jurists' multiple loyalties

Their article "The Force of International Law: Lawyers' Diplomacy on the International Scene in the 1920s" appeared in *Law & Social Inquiry* in 2007. Its central argument concerns how international law acquired relative autonomy through jurists who occupied heterogeneous—and sometimes conflicting—political and professional positions. The authority of international law developed through these relationships of dependence and mediation. Cambridge Core

Their related 2005 study, "Les 'bons offices' du droit international," provides concrete historical distinctions. Jurists associated with smaller European states could invoke sovereign equality and international solidarity in ways consistent with their governments' diplomatic interests. Lawyers serving major powers faced different tensions between universal legal principles and governmental freedom of action.

International professional recognition helped establish reputations for impartiality, while international offices created additional loyalties. Yet national affiliations persisted. The authors also show how the failure to secure universal compulsory jurisdiction for the Permanent Court of International Justice could be interpreted by proponents as a stage in a longer process of legal development. researchgate.net

This historical example yields two important conclusions for a world-state analysis.

First, **support for stronger international law can arise from different—and potentially conflicting—political interests**. It cannot always be explained by a single project originating in the most powerful states.

Second, the interpretation of limited achievements as steps toward a future integrated order can itself be part of political mobilization. A researcher should investigate that interpretation rather than adopt it as proof of the direction of history.

3.2 International officeholding as a source of legitimacy

In "Statesmen of Independence" (2018), Vauchez traces the connection between international government, specialized knowledge, and the legitimacy of independent officeholders back to the League of Nations. He investigates how this inherited understanding of authority contributed to the distinctive position of European institutions. Cambridge Core

This provides a genealogy of supranational legitimacy. It does not establish an uninterrupted institutional progression from the League to the EU and then to a world state.

The distinction matters: a model of legitimate officeholding can travel between organizations without those organizations becoming components of one government.

4. *Brokering Europe*: how law helped construct a transnational polity

4.1 European unity becomes something to explain

Vauchez's closely related books *L'Union par le droit* (2013) and *Brokering Europe: Euro-Lawyers and the Making of a Transnational Polity* (2015) form the central statement of his research on European integration.

The introduction to *Brokering Europe* questions explanations that begin with already constituted European institutions, interests, and legal opportunities. Vauchez argues that these were themselves formed through the history being explained. The treaties did not mechanically generate a coherent constitutional order, nor did one judicial intervention accomplish that transformation.

His object is the contingent process through which heterogeneous treaties, policies, institutions, and groups came to be understood and organized as a single polity. Law acquired a capacity to connect these elements and provide them with a common institutional meaning. assets.cambridge.org

This is one of his most important contributions to your question.

Many theories of international institutional development begin by asking why states would delegate a particular function. Vauchez adds a prior question: **how did that function come to be understood as belonging to a common transnational order in the first place?**

Consider the difference between describing an agreement as:

- A set of reciprocal obligations among governments.
- A legal order with rights that individuals can invoke.
- A constitutional framework with institutions responsible for its continuing development.

These descriptions can support different expectations about judicial interpretation, institutional autonomy, and the permissible scope of national discretion. The transition among them requires explanation.

4.2 The significance of *Van Gend en Loos*

His research on *Van Gend en Loos* examines how a judicial decision became a defining moment in European constitutional history.

The detailed evidence is available in his 2008 working paper, "'Integration-through-Law': Contribution to a Socio-history of EU Political Commonsense," related to his 2010 *European Law Journal* article.

The working paper reconstructs the involvement of the Commission's Legal Service, legal associations, litigators, judges, officials, and scholarly commentators. It follows both efforts to secure consequential decisions and the subsequent work of publicizing and interpreting them. Its discussion of *Costa* also identifies competing conceptions of individual legal access and European political membership. The eventual institutional settlement did not simply reproduce every ambition of the participants. RSCAS Working Paper 2008/10

For a theory of state formation, the important distinction is between **a decision being delivered** and **a decision becoming constitutionally authoritative**.

The latter may require acceptance, repeated invocation, incorporation into legal education, institutional implementation, and recognition by other courts. These activities help turn a ruling into a durable reference point.

My inference is that legal institutional development can proceed without a single comprehensive constituent act. Yet this does not mean that every interpretive innovation produces statehood. Its significance depends on the authority it actually establishes and the practices through which that authority is maintained.

4.3 Institutional continuity across generations

"Keeping the Dream Alive" (2012) asks how the European Court of Justice could maintain an integrationist orientation when national governments controlled the selection of its members.

Vauchez examines commemorative materials—tributes, anniversary publications, eulogies, and related practices—as means of constructing a judicial collective identity and transmitting understandings of institutional roles. The Court's continuity becomes a sociological problem rather than an unexplained assumption. Cambridge Core

This identifies a mechanism relevant to any durable transnational institution: professional memory can help reproduce an institutional mission despite personnel turnover.

However, institutional identity should not be confused with perfect uniformity. To establish that an international court forms part of a global governing apparatus, one would still need to examine its jurisdiction, relationships with other institutions, internal disagreements, and practical effectiveness.

5. Lawyers, economists, and the unequal development of European projects

5.1 Why some projects acquire greater institutional force

With Stephanie L. Mudge, Vauchez broadens the analysis beyond lawyers.

"Building Europe on a Weak Field: Law, Economics, and Scholarly Avatars in Transnational Politics" (2012) compares the relative success of Europe as a legal community and a single market with the weaker fortunes of "Social Europe." The authors examine actors positioned across academic, technocratic, and political worlds, whose authority allows concepts to circulate between them. Scholarly theories can participate in constituting the institutional realities they describe. journals.uchicago.edu

For your inquiry, this helps explain why transnational institutional development may be **uneven in its purposes**.

It is insufficient to observe that authority has moved beyond the nation-state. One must ask which policies gained professional support, organizational resources, and authoritative intellectual justifications—and which did not.

A transnational order might become highly developed in certain economic domains while remaining much less capable in social protection or redistribution. Such asymmetry would require explanation even if the order never became a state.

The comparative value of unsuccessful projects is especially important. They provide evidence against treating every demand for integration as the expression of an irresistible structural necessity.

5.2 The European Central Bank and scientific authority

In “Fielding Supranationalism: The European Central Bank as a Field Effect” (2016), Mudge and Vauchez examine the ECB’s unusually strong investment in economic research and scholarly prestige.

They explain this through its position across financial institutions, professional economics, and European politics. Research activity helps establish scientific standing and build relationships with national central banks; it also participates in struggles over European authority. Stephanie L. Mudge, Antoine Vauchez, 2016

The analytical implication is that formal institutional independence and social connectedness are different dimensions.

An institution may be insulated from direct governmental instructions while remaining deeply connected to particular professional communities. Its authority can depend partly on those connections.

For a global-government inquiry, this suggests examining the institutions that produce authoritative knowledge alongside those that formally make decisions. Expertise becomes politically consequential when it helps determine which options are regarded as credible, responsible, or feasible.

This does not imply that technical knowledge is fictitious. It means that its institutional production and political uses require investigation.

6. Independence as a means of authorizing government

6.1 The European “independent branch”

In *Démocratiser l’Europe* (2014), published in English as *Democratizing Europe* (2016), Vauchez argues that democratic reform must address the actual centres of European governmental power. His analysis gives particular attention to the Court, Commission, and ECB. Their different legal mandates and accountability arrangements remain relevant; his grouping identifies a historical pattern of authority rather than a formally uniform constitutional branch. Springer Nature Link

His own 2014 explanatory essay makes the argument especially clear. Market construction provided a setting in which European institutions acquired autonomous political capacity. Institutions claiming distance from national and partisan interests became guardians of the European undertaking, surrounded by a specialized public sphere of experts, lawyers, and lobbyists. Political conflict consequently took place through legal categories, economic theories, and regulatory instruments. CNRS Le journal

This is highly relevant to the emergence of governmental power beyond states. The absence of familiar national political forms does not establish the absence of politics.

A political order can make consequential distributive choices through procedures whose public presentation emphasizes technical competence or legal obligation. The crucial questions are which choices remain contestable, who can contest them, and through which institutions.

6.2 The distinction between independence “from” and “for”

“The Genie of Independence and the European Bottle” (2022) develops this argument through a historical analysis of independence.

Vauchez distinguishes protection from external interference from the positive authorization to pursue an institutionally defined European general interest. He treats these as ideal types that coexist in changing proportions.

He traces three major settings: the constitutional development of the Court and Commission in the 1960s; monetary integration and the ECB; and subsequent conflicts concerning national courts and other independent institutions. He explicitly preserves the democratic importance of independence, including its contribution to rights and equality, while seeking a more accountable conception of its exercise.

My interpretation is that this is one of Vauchez’s strongest contributions to analysing institutional expansion.

Independence can perform two functions simultaneously. It can protect an institution’s allocated responsibilities, and it can support a claim that the institution is especially qualified to define the common interest. The second function raises questions about the source and limits of its governing mandate.

This yields a concrete research programme. When an international institution invokes independence, one should ask:

- What pressures is it protected against?
- Who defines the ends it may pursue?
- Which decisions remain subject to democratic authorization?
- What mechanisms permit revision of its mandate?
- Which other institutions can contest its understanding of the public interest?

The answers cannot be inferred from the word “independence” itself.

7. *The Neoliberal Republic*: transnational power through the transformation of existing states

7.1 The empirical investigation

With Pierre France, Vauchez published *Sphère publique, intérêts privés* in 2017, followed by the English *The Neoliberal Republic: Corporate Lawyers, Statecraft, and the Making of Public-Private France*.

The research examines movements between senior public positions and corporate legal practice. Its empirical basis includes interviews and a database of more than 200 careers. The authors investigate how these movements alter the relationship between public institutions, private economic interests, and the definition of public purposes. JSTOR

Their 2022 chapter, "Lawyers, Revolving Doors and the Public-Private Foundations of the French Regulatory State," presents this as the formation of legal expertise at the intersection of public and private law. Its career analysis follows people moving from government offices, parliamentary committees, agencies, and courts into large firms. Law, Legal Expertise and EU Policy-Making

7.2 How public authority becomes a resource in private practice

Vauchez's 2021 exposition explains the institutional relationship. Privatization, regulation, contracting, and reliance on outside advisers increased demand for knowledge of public institutions. Law firms recruited officials and developed practices concerning regulation, public affairs, compliance, and lobbying.

He also traces changes within the public sector. The Conseil d'État is particularly important because it combines adjudication, advice to government, elite career formation, and the production of public-law doctrine. He describes a reorientation of public-interest reasoning toward competitive-market principles, accompanied by claims that public service could continue through private professional activity. His proposed response seeks to protect the public sphere's capacity for independent democratic deliberation. LPE Project

The significance for your original concern about powerful groups is direct. Influence can be exercised through relationships embedded within legally recognized institutions and professions.

A company's practical position may depend on decisions concerning licences, competition rules, procurement, taxation, or regulatory compliance. Knowledge of the institutions making those decisions becomes valuable. Former public officials can possess precisely that knowledge, together with professional standing and relationships.

The relevant transformation can therefore occur while national institutions remain formally intact. Ministries, courts, and agencies continue to act, but the social relationships through which policies are formulated and implemented change.

7.3 Legal mechanisms and parliamentary scrutiny

Vauchez's 2018 Senate testimony identifies a regulatory chain connecting Parliament, administrations, agencies, the European Commission's competition machinery, and courts. He discusses the expansion of legal practices serving companies across this chain and historical professional-entry arrangements facilitating movement into the bar.

His recommendations include better monitoring, stronger professional and ethical oversight, and consideration of conflict-of-interest effects in legislative impact assessments. He also acknowledges the difficulty of attributing diffuse structural effects to particular individuals. The inquiry's chair stated that the France–Vauchez book had helped prompt the commission. Préconisations, rapport et annexes - Sénat

For a world-state analysis, three processes should consequently be distinguished:

Geographical expansion of networks; redistribution of influence within public institutions; constitutional integration of those institutions.

The French research provides substantial evidence concerning the first two. The third requires additional investigation.

This distinction also prevents a misleading equation between a strong state and a state insulated from transnational economic power. A state may remain administratively capable while particular parts of its machinery become increasingly connected to internationally operating private interests.

7.4 The wider regulatory transformation

The edited collection *Le moment régulateur* (2024) extends the inquiry to the rise of regulation across economic and other domains, including personal data, audiovisual communication, and medicines. It studies small independent bureaucracies and the claim that regulation embodies a distinct administrative modernity. Its contributors investigate changes across public/private and national/European boundaries. CESSP

My inference is that the growth of cross-border government may involve the reorganization of administrative authority at several levels simultaneously.

This is different from imagining national administration progressively replaced by one central institution. The empirical question is how regulatory bodies become connected, whose expertise circulates among them, and whether their relationships create effective common government.

8. His explicit political programme: stronger and more democratic European public power

Vauchez's normative work deserves separate treatment. An author who studies how elites construct authority may also participate in efforts to redirect that authority.

8.1 Democratizing institutions that already govern

In his 2016 National Assembly testimony, Vauchez proposed more representative recruitment to the Court and ECB executive leadership, stronger parliamentary scrutiny of the ECB, and stricter ethical controls.

He also emphasized political organization: parties, unions, national parliaments, universities, and concrete campaigns should make European policy an object of sustained public debate. He argued that political action had to operate across national and European levels. assemblee-nationale.fr

The underlying normative issue is not simply whether an institution exercises power above the nation-state. It is whether citizens can influence the purposes for which that power is exercised.

My reading is that Vauchez places democratic accountability at the point where governing decisions actually occur. Merely adding representative institutions will have limited effect if consequential choices remain organized elsewhere.

8.2 T-Dem: concrete supranational institutional construction

His strongest contribution to an explicit institutional programme is the Treaty on the Democratization of Europe, developed with Stéphanie Hennette, Thomas Piketty, and Guillaume Sacriste. It appeared in a 2017 French book and subsequently in the English-language *How to Democratize Europe* (2019).

In their 2017 legal defence, the authors proposed a parliamentary assembly through an international treaty operating alongside existing EU commitments. They drew on the institutional techniques used for the European Stability Mechanism and Fiscal Compact, and on their interpretation of the *Pringle* judgment.

