Transitional Governance in Increasingly Turbulent Times: Jim Muldoon's Legacy

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The following short tribute elaborates and assesses the three central themes in the late James Muldoon's scholarly work: 1) the nature and speed of transition, 2) the ins and outs of hybrid governance forms, and 3) new governance forms, such as cross-sector partnerships. Muldoon introduced his idea of transitional governance as an analytical approach to two developments that undermined the fate of the Westphalian sovereignty-based, international order: from above by supranational forces (globalization) and from below by sub-national trends (localization). The second theme Muldoon covers with his concept of transitional governance includes the bottom-up initiatives that have filled the void of international regulation. Muldoon was one of the first to cover the role of the Internet in terms of governance and institutional voids. He gave an account of the Internet Corporation for Assigned Names and Numbers (ICANN) as a form of hybrid governance, including where it confirms realist assumptions about major states retaining ultimate authority. Muldoon showed that by jumping on the bandwagon of multi-stakeholder engagement, some IOs regained legitimacy. In particular the UN with its Sustainable Development Goals (SDGs)—established in September 2015 to set an agenda for the period until 2030—smartly used the long-term engagement of thousands of stakeholder representatives from civil society, corporations, and knowledge institutes.

During the extended time that James P. Muldoon Jr. worked on his doctoral dissertation in between his book projects (roughly between 2002 and 2015) important societal developments materialized, which reinforced the importance of Muldoon's accurate insights. Important shifts in the form and structure of the world moved from an international system of governance to a system of global governance, albeit in a rather fragmented and volatile form. Many articles and books have been published on issues of global governance, such as the more than fifty review essays in the anthology edited by Thomas Weiss and Rorden Wilkinson (2014). But Muldoon's plea to look at global governance issues as transitional remains relevant. While the transition process has picked up considerable pace, it remains unclear in what direction it will head.

Muldoon's effort to integrate insights from at least three different disciplines (international relations, public administration, and business administration) have also gained significance. His interdisciplinary perspective has generated followers, though it is for others to further modify and amplify his legacy of timely, relevant, and lucid scholarship. The accompanying article, which began as his work and was completed by colleagues after his passing, illustrates a combination of theoretical insights and practical implications of transitional governance.

The following short tribute elaborates and assesses the three central themes in Muldoon's scholarly work: 1) the nature and speed of transition, 2) the ins and outs of hybrid governance forms, and 3) new governance forms, such as cross-sector partnerships.

The Increasing Pace of Transition and Pressure for Governance

Muldoon introduced his idea of transitional governance as an analytical approach to two developments that undermined the fate of the Westphalian sovereignty-based, international order: from above by supranational forces (globalization) and from below by sub-national trends (localization). Initially, the forces of globalization all seemed to point in one direction: The successful embedding of most countries (including former communist countries) in a world capitalist trading system, as well as the coming of age of the Internet. The international governance challenge initially could be conceived as primarily an adaption and opening up of multilateralism. However, during the first decade of the twenty-first century, globalization took different and more vicious turns that affected the nature and pace of transition. From 2008 onward, a global economic crisis brought unilateralism back to the foreground, against the previously heralded multilateralism. Protectionism became more important than globalization in trade and investment regimes, while deregulation and privatization slowly moved toward reregulation (cf., Van Tulder et al., 2010 for an overview). States started to renegotiate bilateral treaties and even withdrew from some multilateral and regional agreements, with the Brexit vote being the most dramatic example. The subsequent intensification and new initiatives and trajectories of these trends by the Donald J. Trump Administration illustrate the multidimensional processes at play. Global governance now sees the global trading system as supported more strongly by the Chinese than the U.S. government, rendering the contemporary challenge to be more about "how to prevent a decline in globalization" than the previous mantra, "how to enable progress in globalization." Instead of reducing regulatory gaps, institutional voids at the international level are growing. Already by the end of the twentieth century, the U.S. Army War College described the multilateral world, which resulted from the end of the Cold War, as a VUCA world; one in which international relations have become more volatile, uncertain, complex, and ambiguous (Thurman 1991). There are strong indications that on almost all accounts globalization processes have become more acute in VUCA terms. A leading scholar like Rodrik (2011) argued that so far the futile pursuit of hyper-globalization, governed by institutional functions, has been provided by the nation-state, creating serious transition problems, such as increasing inequality and economic stagnation. He observed a trilemma, where democracy, national sovereignty, and global economic integration operate simultaneously despite their mutual incompatibility. We might combine any two of the three but never all three simultaneously and in full. Rodrik argued that some reversal from globalization is inevitable and possibly desirable to avoid an unstable global no-mans-land. Therefore, Muldoon's concept of transitional governance has become even more relevant. It is highly unlikely that any type of stable global governance system will emerge. However, more research needs to be done on the impact of temporary governance constructions on the VUCA dimensions of the global system.

