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NEW TASKS AND NEW FORCES: INTERNATIONAL LEGAL THOUGHT AFTER NEO/LIBERAL LEGALISM

I. INTRODUCTION

The purpose of this paper is to articulate and attempt to answer a series of foundational questions for the study and practice of international law in the second quarter of the 21st century: Why did the US turn against the international legal order that had ushered into existence after WWII and, in particular, after the 1990s? What were the material and ideological factors that brought the seemingly inexorable march toward the legalisation of global capitalism to an end?

The first question and second questions emerge out the present conjuncture, which may not be virtually unprecedented,[1] but it is certainly exceptional: the United States, which protagonised the creation of neo/liberal international law first, after 1945 and, then, since the end of the Cold War thereby ensuring its conformity with its interests and ideology, has now openly turned against its core rules and institutions. What is distinct about the current moment is not that the US or others act in ways that professional international lawyers or other states consider to be incompatible with international law. Rather, what distinguishes the present moment from earlier crises, say the 2003 Iraq War, is that the US and, increasingly, other states use the language of international law less and less both in some crucial aspects of their internal workings and in their interactions with each other. Crucially, the bipartisan decision to undermine the dispute settlement structure of the World Trade Organization (WTO) speak to a shift away from legalism as a central pillar of the USA's approach to its own economic primacy and to the

* I would like to thank Yilin Wang for the invitation to present this paper at University of Macau and for our invaluable discussions. I would also like to thank Kathryn Greenman, Wanshu Cong, Jed Kroncke, Valeria Vázquez Guevara and Shane Chalmers for reading and commenting upon earlier versions of this paper. Errors and omissions are mine alone.

[1] Nixon's suspension of the dollar's convertibility to gold and the subsequent destruction by neglect of the Bretton Woods system comes to mind as the most apt analogy for the current moment insofar as the hegemon intentionally destroyed a legal system that they had put in place to begin with.

global capitalist economy more broadly.[2]

Given the long-term trajectory of legalisation of global economic relations, this shift poses fundamental questions for international legal scholars of all theoretical and political orientations, since both our object of study and the world within which it operated have been transformed. Writing from within the critical legal tradition, I argue that the current moment necessitates a combined process of description, explanation and reorientation. The frantic pace of the second Trump administration necessitates a careful and detailed documentation of its erratic but significant dis/engagement with international law and institutions. Description, however, is not sufficient. Rather, the dizzying pace of legal, political and economic transformation necessitates the construction of rigorous explanations of the structural forces and contingent developments that underlie these shifts and allow us to situate the idiosyncrasies of the current US administration within broader explanatory frameworks that place personal preferences and vices within the social conditions that enable and even necessitate them.[3] Finally, if one accepts the argument that we are witnessing a fundamental transformation of the relationship between state and capitalist power on the one hand and international law on the other, this puts pressure on professional habits on what meaningful international legal scholarship looks like. The questions, assumptions and even style of international legal scholarship need to shift if our academic practice is to remain relevant to the world as it actually is.

To tackle these questions, I proceed in three steps: first, I outline why the current conjuncture differs from past instances where the US found itself on collision course with established interpretations of international law. Using the examples of the 'Liberation Day' tariffs, UN Security Council Resolution 2803 concerning the future of Gaza, and the early 2026 US intervention in Venezuela and the kidnapping of the state's president, I show that although imperial violence and economic

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[2] For two theoretically and politically divergent but insightful engagements with the USA's decision to block the appointment of new WTO Appellate Body judges for almost a decade thereby leading to the loss of quorum and the impossibility of finalising disputes by appealing panel decisions into the void see: Anne Orford, 'How to Think About the Battle for the State at the WTO' (2023) 24 German Law Journal 45–71; Stratos Pahis, 'An Autopsy of the Appellate Body: International Legal Theory on the Demise of the Rule of Law at the WTO' (2025) 47 University of Pennsylvania Journal of International Law 226–312.

