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## Law, nation and (imagined) international communities

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### Abstract

Although it was published more than 20 years ago, in a world that was geopolitically dramatically different from our own, it is difficult to approach the subject of nation without invoking Benedict Anderson's *Imagined Communities*. This small book has come to serve as an almost mandatory point of reference for academic discussions of the modern nation. And although many disagree with Anderson's analysis that 'from the start, nation was conceived in language not in blood' (Anderson 1991: 133), in the wake of his book it is difficult to consider nation and its relation to community without also considering the modern discursive and cultural forms through which they are each conjured and connected. That is, Anderson saliently observed that the link between community and nation is made, not found.

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Ruth Buchanan and Sundhya Pahuja<sup>1</sup>

All communities larger than primordial villages of face to face contact ... are imagined. Communities are to be distinguished not by their falsity/genuineness but by the style in which they are imagined (Anderson 1991: 6).

If nationalisms in the rest of the world have to choose their imagined community from certain 'modular' forms already made available to them by Europe and the Americas, what do they have left to imagine? (Chatterjee 1996: 216)

## Introduction

Although it was published more than 20 years ago, in a world that was geopolitically dramatically different from our own, it is difficult to approach the subject of nation without invoking Benedict Anderson's *Imagined Communities*. This small book has come to serve as an almost mandatory point of reference for academic discussions of the modern nation. And although many disagree with Anderson's analysis that 'from the start, nation was conceived in language not in blood' (Anderson 1991: 133), in the wake of his book it is difficult to consider nation and its relation to community without also considering the modern discursive and cultural forms through which they are each conjured and connected. That is, Anderson saliently observed that the link between community and nation is made, not found.

What Anderson failed to take sufficient notice of, however, is the extent to which the very boundaries of the imaginable for ‘most of the world’<sup>2</sup> are already determined by a particular form of the nation-state prescribed by the West. Embedded within that form, according to Partha Chatterjee, is a predetermined relationship between community and the state, in which community must take the form of nation; ‘[t]he modern state, embedded as it is within the universal narrative of capital, cannot recognize within its jurisdiction any form of community except the single, determinate, demographically enumerable form of nation’ (Chatterjee 1993: 238). We too are concerned with the ways in which the tendency of the ‘parochial history of Western Europe [to be] made universal’ haunts both the subject formation of contemporary nation-states and their relation to each other (Chatterjee 1993: 238).

This article will begin from the perception of this straitened relation between community and nation produced by the nation-state form, but will seek to build upon and extend this insight in two ways. First, we will shift from what one might call the purely ‘domestic’ production of nation to consider the way in which notions of an *international* community operate to cohere and normalise the modern nation-state as the axiomatic form of social organisation. Secondly, we will introduce a more explicit consideration of the role of law as an essential medium, both discursive and institutional, through which communities and nations are constituted and legitimated. Thus we frame our problematic not in terms of an oscillation between two poles, nation and community, but rather as a stabilising triangular arrangement in which the third element is law. Law, as we will elaborate, is fundamental to the constitution of the nation-state, the paradigmatic form taken by nation in modernity.

These two strands of analysis are brought together in the argument through parallel developments that we have identified in research we have conducted, both individually and together, in the field of international law over the past few years. In the course of that research, we have observed that some notion of an international community, that is, an authentic community located beyond or outside of nation, is more

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and more frequently invoked as a panacea to all manner of ‘global’ crises. This invocation has been occurring in various ways in a number of different contexts. In this article, we will identify three such contexts: US unilateral action in relation to the war in Iraq; responses to the crisis of legitimacy of the World Trade Organization; and changes in the discourse of development emanating from the World Bank. We argue that recent developments in each of these sites reflect a more general tendency for a conception of ‘international community’ to play a crucial legitimating role. Indeed implicitly, the concept of international community has come increasingly to function as the kind of stabilising and legitimating ‘ground’ that the ‘community as nation’ has traditionally provided. In addition, using our three cases as illustrations, we will suggest that the concept of international community is deeply implicated in legitimising the juridical processes by which contemporary hierarchical orderings between nations are (at least partly) maintained.

It is worth noting at this juncture that a significant element of our analysis in this article cuts against at least one recurrent tendency in contemporary debates over the governance implications of globalisation. This is the assertion that the economic and social processes of convergence and integration associated with globalisation are causing a diminution, or at least a radical transformation, in the capacities of the nation-state to govern. For legal scholars especially, this ‘withering away’ is mostly understood in terms of a diminution of sovereignty, or the ability of particular nation-states effectively to govern their own territories and populations. The political corollary to this argument about governance is the suggestion that nation has become less salient as the imagined vehicle for the aspirations and identities of publics. If globalisation is understood as undermining the capacity of nation-states to govern, then it may consequently be seen also as posing a challenge to their legitimacy and accountability to their own populations or constitutive communities. This challenge to legitimacy can be described as ‘the crisis of the hyphen’ (Anderson 1996: 8) between nation and state: states continue to make laws and sign treaties which have ever more immediate effects, but the uncertainty lies in

whether or not they are taken to do these things on behalf of and for the benefit of their entire 'population', understood as a whole and indivisible 'community'.

This perceived crisis might explain why so many scholars and policy-makers, in identifying and trying to remedy the potentially destabilising effects of this de-linking, have responded by seeking to locate 'community' in another place. That is, in that argument, if we can no longer rely on the nation-state to be the privileged and sole provider and protector of the good of a unified public because its capacities are unduly restrained by international treaties, agreements, economic institutions or lending agencies, then these latter bodies must themselves be (re)shaped to act in the service of a broader public good, and a more inclusive 'public'. Yet, this type of response all too frequently tends to perpetuate a belief in the premise from which the perception of the crisis began: the demise of the nation-state. As may be clear by now, our view is that this premise is fundamentally mistaken.

As the examples that follow will illustrate, it is our argument that the modern nation-state is in fact a crucial element in the maintenance of current structures of global governance. Indeed, far from withering away, nation-states persist in their current form because they are reinforced as such by international institutions, both political and economic. But in the turn to international community as a new source of popular legitimacy in the context of globalisation, the dependence of the current order on the continued existence and conceptual unassailability of the nation-state is obscured. Indeed, it is our argument that unpacking the way in which the 'international community' has increasingly become the rhetorical vehicle by which legitimacy is sought for the (non-democratic) decisions of international institutions (and even the unilateral actions of a powerful state such as the US) reveals how that concept functions together with that of the nation-state to reinforce the modern, unequal system of nation-states. This stands in sharp contrast to the panacea or promise of inclusion that the idea of international community would seem to invoke.

