

Statecraft in the Global Financial Crisis: An Interview with Kanishka Jayasuriya

Jeb Sprague

Kanishka Jayasuriya, Professor of Political Science at Murdoch University in Perth, Australia and author of two monographs – *Reconstituting the Global Liberal Order: Legitimacy and Regulation* (2005) and *Statecraft, Welfare and the Politics of Inclusion* (2006) – argues that changing forms of governance and new regulative laws are enabling the transnationalization of institutions within national states. He also interprets these changes as giving rise to a new type of institutional struggle unique to globalisation. For social scientists in general and political economists in particular, Jayasuriya’s work provides a useful lens through which to understand intra-state transformation in the global epoch. By rejecting Realist/Weberian conceptions of the state and drawing inspiration instead from materialist state theory, he understands state transformation as a reflection of ongoing processes linked to socio-economic forces that are novel to the historical present. And in the wake of the global financial crisis, he argues, we should not see the state as either disappearing or returning, for it is continuing to transform in ways peculiar to the age of globalism. The real question is for whom states will act in the future. In order to answer this, Jayasuriya suggests that we must look to transformations occurring within the national state, for it is these that are changing statecraft as we know it.

In this interview, Jayasuriya discusses some of his main concepts and theories, such as the regulatory state; meta-governance; the transition from ‘social constitutionalism’ to ‘economic constitutionalism’; and describes how each of these relate to the ongoing crisis of global capitalism. He clarifies his views on the idea of a transnational capitalist class, arguing that there must be “different fractions within it”; and goes on to discuss the connection of his theories on state-transformation with the related

works of William Robinson and Martin Shaw. Finally, he discusses some of the theorists that have influenced his work – such as Nicos Poulantzas, Carl Schmitt, Franz Neumann, and Amartya Sen – and briefly describes his areas of ongoing research.

Jeb Sprague (JS): You have previously written about the emergence of a global regulatory regime characterized by processes of “decentralized enforcement”, whereby supranational institutions lay down standards for member states and monitor their compliance rather than directly regulating their activities (Jayasuriya, 1999, p. 452). You also suggest that different institutions within national states have become mechanisms for internalized regulation and jumping-off points for transnational governance practices. How do you see these processes as being affected by the global financial crisis, which has sent out a large shockwave across the entire system?

Kanishka Jayasuriya (KJ): My work, particularly on the regulatory state, has emphasized the transformation of the state via complex systems of multi-level regulation, meta-governance, and systems of soft law, all of which enable the trans-nationalization of the state apparatus (1999; 2001a; and 2001b). This approach has a lot in common with the transnational state perspective (e.g. Robinson, 2001a; and 2004), although my approach differs in that it places the emphasis on how, and through what mechanisms, regulatory regimes become the centre of political conflict within the state. Equally, my work has sought to emphasize the often fragmented and contradictory character of the emerging regulatory and administrative rules and standards that shape transnational regulation. It is the understanding of the nature and dynamics of these regulatory rules that should be at the heart of the analysis of transnational governance.

I find it rather curious that the global financial crisis — like the events of September 11 — has led to a revival in the literature of the notion that we are about to witness the *return* of the state. For example, it assumes that the neoliberal transformation over the last three decades occurred without state intervention, when in fact, as many have argued – though with seemingly little effect –neoliberalism itself required the construction of a different form of state: the regulatory state. In this sense, the last couple of decades have seen not the decline but the *transformation* of the state. This is something that is totally missing in the writing of those arguing that the ‘state’ has *returned*.

The real question is: what happens to this regulatory state after the global financial crisis? It is clear that one of the elements of the present crisis is the manner in which various strands of ‘soft law’ — such as regulatory standards and principles — have been widely questioned and challenged. This includes the role of private standards organizations such as the international ranking agencies. Nevertheless, I think this regulatory shift, which, as I have argued, involves substantial multi-level governance

within the state, will not be easily reversed as a result of the crisis. Indeed, in my view there is already an intensification of regulatory governance rather than any shift back towards a more direct role for the state reminiscent of post-war Keynesianism. My short answer is that changes are likely to occur within the regulatory state — in actors, instruments, and agencies — but no fundamental shift is likely in the form or nature of regulatory governance.