The proposed assembly would possess legislative, budgetary, appointment, and oversight functions concerning euro-area government. The authors defended compatibility with EU law against criticism; this was an argued legal position, not an uncontested determination of validity. verfassungsblog.de

This is especially relevant to your initial interest in institutional changes pursued within existing legal frameworks.

The proposal identifies legal possibilities for creating additional public authority without waiting for a comprehensive reconstruction of the entire European treaty system. It therefore represents deliberate institutional engineering.

Its declared political purpose is also clear: to democratize and redirect economic government. Describing it merely as an expansion of supranational power would omit the proposed redistribution of power from executive and expert bodies toward parliamentary deliberation.

8.3 The fiscal and representative content

The 2018 democratization manifesto proposed:

- An assembly composed principally of national parliamentarians, with **80% national and 20% European parliamentary representation**, while leaving the ratio open to debate.
- A budget of approximately **4% of GDP**.
- New taxation involving corporate profits, high incomes, substantial wealth, and carbon emissions.
- Parliamentary authority capable of overcoming executive disagreement in the proposed arrangements.
- Adoption by willing participating countries.

These were proposals, not a description of institutions already established. Voxeurop

From the perspective of state formation, taxation and expenditure are particularly consequential. They could give supranational institutions resources for positive collective action, beyond setting rules or constraining national policies.

Nevertheless, the proposal's European scope and reliance on national parliamentary participation matter. It envisages authority shared across existing democratic communities. It provides no basis for attributing a universal world-state programme to its authors.

8.4 The proposed political constituency

In a further 2017 response, the authors argued that monetary government had reached deeply into national budgets, labour arrangements, and social-policy choices. Their assembly was intended to connect these decisions to national political debate while bringing parliamentary oppositions into transnational deliberation.

They acknowledged practical problems, including competing parliamentary workloads, specialization among a small group, and asynchronous electoral calendars. La Vie des idées

This introduces an important qualification to institutional design. An assembly's formal existence does not guarantee a politically active constituency. Effective parliamentary government also requires public attention, organized alternatives, and recognizable responsibility for decisions.

At global scale, these difficulties would become central research questions rather than details that could be postponed until after institutional creation.

8.5 Public goods and judicial protection

The 2024 collection *L'Europe: du marché à la puissance publique?*, coedited with Éric Monnet, asks how the EU might develop as a democratic public authority. Its presentation focuses on public goods, ecological transition, taxation, budgets, and institutional integrity. This continues the affirmative side of Vauchez's programme: creating the capacity for collective public action. La Vie des idées

A further qualification appears in *Des juges bien trop sages* (2025), coauthored with Stéphanie Hennette Vauchez. The authors criticize French public-law courts for excessive accommodation of governmental policies and insufficient defence of rights, equality, and spaces of contestation. They call for renewed judicial protection of democratic freedoms. CESSP

His assessment of judicial power therefore depends on its institutional relationships and political consequences. Both excessive insulation from democratic contestation and excessive accommodation of executive power can become objects of criticism.

9. Why his work does not establish an inevitable world state

9.1 Transnational institutional forms may remain distinctive

The most direct textual caution appears in the 2008 "Weak Field" article. Vauchez asks whether the European legal field's limited autonomy is merely a preliminary stage in convergence toward a superstate. His answer is **"probably not."** National dependence and cross-institutional connections may be relatively stable characteristics of European government. blenderlaw.com

This undermines a common developmental assumption: that an institution departing from the nation-state model must be an incomplete version of a larger state.

The alternative is a durable transnational political form whose authority depends on connections among institutions that remain differentiated.

9.2 Legal reach and practical penetration differ

"The Map and the Territory" (2020) questions narratives of continuously expanding legal integration by examining how European law is actually used.

Vauchez emphasizes socially selective access, indifference, avoidance, and the importance of support from repeat actors, academics, NGOs, and professional networks. Drawing explicitly on Michael Mann's concept of infrastructural power, he argues that EU law's practical penetration beyond established legal markets can remain weak. He also warns that academic communities may become institutional support groups and lose critical distance. Antoine Vauchez, 2020

For your question, this is a decisive methodological warning.

A norm's formally broad scope does not tell us how widely it organizes social conduct. The existence of rights does not establish that people can invoke them effectively. Constitutional language does not itself create administrative reach.

An emerging world state would therefore have to be investigated through implementation, resource mobilization, accessibility, and social practice—not solely through the vocabulary of its legal instruments.

9.3 International litigators do not automatically form a single global profession

Vauchez's chapter "Communities of International Litigators" (2014) directs attention to the people operating between international courts and parties: legal agents, clerks, litigants, and other specialists. It challenges approaches that leave these intermediaries largely unexamined. Oxford Academic

Applying that approach globally would require asking whether different international legal communities are genuinely integrated. Shared credentials, occasional professional mobility, and common rhetoric might coexist with segmented markets and incompatible institutional projects.

The existence of international legal professionals is thus the starting point of an investigation into global authority.

9.4 Colonial histories complicate the European model

“The Missing View from the Cathedral: European Law during and after Colonies and Empires” (2025) examines the colonial histories obscured by accounts of Europe as a radically new legal construction.

Vauchez identifies continuities carried by legal professionals, knowledge, and institutions. He stresses that foundational European arrangements emerged during the period of empire, and acknowledges omissions in earlier historical scholarship, including his own. The resulting legal geography can appear fragmented and differentiated rather than uniformly integrated. resolve.cambridge.org

This changes how European experience should be connected to global power.

A European institution’s external reach may reproduce unequal relationships, selective inclusion, or differentiated legal statuses. Such developments may be highly consequential without producing common world citizenship or a unified global public authority.

The relationship between internationalization and political unification must therefore remain an empirical question.

10. Critical assessment: the strengths and unresolved problems of his approach

10.1 Its major strength: identifying observable mechanisms

Vauchez makes broad claims about transnational power investigable.

His approach encourages research into careers, institutional appointments, professional associations, legal arguments, teaching, advisory practices, organizational resources, and the uptake of particular interpretations. This allows the analyst to move from a general claim that “elites influence global governance” to specific questions about how influence operates.

It also helps distinguish intention from outcome. Participants can share professional assumptions without sharing an identical political programme. Some can seek integration, others institutional prestige, commercial advantage, or protection against stronger states. Their interactions may nevertheless produce durable authority.

The explanatory task is to reconstruct these interactions rather than assume coordination from the existence of overlapping careers.

10.2 A constitutional critique: independence does not itself justify authority

Frank Vibert’s published reply to the 2022 independence article argues that a constitutional perspective identifies issues that the language of independence can obscure.

He emphasizes the costs of postponing democratic settlement while technical institutions develop: existing organizations may entrench themselves and shape the terms of subsequent reform. He also identifies a tension between treating constitutional arrangements as a stable democratic settlement and treating them as successive stages toward further integration. Oxford Academic

This criticism is valuable for a world-state inquiry. An account of how institutions become authoritative must eventually be accompanied by an account of why their authority is justified and how its limits can be settled.

My assessment is that Vibert identifies a necessary complement to Vauchez's sociology. Historical explanation can reveal the production of legitimacy, but it cannot by itself establish a satisfactory constitutional distribution of power.

10.3 A global-historical critique: the French case needs imperial connections

Sara Dezalay's review of *The Neoliberal Republic* questions how far its national case study explains international corporate legal practice.

Drawing on her own research, she identifies Paris-based French lawyers working through US and UK firms in transactions involving Francophone African states. Their position requires attention to imperial legacies and the continuing connections between former colonial centres and postcolonial elites. She regards the France–Vauchez approach as a strong research programme whose geographical explanation requires extension. orca.cardiff.ac.uk

This is particularly relevant to your perspective. A global analysis must explain connections among differently positioned regions; it cannot simply enlarge a European institutional map.

Vauchez's later attention to colonial history moves in a direction compatible with this criticism, although the respective studies address different objects.

10.4 Is protection of the public sphere sufficient?

Ioannis Kampourakis challenges the remedy of restoring separation between public authority and private interests. Public law itself helps constitute private economic power; consequently, institutional separation alone cannot establish egalitarian outcomes. The substance of public policy and the distribution of economic power remain essential. LPE Project

David Trubek raises a related institutional question: which countervailing organizations could effectively represent diffuse interests? He suggests examining public-interest legal organizations, public advocates, and other mechanisms capable of contesting well-resourced corporate participation. LPE Project

These criticisms sharpen the global-government problem. A formally public world authority might still reproduce unequal influence. Conversely, merely limiting private access could leave citizens without effective means of participation. Democratization therefore requires attention to both institutional boundaries and the practical organization of political voice.

10.5 The limits of a professional-centred explanation

My further reservation concerns causal scope. Studying lawyers and experts can reveal mechanisms that institution-centred accounts overlook. Yet a complete explanation of global political development must also consider fiscal resources, coercion, geopolitical rivalry, production, social movements, and mass electoral politics.

Professional networks may help construct an institutional opportunity without being able to determine whether governments fund it, populations accept it, or powerful actors comply.

Likewise, evidence of a network is not sufficient evidence of its effects. Strong causal analysis should distinguish access from influence, influence from successful policy change, and policy change from durable institutional transformation.

These requirements do not diminish Vauchez's contribution. They identify the additional research necessary to turn it into a comprehensive account of global state formation.

11. Overall assessment from the world-state perspective

Vauchez's work supports a strong proposition: **governing authority can be constructed across national boundaries through legal and professional practices that do not take the form of an explicit founding of a new state.**

It also supports a second proposition: existing national institutions can participate actively in this development. Their continuing existence is compatible with substantial changes in where authority lies, whose expertise counts, and which interests obtain effective access.

The further proposition—that these developments are converging into a unified global state—remains unproven by the works examined.

His research instead makes several possible trajectories intelligible:

Possible trajectory	The question a Vauchez-inspired investigation would ask
Greater supranational constitutional integration	Do professional and legal connections become binding institutional relationships with durable public capacities?
Persistent government through overlapping institutions	Can coordination remain effective without a single ultimate political centre?
Stronger transnational private influence	How does public expertise become available to private actors, and with what effects on decision-making?
Democratization of transnational authority	Which representative and countervailing institutions allow affected populations to determine collective purposes?
Fragmentation and selective legal integration	Where do legal norms fail to penetrate, and who remains excluded from their benefits or protections?

His explicit European reforms address the fourth trajectory while potentially strengthening elements of the first. His historical and sociological research also provides substantial reasons to investigate the second and fifth.

The most productive use of Vauchez for your larger project is therefore to study the formation of transnational governmental power without presupposing its final constitutional form. His work helps explain how authority becomes established, why its professional and social foundations may be narrow, and how its democratic organization could be contested. Whether that authority ultimately becomes a world state requires evidence about

institutional integration, public capacities, geographical reach, and political authorization beyond the existence of internationally connected elites.

Selected reading guide

For pursuing this question systematically, I would prioritize the following works:

Work	Principal value for your inquiry
Sacriste and Vauchez, "Les 'bons offices' du droit international" (2005), and "The Force of International Law" (2007)	International legal authority, professional mediation, and persistent national loyalties.
"The Force of a Weak Field" (2008)	The central sociological framework and an explicit qualification of superstate interpretations.
"'Integration-through-Law'" (2008 working paper), and "The Transnational Politics of Judicialization" (2010)	The construction and political significance of foundational European jurisprudence.
Mudge and Vauchez, "Building Europe on a Weak Field" (2012)	Legal and economic expertise; the unequal success of competing European projects.
Vauchez and de Witte, eds., *Lawyering Europe* (2013), especially Vauchez's introduction	Professional practices and the social organization of European law.
***L'Union par le droit* (2013) and *Brokering Europe* (2015)**	The historical construction of European institutional unity.
***Démocratiser l'Europe* (2014) / *Democratizing Europe* (2016)**	Democratic accountability at the actual centres of European authority.
Mudge and Vauchez, "Fielding Supranationalism" (2016)	Scientific expertise and central-bank authority.
France and Vauchez, *Sphère publique, intérêts privés* (2017); Vauchez and France, *The Neoliberal Republic* (2020)	Corporate legal practice and transformations within the national state.
Hennette, Piketty, Sacriste, and Vauchez, *Pour un traité de démocratisation de l'Europe* (2017) and *How to Democratize Europe* (2019)	Explicit parliamentary and fiscal institutional proposals.
"The Map and the Territory" (2020) and "The Genie of Independence and the European Bottle" (2022)	The practical limits and contested legitimacy of supranational authority.
"The Missing View from the Cathedral" (2025)	Colonial histories and the limits of treating European integration as a universal model.

Source basis: This analysis draws on accessible original articles, working papers, chapters, testimony, and the authors' own explanatory essays. For several monographs, the available evidence consisted of publisher excerpts, introductions, and chapter summaries; the detailed historical examples above are tied to the accessible texts rather than to a claim of having inspected every chapter.

Martti Koskenniemi’ s work

Martti Koskenniemi’s central contribution to your question is his explanation of how law constructs and distributes power internationally. His work illuminates both projects for organizing humanity under a common legal authority and forms of global domination that operate through fragmented institutions, professional expertise, and private economic rights.

The distinction matters. A world increasingly governed through law need not be moving toward a single sovereign world state. Indeed, in a February 2026 interview, Koskenniemi stated:

“I am agnostic about the popular historical assumption that the world is gradually developing into a unified community.” Review of Democracy

His work is therefore especially valuable for examining **which legal developments actually concentrate governing authority, whose interests they serve, and whether those developments create a unified political order or a more dispersed system of power**.

I will distinguish his own arguments from the conclusions that I draw from them for your broader inquiry.

1. What kind of “world state” are we investigating?

For this analysis, it helps to distinguish four possible objects of inquiry:

Concept	Working meaning
A world state	A global political order, whether unitary or federal, possessing ultimate public authority and institutions capable of making and enforcing general governing decisions.
Global constitutionalization	The development of higher legal principles, hierarchies, rights, and constraints on public power across borders. This need not entail a world state.
Global governance	The exercise of governing functions by international organizations, courts, expert bodies, networks, and private institutions.
Global domination	Durable relationships through which powerful actors shape the choices of others, including through arrangements that preserve their formal sovereignty.

These categories can overlap, but none automatically establishes the others.