## **The modern logic of law and nation**

However, before we go on to the examples, something more needs to be said about the modern institutions of nation-states and law and their relation to one another. We have already remarked that there are two significant forms that are foundational to modern social organisation: nation as the authorised form of community, and the nation-state as the paradigmatic form of nation. It is beyond the scope of this article to investigate the nuances of the European social and intellectual history that gave rise to these particular determinations, or indeed to explore the logics which led to the universalisation of a parochial, European ideal of the relation between state and society (Chakrabarty 2000, Escobar 1995, Chatterjee 1993). What we wish to do in this section is to consider briefly the relationship between these forms and the form of modern law. And it is through the lens of this relation that we will explore the three specific developments in contemporary international law below.

It is our intuition that the relationship between these forms — community, nation and state — is sustained in large measure in and through law. Many of the modern mechanisms of governance by which communities are made into nations — constitutions, representative democracy, even the traditional institutions of civil society — are to some extent defined and hence authored by law. It is also law, through the notion of sovereignty, which both author(ise)s and mediates the universal and particular dimensions of the modern nation-state. Law assumed this central yet problematic role in the Enlightenment thinking that gave shape to these institutions. However, as we've suggested above, this also means that law is implicated, less virtuously, in the modernist discourses of development by which '[t]he provincialism of the European experience [continues to] be taken as the universal history of progress; by comparison [with which], the history of the rest of the world [continues to appear] as the history of lack, of inadequacy' (Chatterjee 1993: 238). Ultimately, it is this entanglement and its resonances within contemporary international law that we seek to analyse and understand in this article.

To make sense of that argument, both law and nation first need to be understood in terms of their peculiarly modern natures. And one key shift that heralds modernity as a distinct period is, of course, the loss of external foundations or what is sometimes shorthanded as the ‘death of God’. This existential bereavement has provoked a crisis of authority such that institutions in modernity face the need to become self-founding. This requires social institutions to posit their sources of authority within the modern world (and often within themselves) rather than beyond the world in some transcendent source.

But of course, for any gesture of self-founding to be definitive would be impossible — the proverbial pulling oneself up by one’s own bootstraps. We can trace the paradox of this necessary but impossible act of self-founding through each of the subjects of our inquiry. Law and nation each hold themselves out to be autonomous, legitimate and authoritative. But the question then arises, from where do they draw the source of this authority? The short answer is that they narrate, or author it themselves. Law’s narratives assert that the law is what the law says it is. And nations, too, must create themselves by narrating their own stories of origin that are always imagined, never ‘real’ (Bhabha 1990: 291–322).

In order to secure the legitimacy of this authority, it is necessary for each of nation and law to conceal these acts of self-authorisation. In other words, the groundlessness of the self-foundation must be obscured. One way this concealment happens is through deferral, that is, by reference to some source of authority outside the particular entity whose foundation is in question. So, for example, to secure its authority, law gestures towards the legitimacy granted it by a sovereign nation. In turn, nation coheres as an entity through its claim to being endowed with sovereign (ie legal) authority. Usually this takes the form of a constitution which constitutes the specific nation as a juridical entity but whose authority depends on some notion of the community-as-nation pre-existing the constitution.

Similarly, international law classically obtains legitimacy through its claim to being the consensual product of the conduct of sovereign and putatively equal nation-states. The criteria which determine the

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existence of nation-states, however, are themselves products of international law. Alternatively, when the effect of international law is clearly non-consensual in relation to some, international law's own assertion is that it embodies and is implementing the 'values' of the international community. In that instance though, the boundaries of that community are themselves constituted by international law, as are the values that the law supposedly reflects.

Overall, the effect of these reciprocally deferred foundations is to produce the sought-after legitimacy or authority of that which is being founded, but also to render each concept co-extensive with the other. Thus, we can see that the modern concepts of nation and law, rather than being conceptually distinct, are mutually constitutive: it would be impossible to imagine one existing without the other. Law requires the nation-state to serve as the ultimate source of its authority, while at the same time nation-states cannot come into being without law. Similarly, in that other circular move, international law and international community each bound and found the other.

But in addition to the reciprocity of foundations, law shares another compelling characteristic with nation: the twin dimensions of universality and particularity. Both law and nation face the challenge of reconciling the determinate with that which is beyond determination. For law, this takes the form of a tension between the necessary qualities of determinacy and responsiveness (Fitzpatrick 2001). The law must be made up of rules that are, by definition, fixed and certain. But at the same time, the law also needs to be capable of doing justice, that is, of responding to everything that lies beyond the rule. Our modern conception of law thus requires that a finite and fixed body of rules be capable of addressing a potentially infinite and indefinite range of circumstances.

Further, we know that nations can only exist in the world attached to determined people and territories. But every nation must also narrate itself in general terms as the best possible container for the realisation of the needs and capacities of human beings. Thus each nation must define itself simultaneously in both particular and universal terms. This duality has been well described by others, including Peter Fitzpatrick

in this volume, so we will not elaborate further on it here.<sup>3</sup> But given the similarly dual nature of law, it is not surprising that it is through a juridical form — the nation-state — that nations have been able to combine their universalist aspirations with particular instantiations in ‘blood and soil’ (Fitzpatrick 2001: 159). Chatterjee puts it like this:

The modern form of nation is both universal and particular. The universal dimension is represented, first, by the idea of the people as the original locus of sovereignty in the modern state, and second, by the idea of all humans as bearers of human rights. If this was universally true, then how was it to be realized? By enshrining the specific rights of *citizens* in a state constituted by a particular people, namely a *nation*. Thus, the nation-state became the particular, and normal, form of the modern state (Chatterjee 2004: 29).

Turning again to the world imagined in international legal discourse, we can see that one necessary implication of this ‘combining’ within the form of the nation-state is that the earth had eventually to be covered by a patchwork of nation-states. Moreover, these nations-states had all to be imagined as equals, since they all participated in the same ‘universalist’ form. This putative equality, however, sat uneasily with the evident inequalities of the time: colonialism and imperialism.