The reason for this is, as I have tried to indicate in my recent publications, that the shift from what I have called ‘social constitutionalism’ to ‘economic constitutionalism’ is driven by changes in ‘work’ and ‘war’. The twin transformation of the social settlement within advanced industrial states and the end of the Cold War heralded a change in the politics that was based on the constitutional and political recognition of class politics. This social settlement had a global dimension because the Cold War was essentially a social and political conflict between competing economic and social systems. In a similar way this conflict between the two major superpowers was also fundamental to the way in which these social and political conflicts were played out in the Third World. This point is of course central to the argument of Odd Arne Westad in his book *The Global Cold War* (2007). The core of my argument is that changes in ‘work’ and ‘war’ have resulted in a shift towards a form of economic constitutionalism geared towards the promotion and regulation of economic order. For this reason the deep-seated structural transformation of the state over the last three decades means that we cannot simply go back to the ‘social constitutional’ order of the post-Second World War period. Nevertheless some important changes are now underway in the nature and form of regulatory governance. Some of the significant changes are:

1. The emphasis on the concept and practice of the ‘systemic regulation of risk’ of financial governance. This is potentially an important and intriguing development in that it seeks to create new notions of ‘public responsibility’ within forms of market governance. In this sense it represents an amplification of the idea of market citizenship, which I have discussed in my book *Statecraft, Welfare and the Politics of Inclusion* (2006), as well as in other work I have done on accountability communities (2008b; 2008c; and 2010a). The significance of this notion of ‘systemic risk’ lies in the way it creates a public domain within market-based regulatory governance operating across national boundaries. In other words, forms of ‘publicness’ are created within market-centered forms of governance. This to me is an intriguing development that signals an important move away from pre-crisis forms of regulatory governance. Indeed one of the striking elements of the Obama Presidency (as well as the social democratic government of Kevin Rudd or Gordon Brown) is exactly this ‘third way’ approach to regulatory governance. It reflects one

strand of regulation that socializes neoliberalism in a way that opens up interesting political possibilities.

2. The other crucial element of recent regulatory changes is the development of hybrid public-private forms of governance such as that exemplified in the institutional design of the Troubled Asset Relief Program in the US. What matters here is not whether actors are public or private per se; it is that the relationship between these actors within new institutional settings challenges the distinction between the 'public' and the 'private' and undermines the 'national-global' binary created by Weberian and Westphalian notions of statehood. I suspect that these new institutional ensembles of public and private will become increasingly important within emerging forms of governance. This to me is an interesting area of research for any budding Political Economy PhD students.

JS: You have an expertise in transnational law. Parallel to the global financial crisis, do you see many changes being made to global legal frameworks – for example, with respect to the juridical role of supranational forums such as the World Trade Organization, or to state and corporate arbitrations?

KJ: One of the significant elements I see is the increasing importance of 'global administrative law'. This is a term used by a group of legal scholars at New York University to identify and analyze the role of notions of review, monitoring and participation, both in the administrative acts of international public agencies and through the actions of international non-governmental organizations such as standard setting bodies. This work essentially examines the role of administrative rules, which is a question I have pursued in my earlier work on global regulatory governance and multi-level regulation. What I like about this approach is that it can be used to analyze the way in which new concepts of public law are being used to constitute and implement new forms of governmental authority. It gives us a way to look at the 'governmentalization' of international rules, which is at the core of the new transnational regulation.

Here I would like to point to the growing importance of legitimacy within regulatory structures, which I have already touched on in relation to the notion of systemic regulation. At a conceptual level I have developed the notion of the accountability communities as a framework to understand the constitution of public authority within transnational regulatory regimes. Accountability communities are complex, and they are composed of public and/or private organizations endowed with capacities to perform legislative, monitoring, and compliance activities in specific functionally based regulatory regimes both within and beyond national boundaries. They operate through institutional forms such as deliberative forums, markets, or network

mechanisms. Furthermore, by virtue of particular understandings of the discourses of accountability that bind various actors together, these communities enable the location and identification of public authority, not to mention the 'public' to which account is given within regulatory regimes (see 2008a; and 2008b). In this way, an accountability community defines public authority within regulatory regimes and provides the basis on which new forms of state and market-making are created. These accountability communities are crucial not only to the transnationalization of the state but also to the very nature of politics, which they effectively shape.