A global court might exercise substantial authority without becoming part of a world government. A network of national courts might enforce internationally mobile economic rights without any central international legislature. Conversely, a proposed world constitution might proclaim universal equality while leaving enormous differences in actual political influence intact.

Koskenniemi's writings help us investigate these possibilities without treating every increase in international legal authority as another stage in a predetermined political evolution.

His approach also encourages a distinction between **intentions and effects**. An international lawyer may explicitly advocate global federation. An institution may expand its jurisdiction for more limited reasons. A collection of reforms may strengthen transnational economic power without their sponsors sharing a comprehensive world-state project. Establishing which situation exists requires different evidence.

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2. *From Apology to Utopia*: why a world legal order cannot eliminate politics

The central argument

Koskenniemi's foundational book, *From Apology to Utopia: The Structure of International Legal Argument*, first appeared in 1989 and was reissued with a substantial epilogue in 2005. Its central argument is also developed in his 1990 article, "The Politics of International Law."

International legal argument, he argues, must satisfy two competing requirements:

- It must be sufficiently connected to state conduct, consent, and practice to count as existing law.
- It must possess sufficient independence from those same things to criticize and constrain states.

If law merely reproduces what states accept or do, it becomes an **apology** for their conduct. If its authority rests on principles detached from state practice and agreement, it becomes vulnerable to the charge of **utopia**: the projection of a preferred moral or political order. Legal argument repeatedly moves between these positions. ejil.org

The word *utopia* here should therefore not be read simply as a synonym for world government. The book examines a structure of justification, not a choice between nationalism and global federation.

Why this matters for a world constitution

My interpretation of the implication is straightforward: **establishing a world constitution would relocate political disagreement rather than abolish it**.

Consider a hypothetical global constitution containing commitments to property, environmental protection, social welfare, and democratic participation. A government prohibits an

economically valuable activity because it damages public health. An affected company argues that the prohibition violates its protected rights.

The constitution itself would not answer every relevant question:

- How should the competing commitments be interpreted?
- Which losses deserve compensation?
- Who may bring proceedings?
- Which institution should decide?
- How much weight should that institution give to the choices of the affected population?

A world constitutional court could provide authoritative answers. But its authority would not make those answers politically neutral. The establishment of the court would itself determine where important distributive choices were made.

This is a particularly consequential point for your inquiry. A reform presented as the replacement of power politics by law may also transfer decision-making power to interpreters, judges, or specialists.

Law nevertheless has real effects

The 2005 epilogue emphasizes that international law does more than prohibit or permit conduct by actors whose identities and powers already exist. Law helps constitute the actors, jurisdictions, entitlements, and relationships within which political action occurs. It also criticizes the profession's tendency to interpret multilateral diplomacy as the beginning of a legally governed world federation. Koskenniemi's target is a prior commitment to a particular institutional destination, not the existence of international legal argument itself. law.unimelb.edu.au

This helps explain why legal indeterminacy does not imply legal insignificance.

A legal system can leave substantial room for argument while profoundly affecting who owns resources, who represents a population, who possesses jurisdiction, and which claims an institution will hear. For research on global authority, the question becomes how these legal arrangements organize the exercise of power.

3. Hegemony: how particular interests acquire a universal legal form

In "International Law and Hegemony: A Reconfiguration" (2004), Koskenniemi develops an account of law as a medium of political struggle.

International actors seek to give legal concepts meanings that support their positions. Their ambition is to make a particular interpretation appear to express a universal requirement. Claims about security, self-determination, humanitarian protection, or the international community are therefore also struggles over who can define their practical content.

Yet universal legal language can also distance actors from their immediate preferences. Invoking a principle exposes a claimant to counterarguments formulated in the same terms. Law can thus provide resources for opposition as well as domination. researchgate.net

The relevance to global political authority

Applied to your question, this suggests that the emergence of global authority should be studied partly as a struggle over **who can speak authoritatively for a purported common interest**.

Suppose an institution claims that its policies serve global financial stability. The relevant investigation should examine how it defines stability, which interests its definition protects, and which costs become secondary.

The same questions apply to a body claiming to represent humanity, development, environmental security, or universal rights. The issue is not whether these objectives are insincere. People can sincerely advance a universal cause while understanding it through their professional position and political commitments.

A potential world state would intensify this problem. Its institutions would claim authority over an exceptionally diverse population. The political question would be how competing interpretations of the common good could be represented and contested within it.

Indeterminacy and structural bias

In "The Politics of International Law—20 Years Later" (2009), Koskenniemi distinguishes the openness of legal justification from the patterned character of institutional outcomes. Legal institutions have **structural biases**: established priorities and professional orientations make some arguments more effective than others. He also engages the concern, associated with Susan Marks, that emphasizing contingency can obscure durable structures of inequality. ejil.org

There is no contradiction here. Several interpretations may be legally available while one regularly prevails because of the institution hearing the dispute.

For your wider research, this is a way to move beyond identifying impressive universal language. One should examine appointments, professional training, procedural rules, accepted forms of evidence, and recurring decisions. These may reveal a stable distribution of power that the language of universal law does not make immediately visible.

4. *The Gentle Civilizer of Nations*: the profession that imagined international order

A historical explanation of legal authority

The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960 (2001) moves from argumentative structure to the history of professional commitments.

Its introduction describes the emergence of a liberal and cosmopolitan internationalist sensibility in the later nineteenth century, associated with institutions such as the Institut de

droit international, established in 1873. International lawyers connected legal reform with broader expectations about civilization and progress.

The historical result was deeply ambivalent. Aspirations to peace, rights, and international organization coexisted with the extension of Western sovereignty into colonial territories. The book's "rise and fall" concerns this professional sensibility; it does not mean that international law began in 1870 or ceased to exist in 1960. assets.cambridge.org

For the study of a possible world state, this directs attention to the social groups capable of imagining, legitimating, and administering such an order. Institutions do not emerge from legal doctrines alone. They require people who regard particular arrangements as reasonable, authoritative, and historically desirable.

A shared professional outlook may connect actors across national boundaries. But that connection should not immediately be treated as evidence of a unified political organization. Shared assumptions, professional cooperation, and coordinated political planning are distinguishable phenomena.

Lauterpacht: an explicit federalist project

Koskenniemi's "Lauterpacht: The Victorian Tradition in International Law" (1997), subsequently incorporated into *The Gentle Civilizer*, provides an especially direct example of a legal programme directed toward global federation.

In Koskenniemi's reconstruction, Hersch Lauterpacht envisaged a comprehensive cosmopolitan legal order administered through legal institutions. States' ability to judge their own obligations was a central obstacle. Judicial settlement would reduce that freedom.

Lauterpacht's programme connected restraints on force, peaceful dispute settlement, acceptance of adjudication, enforcement of collective decisions, and mechanisms for peaceful change. Legal doctrines concerning justiciability and the completeness of law were consequently part of a wider political project.

Koskenniemi ends by questioning whether the profession can continue that federalist project after losing confidence in the historical optimism that sustained it. **The federalist programme being reconstructed is Lauterpacht's; it should not be attributed to Koskenniemi as his own proposal.** ejil.org

This is one of the clearest connections to your original interest in institutional changes within existing law. A doctrine about whether a dispute is legally adjudicable can help transfer authority from governments to international judges. Technical legal argument can therefore participate in a far-reaching constitutional ambition.

The important research question is how much of the ambition was realized. A programme's existence establishes intention; it does not establish successful implementation or an inevitable trajectory.

5. Fragmentation: a world governed through competing legal regimes

"The Fate of Public International Law: Between Technique and Politics" (2007) examines the growth of specialized legal regimes and institutions. The resulting order differs markedly from earlier expectations of an integrated cosmopolitan federation.

Koskenniemi's concrete example is the MOX Plant dispute concerning the nuclear facility at Sellafield. Related issues appeared within law-of-the-sea proceedings, the OSPAR framework, and European Community law. The UNCLOS arbitral tribunal deferred consideration pending clarification of the European legal position, while the European Court of Justice held that Ireland's initiation of the international proceedings breached Community obligations.

The example illustrates how overlapping institutions can assert different understandings of a dispute and of their own authority. Fragmentation involves competition over jurisdiction and institutional priorities, not merely an untidy collection of rules. Wiley Online Library

Governing through the classification of problems

A crucial preliminary decision is how a problem is legally described. Koskenniemi's later account emphasizes that the same activity can be understood through trade, environmental, human-rights, or other professional vocabularies. Classification helps determine the institution and expertise that acquire authority over it. ejil.org

Consider the following illustrative application:

A disputed restriction on industrial activity is framed as…	**The questions receiving priority may become…**
A trade problem	Does it obstruct international exchange, and can the restriction be justified?
An environmental problem	What risks arise, and which protective measures are appropriate?
An investment problem	What expectations and economic interests receive legal protection?
A democratic problem	Who should decide acceptable risks and distribute their costs?

These descriptions need not be mutually exclusive. Their institutional treatment, however, can give one set of concerns greater practical weight.

Does fragmentation nevertheless create a functional world state?

One possible interpretation is that specialized regimes collectively perform functions that a world government might otherwise perform. That is a legitimate hypothesis to investigate.

It nevertheless requires care. A collection of powerful institutions can produce coordination in some areas and persistent conflict in others. It may possess no general political process for resolving disagreements between its governing purposes.

My assessment is that Koskenniemi offers a particularly strong account of **governing authority extending across borders without a unified public framework in which its competing objectives can be politically reconciled**.

Calling that a world state may draw attention to its governing effects. It can also conceal the absence of common institutions through which the governed could redirect the system as a whole.

6. The International Law Commission's fragmentation project: legal coordination without a world constitution

Koskenniemi's practical involvement in the International Law Commission is essential to a balanced assessment of his work.

The 2006 report, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, was a **Study Group report finalized by Koskenniemi**. It should be attributed to that collective institutional setting.

Among its important techniques were:

Technique	Function
Lex specialis	A more specific rule may govern a matter while general international law continues to supply its background.
Systemic integration	Under Vienna Convention Article 31(3)(c), treaty interpretation considers relevant international rules applicable between the parties.
Jus cogens	Peremptory norms limit what states can validly agree through treaties.
UN Charter Article 103	Charter obligations prevail over conflicting obligations under other treaties.

The report also distinguishes obligations owed to the international community from the separate question of a norm's peremptory status: *erga omnes* character and *jus cogens* rank are not interchangeable. legal.un.org

These techniques show how legal relationships can be coordinated without assuming a single global legislature.

What the project deliberately left unresolved

The Commission's conclusions expressly set aside questions about institutional competences and hierarchies. The project concentrated on relationships between legal rules. It did not establish a supreme global court or allocate final governing authority among international institutions. legal.un.org

The distinction is substantial. Recognizing that an interpreter should take other relevant rules into account is different from giving that interpreter general authority to enforce those rules. Similarly, a priority rule between obligations does not, by itself, create a world executive.

For your inquiry, this is a useful test of claims about constitutional development. One should ask separately:

1. Are legal norms being connected?
2. Is their relative priority being clarified?

3. Is jurisdiction being transferred?
4. Is an institution acquiring final authority over other institutions?

A reform can accomplish the first two without accomplishing the latter two.

The political ambiguity of coherence

My assessment is that coordination can have opposing political consequences.

It may prevent a specialized institution from treating its own objectives as the entire relevant legal universe. It may also enlarge interpretive discretion, permitting specialists to resolve broader conflicts under the heading of legal coherence.

Consequently, neither fragmentation nor unity supplies a sufficient political criterion. The decisive questions concern who interprets, who participates, and how the resulting decisions can be challenged.

Koskenniemi's participation in this project also demonstrates that criticism of international law's political foundations can coexist with careful work on its practical operation.

7. Managerialism: authority exercised by defining the goals in advance

In "Miserable Comforters: International Relations as New Natural Law" (2009), Koskenniemi criticizes approaches that evaluate law principally through its contribution to governance objectives. Drawing on Kant's criticism of earlier natural-law thinkers, he questions whether apparently scientific accounts of effective governance can naturalize political power. Law risks becoming an instrument for goals whose authority has already been assumed. Martti Koskenniemi, 2009

The issue can be illustrated with a hypothetical international debt institution.

It might measure success by repayment, market access, fiscal stability, poverty reduction, or the preservation of essential public services. Those goals can conflict. Expertise becomes politically powerful when one goal is treated as the self-evident purpose of the institution and disagreement is reduced to a question of implementation.

A world state would face the same difficulty on a larger scale. Highly competent global administration would still need politically defensible answers to questions such as:

- Which needs receive priority?
- Who bears the costs of adjustment?
- Which risks are acceptable?
- Who can revise the governing objectives?

Koskenniemi's critique is especially relevant when institutional change proceeds through mandates, performance indicators, technical standards, and professional discretion. Such changes may substantially reorganize authority while attracting less attention than a new treaty or constitution.

The analytical point is that **control over the definition of a problem can be a form of government**.

8. Sovereignty, property, and empire: global power may depend on preserving states

"The real Spanish contribution"

"Empire and International Law: The Real Spanish Contribution" (2011) examines the relationship between public sovereignty and private rights in early modern legal thought.

Koskenniemi shows how rejecting universal political lordship could coexist with recognizing universal claims concerning property, travel, commerce, and exchange. In his account of the Spanish scholastics and subsequent developments, acknowledgement of the political authority of non-European communities did not necessarily insulate them from economic penetration or coercion justified through rights.

This opens a history of informal empire: control exercised through legal entitlements and their enforcement, including arrangements that do not require a universal public sovereign. helda.helsinki.fi

The implication for your question is profound. A researcher concentrating exclusively on the transfer of sovereignty to supranational institutions may miss powerful forms of global integration.

Formally independent states can remain indispensable to an international economic order. They can recognize ownership, enforce obligations, and sustain the institutions through which cross-border claims operate.

The empirical issue becomes which uses of state power support global economic authority and which uses become restricted or difficult.

To the Uttermost Parts of the Earth

To the Uttermost Parts of the Earth: Legal Imagination and International Power 1300–1870 (2021) widens the historical investigation beyond the modern international legal profession.