[3] The paradigmatic piece of work when it comes to uncovering the structural reasons behind the rise of an unimpressive populist leader into power remains: Karl Marx, 'The Eighteenth Brumaire of Louis Bonaparte' in Robert C Tucker (ed), The Marx Engels Reader (WW Norton 1978). For a recent engagement with the piece: Richard Joyce and James Martel, 'Authoritarian populism, neoliberalism, and The Eighteenth Brumaire of Louis Bonaparte' (2025) 13 London Review of International Law 243–265.

exploitation are nothing new, the USA's disengagement from international legalism and its distinctly personalist approach to international affairs constitute sharp departures from past precedents. Having established the distinctiveness of the present moment, I posit that prevailing liberal approaches that describe the Trumpian approach to law and international order as a return to feudalism and/or as being 'neo-royalist' in nature resort to these historical metaphors inappropriately. By associating these shifts with long-gone political (absolute monarchy) and economic (feudalism) forms, liberal thinkers invisibilise the most apposite question: what material and ideological shifts in the operation of modern, actually-existing state and global political economy gave rise to the current US hostility toward international legalism and led to the emergence of a highly personalist, deformalised and de-instiutionalised approach to global economic and political ordering?

To answer this question, I draw insights from critical engagements with international law, and, in particular, critiques of the 'unwilling or unable' doctrine' as well as from two debates about contemporary capitalism. I engage with the recent work of Melinda Cooper and Ann Lipton on the transformation of US corporate governance and, in particular, the increased significance of the private, founder-centric corporation and the merger between family wealth management and modern corporate activity. Secondly, I draw from literature concerning the long-term slowdown of global economic growth and its consequences for the relationship between state and capital. I posit that the combination of these two trends has precipitated the emergence of personalist modes of economic governance that rely on a cult of leadership and closely-knit interpersonal relationships both for legitimisation and for their day-to-day operation. In turn, this mode of economic governance has given rise to novel legal forms that superficially rely on formal sources of authority but they enact an ad hoc, openly selective and partisan approach to economic governance that relies on and legitimises charismatic leadership, inter-personal relationships between states and specific capitalists and an openly hierarchical and transactional approach to the global economic and political order. With these arguments in mind, the third part of this article argues that many of the assumptions that have animated critical legal scholarship to date no longer hold, since they were developed in response to highly legalistic forms of imperialism and global capitalism. With that in mind, I investigate what the role of critique could be in this conjuncture both within and beyond the West.

II. THE CRISIS OF NEO/LIBERAL LEGALISM

Talk of the demise of the international legal order is not new and neither are concerns about the hostile attitude of the US toward it.[4] Since its elevation onto the predominant capitalist power after 1945 and its (temporary) ideological triumph after the collapse of the Soviet Union, the US has often operated in ways that clashed with predominant interpretations of international law,[5] has been repeatedly hostile or openly defiant toward international institutions,[6] and has interpreted the field's rules in ways that diverged from scholarly and state consensus.[7] Liberal legalists have long criticised this perceived lawlessness,[8] while critical legal scholars have retorted that (US) imperialism has actually been articulated through rather than against or despite international law.[9] In other words, there are good reasons to doubt that there is anything particularly novel about the current moment and, more broadly, to be suspicious regarding invocations of 'newness' insofar as they obscure the important historical continuities in the construction, function and legitimisation of the international legal order.[10]

Although caution is prudent, overemphasising historical continuity would be misleading in this instance. This is because the current indifference or open hostility of the US toward the language of international law across a variety of issues is novel and so are its experimentations with international legal forms that sidestep or instrumentalise formal legal authority in

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[4] Amongst (too) many see: Philippe Sands, *Lawless World: Making and Breaking Global Rules* (Penguin 2006); Bill Bowring, *The Degradation of the International Legal Order?* (Routledge 2008); American Society of International Law, 'Under the procedure set forth in Article IX of the ASIL Constitution, the following resolution was adopted at the Annual General Meeting of the American Society of International Law on March 30, 2006', <www.asil.org/sites/default/files/insights_pdfs/ASIL_Resolution.pdf.> accessed 28 February 2026.

[5] The 2003 invasion of Iraq being a prime example: 'War Would Be Illegal' *The Guardian* (London, 7 March 2003) <www.theguardian.com/politics/2003/mar/07/highereducation.iraq> accessed 28 February 2026.