The other feature to which I want to draw attention is the crucial importance of the notion of meta-governance – that is, the governance of governance. On this basis there is a complex interplay between the global, the regional, and the national. Meta-governance, through agencies such as the International Monetary Fund (IMF) or even via regional multilateral banks, has been amplified during the current financial crisis. In addition to this, I also see a hardening of soft law – that is, the rules, standards, and benchmarks through which regulation is implemented. I think soft law is still critical to the way in which new forms of state power are being created, but these new powers are dependent on 'harder' forms of state power. All of these elements are crucial to the development of a transnational regulation and governmental authority.

In my view, those arguing for a transnational polity need to be more cognizant of these transformations in the administrative form of the rules and regulations that are located *within* the state, rather than in a transnational entity above the state.

JS: You have previously used Carl Schmitt's notion of a 'state of exception' to describe a de-formalization of international law and a concentration of emergency powers in the hands of the executive branches of state the world over (Jayasuriya, 2005). How do you see these powers playing-out during the global financial crisis? Do you see a 'state of exception' being explicitly deployed by state leaders and other elites implicated in the circuits of global capital accumulation?

KJ: I think notions of exception and emergency are important in relation to the contemporary crisis but not in the currently fashionable way of understanding emergencies as a 'zone of non-law'. In one sense, the common element of both 9/11 and the current crisis lies in the ushering-in of a global state of emergency; and in a distinct form of international emergency regulation and standards – very much in the form of a global administrative law – that reframes the jurisdictional practices that have shaped national constitutional formations. The economic crisis, like 9/11, was a global state of emergency that may lead to the emergence of new jurisdiction of governance layered onto the domains of national and international law.

With the current crisis, we are back to the idea of global administrative law, and

here too as in the 9/11 crisis, new forms of state power have been created that allow actors to bypass 'national' constitutional and administrative structures. In the case of 9/11 these new forms of state power have made the boundaries between state and non-state actors and civilians and combatants more flexible.

One of the arguments I make in a paper on the international state of emergency with reference to 9/11 is that society creates distinctions between legal spaces that lead to the construction of new legal subjects and categories — for example, through new forms of preventive detention and control orders — which establish new legal jurisdictions within national constitutions (2008d). Novel administrative forms of power established during the current crisis through the exercise of emergency powers create new administrative domains 'in' and 'out' of the national state with strikingly similar effects to that produced by the events of 9/11. The crucial point here is the creation of new forms of administrative power that transcend the national and international divide.

JS: Furthermore, how do you see the growing importance of the G20 in place of the G8? Does it reflect an inevitable attempt on the part of elites to develop institutions capable of governing and stabilizing global capital? More specifically, the G20 appears to have been focused on coordinating the stimulus packages and regulatory initiatives of different central banks. In April 2009, for example, it agreed for the IMF's floating currency Special Drawing Rights to be increased by nine-fold, and in September 2009 they moved forward on a host of new regulatory frameworks. What are your thoughts on this?

KJ: Yes – I agree with you about the enhanced role of the IMF in the crisis – a point that has also been made by Paul Cammack (2009). Equally important in this regard is the way the US Federal Reserve has taken on the role of a harsh policy-coordinating body for the global financial system. This flies in the face of those who argue for multi-polarity. In some ways the Fed rather than the IMF has become the global central bank. More important than this, though, is the role played by networks of central banks in managing the crisis. This is exactly the kind of transnational regulatory regime that is crucial to understanding the embryonic structures of global governance.

One of the interesting elements of the crisis is the way in which new forms of regional governance are being used to respond to the crisis — a process we describe as 'regulatory regionalism'. Shahar Hameiri and myself have elaborated on this regulatory regionalism framework in a recent Special Issue of the *Australian Journal of International Affairs* (Hameiri 2009a; 2009b; and Jayasuriya, 2009). This has been expanded further in a forthcoming special issue of the journal *Globalisation, Societies and Education* on the topic 'Regulatory Regionalism and the Governance of Higher Education', which I have edited with Susan Robertson of the University of Bristol (Jayasuriya and Robertson, 2010).