Its central concern is how legal vocabularies were inherited and recombined to explain, justify, stabilize, or contest power. Sovereignty and property receive particular attention. The public/private distinction is itself part of this history, rather than an unquestioned boundary between political government and an independently existing economy.

The book's introduction rejects a simple linear account of legal development and emphasizes the situated character of claims with universal ambitions. assets.cambridge.org

My interpretation is that this historical approach changes the most productive unit of analysis. Instead of looking only for an embryonic global government, one can investigate combinations of legal arrangements: jurisdiction, ownership, corporate powers, public enforcement, and commercial obligations.

Imagine a corporation able to hold assets and pursue claims across several jurisdictions. Its power might depend on a network of public authorities rather than on their disappearance. A unified world government could be unnecessary to that arrangement. Depending on its democratic organization, it might even introduce new constraints on it.

That possibility complicates any assumption that powerful private actors must necessarily prefer a centralized world state.

Continuity in his recent work

In the 2026 interview discussing "The Laws That Rule Us," Koskenniemi connects neoliberal change and financialization with stronger private economic bargaining power. He also stresses the role of domestic elites in international relationships of dependence and the need for political organization within affected societies. His account therefore remains attentive to the interaction of public and private power, including the role of formally sovereign states. Review of Democracy

9. What does Koskenniemi defend? Formalism, constitutionalism, and universal aspiration

A reading limited to domination and professional bias would miss a major dimension of his work. Koskenniemi continues to seek a defensible role for international legal argument.

Universal claims without ownership of universality

"International Law in Europe: Between Tradition and Renewal" (2005) examines the tension between international law's European history and its universal claims.

A tradition's particular origins do not automatically invalidate every universal demand articulated through it. At the same time, Europe's legal tradition cannot simply establish its own institutional preferences as the authoritative expression of humanity's interests. Legal universality remains politically contested. ejil.org

For a proposed world constitution, this raises a demanding question: how can its institutions make universal claims while remaining open to challenges from people whose experiences were marginal to their formation?

A universal institution would need more than globally worded objectives. Its membership, procedures, legal categories, and possibilities for revision would matter.

A culture of formalism

"The Lady Doth Protest Too Much: Kosovo, and the Turn to Ethics in International Law" (2002) examines the movement from legal argument about intervention toward claims of moral necessity and ethical responsibility.

Koskenniemi's concern is how this movement can authorize political leaders to treat their judgment of an exceptional situation as sufficient justification for action. His defence of formalism seeks resources for restraint, public justification, and recognition of others' standing

within a shared legal framework. It does not promise that rules mechanically determine every decision. oas.org

Applied to global institutions, the implication is that claims to benevolent purpose cannot settle questions of authority.

An executive body with worldwide reach might possess considerable capacity to prevent harm. The people subject to its decisions would nevertheless need ways to demand reasons, contest classifications, and challenge abuses. Enlarging an institution's jurisdiction makes these requirements more consequential.

Constitutionalism as a mindset

In "Constitutionalism as Mindset: Reflections on Kantian Themes About International Law and Globalization" (2007), Koskenniemi presents constitutionalism as a tradition and sensibility concerning political action, rather than identifying it with a specific institutional architecture. degruyterbrill.com

I read this as separating a constitutional attitude toward power from commitment to a completed world constitutional structure. One can demand that authority justify itself in public, universalizable terms without assuming that a particular global institution embodies the final answer.

"Formalism, Fragmentation, Freedom" (2007) makes the distinction especially explicit. Its discussion of a perfect constitution and perpetual peace treats them as a regulative horizon. Koskenniemi expressly distinguishes this from a positive institutional programme represented by the European Union or United Nations. nofoundations.com

A regulative horizon provides a standard against which existing arrangements can be criticized. It is not an empirical prediction that history must arrive at a particular destination.

His direct treatment of world-state theories

"Law, Teleology and International Relations: An Essay in Counterdisciplinarity" (2012) discusses Alexander Wendt's world-state argument and Heikki Patomäki's democratic-socialist alternative.

Koskenniemi does not dismiss those possibilities categorically. He argues that law's purposive orientation cannot be reduced to a particular institutional blueprint. He also emphasizes legal practice as contextual argument and judgment, rather than a science capable of deriving correct decisions from an abstract theory of social development. Martti Koskenniemi, 2012

This is an important qualification to any simple classification of him as either a supporter or opponent of world government. His strongest commitments concern the character of political judgment and contestation; they do not yield a determinate constitutional endpoint.

10. "What Use for Sovereignty Today?": self-government against global management

The 2011 article “What Use for Sovereignty Today?” addresses your question particularly directly.

Koskenniemi criticizes evaluating political authority solely by its production of security and welfare. These objectives have contested meanings, and people have an interest in participating in their definition.

He illustrates the problem with an imagined corporation, Supernova, able to deliver exceptionally high levels of welfare and security in exchange for sovereignty over populations. Superior performance would not settle the question of legitimate authority.

Sovereignty can express a commitment to collective self-formation, political participation, and the ability to revise shared objectives. At the same time, he expressly rejects the idea that existing holders of power should enjoy unlimited authority. His defence concerns possibilities of self-government, not unconditional immunity for national rulers. Cambridge Core

The challenge this poses to a world state

My assessment is that this argument supplies a substantive test for any global political project.

It is insufficient to show that global administration could handle certain problems more efficiently. A defensible project would also need to explain how people participate in defining its purposes.

A democratic world federation could attempt to answer that challenge through multiple levels of representation, political association, and decision-making. A system governed predominantly through insulated expertise would have greater difficulty.

The relevant question is therefore not simply how much sovereignty moves upward. It is what happens to people’s capacity to act collectively as political agents.

That capacity could be weakened by international arrangements. It could also be weakened by national institutions. Koskenniemi’s argument does not make the national scale morally decisive in advance.

11. Critical assessment: the strengths and unresolved difficulties of his approach

First strength: exposing the political content of legal integration

Koskenniemi provides unusually effective tools for investigating institutional reforms that present themselves as technical improvements.

His approach encourages scrutiny of jurisdiction, interpretation, professional authority, and the definition of legally protected interests. These are concrete mechanisms through which power can change hands.

For a study of global state formation, this helps connect large political ambitions to ordinary legal work.

Second strength: explaining authority without presupposing a unified sovereign

His approach accommodates a world in which legal authority becomes stronger in particular sectors while political responsibility remains divided.

This is useful because it permits a researcher to ask whether fragmentation is a transitional problem, a stable governing arrangement, or something advantageous to particular actors. The answer is left to investigation.

First difficulty: how should we choose institutions?

The critical method offers less operational guidance when several institutional alternatives are plausible.

Suppose the choice is between a global environmental court, coordinated national institutions, and a new representative international body. Each would distribute power differently. Each could develop structural biases.

Demands for public justification and political contestation provide important evaluative standards. They do not settle representation, financing, review, voting rules, or the allocation of competences.

This is a limitation for someone seeking a detailed institutional programme. It is not necessarily a failure on the terms of a critical project whose purpose is to make those choices visible.

Second difficulty: the position of legal professionals themselves

There is a tension between criticizing expert authority and defending a distinctive legal professional culture.

If international lawyers insist on the importance of their own forms of reasoning, they may preserve valuable means of contestation. They may also reinforce their role as gatekeepers.

Formal opportunities to argue are not equivalent to equal capacities to influence decisions. A convincing extension of Koskenniemi's approach would therefore examine the resources, organization, and access required to use legal argument effectively.

Pollack's criticism of his account of international relations

Mark A. Pollack's "Is International Relations Corrosive of International Law? A Reply to Martti Koskenniemi" (2013) challenges the characterization of international-relations scholarship as predominantly instrumental and aligned with American power. Pollack emphasizes the discipline's diversity and questions whether Koskenniemi's generalizations receive adequate empirical support. sites.temple.edu

The lesson for your inquiry is methodological. Identifying an influential vocabulary does not establish that everyone using it belongs to the same political project. Claims about professional networks and their effects need evidence about actual institutions, relationships, and decisions.

Howse and Teitel's criticism concerning humanity and progress

Robert Howse and Ruti Teitel, in "Does Humanity-Law Require (or Imply) a Progressive Theory of History?" (2013), argue that humanity-oriented legal developments need not depend on belief in inevitable historical progress. They also challenge the interpretation of Kantian cosmopolitanism as tending toward a world state, emphasizing the distinction between federation and global political unification. Their broader argument is that universal human standing can support constraints on violence without requiring a single sovereign order. sites.temple.edu

This criticism matters, although Koskenniemi's own distinction between a regulative aspiration and an institutional programme already recognizes part of the problem.

The strongest conclusion is that several questions must remain separate: whether universal rights are defensible, whether a particular institution realizes them, and whether their realization requires a world state.

Third difficulty: explaining political causation

A final limitation concerns explanatory scope.

Showing that legal concepts facilitate a political project does not establish why that project prevailed. Historical explanation may also require evidence about military power, economic interests, social mobilization, administrative capacity, and institutional bargaining.

Koskenniemi's work is especially strong at revealing what legal arguments make possible and how they organize political understanding. It should be combined with empirical research when the aim is to demonstrate a coordinated process of global state formation.

12. What his work ultimately contributes to your inquiry

My overall assessment is that Koskenniemi changes the central question from **"Is international law building a world state?"** to a more discriminating investigation:

How do particular legal arrangements create authority across borders, and what possibilities exist for those subject to that authority to contest and change it?

His writings identify several different developments:

- Historical programmes, such as Lauterpacht's, with explicit ambitions for global federation.
- Interpretations that treat existing international institutions as the beginnings of a constitutional order.
- Specialized regimes that acquire governing power through jurisdiction, expertise, and legal classification.
- Economic arrangements in which property and other private rights organize global power through public institutions.
- Uses of legal universality, formalism, and sovereignty that can support resistance to concentrated authority.

Those developments do not necessarily converge.

For further research, I would use his work to structure five concrete questions:

1. **Who acquires decision-making authority through the proposed legal change?**
2. **Which interests become legally protected, and which remain politically negotiable?**
3. **Which institution determines conflicts between competing objectives?**
4. **What opportunities do affected populations have to define purposes, challenge decisions, and revise arrangements?**
5. **Does the change create a common public governing structure, or strengthen authority within particular sectors?**

These questions allow the world-state hypothesis to be tested rather than assumed.

Koskenniemi's most important contribution is therefore an account of how the world can become extensively governed through law while the identity, purposes, and accountability of its governing powers remain politically unsettled. His work makes a world state one possible object of critical inquiry, while showing why global domination, legal integration, and political unification must be investigated separately.

A selective reading route

For your particular interest, I would prioritize the following:

Work	Main reason to read it
"The Politics of International Law" (1990)	The argumentative foundations.
From Apology to Utopia, 2005 epilogue	His retrospective clarification of the critical project.
"Lauterpacht: The Victorian Tradition in International Law" (1997)	A documented legal programme for global federation.
The Gentle Civilizer of Nations (2001), introduction	The historical and professional framework.
"The Fate of Public International Law" (2007)	Fragmentation and competing institutions.
ILC fragmentation report (2006)	The concrete techniques of legal coordination.
"What Use for Sovereignty Today?" (2011)	The political case for collective self-government.
To the Uttermost Parts of the Earth (2021), introduction	The wider history of sovereignty, property, and legal imagination.

Source note: This analysis draws on original articles, the 2005 epilogue, the UN documents, the published introductions to the two historical monographs, and the 2026 interview. The historical books are discussed through those accessible introductions and related original articles.

David Kennedy’ s work

David Kennedy’s work is highly relevant to the emergence of global political authority because it examines how the world is already governed through law, professional expertise, and economic institutions. His distinctive contribution is to shift attention toward the decisions that establish property rights, allocate credit, organize production, authorize violence, and determine which political demands appear reasonable.

My overall assessment is that Kennedy offers a powerful account of **global rule operating through dispersed institutions**. His work provides less support for the proposition that these institutions are necessarily converging into a unified sovereign world state. He is also skeptical that creating a global constitution or parliament would, by itself, bring the most consequential forms of power under democratic control. This distinction follows from his treatment of expertise and political economy, and from his explicit intervention in the debate about a global parliament. Oxford Academic

Nevertheless, it would be misleading to present Kennedy simply as an opponent of international institution building. He has proposed stronger public capacities, changes to the legal organization of economic life, and—in a particularly revealing intervention—an extension of European legal and economic integration into the Middle East.

The central question running through the analysis below is therefore:

How does Kennedy explain the construction of global governing power, and what does his explanation imply for the possibility, desirability, and institutional form of a world state?

1. What should “world state” mean in an analysis of Kennedy?

For your inquiry, two meanings need to be distinguished.

A **world state in the institutional sense** would be a political order claiming general and ultimately authoritative jurisdiction over the world. It would need institutions capable of making collectively binding decisions, resolving conflicts among subordinate authorities, mobilizing resources, and authorizing coercion. Such a state could be federal and internally decentralized; it would not require every decision to be made in one capital.

A **global system of rule in the functional sense** exists wherever institutions and practices organize conduct, distribute resources, and restrict political possibilities across national boundaries. Such rule can involve national governments, international organizations,

corporations, courts, professional associations, and financial institutions, without their being subordinate to a common sovereign.

Kennedy is especially useful for examining the second phenomenon. Whether it is developing into the first remains an additional historical and institutional question.

This distinction matters because it prevents two opposite analytical mistakes. The absence of a world government does not demonstrate the absence of global governing power. Conversely, the existence of extensive global regulation does not establish that a world state is emerging.

Applied to Kennedy, the most productive formulation is:

To what extent are existing legal and professional arrangements performing functions associated with government, and what would have to change for these arrangements to constitute a common political authority?

That formulation allows us to investigate state formation without assuming its outcome.

2. The intellectual starting point: law helps construct the world it governs

Kennedy's early *International Legal Structures* (1987) examines international legal argument from within. Its concern is with the recurring patterns through which legal propositions acquire meaning and persuasive force: how arguments invoke other arguments, organize distinctions, and describe their relationship to political circumstances. The book develops an account of the argumentative structure of international law, rather than treating doctrine simply as a reflection of external political forces. Google Books

The significance for your question is substantial.