[6] Notoriously, the American Service-Members' Protection Act, colloquially known as the Hague Invasion Act, empowers the US President to use 'all means necessary' to secure the release of US or allied military personnel arrested or imprisoned at the request of the International Criminal Court.

[7] Examples of this practice abound. On the USA's efforts to narrow down the scope of the prohibition of starvation in international humanitarian law and their recent utilisation by Israel see: Jessica Whyte, 'A "Tragic Humanitarian Crisis": Israel's Weaponization of Starvation and the Question of Intent' (2026) 28 *Journal of Genocide Research* 79-93.

[8] Sands (n 4).

[9] For a compelling articulation of the critical legal hesitance vis-a-vis the accusation of lawlessness see: China Miéville, 'Multilateralism as terror: International Law, Haiti and Imperialism' (2008) 19 Finnish Yearbook of International Law 63–93.

[10] Obiora Chinedu Okafor, 'Newness, Imperialism, and International Legal Reform in Our Time: A TWAIL Perspective' (2005) 43(1/2) *Osgoode Hall Law Journal* 171–191.

favour of an openly personalist and hierarchical model of managing international affairs. Crucially, this historical shift is not simply important for the United States but for international law as a whole. This is because the US has played a disproportionate role in the development and reproduction of the international legal order since 1945. This role was multifaceted and involved protagonising the development of substantive rules and institutions, materially supporting said institutions through financial contributions that far surpassed those of any other nation, and underwriting a global order that made possible the operation (some of) these rules. There is little doubt, for example, that being under the 'nuclear umbrella' of the USA has made possible the commitment of numerous states to an international legal regime of non-proliferation.[11] As a result, the USA's disengagement from international law is qualitatively different from, say, Russia's violation of and partial disengagement from the same in light of its invasion of Ukraine. As Gorobets has argued, Russia's aggression not only violates the most basic tenets of modern international law but it also has relied on a justificatory practice that differs from predominant understandings of international law. Russia's argumentation in support of its aggression does not rely on formal rules, equal sovereignty or self-determination but on historicity, mysticism and open embrace of hierarchy within regional orders.[12] Although this divergence is of immediate, fatal importance for Ukrainians, it is not capable of undoing the international legal order as such. Russia has never occupied a position of material, geopolitical or symbolic significance equivalent to the US within that order. In addition, the economic and military power of the US has meant that many Western and non-Western states alike have abandoned or at least lessened their reliance on international law in their interactions with the USA and/or have accepted or at least acquiesced to the USA's efforts to remake the international order alongside non-legalist, personalist and openly hierarchical lines. In other words, the centrality of the US both for international law and for the contemporary economic and geo/political order mean that its disengagement from international law has affected the field as a whole: this is not a 'rogue' state operating within an otherwise stable international order, but rather the predominant (if declining) economic and military power that is no longer seeking exceptional treatment within the existing normative and

[11] See: Bruno Tertrais, 'Security Guarantees and Nuclear Non-Proliferation' Fondation pour la Recherche Stratégique No 14/11, <www.files.ethz.ch/isn/133021/201114.pdf> accessed 28 February 2026.

[12] Kostia Gorobets, 'Alternative Legalities: How the Russian Invasion of Ukraine Fractures International Law' (in file with the author).

discursive framework, but is rather un/re-making this framework as a whole.

The 'Liberation Day' tariffs announced by the US in April 2025 are a typical example of this shift. What is important is not that the US acted in a manner that is incompatible with its international legal obligations-even though these 'reciprocal tariffs' and the bilateral 'deals' that followed them are straightforwardly unlawful under WTO law.[13] What is more important is that the US did not use the language of WTO law to justify these tariffs nor did it design the tariffs in a way that could be defensible through this language.[14] As journalists immediately observed,[15] the 'Liberation Day' tariffs were almost certainly calculated through the use of AI; they implemented an arbitrary tariff floor of 10% even with states that USA runs trade surpluses with; and calculated tariffs above that baseline were not based on concrete assessments of purportedly trade-distorting measures but by dividing by two (another arbitrary number) the ratio of imports and exports in goods (but not in services) between the US and each individual state. The point here is not that this method is incompatible with WTO law (even though it is): the point is that it is hard to imagine that any US international trade lawyers who may be called upon to defend these measures in front of the WTO were involved in the design of these measures or that the US is interested at all in articulating a plausible defence of these measures using the language of WTO law in the future. If we think of international law as being amongst other things an institutional practice that takes place both domestically and internationally, the apparent marginalisation of international trade lawyers from the design of US trade policy speaks to a tangible shift within the US state apparatus.