And so it was that this Enlightenment idea of ‘comity’, or the sovereign equality of nations, became dangerously emancipatory. In that moment, the universal promise of nation gave rise to the possibility of an emancipation to which colonised peoples could themselves lay claim. This capture took the form of self-determination. But the inclusion of putatively sovereign equals into the international order could not overcome the way in which the ‘universal nation’ was still instantiated in the very particular European form. The explanation was that some ‘nations’ were simply fuller or more complete realisations of the ‘universal’ form of the nation-state than others (see Fitzpatrick this volume). These latter were automatically assumed to aspire to, though not yet embody, the same ideal. And so the world of nation became ‘organized and classified along a spectrum ranging from the most “advanced” or exemplary nations to barely coherent nations always about to slip into the abyss of an ultimate savage alterity’ (Fitzpatrick 2001: 127–8).

It is a key theme of this article that this spectrum is still clearly evident within the structures and institutions of international law and indeed, is cohered rather than contradicted in the contemporary developments relating to ‘international community’ to which we will now turn. In our first example, we consider the manner in which the space of the exemplary or universal nation must be occupied by one state or group of states, while in the second and third, we discuss how evident and persistent inequalities among sovereign nations are legitimated within international institutions and ‘authorised’ by international law.

### **The exemplary nation-state — the US occupation of Iraq**

One familiar instance in which some notion of an international community has recently been invoked as a curative is the case of United States unilateralism. As readers will know all too well, the willingness of the United States to engage in the unilateral use of force in the name of the war on terror has frequently been met with calls to the United States to have regard to the ‘international community’ and its laws — that is, to international law.<sup>4</sup> The idea of ‘coalitions of the willing’ in which ‘the mission determines the coalition’ rather than the other way around is anathema to understandings embedded in international law of that body of rules being a product of a coherent community reflecting and upholding an agreed set of values. If neither the coalition nor the mission may be determined in advance, such action cannot logically be seen as taking place pursuant to a rule of law.

Yet, upholding the rule of law is precisely what the United States is claiming to be doing in Iraq. In order to understand this paradoxical positioning, we need to explore further the mutually constitutive relation between international law and international community, and the position occupied by the US in relation to each. We will argue that in the context of the debates over the legality of the war in Iraq, the US situated itself both inside and outside the international community and international law. Rather than simply viewing this as a cynical and transparent cover for power politics, we argue that the United States is

inserting itself into a space made available to it by the logic of the international nation-state system: the space of the exemplary or universal nation. The position of exemplarity here assumed by the United States is the means by which claims to arbitrate the boundaries of both international law and international community can be made. The perennial difficulties faced by other, less 'exemplary' nations in occupying their own rightful places in the international community flow from their persistent 'failure' fully to embody the nation-state form as currently represented by the US.

In exploring this example, we will turn first to consider the way in which the United States casts itself in relation to the international community. This is evident in the recent 'National Security Strategy' of the United States<sup>5</sup> as well as in the manner in which the US has consistently responded to calls from others to pay greater heed to the international community. One telling example is evident in a press release issued by US Secretary of State, General Colin Powell on 19 August 2003, immediately after the bombing of the UN headquarters in Iraq:

The terrorist bombing that occurred today at the UN headquarters in Baghdad is a heinous crime against the international community and against the Iraqi people. I condemn the bombing unequivocally.

I spoke to the UN Secretary-General Kofi Annan earlier today to convey my deepest sympathy. We extend our sympathies also to the victims of this vicious attack and to their families, colleagues, and the international community. At the UN headquarters in Baghdad, the international community has been working with the Iraqi people to build a better future for Iraq.

The United States strongly supports the vital role of the UN in Iraq's reconstruction. We will not be deterred by such immoral acts. The international community must renew its commitment to working with the majority of the Iraqi people who seek to build a free and stable country.

As banal as this statement might seem at first glance, we think it is quite suggestive of certain ways in which 'international community' functions as a concept in relation to international law.

The first thing to note is the repetitive invocation of the 'international community' itself: a discrete incident targeting an international organisation becomes a 'crime against the international community';

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sympathy is extended beyond the victims and their families to the entire ‘international community’; the controversial and coercively patched together coalition of the willing occupying Iraq becomes ‘the international community’ engaged in a nation-building exercise. This repetitive invocation seems to be almost incantatory in effect — directed at bringing into being the very international community to which it refers.

And when this (re)narration of community happens in international legal discourse, it is typically equated with the boundaries of legality. So in the given example, General Powell asserts that ‘a crime’ has been committed against ‘the international community’. In describing the attack in this way, those responsible are being placed firmly outside both law and the community. Arguably, in this equation, what is being brought into being, is not just a community, but a community of law. The effect of this dual origin is to underpin the foundations of (international) law by locating its impelling authority in a community that would appear to give it legitimacy, and simultaneously to legitimise the community by equating it with that which is lawful. In this kind of incantation common in international legal discourse, law and community thus come to sustain each other in a virtuous circle. And this circularity repeats the reciprocally deferred foundations of law and nation with which we began.

As we’ve suggested, the positioning of the United States in relation to the international community illuminates a further point about the nature of that community. In one breath, the US is expressing its sympathy to the international community, thus placing itself outside it. In the next breath, it is implicitly including itself within the international community that must respond to such ‘heinous crimes’. This oscillation is not simply a cynical manipulation of the concept of community as a cover for power politics. Rather, it is a tellingly ambivalent or ‘borderland’ positioning that replicates the United States’ relationship to international law itself.

International lawyers are endlessly trying to explain the United States’ vexatious relationship with international law. The relationship is obviously not one of wholehearted compliance, but nor can it be

explained as complete disdain. It is rather a more complex engagement with international law, even as the US breaches it. One way to explain this might be to say that rather than allowing its conduct to become involved in questions of legality and illegality, the United States attempts to inhabit the place between law and non-law. In other words, it seeks to occupy the space of law itself, which is, as we now understand, also to determine the borders of community.

This attitude is tellingly illustrated in Robert Kagan's *Of Paradise and Power*, a recent book that has been influential in foreign policy circles. In that book Kagan's intention is to explain why Europe has a greater willingness than the United States to turn to law as a solution to international problems and why the US is more willing than Europe to turn to force, or what he calls 'power', which he assumes will generally be unilaterally exercised. At many points in the book, Kagan asserts that the US would not want unilateral action 'outlawed' (Kagan 2003: 39). However, in drawing the central contrast which impels the book — between the American approach to unilateralism and the European support for the rule of law — he implicitly acknowledges that unilateral action stands in contrast to law. But it is not illegal. Indeed, the subtext is that unilateral action is the sovereign act *par excellence* (though he does not put it in these terms). From this it follows that the US is the sovereign that inhabits the borderline between law and non-law as well as the entity that ensures the safety of the 'international community' inside that border and governed by law. Indeed, in one particularly telling quote, Kagan suggests that the US 'mans the walls [of the European Kantian paradise] but cannot walk through the gate' because it has to stay outside 'to deal with the Saddams and ayatollahs ...' (Kagan 2003: 76). In this 'manning of the walls', the US, for the time being, is arguably occupying the space of both law and community by virtue of its assumed role as exemplary nation.