A conventional account of world-state formation might begin with already identifiable actors—states, corporations, international organizations—and ask how much power moves from one to another. Kennedy's starting point encourages an earlier question: **How does law establish the identities, capacities, and boundaries of those actors?**

Consider the difference between classifying a dispute as:

- interference with a protected investment;
- legitimate economic regulation;
- enforcement of a private contract;
- an exercise of public authority;
- a matter of national security.

These are analytical examples. Each classification can direct the dispute toward different institutions, identify different decision makers, and make different remedies plausible.

Consequently, global authority can develop through changes in legal classification even when no new organization is created. A court's jurisdiction may remain formally unchanged while the range of decisions treated as legally reviewable expands. A government may retain

sovereignty while more of its economic choices become subject to claims formulated elsewhere.

The implication I draw is that **legal argument is one possible mechanism of institutional transformation**. A study of global political development must therefore examine how authority is redescribed and exercised, alongside constitutional texts and organizational charts.

This also explains why Kennedy's later interest in expertise is continuous with his early work: the professionals who master legal categories participate in shaping the practical world in which others must act.

3. Expert rule: government through ordinary professional decisions

3.1 The importance of decisions that receive little political attention

In "Challenging Expert Rule: The Politics of Global Governance" (2005), Kennedy advances a deliberately provocative hypothesis: routine decisions by professionals administering the background arrangements of global life may matter more for wealth and poverty than many highly visible decisions by presidents and parliaments.

His examples include private ordering, standards bodies, payment systems, financial institutions, taxation, and trade regimes. The challenge is to understand how legal expertise manages these arrangements and how its work can become politically contestable. He presents the relative importance of these decisions as a hypothesis requiring investigation, rather than as an already established quantitative finding. Harvard Law School

This argument changes where one should look for global governing power.

Suppose a political assembly publicly commits itself to improving employment. Whether that commitment succeeds might depend on less visible decisions concerning access to finance, recognition of collateral, bankruptcy priorities, procurement conditions, and the legal responsibilities of firms. The assembly can announce a goal while the institutions controlling these arrangements determine much of its practical feasibility.

The analytical implication is that political authority has several dimensions:

1. The authority to announce collective objectives.
2. The authority to determine which instruments are available.
3. The authority to define the costs and risks of using them.
4. The authority to interpret and enforce the resulting obligations.

A global parliament might acquire the first while leaving much of the other three untouched.

3.2 Expertise is a form of participation in government

Kennedy's argument should not be reduced to the observation that politicians rely on technical advice. It asks us to examine how the formulation of a technical problem already structures the possible political answers.

For example, an institution asked to maximize investment security begins from a different problem definition than one asked to maximize workers' bargaining power. Both may use sophisticated analysis. Their expertise becomes politically consequential partly through what each treats as its assigned objective.

This does not require assuming that experts are insincere or knowingly concealing an agenda. A professional can sincerely believe that a particular institutional arrangement is technically necessary. The political question is how that conviction acquires authority over people whose interests and priorities differ.

For a world-state analysis, this suggests a possible **professional infrastructure of global rule**: people in different organizations can exercise mutually reinforcing authority because they recognize similar categories, methods, and forms of evidence.

But professional convergence alone cannot establish a common political command. To show the emergence of a state, one would also need evidence about who can settle disagreements among these professionals, redirect their activities, and enforce collective priorities.

3.3 *A World of Struggle*: why the familiar globalization story can obscure responsibility

A World of Struggle: How Power, Law, and Expertise Shape Global Political Economy (2016) develops Kennedy's broader account. One revealing passage presents the familiar story that economic activity has become global while political control remains national, making stronger global governance appear the natural remedy.

Kennedy then challenges that story. It can excuse governments and economic actors by portraying damaging outcomes as consequences of impersonal structures. Private actors appear merely to pursue their assigned interests; public actors appear unable to overcome forces beyond their jurisdiction. The resulting reform agenda can leave the decisions producing those outcomes insufficiently examined. AbeBooks

This passage is particularly easy to misread. The argument that globalization has outgrown national politics is a narrative Kennedy stages for examination. It should not be quoted as his straightforward endorsement of world government.

My interpretation is that his objection concerns the causal shortcut:

A problem crosses borders; therefore its solution requires authority at a higher territorial level.

Sometimes that conclusion may be correct. But it must be demonstrated. A harmful cross-border outcome might also be changed by altering the legal powers of a bank, the obligations of a corporation, the financing of a municipality, or the bargaining rights of workers.

The appropriate level of government is therefore part of the question.

4. Political economy: law constitutes the machinery of global power

4.1 Economic power has a legal organization

"Law and the Political Economy of the World" (2013) makes the relationship between law and economic distribution especially explicit. Kennedy treats capital, labour, credit, money, and public and private authority as legally organized institutions. Law helps connect economic centres and peripheries and provides vocabularies through which actors justify their advantages and pursue their projects. iglp.law.harvard.edu

The relevance to global state formation is that economic integration need not develop in a space outside state authority. It can develop through the transformation and coordination of domestic legal systems.

Consider a hypothetical chain of production spanning several countries. Its organization could depend on:

- which entity owns productive assets;
- which entity employs workers;
- which creditors have priority;
- which contractual obligations can be enforced;
- which participants bear the losses if an enterprise fails.

Those arrangements distribute capacities to make decisions and to impose costs. They also determine which public institutions are involved when the arrangements are challenged.

This perspective suggests that globalization can transform the role of states while continuing to depend on them. A national court enforcing a cross-border claim is exercising state authority, even when the practical beneficiary is an organization operating internationally.

The expansion of global economic power can therefore occur through the active operation of national institutions. It need not take the form of a simple upward transfer of sovereignty.

4.2 Development policy and the authority of legal "common sense"

In "The 'Rule of Law,' Political Choices, and Development Common Sense" (2006), Kennedy reconstructs changing development orthodoxies. His account moves from a relatively interventionist postwar consensus, through crisis and retrenchment, toward market-oriented transition policies, and then the more eclectic approaches emerging by the period in which he wrote.

He distinguishes two political effects of expertise: distributing resources among social groups and changing the balance among ideological positions. Development policy can obscure both by presenting contested decisions in professional vocabularies. The New Law and Economic Development

This offers an important way of interpreting legal reform.

An institutional recommendation can be presented as a general requirement of competent administration while having a very particular distributive effect. Judicial independence, formal property protection, reduced administrative discretion, or predictable enforcement may each be

desirable for particular purposes. Their names alone do not identify who benefits from the specific version adopted.

For your inquiry, this means that one should examine **the content of harmonization**, rather than merely record its existence.

Two countries can both strengthen judicial institutions while strengthening quite different kinds of claims. A reform benefiting small producers against powerful intermediaries has a different political effect from one protecting large creditors against public restructuring, even if both are described as improving legal certainty.

4.3 The concrete institutional mechanisms in the property-rights critique

"Some Caution about Property Rights as a Recipe for Economic Development" (2011) is especially relevant to your original interest in institutional changes within functioning legal systems.

Kennedy identifies a reform package that can include the following measures. The second column states the implications I would investigate:

Measures Kennedy identifies	**Questions about the redistribution of authority**
Harmonizing private law while removing social exceptions	Which public priorities become harder to pursue?
Insulating international private law from national judiciaries	Which institutions lose opportunities to reconsider arrangements?
Substituting private rules for public standards	Who gains rule-making authority?
Standardizing payment and banking arrangements	Whose transactions and business models become easier?
Making domestic commercial law familiar to foreign investors	Which participants gain an advantage in navigating the system?

Kennedy interprets the broader package as potentially dismantling the developmental state and opening markets to private investors. He challenges the assumption that stronger or more formal property rights constitute a universally reliable development strategy. dash.harvard.edu

The world-state implication is significant but specific. These changes can create a more interconnected and investor-oriented legal environment without establishing a general global sovereign.

They may also produce different institutional effects. Harmonization can centralize the authority to define standards while leaving enforcement decentralized. Private rule making can expand even while formal legislative authority remains national. Restricting one institution's discretion may increase another institution's effective power.

A rigorous analysis must therefore distinguish **integration, centralization, privatization, and insulation from political revision**. They can occur together, but they are not the same process.

4.4 The simultaneous visibility and invisibility of law

Kennedy returns to these issues in "Law in Global Political Economy: Now You See It, Now You Don't" (2020). He describes a tension in North Atlantic legal thought: lawyers developed tools used in struggles over wealth and power while also promoting understandings of law that made its distributive role difficult to see. He proposes foregrounding those struggles and their distributive effects. The Law of Political Economy

Applied to your question, the methodological lesson is to follow legal arrangements into ordinary economic activity. The politically consequential development may be an enforceable entitlement, a financing restriction, or a contractual allocation of risk that receives little attention in debates about international constitutional reform.

5. Global constitutionalism and the proposal for a global parliament

5.1 Constitutional interpretation can itself change authority

In "The Mystery of Global Governance" (2008), Kennedy discusses efforts to understand the UN Charter, the WTO, and relationships among national constitutional systems in constitutional terms.

He treats such interpretations as potentially productive of the order they describe. Calling selected arrangements constitutional can elevate their authority and encourage others to regard them as parts of an overarching settlement.

His objections include the assumption of coherence, the selective elevation of particular institutions, and the danger that constitutionalization could entrench existing distributions of power and restrict their revision. iglp.law.harvard.edu

This is one of the clearest connections between his scholarship and your original question about legal research contributing to global political development.

A constitutional interpretation can have an institutional ambition even without proposing a new treaty. If accepted, it may affect which norms are treated as superior, which actors are understood to possess public authority, and which disputes are considered settled.

My assessment is that Kennedy identifies a question every global constitutional project should answer: **Why should these institutions and commitments become the framework within which future political choices must occur?**

A constitutional settlement always selects and stabilizes something. Its justification must address the substance of that selection, as well as the virtues of order, consistency, and enforceability.

There is also a legitimate counterargument. Entrenchment can protect vulnerable groups and make redistributive commitments durable. Kennedy's criticism therefore establishes a demand for political evaluation; it does not prove that constitutionalization must have regressive effects.

5.2 His direct intervention on a global parliament

"Assessing the Proposal for a Global Parliament: A Skeptics View" (2007) directly addresses the institutional proposal at the centre of your inquiry.

Kennedy's skepticism concerns its model of politics, rather than simply its practical feasibility. Power is dispersed across institutions and semi-autonomous systems, so concentrating attention on a legislative centre may fail to engage consequential decisions elsewhere. He favours multiplying opportunities for political contestation and developing heterogeneous public capacities.

He also explicitly resists the idea that all important decisions can simply be traced to global capital or Wall Street. Dispersal does not mean that powerful individuals lack agency; his discussion recognizes that particular leaders can still make decisive choices. iglp.law.harvard.edu

For world-state theory, his challenge is that **representation must be connected to effective capacities to govern**.

A global assembly could be elected and publicly visible while lacking meaningful influence over credit allocation, corporate organization, enforcement practices, and the professional standards through which policies are implemented.

Yet this argument leaves a substantial institutional question open. A parliament need not merely sit above existing arrangements. It could be designed to investigate them, change their mandates, control their resources, and create public forums for challenging their decisions.

Accordingly, Kennedy's objection is strongest against an institutional proposal that assumes representation automatically generates control. It is less decisive against a proposal that specifies how representative institutions would acquire authority over the dispersed powers he identifies.

6. Humanitarianism: moral authority as a practice of government

6.1 *The Dark Sides of Virtue*

The Dark Sides of Virtue: Reassessing International Humanitarianism (2004) examines the practical consequences of humanitarian work. Kennedy draws on experiences involving human-rights advocacy, international institutions, and military affairs to question whether professional methods and morally attractive commitments reliably produce the outcomes their advocates seek.

The focus includes the relationship between humanitarian intentions, institutional practice, and unintended consequences. Princeton University Press

For your question, the crucial issue is how an institution acquires authority to define another population's needs.

A humanitarian organization can influence which injuries become internationally visible, which local actors receive recognition, and which remedies attract resources. These activities can have governing effects even when the organization lacks formal legislative authority.

This creates a particular problem of accountability. If authority rests partly on a claim to act for humanity, the organization's constituency is difficult to specify. Donors, professional peers, affected communities, governments, and intended beneficiaries may have different priorities.

The analytical task is to determine which of these groups can actually change the organization's decisions.

6.2 The human-rights critique must be read with its qualifications

"The International Human Rights Movement: Part of the Problem?" (2002) develops a checklist of possible disadvantages associated with human-rights advocacy. These include crowding out alternative political vocabularies, directing attention toward some injuries while leaving background economic arrangements relatively unexamined, and translating political choices into professional legal questions.

Kennedy explicitly states that his proposed criticisms are hypotheses. He acknowledges the movement's substantial achievements and insists that possible costs must be examined in particular circumstances and weighed against benefits. The article does not establish that human rights are generally harmful. journals.law.harvard.edu

The connection with global political authority can be developed as follows.

When a social conflict enters an international rights process, it may gain access to powerful institutions and supporters. At the same time, its demands may need to be reformulated in terms those institutions recognize.

The political effect can therefore be double: increased capacity to challenge one form of power, accompanied by increased dependence on another set of gatekeepers.

That possibility is especially relevant to a world-state project built around universal rights. The question would be whether people gain effective political authorship over the institutions acting in their name, alongside opportunities to bring claims before them.

6.3 *The Rights of Spring*: how professional authority is made

The Rights of Spring: A Memoir of Innocence Abroad (2009) revisits a human-rights mission to Uruguay and reflects on the development of humanitarian professionalism. The account considers the relationship between uncertain personal encounters, the stories professionals construct from them, and the authority those stories acquire. Kennedy also recognizes that humanitarian practice became more sophisticated and pragmatic over time. assets.press.princeton.edu

The memoir is relevant as a close examination of representation, although it should not be treated as a representative empirical survey.

Its broader analytical value is to prompt questions about how experience becomes authoritative knowledge. Who determines what an encounter demonstrates? What is lost when uncertainty is converted into a report? Who can contest the professional account?

A global political order would necessarily depend on institutions that represent distant people and events. Kennedy's work directs attention to the political responsibilities involved in that representation.

7. War and law: the legal organization of coercive power

7.1 *Of War and Law*

In *Of War and Law* (2006), Kennedy examines law as part of the organization and conduct of warfare. Legal arrangements help structure military operations, allocate responsibilities, and provide a vocabulary through which military and humanitarian professionals evaluate violence.