The Increasing Risks of Hybrid Governance Mechanisms

The second theme Muldoon covers with his concept of transitional governance includes the bottom-up initiatives that have filled the void of international regulation. Muldoon was one of the first to cover the role of the Internet in terms of governance and institutional voids. His account of ICANN[1] as a form of hybrid governance can be considered required reading for anyone interested in understanding this type of regulation, not only where it is innovative (its institutional evolution as public-private organization) but also where it confirms realist assumptions about major states retaining ultimate authority.

Muldoon questions whether these forms of hybrid governance can institutionalize beyond transitional epiphenomena. ICANN can still be considered an experimental phase and there are

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1. See www.icann.org. Muldoon also planned to make comparative studies of the United Nations Global Compact, the World Economic Forum, and the Global Fund to Fight AIDS, Tuberculosis, and Malaria; only the ICANN case could be covered, unfortunately. The subsequent essay, an excerpt from his work, provides an account of his concept of hybrid governance.

arguments to question whether the new forms can replace existing modes of governance. Initially, the Internet was largely unregulated or was difficult to regulate on a national basis. This partly explains its success but also explains the dominance of particular companies. *The Economist* (12 July 2017) talked about an "era of digital exceptionalism," in which online platforms in America and to some extent in Europe, "have been inhabiting a parallel legal universe [. . . in which] they are not legally responsible, either for what their users do or for the harm that their services can cause in the real world." New technology firms often operate in an institutional void, which can actually help in spreading the technology and networks but leaves questions of control open.

This system has come under increasing scrutiny due to a number of developments (Kenney and Zysman 2016): The dominant position of a few U.S.-based, multinational companies in social media, search web sites, and other platforms such as Facebook, Google, Twitter, Uber and Amazon; the manifestation of multinational company tendencies that scholars emphasized in the 1970s (Vernon 1981); the unclear nationality of these companies (reinforced by their use of tax evasion schemes); the unclear legal liability of platform companies (such as for transmitting criminal material); and their apparent violations of customer privacy. The uncertainty and volatility of the world economy is also threatened by social media's falsification of news and polarization of democratic policies, as recent elections and false political posturing in the U.S. and Europe have demonstrated (*The Economist* 4 November 2017). In all of these cases, governments, transnational advocacy networks, and expert forums like the World Economic Forum (2016) have advocated new governance models to effectively regulate the platform economy. The world hereby faces a particular transition dilemma. Whereas a retreat to national regulation might jeopardize progress in international integration and the preferred network effects, the harm caused by the lack of regulations to authenticate the producer of information as the person being presented harms the quality and stability of democracy and contractual arrangements in any type of political regime. International forums like the World Economic Forum plea for collaborative approaches to the regulation challenges and governance issues. While the top layer of the world's Internet network might be the simplest place to regulate, most users interact with the least regulated part of the Internet. Platform companies, such as Google and Facebook, operate at this level in particular. The ICANN hybrid approach does not seem sufficient to strike a balance between nongovernmental, private sector autonomy, and U.S. corporate and national interests represented by the U.S. government, despite the multilateral nature of both participating states and stakeholders from around the world. The U.S. creating the ICANN did not eliminate U.S. interests, such as whether to permit an unregulated environment, where even labeling the domain names of pornographic sites was opposed in order to prevent reducing traffic to those sites. Moreover, large platform companies have resisted formal regulation (other than self-censorship by the companies themselves) of hate speech, libel, slander, and even calls for violence, because of the additional costs associated with such efforts and the varying national legal standards proscribing hate speech, and whether its protected as free speech, however harmful.