In General Powell's statement, we also see a clue about the way in which the international community operates to secure the modern nation-state as the only way to 'enter the world' (Fitzpatrick 2001: 126) and take a place in it. The General refers more than once to the

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role of the international community in helping to ‘build a better future’ for Iraqis and to ‘build a stable country’. The suggestion is that working together with the people of Iraq, the international community will create a modern nation-state. This will ostensibly enable the people of Iraq — who are evidently currently outside the international community (even though sovereignty has officially now been ‘handed over’) — to join that coveted clique. This notion, of tutelage leading to inclusion is a common — and possibly the only — result of the interventions, both military and economic which we see unfolding at the moment. Indeed, as we will explore further below, the only choice being offered to the new and developing subjects of international law — such as East Timor, Kosovo, Afghanistan and Iraq — ‘is to be governed by economically rational governments under the tutelage of the international economic organizations [who follow the military] as representatives of the international community’ (Orford 2003: 27). The seeming challenge this poses to the competing foundational principle of international law — that of sovereign equality — is contained in part by the way the ‘international community’ operates to cohere the disparate dimensions of nation — that is, its dimensions of universality and particularity — and enabling that concept to, in a sense, cover the earth. This cohesion happens through the way the international community can encompass a scalar progression from the ‘obdurate particularity’ of the (reforming) state of Iraq to the universality of its most exemplary members, here the US.

But if the ‘international community’ stands on higher ground, it is also highly contested ground. As we will discuss in the examples below, international financial institutions, while themselves comprised of nation-states, are having their claim to occupy the space of ‘international community’ challenged by other imagined collectivities. We will consider two manifestations of this: first in the form of challenges to the World Trade Organization by ‘global civil society’, and second, in the recent move made by the World Bank to embrace social concerns, including human rights.

## **'Global civil society' and the WTO's crisis of legitimacy**

'Global civil society' is a term that has become widely, if not always precisely, deployed to describe the growth of both new types of transnational actors and a new realm of advocacy in and around international institutions over the last several decades (see generally de Burca & Walker 2003 and sources cited therein). Growing interest in the realm of global civil society has paralleled the increase in concern over the perceived crisis of the nation-state (Strange 1996, Boyer & Drache 1996). Indeed, 'global civil society' has become a preferred vehicle for the very types of arguments that seek to compensate for the perceived diminution of popularly endorsed sovereignty caused by globalisation by re-founding the impugned legitimacy of nation-states in some more 'authentic' form of community. This time, though, the re-founding happens at the international level. In this way, invocations of 'global civil society' often operate as the same sort of panacea as the notion of 'international community' discussed in the previous example.

Evidence of this tendency towards 'invocation' of the term can be seen in the 'celebratory rhetoric and high moral passion associated with these visions of global modernity' (Chatterjee 1998: 67). Advocates of global civil society have described it as 'a crucial agent for limiting authoritarian governments, strengthening popular empowerment, reducing the social effects of market forces, improving the quality of governance, and the role of civic organizations in the delivery of public goods' (Institute for Development Studies 1998) as well as a sign of 'the evolution of a new global consciousness' (Pearson 2004: 85).<sup>6</sup> We argue, however, that this ideal of global civil society emerges from the same set of rather older, ostensibly universalist ideals described above that are deeply embedded in both our international legal order and the nation-state form.<sup>7</sup> As a theoretical concept, it is necessarily conceived in abstraction from particular social contexts, languages, or even politics. Both the appeal and the difficulty of the notion of global civil society reside in the way in which it appears to

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sweep away the multiplicity and conflict that are a necessary part of interactions among actors situated in different parts of the world. Because of the universalist aspirations underpinning the notion of global civil society, activists working within the messy particularities of international networks can imagine that they are working towards a common purpose. As such, global civil society operates effectively and seductively as yet another incarnation of the imagined international community.

To place this story of the emergence and the function of global civil society within the present framework of analysis, we can see how, in the first instance, the emergence of something called ‘global civil society’ can be read as both a proffered solution to the ‘hollowing out’ thesis to which we originally averred and a further challenge to the nation-state, already perceived as in decline. It might be useful to look more closely at the logic of the specific challenge it purports to mount in order to understand its potential effects, or more accurately, to identify the limits of its transformative potential.

The increased attention paid to global civil society is a response to the perceived challenges presented by globalisation. Indirectly, however, global civil society also presents a challenge to the self-founded nature of nation; that is, to the claim that nation corresponds to community. To put it another way, the belief that nation-states are passé and ‘can’t cope’ with globalisation gives rise to the need for a new site for ‘global’ politics. But because of the link between the foundations of law and nation, this also presents a challenge to law. In this way, global civil society seems to challenge the deferral we’ve described: the way that nation locates its ground in sovereign law, or the claim that a nation’s sovereignty cannot be inquired into. In part, this challenge becomes plausible at certain historical moments because the general population becomes aware of the deep incursions into the affairs of sovereign nations already effected by international financial institutions. This was the case throughout the 1980s and into the 1990s. This was also the moment at which we saw a dramatic expansion of nongovernmental organisations (NGOs) focused on issues and topics that cross national borders. People sought to influence decisions where

they were being made, which increasingly appeared to be somewhere other than in national capitals. Thus, whether right or wrong, the challenge to nation represented by global civil society was, and is, the claim that at the international level, gatherings of the representatives of individual nation-states do not adequately represent the global community. Rather, community at the international level must be imagined to include the 'people', which means global or transnational civil society.