Law can constrain action while also enabling and legitimating it. The relationship between law and force therefore requires examination throughout the conduct of war, beyond the initial determination of whether force may lawfully be used. lawapps2.law.miami.edu

This is relevant to a world state because the organization of coercion is central to statehood.

The existence of a shared legal language among military forces, governments, international institutions, and humanitarian organizations could facilitate coordination. It may contribute to a common professional environment within which coercion is authorized and assessed.

But that observation does not establish a global monopoly over legitimate force. Shared standards can be used by actors pursuing opposing objectives. They can sustain disagreements about authority as well as cooperation.

To demonstrate world-state formation, a researcher would need to show how such disagreements become subject to a common and effectively final political decision.

7.2 Legal assessment and the experience of responsibility

In "Modern War and Modern Law" (2007), Kennedy develops the concern that professional legal assessment can displace the experience of personal and political responsibility. Decisions about violence may be presented as the application of principles, while responsibility moves among commanders, civilian leaders, lawyers, and other participants.

His concern is that participants may experience themselves as implementing an externally justified decision rather than confronting their own role in producing harm. iglp.law.harvard.edu

The implication I draw for global institutions is that procedural elaboration does not automatically produce accountable government.

A highly developed international machinery could generate decisions that are extensively reviewed, documented, and legally defended while still making it difficult to identify who must answer politically for their consequences.

This argument should not be read as permission to disregard legal prohibitions. It concerns the additional responsibilities that remain even when an actor believes a decision is legally defensible.

8. What institutional changes does Kennedy favour?

8.1 Stronger and more varied public capacities

In "One, Two, Three, Many Legal Orders: Legal Pluralism and the Cosmopolitan Dream" (2007), Kennedy argues for recognizing the diversity of global legal and political arrangements. He explicitly observes that the United Nations is not a world government.

He proposes a role for international leadership that encourages varied policy initiatives and public capacities across different levels. He is wary of presenting a single institutional voice as the expression of humanity's settled ethical consensus. socialchangenyu.com

This is a positive orientation, although it is not a comprehensive constitutional programme.

Its attraction is that it allows different problems to be addressed through different configurations of public action. It also creates opportunities for political experimentation and for groups excluded from dominant institutions to develop alternatives.

Its difficulty is coordination. Public capacities dispersed across jurisdictions may confront actors able to move between them. Moreover, experiments can impose costs on outsiders or reproduce local domination.

Thus, the appropriate assessment is not whether decentralization is inherently preferable. It is whether a particular distribution of authority increases the practical capacity of affected people to shape decisions.

8.2 Concrete economic and legal interventions

"Law, Expertise and Global Political Economy" (2018) contains unusually concrete proposals. Kennedy discusses reconnecting economic activity with territories and communities through measures such as:

- local-content and employment requirements;
- technology-transfer and investment requirements;
- corporate obligations toward communities and trade unions;
- directing credit toward peripheral regions;
- restrictions on capital flight and rapidly moving speculative finance.

He also calls for distributing political choice beyond national capitals. iglp.law.harvard.edu

These proposals show that his critical project can lead toward affirmative changes in legal entitlements, obligations, and public authority.

From the world-state perspective, their significance is that they leave institutional scale open. Some could be pursued domestically; some would benefit from regional cooperation; others might require wider coordination to be effective.

My assessment is that they embody a substantive criterion for evaluating institutional reform: **does the change enable communities and public institutions to influence the economic decisions that shape their lives?**

That criterion can support some forms of international integration and challenge others. It does not make the creation of a global sovereign either a necessary first step or a sufficient achievement.

9. A revealing complication: his proposal for wider European integration

One of Kennedy's most relevant texts for your original question is "International Humanitarianism: The Dark Sides" (2004).

In the context of debates surrounding Iraq, he asks whether Europe could extend the approach of gradual legal and economic integration to countries in the Middle East. He envisages beginning with Turkey and offering paths toward membership to countries such as Morocco, Jordan, and Tunisia, with potentially wider participation later.

The proposal concerns sustained institutional transformation through accession negotiations, phased reform, market access, and membership. He presents it as an alternative to military intervention, limited international policing, humanitarian assistance, and abrupt market restructuring. ICNL

This is clear evidence that Kennedy has contemplated substantial integration beyond existing national political boundaries.

It should be read in its historical context. The passage is a strategic intervention in a particular debate, not a developed blueprint for worldwide European expansion or a universal federal state.

My assessment is that this proposal reveals a productive tension in his work. Accession can make transformation more durable by linking legal reform to resources, market access, and participation in common institutions. It can also give existing members considerable influence over the terms under which others transform themselves.

That tension can be tested through concrete questions:

- How much influence would prospective members have over the rules they must adopt?
- How would reform costs and benefits be distributed?
- Which domestic policy alternatives would remain available?
- Would membership create effective participation in common rule making?

Kennedy's own critical methods should be applied to his proposal. The fact that integration proceeds through law makes its distributive and political effects especially important to examine.

10. The connection with Martti Koskenniemi

The relationship with the scholar in your preceding question is direct. Kennedy and Koskenniemi jointly published *Of Law and the World: Critical Conversations on Power, History, and Political Economy* in 2023.

Their conversations address critical method, international legal history, universal claims, and the legal constitution of economic and political life. Kennedy describes his movement across different fields of global affairs and contrasts it with Koskenniemi's closer continuing engagement with international law. This is a difference of emphasis within a shared critical conversation. JSTOR

For your research programme, Kennedy adds particular value by connecting the authority of legal thought to the ordinary work of economic and administrative organization.

The resulting questions are practical: who drafts the instrument, defines the professional standard, structures the transaction, characterizes the emergency, or makes an alternative appear unavailable?

This provides a way of moving from the critique of universal legal claims toward investigation of the institutions and decisions through which those claims affect social life.

11. Major criticisms and unresolved questions

A detailed assessment must ask whether Kennedy's approach explains enough, and whether it provides an adequate basis for institutional reconstruction.

11.1 Does attention to expertise understate other causes of power?

In "Knowledge and Politics in International Law" (2016), Samuel Moyn critically examines *A World of Struggle*. Among the issues he raises are the relationship between knowledge and other sources of political power, and whether critical awareness supplies a sufficiently developed alternative politics. 2164-2189 Moyn

The problem is important for your inquiry. An analysis of elite rule must be able to distinguish the effects of professional knowledge from those of ownership, organizational resources, coercive capacity, and political mobilization.

Explaining how an advantage is legally articulated does not, by itself, establish why one group possesses the resources to make its articulation prevail.

A satisfactory account should therefore connect professional practice to evidence about material capacities and institutional dependence.

11.2 Who can transform the system?

Ingo Venzke's "Cracking the Frame? On the Prospects of Change in a World of Struggle" (2016) questions whether Kennedy provides a sufficient account of historical transformation and effective agents of change. Venzke also challenges the tendency to treat different forms of struggle in ways that risk obscuring distinctions among force, rhetoric, and reasoned argument. pure.uva.nl

The practical issue is that demonstrating contingency does not identify an effective political strategy.

If a legal arrangement could have been otherwise, we still need to know who can change it, through what coalition, using which institutions, and against what resistance.

This is where a theory of world-state formation would require more historical specification than Kennedy's general framework alone supplies. It would need to identify actors capable of converting dispersed authority into common institutions and explain why they would seek to do so.

11.3 Can legal procedures sustain moral judgment?

Dale Stephens's review of *Of War and Law* (2007) offers a practitioner's counterpoint. While recognizing the value of Kennedy's analysis, Stephens emphasizes that operational discretion and legal assessment can contribute to decisions to withhold force. He challenges an overly generalized image of military procedures as depersonalizing or morally anesthetizing. 17Stephens.doc

This does not eliminate Kennedy's concern. It changes its empirical formulation.

The question becomes: **Under what institutional conditions does legal procedure promote responsibility, and under what conditions does it encourage evasion?**

That is a more discriminating research question than assuming either effect follows automatically from legalization.

11.4 Could Kennedy's diagnosis support a global parliament?

Heikki Patomäki's "Rethinking Global Parliament: Beyond the Indeterminacy of International Law" (2007) offers a different institutional inference. Disagreement and indeterminacy can strengthen the case for a democratic body capable of debating common priorities. His proposal does not require a centralized world state with its own enforcement machinery. patomaki.fi

This counterargument has force. If expert authority is insufficiently accountable, creating representative institutions could be one means of challenging it.

Kennedy's work therefore supports demanding questions about a global parliament's design and capacities. It does not conclusively establish that such an institution would be ineffective.

11.5 Fragmentation does not settle the statehood question

My additional reservation concerns the relationship between dispersed power and state formation.

Existing states also contain overlapping jurisdictions, rival bureaucracies, powerful private organizations, and decisions that escape effective legislative control. A global order could acquire important characteristics of statehood while remaining internally fragmented.

Accordingly, Kennedy's demonstration of dispersed authority should not be treated as a decisive argument against the possibility of a world state.

The necessary further inquiry concerns **political closure**: which institutions can settle conflicts over jurisdiction, impose common obligations, mobilize resources, and secure compliance when other authorities resist?

His work tells us why this inquiry must extend beyond formal constitutional documents. It does not relieve us of undertaking it.

12. What does Kennedy ultimately contribute to the world-state question?

I would distinguish four conclusions.

First, Kennedy supplies a strong framework for investigating existing global governing power. Legal expertise and ordinary institutional practices can determine opportunities, obligations, and distributions across borders. The research object is broader than international organizations and treaties.

Second, he identifies mechanisms through which legal reform can reorganize global authority. Changes in private law, judicial involvement, professional standards, financial arrangements, and development policy can expand some actors' capacities while restricting others. These mechanisms deserve close empirical study.

Third, his work does not establish a single coordinated project aimed at a world state. For your wider inquiry into powerful groups, it is essential to distinguish deliberate coordination, convergence among professional commitments, and cumulative effects produced by separate initiatives. Similar outcomes do not establish identical intentions.

Fourth, his normative position is institutionally selective. He questions global constitutionalism and parliamentary proposals, while supporting forms of public capacity, economic intervention, and legal integration. The relevant test concerns their political and distributive effects.

A research programme building on Kennedy would therefore follow a particular reform from its conception to its consequences: identify its sponsors and drafters; examine their stated objectives and working assumptions; reconstruct the alternatives considered; trace changes in legal authority and enforcement; and investigate who gained effective control over resources and decisions.

That method could substantiate a claim about emerging global statehood. It could also reveal a different development: a durable pattern of global domination that continues to depend on separate states and has little need for a common sovereign.

Kennedy's deepest contribution is to make the exercise of global power more visible while leaving its eventual political form open. For him, the decisive achievement would be greater capacity to contest and redirect the decisions shaping the world. Whether a world state would advance that achievement depends on how it would actually be constituted, whose authority it would consolidate, and what people could do through it.

A focused reading sequence

For the particular inquiry you are pursuing, I would prioritize:

1. **"Challenging Expert Rule: The Politics of Global Governance" (2005)** — the concise starting point for his account of professional authority.
2. ***A World of Struggle* (2016)** — the broad synthesis connecting expertise, law, conflict, and political economy.
3. **"The Mystery of Global Governance" (2008)** — his examination of constitutional interpretations of global order.
4. **"Assessing the Proposal for a Global Parliament: A Skeptics View" (2007)** — the most direct engagement with a representative global institution.
5. **"Some Caution about Property Rights as a Recipe for Economic Development" (2011)** — concrete legal mechanisms of economic transformation.
6. ***The Dark Sides of Virtue* (2004)** and ***Of War and Law* (2006)** — humanitarian authority and the organization of coercion.
7. **"Law, Expertise and Global Political Economy" (2018)** — affirmative proposals for changing economic power.
8. ***Of Law and the World* (with Martti Koskenniemi, 2023)** — a later reflection on their shared critical project.

Source note: The book discussions use available introductions, excerpts, and descriptions alongside Kennedy's related full-length articles. The analysis distinguishes his documented arguments from my applications of them to the world-state question.

Nico Krisch’ s work

Nico Krisch is particularly important for your inquiry because he explains how institutions can acquire authority beyond states while their ultimate constitutional relationships remain unsettled. His work also makes a normative argument: under conditions of deep political disagreement, preserving competing sources of authority can provide a more legitimate and durable basis for international cooperation than imposing a comprehensive constitutional settlement.

This produces an important qualification to any simple classification of his position. **Krisch supports forms of postnational institution building, but generally questions their consolidation within a single overarching legal hierarchy.** Indeed, in his 2011 article on radical pluralism, he explicitly argues that leaving fundamental questions of authority open can help European and global institutions develop and consolidate. His pluralism can therefore facilitate the growth of authority beyond states, even while placing limits on its constitutional unification. jog.tk.hu

From the perspective of an emerging world state, his scholarship raises three distinct questions:

1. How much governing authority is moving beyond, or operating across, national political institutions?
2. How are the relationships among these authorities being organized?
3. Do these developments amount to the formation of a common sovereign political order?

Krisch provides extensive arguments and evidence concerning the first two. The third requires a further interpretation of what constitutes a state and additional evidence about the consolidation of power.

The discussion below distinguishes his documented arguments, my interpretation of their implications for world-state formation, and the principal criticisms of his position.

1. The central distinction: postnational authority and sovereign unification

A useful starting point is to distinguish three developments that can occur at different speeds:

Development	What changes?	The question it raises
Expansion of global governing authority	More consequential decisions are made through international, transnational, or externally influential institutions.	Who governs whom?

Development	What changes?	The question it raises
Constitutional organization beyond states	Norms establish or claim superior status, allocate powers, and regulate relationships among authorities.	Which institutions and principles have priority?
Formation of a world state	A common political order claims and exercises general, ultimately authoritative governing powers.	Who can settle fundamental conflicts and secure compliance?

These are analytical distinctions for assessing Krisch's work. A dense global legal order might remain institutionally pluralist. Conversely, a world state could contain substantial decentralization, rival institutions, and overlapping jurisdictions. The existence of fragmentation alone cannot settle the statehood question.