The Increasing Relevance of New Governance Mechanisms for Positive Change

The ICANN case shows how difficult it was for the UN and other global governance mechanisms to become legitimate and effective in governing of some of the more tendentious dilemmas emerging from the global Internet revolution. Muldoon concluded that "there is only limited empirical support of these claims that multi-stakeholder partnerships are more effective in terms of policy formulation and implementation than traditional intergovernmental negotiations and arrangements." This observation still seems relevant. Research on cross-sectoral partnerships has slightly progressed, but due to the lack of a needed, interdisciplinary method, it is still in its infancy. Muldoon gave many reasons for why international organizations have been slow to adapt to globalization, which in turn allowed the gap between organizational design and operational performance to grow. But Muldoon

showed that by jumping on the bandwagon of multi-stakeholder engagement, some IOs regained some legitimacy. In particular the UN with its Sustainable Development Goals (SDGs)—established in September 2015 to set an agenda for the period until 2030—smartly used the long-term engagement of thousands of stakeholder representatives from civil society, corporations, and knowledge institutes. This has been a clear departure from the Millennium Development Goals that were created earlier at the initiative of the Secretary-General Kofi Annan. The implication of the SDGs is that no country should dominate standards that ought to be generally applied on their own merits. They mirror what Muldoon dubbed the "pluralization of international relations." The effective implementation of the SDGs depends on the internalization of the goals by major companies and governments while coordinated by the UN and other international organizations. For example, the Organization for Economic Cooperation and Development (OECD), the World Resources Institute (WRI), the World Business Council for Sustainable Development (WBCSD), and the World Economic Forum (WEF) have all embraced the SDGs as universal goals for states to implement through public-private initiatives and regulation. The WBCSD (2015, 8) concluded that SDGs are "an effective way for companies to communicate their contribution to sustainable development." There are indications that these goals are, at least initially, actually being achieved. A 2015 PwC study disclosed that 71 percent of businesses said that they are already planning how they will comply with the SDGs. Forty-one percent of them stated that they will implement the SDGs to an unknown extent in their corporate strategies within five years (PwC 2015). Another study concluded that 87 percent of CEOs worldwide believe that the SDGs provide an opportunity to rethink approaches to sustainable value creation, and 70 percent of them see SDGs as providing a clear framework to structure sustainability efforts (Accenture and UN Global Compact 2016). Muldoon observed that "multi-stakeholder arrangements are fundamentally a provisional form of governance in as much as most of them are in an experimental phase in their organizational development, supplementing rather than replacing existing modes of governance."

Another supplemental governance technique would be through partnering, according to Muldoon brings public-private ventures as inputs to strengthen both private businesses and the public good provided or corrects market failures. Partnership is effective when core activities do not compromise public purpose and also support the enlightened self-interest of private actors by pooling complementary competencies (Kolk et al., 2008). Partnership deals are forged when individual actors cannot solve collective action challenges through governmental techniques alone. Bryson (et al., 2015) concluded that traditional (1.0) approaches to governance have been evolving from second generation approaches (i.e., via a 2.0 approach, new public management, based on micro-economic cost-benefit analysis) to a 3.0 type approach of collaborative governance, in which common goal systems can be defined, and partnerships share collaborative advantages by pooling resources. Muldoon had already covered this evolving trend earlier in his studies of international developments in a more interdisciplinary way. In the case of ICANN, he also pointed out some of the conflicts and conflicting logics that arise in the process.

Conclusion: A Permanent State of Transition?

These examples show why the transition toward global governance also involves the challenges of transitions. Muldoon's example and advocacy of creating interdisciplinary knowledge on effective transition governance processes contributes to the scientific and policy discourse. Muldoon underscored that shifts in "relational authority" between states and non-state actors on the global level (see Lake 2010) result from the new dynamics and complexity of a globalizing international environment. In the words of Muldoon, "Transitional governance shows the diversity of organizations (public, private, and hybrid forms) and their ongoing dynamics that have not (yet) created a stable system of global governance." Transitional governance, how-

ever, is becoming more institutionalized. Existing global governance institutions, like the UN, will have to transform into different forms, involving international law, regimes, partnerships, initiatives, compacts, soft law norms, and whatever else as states and stakeholders try to address increasingly necessary actions to resolve problems that can only be ignored at our global peril, and can even influence human survival. The increasing polarization of domestic and international politics have both complicated these challenges and the forms that global governance may take to regain legitimacy through effectiveness, consensus promotion, and rights protection. By defining transitional governance as "the innovation of processes and structures of governance that enable societal actors to reconfigure and reconstitute governance roles and practices vis-à-vis each other and the system as a whole," Jim Muldoon as a leading scholar has, in our view, successfully laid the foundation for further interdisciplinary research into processes of governance. Furthermore, he provides a benchmark for success by defining the outcome of these processes as the confluence of norms, rules, laws, and institutional arrangements of new and unforeseeable dimensions that seek to address the compelling predicaments of the new century.

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