This is not simply a question of the global against the regional; it is about the way in which the regional is layered onto global and national regulation in the implementation of administrative rules. In the East Asian context, a particularly important role has been played by the Asia Development Bank (ADB) in providing the framework for financial and economic policy at the national and sub-national level. The ADB has also played a significant role in regional financial initiatives. These changes reinforce initiatives such as the Chiang Mai Initiative (CMI), which provided emergency funds for currency stabilization in the event of a financial tsunami sweeping through the region, such as the 1997-98 Asian crisis (or the 2008 credit crisis). The initiative is limited in scope as well as in terms of the volume of funds available for emergency funding. However, the very fact that a currency stabilization scheme such as the CMI is on the policy agenda is itself a major step away from the Asia-Pacific region's traditional emphasis on trade liberalization.

JS: In much of your work you speak of a transnational class, echoing a literature that links the creation of a transnational capitalist class (TCC) to the rise of transnational corporations during the last quarter of the twentieth century (Robinson & Harris, 2000; and Sklair 2001). More recently, Jerry Harris has conceptualized a statist-TCC connected to sovereign wealth funds (SWFs) in countries such as China, Russia and the Persian Gulf States (2008b). Even SWFs, he suggests, are beginning to transnationalize. The *Financial Times* has made similar observations, writing of the South Korean SWF's strategic joint investment with its Malaysian counterpart and an Austrian state-owned fund: "The deals are among the first alliances between wealth funds from different countries as they seek to diversify their investment portfolios" (Jung-a, 2009). What are your thoughts on these new developments?

KJ: I am persuaded by Harris' take on this issue. It seems to me that the basic point here is that there is no monolith transnational capitalist class; rather, we have different fractions within it. What is clear is that the idea of 'national capital', or indeed, national developmentalism, is simply not viable in the current circumstances. It is interesting, though, that these nationalist ideas have wide currency within much of the developing world and I think this is a retrograde step in political terms.

It is clear that in East Asia statist forms of capital are becoming much more important. The really imperative question here lies in the way these 'statist' forms of capital are transforming the state in critical ways. In some respects it is commodifying the state, which has become a player on international financial markets. See for example the role of the Chinese state as a bondholder in the US. But to give a short answer to your question: We need to be much more cognizant of the differences within forms of transnationalised capital and the way this plays out in political and policy-making

institutions.

JS: You write in a recent article that the “anti-pluralism of the global order reverberates within domestic politics” (Jayasuriya, 2008, p. 31). You have also said that new contractual relations are forming between states and their citizens. How might these understandings of how the state interacts with its citizens be seen in light of the financial crisis? For example, in California, corporate and state elites are articulating new contractual relations as the state budget deficit climbs and unemployment persists (Davis and Bacon, 2009). Do you see state elites engaging in anti-pluralist projects tied to globalization (or, in other words, as transnational elites re-articulating governing apparatuses in a way that prioritizes global over local strategies of accumulation)?

KJ: This is an interesting question. In one sense I think that over the next two decades we will see an ongoing fiscal crisis of the state, which is not going to be easily resolved. It is made doubly difficult because of the emerging trilemma of government services – a route for accumulation and employment, a vehicle to enhance access, and a driver for legitimation. In a sense this is James O’Connor’s thesis on the fiscal crisis of the state with a couple of extra twists! (See O’Connor, 2001.) This fiscal crisis is leading to shifts in the governance of these services towards more contractual forms. And this is consistent with a move towards the development of what I have called a market citizenship. It is this shift in the instruments of governance towards ‘executive discretion’ that challenges some of the central principles of representative democracy and political pluralism. We need to pay much more attention to new modes of political governance.

I also want to say that within this framework there is scope for interesting social policy experiments such as the basic or participation income proposals, and various ideas of empowered participation such as participatory budgeting. This is something on which we need more work.