The dynamic set into motion by global civil society's claim to occupy the space of international community in the current juncture can be illustrated by reference to the efforts of 'global civil society' in relation to one international institution, the World Trade Organization. After the upheavals at the Seattle Ministerial in 1999, it was widely acknowledged that the WTO was experiencing a 'crisis of legitimacy'. That crisis had its source in two distinct challenges to the institution, which might be described as the 'internal transparency' and 'external transparency' critiques.<sup>8</sup> We are concerned here with the 'external' challenge to the WTO, articulated by a range of networks and organisations that we are here taking to be the representatives of global civil society.<sup>9</sup> The critique of external transparency argues that the WTO should become more open and accessible to the civil society representatives of the world community directly, and not only via the representatives of member-states. Implicitly, the argument is that the laws that are negotiated at the WTO lack a legitimate 'ground' because the institution is not representative of the 'global community'. Arguments made by the defenders of the WTO that it is itself a community of nations are rejected for the reasons we have already considered. Ironically, it was in part the incursions into sovereignty effected by WTO rules themselves that created the space for other challenges to national sovereignty, including that mounted by global civil society. And following our earlier argument, if law may no longer claim to found itself in a community, or if that community is no longer understood to be authentic, so must law's claim to authority and legitimacy fail.

It is in the solution proposed by global civil society to this dilemma that we see its inability to escape the encompassing modern frame of

law and nation. For global civil society itself proposes to occupy the space of the 'cohering community' which seems legitimately to found authority. For many of the WTO's civil society critics, what will fix the external transparency problem is simply the greater inclusion of global civil society into the twin processes of the negotiation of trade rules and the adjudication of disputes arising from the application of those rules. In other words, the problem is not the groundlessness of law or community *per se*; the critique is limited to the inauthenticity of the 'grounding' of the World Trade Organization as currently constituted.<sup>10</sup> This argument thus prioritises the critique of formal, procedural matters such as accountability and transparency. In its embrace of such arguments, global civil society is participating in the circular logic of the self-constitution of law and community and therefore unwittingly undermining the potentially radical politics unleashed by the crisis of legitimacy.<sup>11</sup>

But perhaps we should not be surprised that 'global civil society', in seeking to relocate politics to another level, has shown itself incapable of grasping the foundations of modern law and nation by their tangled roots. For we count ourselves among those scholars who seek to cut against the grain of currently fashionable post-national theory in arguing for the continuing need for analyses that grapple with the historical particularity of the nation-state form as a crucial building block of our contemporary international order (Balakrishnan 1996, Fitzpatrick 2001, Pahuja forthcoming, Buchanan forthcoming). In a similar vein, Chatterjee argues that we should look first within the nation, rather than beyond it, for the sources of what we have called the current crisis of the hyphen between nation and state (Chatterjee 1998: 57). In so doing, he proposes that an important distinction be drawn between the notion of 'civil society' and that of 'political society'. Civil society represents 'those characteristic institutions of modern associational life originating in Western societies that are based on equality, autonomy, freedom of entry and exit, contract, deliberative procedures of decision making, recognised rights and duties of members and other such principles' (Chatterjee 1998: 60). In contrast, political society is a term which represents a much wider domain of institutions and activities

concerning the ‘rest of society’ that is reached by the legal bureaucratic apparatus of the state in the colonial and postcolonial period, a domain that has more in common with Foucault’s notion of ‘governmentality’ (Foucault 1991). For Chatterjee, civil society is the (restricted) domain of citizens, while political society operates within the much wider realm of populations. Civil society is the product of modernity, while political society is a product of democracy.

So in countries like India, in his example, civil society is most accurately used to describe ‘those institutions of modern associational life set up by nationalist elites in the era of colonial modernity, though often as part of their anti-colonial struggle’ (Chatterjee 1998: 62). In other words, for ‘most of the world’ civil society represents a political project that is elitist and exclusive, not one that is inclusive and non-hierarchical, as contemporary advocates of ‘global civil society’ would have us believe. In response, one might point to an alternative tradition that focuses on the political potential of ‘disorganised’ civil society (Hardt & Negri 2000, Christodoulidis 2003). However, our view is that the evidence of recent civil society engagement with the WTO is much more closely reflected by Chatterjee’s account. The questions of NGO ‘representation’ and ‘participation’ at the WTO that have occupied so much attention in recent years can be seen as transnational *doppelgänger*s to those ‘characteristic institutions of modern associational life’ identified by Chatterjee with civil society at the national level. For ‘most of the world’, it is likely that these types of interventions read as confined and elitist. In order for a critique of the WTO to resonate more widely, with ‘political society’, it would be necessary to connect it directly to those ‘legal bureaucratic apparatuses’ that have real and immediate consequences for populations. Such an approach would necessarily include a critique of the modern forms of nation-state and of law, for ‘[t]he framework of global modernity will ... inevitably structure the world according to a pattern that is profoundly colonial; the framework of democracy, on the other hand, will pronounce modernity itself as inappropriate and deeply flawed’ (Chatterjee 1998: 68).

## **Making the international community: the World Bank and nation-state building**

In our final example, we want to turn to the way in which contestations over the nature and authenticity of the meaning of international community have provoked shifts in the practice of the World Bank. These shifts have engaged the Bank in practices of what is commonly known as ‘nation building’. In our view what the Bank is actually engaged in should be described more precisely as ‘nation-state’ building, with the hyphen accorded as much importance as each of the terms it unites. What this example illustrates is first the way in which the nation-state remains a crucial part of contemporary global configurations, and second, the way in which, in the context of development, the notion of international community operates to stabilise the hierarchical nature of those configurations.

It must be some time ago — indeed, if ever it was — that the World Bank was seen as a representative of the international community charged with the task of helping newly independent nation-states grasp the promise of development. But whether that version of the Bank is nostalgia or fiction, it is certainly true that in the past decade or so, there has been a widespread acknowledgment that the institutions of international economic governance, including the World Bank (and indeed, the WTO) have faced a ‘crisis of legitimacy’. The crisis manifested at the World Bank in the early 1990s as it became clear that structural adjustment policies had not delivered what they promised. Many of the Bank’s critics charged that the Bank policies reflected in those structural adjustment packages were antithetical to the values of the wider ‘international community’. In response to the crisis, the World Bank underwent a significant shift in its personnel, policies, and programs, towards what became known as the ‘post-Washington’ consensus.

To simplify the story, in this shift the Bank became increasingly aware that the programs it had been engaged in — of stripping back, or paring down the state in order to facilitate the expansion of global markets, and so to promote economic development — could no longer

be sustained. This was because of a growing awareness that markets could not function adequately without law, and that law was, in turn, an institution reliant on the state (Buchanan & Pahuja 2004).