This open disregard puts contemporary US trade practice at odds even with some actions of the first Trump administration. Although open embrace of protectionism at odds with the GATT disciplines has been a growing feature of US economic policy over the past decade, the US often (but not invariably) designed these measures in ways that made them at least defensible through the language of WTO law. For example, one need

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[13] For a concise summary of the second Trump administration's trade policy and its incompatibility with WTO law see: Jeffrey L Dunoff and Mark A Pollack, 'The Trump Administration's Trade Policy and the International Trading System' (2025) 119 American Journal of International Law 680–699.

[14] On international law as a specialised language see: Martti Koskenniemi, 'The Politics of International Law – 20 Years Later' (2009) 20(1) European Journal of International Law 7–19; Dino Kritsiotis, 'The Power of International Law as Language' (1998) 34 California Western Law Review 397–409.

[15] See: Theo Burman, 'Did Trump Admin Use ChatGPT to Allocate Tariffs? What We Know' *Newsweek* (4 April 2025), <www.newsweek.com/donald-trump-tariffs-chatgpt-2055203> accessed 28 February 2026.

not accept that the WTO panel was correct to rule in favour of the USA in the *United States—Safeguard Measure* (China) case[16] to observe that the administrative practice and politico-juridical rhetoric surrounding the 2018 US tariffs on Chinese crystalline silicon photovoltaic cells differed markedly from the 'Liberation Day' tariffs: the former were implemented following the complaints of two US corporations and an investigation by the United States International Trade Commission that led to the adoption of two separate reports alleging that the surge of imports of Chinese CSPV products in the US constituted an 'unforeseen circumstance' capable of justifying temporary safeguard measures under both WTO law and domestic US law.[17] Indeed, the measures were (nominally) designed to be temporary (four years) and the imposed ad valorem duties were supposed to decline yearly over that period.[18] China contested the US position that this increase in imports constituted 'unforeseen developments' that were the 'effect of obligations incurred' thereby justifying safeguard measures under the GATT.[19] The panel was not convinced by the Chinese arguments and the US eventually won that case, even though it is doubtful that this victory would have survived an appeal in front of a functional Appellate Body.[20] What matters here is not whether the 2018 tariffs were compatible with WTO law as a matter of abstract legal reasoning or whether the panel's decision would have survived a review in front of a functional Appellate Body (it probably would not have had): my point rather is that both the administrative

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[16] Indeed, China appealed the panel's decision into the void in the absence of a functioning WTO Appellate Body contesting almost every aspect of the panel's reasoning, including the idea that the increase of Chinese solar panel imports in the USA constituted 'unforeseen developments' or that it was causally linked to the troubles of the USA solar panel industry: Notification of an Appeal by China under Article 16 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) WT/DS562/12 (20 September 2021).

[17] See: *United States—Safeguard Measure on Imports of Crystalline Silicon Photovoltaic Products*, WT/DS562/R. China the panel's decision raising a broad range of objection's against the panel's factual and legal reasoning, but in the absence of a functional WTO Appellate Body this was an ineffective appeal 'into the void'.

[18] The USA's international legal justification invoked, amongst others, Art. XIX (1) (a) of the General Agreement on Tariffs and Trade, which reads as follows: 'If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.'

[19] *US-Safeguard Measure* (n 17), para 2.3.

[20] On the divergence of the standard of review adopted by the panel from the existing jurisprudence of the WTO dispute settlement system see: Weihuan Zhou and Mandy Meng Fang '"Unforeseen Developments" Before and After *US–Safeguard Measure on PV Products*: High Standard or New Standard? '(2023) 22 *World Trade Review* 541–561.

practice and justificatory language of the US could and were made legible through the language of WTO law and that the US seemingly designed these measures with this legibility in mind.