Krisch's distinctive position concerns the desirability of leaving some fundamental relationships open. His preferred order can contain strong institutions, binding rules within particular regimes, and extensive cooperation. Its defining feature is that the relationships among the participating legal orders are not comprehensively determined by a single superior framework.

That position is also more demanding than the observation that international law contains many institutions. Institutional multiplicity could exist within a clearly hierarchical constitution. Krisch asks whether competing authorities should retain the capacity to contest the terms on which their decisions relate to one another.

2. *Beyond Constitutionalism*: the normative foundations of postnational pluralism

2.1 The problem the book addresses

Beyond Constitutionalism: The Pluralist Structure of Postnational Law (2010) is the central statement of Krisch's earlier theoretical project. It addresses the growing interconnection of domestic, regional, and international law and evaluates competing ways of organizing this postnational legal space. Its empirical studies concern European human-rights law, UN sanctions, and regulation involving trade, environmental protection, and food safety. Oxford Academic

The underlying problem is familiar in constitutional theory but becomes more difficult beyond the state: several institutions can plausibly claim authority over the same question while deriving their legitimacy from different political communities and legal traditions.

A national constitutional court might invoke democratic self-government and constitutional rights. An international institution might invoke obligations accepted by states or the protection of people affected by cross-border conduct. A regional court might invoke the integrity of its own legal order.

The challenge is not merely to identify an administratively convenient decision maker. It is to decide whose claims of political membership, autonomy, and inclusion should prevail.

2.2 Public autonomy and disagreement about political boundaries

In the book's chapter "The Case for Pluralism," Krisch grounds his argument in individual autonomy. People disagree about the appropriate scope of their political communities. National, regional, and global affiliations can all generate serious claims to participation.

His pluralist alternative gives institutional expression to these disagreements. Relations among legal orders are governed by norms arising from those orders, potentially in tension with one another, rather than being finally determined by one supreme rule. The justification is that an open structure can respect competing understandings of political membership more effectively than a comprehensive legal settlement. Oxford Academic

The relevance to a world state is fundamental. A constitution does more than distribute powers among institutions: it also helps determine the political community within which authoritative decisions will be made.

Consider an environmental dispute affecting residents of one country, consumers in several others, and populations exposed to long-term ecological harm. Different answers to the question "Who should decide?" will produce different constituencies. None can simply be assumed from the geographical location of the relevant activity.

My interpretation is that Krisch resists resolving this disagreement in advance through an exclusive presumption favouring either national sovereignty or global authority. His approach seeks to retain channels through which the boundaries of legitimate decision making can themselves be challenged.

2.3 Democracy and the rule of law

The book's chapter "Pluralist Challenges" considers the implications for democracy and legal certainty. Krisch acknowledges the difficulty of constructing postnational democracy and does not offer a complete theory of it. He emphasizes multiple political constituencies, opportunities for contestation, and norms governing the interfaces among legal orders. Those interface norms should take account of the autonomy credentials of the institutions involved. Oxford Academic

This creates a tension that runs through his work. Predictable allocations of authority can protect individuals against arbitrary government. Yet fixing authority can also protect an institution against challenges from people inadequately represented within it.

A world constitution might reduce uncertainty while making it harder to challenge the institutions whose powers it entrenches. Conversely, persistent uncertainty could leave individuals unable to know which decisions bind them.

The appropriate evaluation must therefore examine both the benefits of settled rules and the political consequences of settling them in a particular way.

3. Hegemony: global power can expand through selective legal arrangements

Krisch's earlier work on hegemony provides an essential corrective to an overly harmonious reading of pluralism.

In "International Law in Times of Hegemony: Unequal Power and the Shaping of the International Legal Order" (2005), he identifies four broad patterns in the conduct of dominant powers: using international law instrumentally, withdrawing from inconvenient arrangements, reshaping law to accommodate superior power, and substituting domestic legal mechanisms for international ones.

He also stresses law's ambivalent relationship with power. Its legitimating value depends partly on maintaining some independence from the preferences of the dominant actor. The study primarily examines strategies and possible patterns; it does not claim systematically to establish their enduring effects. ejil.org

This is directly relevant to your original interest in powerful groups and states shaping a global political order.

A dominant actor need not favour a strong, generally authoritative global government. It might prefer international rules in some fields, exemptions in others, informal coordination where formal equality would be inconvenient, and domestic enforcement where its own institutions are more favourable.

My assessment is that this supplies a strong reason to distinguish global domination from world-state formation. A common sovereign might constrain dominant actors by subjecting them to institutions they cannot fully control. Selective internationalization can sometimes preserve their freedom of action more effectively.

At the same time, a pattern of selective arrangements can produce considerable hierarchy. The absence of an overarching constitution does not imply that participants relate as equals.

Krisch's hegemony analysis thus supports investigation of the uneven organization of global power, while cautioning against assuming that its beneficiaries necessarily seek universal sovereign institutions.

4. Global administrative law: institutional development through existing legal systems

4.1 The joint project with Kingsbury and Stewart

"The Emergence of Global Administrative Law" (2005), coauthored with Benedict Kingsbury and Richard B. Stewart, identifies administrative activity across formal international organizations, regulatory networks, domestic bodies implementing global regimes, public–private arrangements, and private regulatory institutions.

The proposed legal responses include participation, transparency, reason-giving, and review. A particularly important observation is that global norms can give domestic regulators an additional role as participants in global regimes. National institutions thereby become points at which international requirements and domestic public authority interact. iilj.org

This is among the most concrete contributions to your inquiry about institutional changes occurring within functioning legal systems.

A global administrative structure need not be created through a single constitutional founding. It can develop when existing agencies acquire new obligations, recognize standards formulated elsewhere, participate in transnational networks, or become accountable to additional constituencies.

For example, a domestic regulator's institutional identity can change even if its name, legal personality, and formal place in national government remain unchanged. It may increasingly have to justify its decisions in terms of a global regulatory regime.

The analytical significance is that national authority and global authority can develop through the same institution. Counting the number of formally independent states would reveal little about this transformation.

4.2 Accountability is a distribution of political control

Krisch's own "The Pluralism of Global Administrative Law" (2006) asks a question that the general language of accountability can obscure: **accountability to whom?**

He distinguishes claims arising from national political communities, the international community of states, and a global public of individuals. These constituencies can demand different decisions from the same institution. Increasing accountability therefore changes the distribution of influence; it does not simply add a politically neutral safeguard. ejil.org

Imagine that a regulator becomes more responsive to foreign investors while remaining equally responsive to domestic citizens. Its formal accountability has expanded. Whether the change is democratically desirable depends on the relative powers of the participants, the decisions involved, and the people affected.

The same issue arises if an international organization becomes more accountable to governments but less accessible to individuals, or if judicial review strengthens legally sophisticated participants more than groups lacking resources.

My interpretation is that Krisch treats global administrative law as a field of institutional politics. The central issue is the allocation of powers to participate, challenge, review, and enforce.

4.3 The project is also self-critical

In their 2006 introduction to a symposium on global administrative law, Krisch and Kingsbury acknowledge that legal procedures can privilege powerful actors and reduce room for political struggle. They discuss Carol Harlow's concern that juridification might limit democracy and establish juristocracy, and recognize that disruption and less orderly political action may remain necessary. ejil.org

This qualification matters. Their participation in developing global administrative law is evidence of an affirmative institutional project. It should not be interpreted as an unqualified endorsement of every expansion of global administration.

5. The empirical cases: integration through contested authority

5.1 European human-rights law

"The Open Architecture of European Human Rights Law" (2008) examines interactions among the European Court of Human Rights and domestic and European institutions. Krisch argues that disputes over ultimate authority coexist with substantial practical convergence. He attributes part of this accommodation to incremental development and the absence of a finally settled hierarchy. Wiley Online Library

The institutional mechanism can be illustrated without assuming that all courts occupy identical legal positions.

An institution can recognize the authority of another while reserving the possibility of resistance under particular circumstances. The second institution then has an incentive to take those concerns seriously. Cooperation may grow through repeated adjustment even though neither side abandons its ultimate constitutional claims.

For world-state analysis, this has two possible implications. It can preserve a durable plurality of authorities. It can also permit practical integration to advance beyond what participants would have accepted in an explicit initial settlement.

Which trajectory emerges cannot be inferred from the existence of judicial cooperation alone.

5.2 UN sanctions and the *Kadi* controversy

The sanctions chapter of *Beyond Constitutionalism* examines the interaction of UN, European, and domestic law where security measures confront fundamental-rights claims. Krisch finds diverse approaches to supremacy and institutional accommodation, with pragmatic cooperation moderating potentially severe conflicts. His assessment concerns the developments available when the book appeared in 2010. Oxford Academic

The *Kadi* litigation is especially revealing because review of European implementation of UN sanctions allowed European rights requirements to be asserted against the effects of an external decision. The legal challenge concerned the implementing measures within the European order; it was not the exercise of a general power to annul Security Council resolutions. academic.oup.com

My interpretation is that the episode illustrates how resistance can alter the conditions under which global authority operates. An institution exercising considerable external authority may need to adjust its procedures to secure implementation elsewhere.

This can produce stronger safeguards, but it also raises a distributive question: which legal orders possess enough institutional weight to make their resistance consequential?

5.3 Trade, biotechnology, and regulatory disagreement

Krisch's 2006 administrative-law article examines disputes over genetically modified organisms through the overlapping settings of European regulation, WTO law, food standards, and biosafety arrangements. The conflict involves competing regulatory priorities and constituencies, rather than a single institution possessing uncontested authority over the whole problem. ejil.org

The wider lesson is that global integration does not necessarily eliminate disagreement over substantive policy. It can relocate that disagreement into struggles among legal regimes.

For a world state to emerge from such interactions, more would be required than coordination. There would have to be a sufficiently authoritative process for settling persistent conflicts over which institution may decide and which priorities should govern.

6. The most direct contribution: incremental construction of postnational authority

"Who is Afraid of Radical Pluralism? Legal Order and Political Stability in the Postnational Space" (2011) is particularly important for your research programme.

In its discussion of institutional authority, Krisch examines gradual change, tacit acceptance, and path dependence. Individual expansions of authority may impose costs too limited to provoke strong resistance. Initial acceptance can subsequently make reversal more difficult. He also discusses judicial strategies that combine significant doctrinal shifts with immediate outcomes acceptable to affected actors.

The article argues that a pluralist setting can facilitate adjustment and institutional consolidation by avoiding direct confrontation over fundamental commitments. Its conclusion explicitly connects this argument to the development of European and global institutions. jog.tk.hu

This is an explicit scholarly account of how authority beyond states can grow without an initial comprehensive constitutional agreement.

Several implications follow from it.

First, the institutional significance of a reform may exceed its immediate practical effect. A small decision can establish a premise that later decisions treat as settled.

Second, opposition may be temporally uneven. Actors may accept several limited changes while objecting to their cumulative result. Their later objections then confront an institutional structure partly established through their earlier acquiescence.

Third, continued opportunities for resistance can increase an institution's durability. An arrangement that permits adjustment may retain participants who would reject unconditional subordination.

These are my analytical extensions of the mechanism. They suggest that **contestability and consolidation can reinforce one another**.

From the world-state perspective, the decisive unresolved question is whether incremental integration eventually changes the character of the arrangement. Does an authority that initially depended on continuing accommodation acquire the capacity to impose decisions despite fundamental resistance? Or do the opportunities for resistance remain sufficiently effective to prevent such a transformation?

Krisch's account identifies a process that could be relevant to either outcome. It does not demonstrate an inevitable progression toward sovereign unification.

7. "The Decay of Consent": global authority can grow by moving outside formal international law

"The Decay of Consent: International Law in an Age of Global Public Goods" (2014) examines international antitrust, climate change, and terrorism financing.

Its conclusion is carefully qualified. Formal international law retains much of its consensual structure, while regulation increasingly occurs through unilateral and informal arrangements in which consent offers less protection and hierarchy can be pronounced. The development is therefore partly a displacement of traditional international legal mechanisms, rather than a straightforward conversion of international law into global majority legislation. nico krisch

This distinction is crucial.

There are at least three different responses to the difficulty of securing agreement among states:

- creating a more inclusive institution with authority to decide without unanimity;
- allowing a smaller group of actors to establish standards that others must accommodate;
- using the domestic institutions of powerful jurisdictions to influence conduct abroad.

All can reduce the practical importance of individual state consent. Their implications for political equality and world-state formation differ substantially.

My assessment is that Krisch's article weakens any assumption that global problems automatically produce progressively inclusive global institutions. Demand for effective regulation can also strengthen arrangements in which those affected have little influence.

The historical baseline is contested

Eyal Benvenisti and George Downs, responding in 2014, question whether traditional consent protected weaker states as effectively as the contrast might suggest. Powerful actors already exercised considerable influence through treaty structures and institutional fragmentation. They also argue that more visible domination can generate new demands for justification and accountability. cambridge.org

This criticism improves the research question. The relevant comparison is between actual institutional arrangements, including their inequalities, rather than between an ideal consensual order and a defective post-consensual one.

8. “Liquid Authority”: governing power that does not depend on commands

“Liquid Authority in Global Governance” (2017) broadens the concept of authority beyond formal command. Krisch emphasizes deference: actors give weight to a source because of its recognized authority, rather than assessing every claim entirely independently.

Liquidity concerns changes in the location, configuration, and relative weight of authority, often associated with informality and institutional multiplicity. It does not necessarily mean that authority is weak. His examples include certification arrangements and credit-rating agencies. The article also identifies difficulties in holding authority accountable when influence is dispersed or shifts among institutions. nicokrisch.net

The significance for your inquiry is that global political power may develop without assuming the familiar legal form of a command backed by public coercion.

Consider a hypothetical standard-setting body whose judgments become widely relied upon by purchasers, lenders, or regulators. Its formal decisions might be nonbinding. Nevertheless, actors could find compliance practically necessary because other institutions treat its standards as authoritative.

Authority here depends on a network of recognition. The originating body, the intermediaries, and the enforcing institutions need not be parts of one organization.

This creates a problem for conventional accountability. Reviewing the standard-setting body alone may fail to address the way its decisions acquire force elsewhere. Regulating one intermediary may cause influence to move to another.