The shift can be traced through the publications of the Bank from the mid 1990s onwards, including its annual World Development Reports (eg Orford & Beard 1998). This evolution could be said to have culminated in the 2002 Report, *Building Institutions for Markets* which is overtly directed at strengthening state institutions, now proclaimed by the Bank to be necessary to the functioning of efficient and effective markets. Instructively, most of the exemplars of such institutions are legal:

Effective institutions can make the difference in the success of market reforms. Without land-titling institutions that ensure property rights, poor people are unable to use valuable assets for investment and income growth. Without strong judicial institutions that enforce contracts, entrepreneurs find many business activities too risky. Without effective corporate governance institutions that check managers' behavior, firms waste the resources of stakeholders (World Bank 2002: iii).

But this recognition of the necessity of the existence of state institutions (especially law) was happening at the same time as multilateral economic institutions were suffering the more generalised crisis of legitimacy to which we averred earlier. Most notably the mere fact of the multilateral nature of such institutions — that is, that they are comprised of groups of nation-states — was (and is still) seen less and less to make up for undemocratic internal processes, or to be capable of reflecting the wider values of the international community. In other words, there was a widespread perception that the version of the 'international community' being represented in such organisations was not sufficiently inclusive, or authentic. Those who considered themselves to be the excluded elements of this community began to urge the Bank to take on board a collection of values endorsed by what was understood as the wider international community. These values are principally those embodied in human rights norms, environmental standards, labour rights and gender equality.

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The effect of this clamour, and indeed of concerted action by many activists, human rights lawyers and development practitioners among others, was to provoke another shift in Bank practice that is still occurring, this time to ‘bring the social on board’. Once again, this shift can be traced through a chronology of Bank publications, but in this case, one document does stand out. The *Comprehensive Development Framework* (CDF), first circulated in 1999, is an important indicator of the expansion of the Bank’s concerns toward ‘the social’. In the CDF, Bank President James D Wolfensohn explicitly states that the development agenda must have two sides. The Bank’s traditional preoccupation with the macroeconomic and financial aspects of development was to be complemented by an attention to its ‘social, structural and human’ dimensions (Wolfensohn 1999).<sup>12</sup> In the CDF, the Bank is embracing human rights, good governance and the rule of law as explicit development goals (in addition to economic growth). This would have been hard to imagine a decade ago.

This shift has had the desired effect of bolstering the legitimacy of World Bank interventions, and is closely related (in some cases even causally) to an expansion in the conditionalities of other institutions — for instance those connected to aid or to bilateral and multilateral trade agreements — extend to human rights standards for example. The increased legitimacy has also had the effect of enabling the World Bank to be perceived (perhaps once again) as a representative of the international community and bearer of its values in its interventions in ‘most of the world’.

The two-fold move by the Bank toward ‘good governance’ and the ‘social’ has also facilitated a dramatic expansion of the Bank’s capacity to intervene in the domestic affairs of ostensibly sovereign nations. Initially, the Bank’s lending practices aimed to identify and isolate ‘economic’ issues from the wider zone of politics both to insulate reforms from political ‘interference’ but also to comply with the Bank’s own prohibition on interfering in the domestic affairs of nation-states.<sup>13</sup> But the recognition of the importance to a nation’s economic performance of laws and institutions, as well as social policies such as human rights

and gender equality, meant that trying to keep the Bank's interventions out of the realm of domestic politics, even for the sake of appearances, became increasingly untenable. Instead, the Bank simply redefined the line between the economic and political in terms of the new thinking on governance. Indeed, the Bank's legal counsel simply issued a legal opinion authorising the shift (Shihata 2000: 245). This is a bold example of the self-authorising nature of (international) law daring to reveal itself.

The increased legitimacy accorded the Bank, and the extent to which it was (and is) understood better to represent the values of the international community has certainly assisted in its capacity to self-authorise. It is this increased legitimacy that arguably coheres the putative lawfulness of the expansion. The recognition of lawfulness in turn legitimises the community and its values, which then cohere into law. As we have seen elsewhere, this virtuous circle thus constitutes simultaneously both a community of law and the law of that community.

But what of the nation-state in this cosy circle? Besides illustrating the way law and community can each found and delimit the other, what is interesting about this example is that it is suggestive of the way in which populations must be rendered into nation-states in order to be commensurable with this 'community of law' on which the global order depends. This rendering happens through 'global technologies of governmentality', in particular those 'that claim to ensure that the benefits of development are spread more evenly and that the poor and the underprivileged do not become its victims' (Chatterjee 2004: 67–8).

The shift in bank practice toward holistic development has thus also included an increased emphasis on 'participation', the creation of 'social capital' and a focus on developing local 'capabilities',<sup>14</sup> emphasising what Foucault has called the 'pastoral' functions of government (1991: 104), or in this instance, the pastoral functions of the institutions of global governance. Through these pastoral functions, heterogeneous populations are re-shaped and categorised, at least for the purposes of governmental administration, into homogenous socialities.<sup>15</sup> These socialities are 'convenient instruments for the administration of welfare to marginal and underprivileged groups' (Chatterjee 2004: 40)

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and so provide a way for agencies to deal with unruly people other than as bodies of citizens who might make demands outside the confines of dominant forms of social, political and indeed legal, organisation, in other words, outside the bounds of civil society. For this latter grouping supports the nation-state form through its connection to the nation-state's now mandatory foundation on popular sovereignty and the formal granting of equal rights to citizens (Chatterjee 2004: 27). In contrast, other forms of (political) community such as Chatterjee's 'political society' threaten the stability of the law-nation-community triangle on which the nation-state is balanced. Chatterjee puts it like this:

Community ... is conferred legitimacy within the domain of the modern state only in the form of the nation. Other solidarities that could potentially come into conflict with the political community of the nation are subject to a great deal of suspicion (Chatterjee 2004: 75).

But of course, if nation-state formation is the goal of the Bank's interventions, we are then led to the myth of the sovereign equality of nation-states on which the international legal order, at least, is said to be founded. And it is here that the notion of international community — with the Bank as its vehicle — performs its dual role. That is, the Bank in this example seeks to occupy a space similar to that of the United States in our first example, holding together the universal promise of the community of sovereign nations and the patent inequality of the present order. In this example, it does so by prescribing a certain idea(l) of development. That is the idea which provides that within the international community there is a scalar progression from poor ethnic, religious, particular nations to rich liberal, secular and universal nations.