On this issue, I would also like to add that both the critical and mainstream Political Economy approaches fail to seriously consider the transformation to a post-industrial economy with a dominant service sector. Many of the developments that are crucial to the political economy of the service sector – the new social markets in health and education, global cheap labor in the services, and the increasing regulation of service professionals – all of these seem to receive little or no attention in the Political Economy literature.

JS: I am curious as to your thoughts on some of the other theoretical approaches that share your basic understanding of global order. For example, you cite Martin Shaw’s *Theory of the Global State* (2000) in your discussion on the emergence of a “putative set of transnational regulatory structures” (2005, p. 21). In another article you cite William

Robinson's *A Theory of Global Capitalism* and write that his idea of a nascent transnational state forces "us to explore how the national state has been transformed through the transnationalization of state actors and institutions"; and that "It compels us to confront the way global capitalism has rendered conventional notions of statehood" (2004, p. 6). Robinson has written a critique of Shaw's idealist – rather than materialist – conception of a 'global state' (2001b). What is your theoretical position in relation to these different approaches?

KJ: I find the general approach of the transnational state or globality useful in examining some key aspects of the global political economy. It moves us beyond unhelpful debates about the return of the state and/or misguided attempts to perceive global conflict in terms of a return to national developmentalism. In sum, I think it usefully takes us beyond the methodological nationalism that troubles much of the mainstream and critical Political Economy literatures.

Having said this, my own approach differs from these perspectives in that I see the crucial issue as the transformation of the state rather than the emergence of a new transnational state. At the same time, we need to see the development of these transnational forms of governance as an ongoing process that involves accommodation and contestation between various 'national' and transnational regimes within the state. I would emphasize the strategic choices and conflicts between key actors in rescaling projects. It is these kinds of conflicts that drive state transformation, and I think this should be at the centre of a research agenda on transnational regulation.

In addition, I think we should place more emphasis on the nature and dynamics of the emerging transnational administrative/regulatory law, even if this is often of the soft law variety. As I indicate in my responses above, it is the complex and fragmented nature of this global administrative law that defines the new transnational governance. This transnational law and governance is likely to be very different from what is usually associated with the national state. This is something that is neglected by notions such as globality or the transnational state.

JS: Who have been the most influential writers for the development of your own ideas?

KJ: A strong influence on my work is Nicos Poulantzas, particularly his later work. I think especially useful are his ideas of institutional struggles within the state and the broader notion of state transformation. In particular I find his work on the shifts and transformation from mass politics to 'authoritarian statism' very useful (see 1978).

In the areas of legal theory, I have drawn on the work of Franz Neumann, particularly his notion of the de-formalization of law and its relationship to broader economic and social changes (see 1957; and 1986). Other Frankfurt School legal

theorists such as Otto Kirchheimer have been very important for my work too. Indeed, the broader Weimar debates on legal theory – Heller, Kelsen and Schmitt – are a very useful resource. I would locate Schmitt (1927) within the context of these ‘Weimar debates’. His notions of constitutional order and exception have been very useful tools but these tools need to be used critically and placed within the context of the Weimar debates. The broader point I would make is that these debates took place within the context of a broader conversation about Marx and Weber. It is this conversation that I have drawn on and which I think we need to resurrect in social and political theory.

My work on social policy has been influenced by the work of Amartya Sen on capabilities, which provides an important pathway for the development of a critical theory of justice (see 1979; 1985; and 1999). This is something that I will be working on in the future.

JS: What areas of research are you focused on now?

KJ: There are three areas of my ongoing research that link in with some of the issues noted in this interview. First, I am continuing to work on the issue of the transformation from social to economic constitutionalism, focusing more specifically on its implications for the future of democratic politics. I am particularly interested in exploring what forms of democratic politics are possible within emerging forms of economic constitutionalism.

Second, I am interested in the issue of the legitimacy of transnational regulatory regimes, and here I develop the concept of accountability communities noted in the responses to one of your previous questions. In a related fashion, I am also interested in teasing out the political and legal implications of the development of so-called soft law. What does this imply for our understanding of both the law and the state?

Finally, I continue to work on issues of social policy with an emphasis on experiments to ‘socialize neoliberalism’ in places as diverse as Brazil, China, and South Africa. This is a continuation of my work on social policy and the politics of social inclusion.

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