For world-state theory, the implication is double. A focus on formal sovereignty can underestimate the extent of existing global authority. But recognizing that authority does not establish that it is moving toward a single sovereign centre.

The empirical issue is whether these changing relationships eventually become durably organized under common institutions capable of directing and constraining them.

9. “Jurisdiction Unbound”: global governance through powerful national legal systems

“Jurisdiction Unbound: (Extra)territorial Regulation as Global Governance” (2022) is one of Krisch’s most concrete studies of authority operating through existing legal systems.

He argues that formally territorial jurisdiction can support regulation of extensive cross-border activity. Financial connections, market presence, and other links can provide the basis for far-reaching legal action. Overlapping jurisdiction then favours actors possessing substantial market power, regulatory resources, and enforcement capacity.

His concern is that such arrangements can generate hierarchical governance, especially by powerful jurisdictions over weaker societies. ejil.org

The importance of this argument is that global authority can expand through a reinterpretation or broader use of familiar jurisdictional categories. A state need not formally acquire sovereignty over foreign territory to exert significant influence over decisions made there.

My interpretation is that this is an especially strong example of a transformation that the world-state vocabulary can partly illuminate and partly obscure. It illuminates the exercise of governing power beyond national boundaries. It can obscure the fact that the power may remain institutionally concentrated in particular states, whose domestic constituencies enjoy privileges unavailable to foreign populations.

His affirmative proposals

Krisch calls for meaningful public accountability to affected populations. He considers participation, shared standards, joint institutions, and arrangements that give affected communities greater influence. In the corporate human-rights context, he supports preventive obligations for home states while also emphasizing respect for—and assistance in making effective—the democratic choices of host societies. ejil.org

These proposals are important because they show that his response is not a general prohibition on external regulation. The question is how such regulation can protect people without simply substituting the preferences of a powerful foreign authority for their own.

O'Keefe's objection

Roger O'Keefe's reply emphasizes that overlapping jurisdiction can also support deliberate cooperation. Existing international law and treaties can enable states to address common problems through coordinated national regulation. He contests aspects of Krisch's legal characterization and the weight placed on domination. ejil.org

The disagreement turns partly on the relationship between legal possibilities and unequal capacities. Equal permission to regulate does not create equal practical power. Unequal power, however, does not make cooperation impossible.

10. From plural legal orders to "entangled legalities"

10.1 The later conceptual development

Krisch edited *Entangled Legalities Beyond the State* (2021) and wrote its framing chapter. He develops the idea further in "Entangled Legalities in the Postnational Space" (2022).

The framing chapter examines relations among norms of different origins that are neither fully integrated nor clearly separated. Its scope includes interactions between state and non-state law as well as international and transnational legal arrangements. It also stresses that legal entanglement has a long history and should not be treated as an entirely new product of globalization. Entangled Legalities Beyond the State

The 2022 article shifts attention toward how actors construct relationships among these legalities. Their interaction can be constitutive of legal meaning and authority. The resulting

order reflects simultaneous pressures toward connection and differentiation. graduateinstitute.ch

This is more than a terminological adjustment. A model of separate legal orders begins by identifying bounded systems and then asks how they interact. An entanglement approach asks whether those boundaries and identities are themselves partly produced through interaction.

For example, a legal standard may acquire significance because it is invoked in contracts, relied on in administrative decisions, and interpreted through judicial reasoning from several jurisdictions. Its authority cannot necessarily be assigned to one originating institution.

10.2 Implications for world-state analysis

My assessment is that entanglement complicates a linear model of state formation.

A linear model might anticipate separate national systems gradually being integrated into a higher legal order. Entanglement allows another possibility: increasingly dense connections without a corresponding consolidation of ultimate authority.

The relevant research would then examine which connections become stable, which institutions can redirect them, and whether some actors gain privileged control over the points where different legal arrangements meet.

Those points may be strategically important even when they do not resemble conventional ministries, legislatures, or supreme courts.

11. Constituent power and *pouvoir irritant*: who could authorize a global political order?

“Pouvoir constituant and pouvoir irritant in the Postnational Order” (2016) addresses the democratic foundation of authority beyond the state.

Krisch questions whether existing postnational institutions can plausibly be understood as constituted by a people exercising constituent power. Their origins and structures are too fragmented for that description to carry the meaning it commonly has in domestic constitutional theory.

He nevertheless retains a role for constituent-power claims as a *pouvoir irritant*: a source of political challenge that can unsettle technocratic or insufficiently legitimate arrangements. He also leaves open the possibility that future institutional and social changes could make stronger forms of postnational democratic authorship possible. academic.oup.com

This bears directly on the world-state question.

An emerging global administration could become extensive before there existed a convincing political process through which its subjects collectively authorized it. Legal order, administrative capacity, and democratic constitution-making need not develop together.

The distinction between constituent power and an irritant also identifies a limitation of resistance. People may be able to disrupt an institution without possessing the organized capacity to replace it or redesign the wider order.

My assessment is that this is one of the most important unresolved issues in Krisch's normative programme. Contestation can prevent closure and expose illegitimate authority. Yet durable self-government also requires capacities to formulate common decisions, establish institutions, and maintain collective commitments.

A world-state project would need to demonstrate how such capacities could emerge. Invoking humanity or a global public would not by itself establish their existence.

12. The recent empirical turn: *Change in International Law* (2026)

Krisch's more recent work gives the inquiry into institutional transformation a stronger empirical basis.

"The Dynamics of International Law Redux" (2021) examines how international law can change rapidly despite demanding formal requirements for treaty amendment and customary-law formation. It directs attention toward actual practices, variable institutional settings, and forms of authority that doctrinal accounts can leave insufficiently explained. academic.oup.com

This project culminates in the coauthored *Change in International Law: Paths, Processes, Power*, published by Oxford University Press in 2026, with **Ezgi Yildiz and Pedro Martínez Esponda**.

The book examines twenty-five cases across eight subfields, combining qualitative analysis with statistical examination. Its central finding concerns the importance of field-specific institutions and authorities in legal change beyond treaty-making. In the cases examined, support from powerful states does not straightforwardly determine whether attempted changes succeed. Institutional settings and the mobilization of legal arguments matter considerably. Oxford Academic

For your original question, this is especially relevant because it investigates how legal arrangements change without a corresponding formal legislative act at the global level.

My interpretation is that the book strengthens the case for examining the professional and institutional processes through which governing powers expand. It also cautions against reducing those processes to the preferences of the strongest states.

That does not prove that legal change is democratically controlled or independent of elite influence. Institutional authority can itself be unequally distributed, and private or professional actors may exert influence through channels that measures of state power do not capture.

The study also concerns selected processes of legal change beyond treaty-making. Its findings should not automatically be generalized to every domain of geopolitical power, coercion, or international institutional creation.

13. Does Krisch's work support the "global state" interpretation? The direct debate with Chimni

The connection with B. S. Chimni is unusually explicit.

In "Cooption and Resistance: Two Faces of Global Administrative Law" (2005), Chimni interprets global administrative law in relation to an emerging global state and the power of a transnational capitalist class. His concern is that procedural reform can legitimate an unequal institutional order. He also recognizes that procedural rights can assist resistance under particular conditions. 2005.16 Chimni.rtf

The joint 2005 article by Kingsbury, Krisch, and Stewart expressly considers the critique of global institutions as imperial plausible. It acknowledges that procedural improvement might stabilize injustice and that reforms favouring already influential Northern constituencies could deepen inequality. iilj.org

The attribution must remain precise. Taking the imperial critique seriously does not mean that Krisch adopts Chimni's entire theory of a nascent global state.

My assessment is that the difference concerns how one characterizes the unity of the emerging order.

Chimni's framework encourages investigation of whether institutions collectively perform the functions of a state in reproducing a transnational structure of domination. Krisch's framework emphasizes the plurality of authorities, the instability of their relationships, and the possibilities for contestation.

These perspectives can identify overlapping phenomena. A fragmented institutional order can still reproduce concentrated economic power. Equally, institutions participating in a broadly similar pattern of domination may remain sufficiently autonomous and conflictual to resist treatment as one political organization.

To decide between these interpretations, research must demonstrate the mechanisms that coordinate the institutions, maintain their common orientation, and resolve conflicts among them.

14. Major criticisms: constitutionalism, inequality, and juristocracy

14.1 Is the contrast with constitutionalism too strong?

Alec Stone Sweet's 2013 review argues that Krisch draws too sharp a distinction between constitutionalism and pluralism. Constitutional systems can contain unresolved conflicts and competing authorities. Shared rights commitments and judicial interaction can themselves be understood as constitutional development without requiring an uncontested final arbiter. Oxford Academic

Krisch replies that substantial agreement exists, but insists that influential constitutional projects still seek stronger unity and more settled relationships than his pluralism allows. The disagreement therefore concerns both the meaning of constitutionalism and the desirability of institutional closure. Oxford Academic

This objection matters for world-state analysis. If states themselves contain plural authority, then pluralism cannot serve as a sufficient argument against emerging statehood.

What matters is how extensive the common framework has become and what happens when institutions persistently refuse accommodation.

14.2 Can European experience support a general theory?

Gregory Shaffer's 2012 critique questions the generalization from Krisch's European examples. He also challenges the emphasis on courts and calls for greater attention to legislatures, administrative networks, firms, and other actors. His preferred approach emphasizes empirical comparison of transnational legal ordering and the continuing importance of states. ejil.org

The underlying problem is that institutions capable of effective resistance are unevenly distributed.

A powerful regional court may induce an international body to change its procedures. A court in a small, economically dependent state may lack comparable influence. The same formal opportunity to challenge authority can therefore have very different practical value.

Krisch's pluralism needs to be evaluated through these differences, rather than through the existence of contestation in the abstract.

14.3 Pluralism among courts can coexist with juristocracy

This point is particularly relevant to the relationship between judicial power and democratic legislation.

My analytical extension of the debate is that preventing one court from becoming supreme does not necessarily prevent judges from acquiring greater collective authority.

Several courts might contest one another's interpretations while jointly expanding the range of political questions treated as judicially determinable. Rivalry within the legal profession can coexist with declining legislative control.

Carol Harlow's critique of global administrative law raises related concerns about Western institutional models, unequal access to legal expertise, and the displacement of political choice by judicially enforced principles. Her reservations partly converge with Krisch's own pluralist concerns. ejil.org

The appropriate democratic test is therefore broader than institutional plurality. It asks whether affected people can initiate challenges, influence governing priorities, and change the institutions themselves.

14.4 Does "entanglement" explain enough?

Jan Klabbers's 2022 reply questions the perspective from which entangled legalities are described, particularly the emphasis on regulators. Sanne Taekema's response argues that identifying entanglement empirically needs to be connected to a more developed theory of law as social and normative practice. University of Helsinki

These objections identify a methodological risk. A sufficiently flexible account of interacting legalities can describe many arrangements without explaining why particular actors prevail or what distinguishes legitimate legal authority from successful exercises of influence.

For your inquiry, the concept should therefore be connected to concrete evidence about control, resources, institutional dependence, and the ability to secure compliance.

15. Overall assessment: what Krisch contributes to the study of a global world state

I would draw five conclusions.

First, Krisch offers an affirmative theory of political and legal organization beyond states. His preferred postnational order preserves multiple sources of authority and opportunities for challenge. It is capable of substantial institutional development.

Second, he identifies mechanisms through which that authority can grow incrementally. Changes in judicial interpretation, administrative obligations, professional recognition, jurisdiction, and informal norm production can transform governing relationships without a comprehensive constitutional founding.

Third, his analysis shows why global hierarchy may develop without a common sovereign. Powerful states, institutions, and private actors can govern across borders through arrangements that remain formally decentralized. This is one reason to distinguish a world state from a global structure of domination.

Fourth, his pluralism can both constrain and stabilize global authority. Retained possibilities of resistance may limit domination, but they may also make institutions more acceptable and durable. The 2011 article makes this second possibility unusually explicit.

Fifth, the democratic promise remains conditional. Contestability matters only insofar as people and institutions possess the practical capacity to use it. A plural legal order can still be inaccessible, unequal, or dominated by professional elites.

For your research programme, the strongest formulation is therefore:

Krisch explains how a dense postnational order can acquire governing capacities while leaving sovereignty unresolved. He also provides arguments for preserving that openness. Whether the resulting order should be understood as an emerging world state depends on evidence about the consolidation, coordination, and ultimate control of those capacities.

A decisive empirical inquiry would follow particular institutional changes over time: who initiated them, which legal arguments made them acceptable, who could resist, what forms of authority they accumulated, and whether those authorities eventually became subject to a

common political direction. Krisch's work supplies many of the concepts needed for that inquiry, while resisting the assumption that its outcome is already known.

Principal works for further reading

The most useful sequence for this particular question is:

1. **"International Law in Times of Hegemony" (2005)** — selective internationalization and the legal strategies of dominant powers.
2. **"The Emergence of Global Administrative Law" (with Kingsbury and Stewart, 2005)** — institutional transformation across domestic and global administration.
3. **"The Pluralism of Global Administrative Law" (2006)** — competing constituencies and the politics of accountability.
4. ***Beyond Constitutionalism* (2010)** — the principal theoretical statement.
5. **"Who is Afraid of Radical Pluralism?" (2011)** — the clearest discussion of incremental authority and institutional consolidation.
6. **"The Decay of Consent" (2014)** — movement toward informal and unilateral governance.
7. **"Pouvoir constituant and pouvoir irritant" (2016)** — democratic authorship and resistance.
8. **"Liquid Authority in Global Governance" (2017)** — authority through recognition and deference.
9. ***Entangled Legalities Beyond the State* (edited volume, 2021)** and **"Entangled Legalities in the Postnational Space" (2022)** — the later account of legal interaction.
10. **"Jurisdiction Unbound" (2022)** — global regulation through national legal systems.
11. ***Change in International Law: Paths, Processes, Power* (with Yildiz and Martínez Esponda, 2026)** — empirical investigation of gradual legal change.

Source note: For the 2010 monograph, I used the publisher's chapter descriptions alongside related articles and scholarly reviews. The discussion of the 2026 book draws on its accessible introduction and publisher overview. The analysis of the other works uses the cited primary texts or, where full access was unavailable, their author-written summaries and published responses.