This idea of development embodies an understanding that the modern nation-state exists in what has been characterised as the 'empty homogenous time-space of modernity' (Chatterjee 2004: 8) such that other kinds of nation must temporally pre-date that form. Nation-states are therefore perceived not to co-exist equally in their heterogeneity in the same time-space, but rather are conceptually captured and arranged in a hierarchical progression from past to present to future. The present moment in time of the exemplary, universal nation represents the future for the particular, ethnic nation. The threat to this hierarchy apparently

posed by the foundational principle of sovereign equality would seem thereby to be averted. The increased legitimacy promoted by the putative adoption of the values of the international community only reinforces World Bank tutelage as the proper way in which those who are currently outside (or only marginally within) the international community may enter the world (Fitzpatrick 2001: 126) and capture the elusive promise of membership. That the international community can encompass this progression, from the particularity of its reforming members to the universality of its most exemplary members, illustrates that it operates to cohere within it the nation and its universal and particular dimensions.

## **Conclusion**

We suggested at the outset that our argument in this article would cut against the tendency in current globalisation debates to look ‘beyond the nation’ for both effective institutions of governance and their sources of legitimacy.<sup>16</sup> We have argued that nation, far from withering away, is firmly at the centre of a conceptual framework through which the modern world and its subjects continues to be produced and hierarchically ordered. Further, we have sought to consider the extent to which this modern conceptual frame depends integrally upon law to hold itself together. Moreover, we maintain that in the shift to the international triggered by globalisation, this basic architecture has not altered, but intensified.

Through each of three examples, we have explored the way in which international law ‘founds’ itself through a characteristically repeated gesture towards some notion of ‘community’, replicating at the international level what we think of as a foundational logic of modern law and nation. That is, the manner in which international community can combine a promise of universality with the particularity of its constitution is what enables it to conceal the self-groundedness of international law. This concealment makes the particular ways of being and knowing of modernity — effected in part through modern law — appear to be both grounded (in the world) and universal.

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By revealing the logic of this interplay, we hope to have illustrated why the comfort which seems to be offered by the idea of international community is illusory. For in the tempting move embraced by many contemporary resistance movements to redefine international community and then to re-found the institutions of international law in those communities, we wonder whether the radical potential offered by questioning those foundations is lost. When attention is focused on increasing the inclusivity of the international community and demanding that international economic institutions, for example, become more answerable to that community, it paradoxically helps to conceal the mutual self-grounding of both international law and international community rather than revealing the instability of that foundation. Further, by shoring up the notion of international community, these arguments also help to mediate and normalise the contradictory implications of the clash between the ideal of sovereign equality and a world in which some nations are more equal than others. In our view, any pathway towards more equitable and inclusive governance at the international level must lead directly into a critique of its modernist paving stones: law, nation and community, and not pronounce us already beyond them.

### Notes

- 1 This article is based on a talk given in the 'Challenging Nation' series at the University of British Columbia in January 2004. The authors would like to thank Catherine Dauvergne and Wes Pue for their generous invitation to participate. This article also forms part of an ongoing collaborative project undertaken by the authors funded by the Social Sciences and Humanities Research Council of Canada. The authors also gratefully acknowledge the research assistance of Pooja Parma in the final stages of preparation of the manuscript.
- 2 In a remarkable new work, Chatterjee rejects loaded terms such as the 'East', the 'Third World' or 'Developing Countries' to describe the roughly 'three fourths of humanity' to whom those terms are habitually applied, and instead coins the term 'most of the world' to describe those who 'were not direct participants in the history of the evolution of the institutions of modern capitalist democracy' (2004: 3).

- 3 Fitzpatrick, 'We Know What it Is When You do not Ask Us: The Unchallengeable Nation': 'As particular, the nation of modern nationalism takes on a settledness and a completeness, and these are qualities which, historically at least, have been assumed or accepted mainly in terms of territory. But nation has not subsisted in such a contained and solitary way, avoiding any constituent relation to what is ever beyond such a straitened identity. The modern nation has, rather, always arrogated to itself the universal, even if that is now rarely done in explicit terms, nation continues to do so through the prerogative claim to some commensurate capacity, such as being the exemplar of civilization or humanity, or through the adoption of a universalising project, or through its quotidian yet illimitable relating to what is beyond its emplaced existence.'
- 4 See for example the comments by UN Secretary General Kofi Annan made to the BBC on 16 September 2004 available at: <[http://news.bbc.co.uk/go/pr/fr/-/2/hi/middle\\_east/3661134.stm](http://news.bbc.co.uk/go/pr/fr/-/2/hi/middle_east/3661134.stm)> (accessed 1 November 2004).
- 5 See for example the preamble at page v, as well as pages 6 and 19 in which the United States alternately narrates itself as protector and member of the 'international community': National Security Strategy of the United States 2002.
- 6 See also sources cited therein.
- 7 According to de Burca and Walker, "'civil society" was resurrected by John Locke and the Scottish Enlightenment in the late seventeenth and eighteenth centuries for the immodest purpose of accounting for and justifying the very foundations of social and political order in an age where the certainties of an external or transcendent referent ... God, King or even the givenness of traditional norms and behaviour itself were disappearing ... So began the checkered and contentious career of a concept that the very idea of modernity and the decline of the transcendental seemed to demand but also to render elusive and highly contestable' (2003: 388). See also Buchanan 2003.
- 8 The internal challenge, not at issue in this article, is the one mounted by and on behalf of developing states against processes such as the widely critiqued 'Green Room' negotiations which are seen as heavily weighted in favour of the rich nations, particularly the US and the EU. For a full account of the internal transparency critique, see Kwa 2003.
- 9 There is a further distinction to be drawn between the role of 'organised' and 'disorganised' civil society, and debate over which might be taken to

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be the 'real' representative of global community. See the *European Law Journal* 9/4 *Special Issue: Law, Civil Society and Transnational Economic Governance* (2003) in general and the article by Christodoulidis for further consideration of this question. We are here confining our analysis of the WTO context to the arguments of representatives of 'organised' civil society. For rationale, see Buchanan 2003.

- 10 We note that a similar limitation could be observed of the internal transparency critique, which does not, in most formulations, fundamentally challenge the modern forms of law and nation, but only the processes by which nations appear to be differentially empowered within the institution.
- 11 Of course, this is by no means the only political stance taken by civil society in relation to the WTO. However, it has arguably come to represent a dominant strand of argument because it is an issue around which a large number of otherwise disparate groups seem to be able to converge. See Buchanan 2003. For a contrasting account of civil society politics in relation to the WTO, see Said & Desai 2003.
- 12 See also Rittich forthcoming for a discussion of CDF.
- 13 For example, the International Bank for Reconstruction and Development Articles of agreement, Article IV Section 10 says under the heading 'Political Activity Prohibited': 'The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I.': <<http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK:20049603~pagePK:43912~piPK:36602,00.html#I11>> (accessed 1 November 2004). Similarly, the Articles of agreement of the International Development Association Article V Section 6 says under the heading 'Political Activity Prohibited': 'The Association and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in this Agreement.': <<http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/IDA/0,,contentMDK:20052530~menuPK:115747~pagePK:83988~piPK:84004~theSitePK:73154,00.html>> (accessed 1 November 2004).

- 14 The capabilities approach is inspired by the Nobel Prize winning economist Amartya Sen. See Sen 1999. For a good example of participation, see *World Bank, Voices of the Poor*: <<http://www.worldbank.org/poverty/voices/index.htm>> (accessed 1 November 2004).
- 15 This doesn't mean that the groups do not resist or are not political. Indeed, Chatterjee's thesis in *The Politics of the Governed* is precisely that 'the line connecting populations to governmental agencies pursuing multiple policies of security and welfare ... points to a different domain of politics' to the domain of civil society. He calls this domain 'political society' (2004: 37, 38).
- 16 This is a reference to the declaration made by Arjun Appadurai, 'We need to think ourselves beyond the nation' (1993: 411).

## References

- Anderson B 1991 *Imagined Communities: Reflections on the origin and spread of Nationalism* Verso London (first published 1983)
- 1996 'Introduction' in Balakrishnan 1996: 1–16
- Appadurai Arjun 1993 'Patriotism and Its Futures' *Public Culture* 5/3: 411–29
- Bhabha H K 1990 *Nation and Narration* Routledge London
- Balakrishnan G ed 1996 *Mapping the Nation* Verso London
- Boyer R and Drache D eds 1996 *States Against Markets: The Limits of Globalization* Routledge New York
- Buchanan R 2003 'Perpetual Peace or Perpetual Process: Global Civil Society and Cosmopolitan Legality at the World Trade Organization' *Leiden Journal of International Law* 16/4: 673–99
- forthcoming 'Reconceptualizing Law and Politics in the Transnational: Constitutional and Legal Pluralist Approaches' *Acta Sociologica* Mexico
- Buchanan R and Pahuja S 2004 'Legal Imperialism: *Empire's* Invisible Hand?' in Passavant and Dean 2004: 73–94
- Burchell G, Gordon C and Miller P eds 1991 *The Foucault Effect: Studies in Governmentality: With Two Lectures by and an Interview With Michel Foucault* University of Chicago Press Chicago
- Chakrabarty D 2000 *Provincializing Europe* Princeton University Press New Jersey

## Law, nation and (imagined) international communities

- Chatterjee P 1993 *The Nation and Its Fragments: Colonial and Postcolonial histories* Princeton University Press Princeton
- 1996 'Whose Imagined Community?' in Balakrishnan 1996: 214–25
- 1998 'Beyond the Nation? Or Within?' *Social Text* 56: 57–69
- 2004 *The Politics of the Governed* Columbia University Press New York
- Christodoulidis E 2003 'Constitutional Irresolution: Law and the Framing of Civil Society' *European Law Journal* 9/4: 401–32
- de Búrca G and Walker N 2003 'Law and Transnational Civil Society: Upsetting the Agenda?' *European Law Journal* 9/4: 387–400
- Escobar A 1995 *Encountering Development: The Making and Unmaking of the Third World* Princeton New Jersey
- Fitzpatrick P 2001 *Modernism and the Grounds of Law* Cambridge University Press Cambridge
- 2004 'We Know What it Is When You do not Ask Us: The Unchallengeable Nation' Lecture St John's College UBC 29 March 2004; see article this volume.
- Foucault M 1991 'Governmentality' in Burchell et al 1991: 87–104
- Hardt M and Negri A 2000 *Empire* Harvard
- Institute for Development Studies 1998 'Civil Society and Governance' a concept paper available at: <<http://www.ids.ac.uk/ids/civsoc/public.doc>> (accessed 9 November 2004)
- Kagan R 2003 *Of Paradise and Power: America and Europe in the New World Order* Knopf New York
- Kaldor M, Anheier H and Glasius M eds 2003 *Global Civil Society 2003* Oxford University Press Oxford
- Kwa A 2003 'Power and Politics at the WTO' (2<sup>nd</sup> edn, ed Alec Bamford): <[www.focusweb.org/publications/booksindex.htm](http://www.focusweb.org/publications/booksindex.htm)> (accessed 9 November 2004)
- Orford A 2003 *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* Cambridge University Press Cambridge
- Orford A and Beard J 1998 'Making the State Safe for the Market: The World Bank's World Development Report 1997' *Melbourne University Law Review* 22: 195–216

## Buchanan and Pahuja

- Pahuja S forthcoming 'The Necessary Inclusion of the Excluded: The Inherent Plurality of IMF Conditionality' *Acta Sociologica Mexico*
- Passavant P A and Dean J eds 2004 *Empire's New Clothes: Reading Hardt and Negri* Routledge New York
- Pearson Z 2004 'Non-Governmental Organizations and International Law: Mapping New Mechanisms for Governance' *Australian Yearbook of International Law* 73
- Powell General C 2003 Press Release 19 August: <[http://usinfo.state.gov/is/Archive\\_Index/Powell\\_Condemns\\_Bombing\\_at\\_UN\\_Headquarters\\_in\\_Iraq.html](http://usinfo.state.gov/is/Archive_Index/Powell_Condemns_Bombing_at_UN_Headquarters_in_Iraq.html)> (accessed 1 November 2004)
- Said Y and Desai M 2003 'Trade and Global Civil Society: the Anti-Capitalist Movement Revisited' in Kaldor et al 2003: 57–85
- Sen A 1999 *Development as Freedom* Oxford University Press Oxford
- Shihata Ibrahim F I 2000 *The World Bank Legal Papers* Martinus Nijhoff The Hague
- Strange S 1996 *The Retreat of the State: The Diffusion of Power in the World Economy* Cambridge University Press Cambridge
- Wolfensohn J 1999 (January) *A Proposal for a Comprehensive Development Framework (A Discussion Draft)*: <<http://www.worldbank.org/cdf/cdf-text.htm>>
- World Bank 2002 *World Development Report 2002: Building Institutions for Markets* Oxford University Press Oxford