In contrast, the US did not even attempt to argue that 'Liberation Day' tariffs had a plausible justification under international trade law. President Trump's speech on the 2nd of April 2025 did not reference the WTO explicitly or implicitly, only mentioning NAFTA as an example of a misguided trade agreement.[21] Perhaps more significantly, with the notable exceptions of China and Brazil,[22] the vast majority of states did not initiate dispute-settlement procedures in front of the WTO despite the fact that the illegality of the 'Liberation Day' tariffs is beyond doubt. In addition, although all other major economies remain nominally committed to the WTO and its legalistic model of trade governance, they have not taken as of yet steps to multilateralise these deals (for example, through generalising the terms of these deals in their trade relations with other states in application of the most-favoured-nation principle). Instead, states were quick to negotiate bilateral trade deals that not only are incompatible in terms of substance with WTO law,[23] but, more fundamentally, do not constitute legally binding agreements that are governed by international law and/or involve a formalised dispute settlement system. Rather, these are personalised deals between the US president and foreign powers. They are predominantly framed as 'framework agreements' that are temporary, non-legally binding and brief. For example, the first of these deals that was concluded between the US and the UK was just above four-pages long; it explicitly stated that it was not a legally-binding agreement and it repeatedly deferred crucial matters to future negotiations.[24] This is true more broadly: the main

[21] For a transcript of his speech see: 'Remarks Announcing Additional United States Tariff Actions on Foreign Imports' (2 April 2025) <www.presidency.ucsb.edu/documents/remarks-announcing-additional-united-states-tariff-actions-foreign-imports> accessed 28 February 2026.

[22] China initiated a dispute in front of the WTO four days after the announcement of 'reciprocal tariffs': WTO Doc WT/DS639/1 (8 April 2025) <https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=314572&CurrentCatalogueIdIndex=0&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True> accessed 28 February 2026.

[23] Most obviously, these deals violate Article I of the GATT which mandates all like goods originating from WTO members should be treated equally in regards to custom duties, other charges or any any advantage, favour, privilege or immunity (Most-Favoured-Nation clause) and, for the most part, Article II of the GATT insofar as the tariffs agreed upon surpass the levels specified by the US in its schedule of concessions.

[24] See: 'General Terms for the United States of America and the United Kingdom of Great Britain and Northern Ireland Economic Prosperity Deal' (UK Government, 5 August 2025) < https://assets.publishing.service.gov.uk/media/681d327d43d6699b3c1d2a9d/US_UK_EPD_050825_FINAL_rev_v2.pdf> accessed 28 February 2026. For a comprehensive overview of these deals see: Inu Manak, 'Tracking Trump's Trade Deals' (Council on Foreign Relations, 11 February 2026) <www.cfr.org/articles/tracking-trumps-trade-deals> accessed 28 February 2026.

purpose of these deals appears to be the temporary stabilisation of the level of tariffs and serve as basis for future negotiations rather than settle authoritatively the terms of trade in ways that constrain the behaviour of the parties.[25] Otherwise put, states beyond the US have agreed to regulate trade with the biggest world economy through deals that not only depart from the substance of WTO law but also from its form: bilateralism over multilateralism, informal and broad over formal, detailed regulation, temporary settlement over long-term/indefinite stabilisation of terms of trade, legally unbounded unilateral, executive action over the legalism and juricialisation of disputes that characterised the WTO, deals between a specific person (the US president) and his counterparts over treaties between sovereign states.[26]

This shift in form distinguishes these deals from earlier efforts of the US to bypass the WTO when trade negotiations or the outcomes of dispute settlement did not meet its expectations. In some ways, then, Trump administration's practice amplifies and builds upon existing trends, notably toward the fragmentation of international trade law. This trend toward fragmentation dates back to the Obama administration and was, much like the US's current practice, motivated by anxieties over China's ascendence and the perceived inability of the WTO to adequately discipline Chinese state capitalism.[27] The US responded to the deadlock of the Doha Development Round and to a number of unfavourable decisions by the WTO Appellate Body, for example concerning the meaning of 'public body' for the purposes of identifying subsidies, by pivoting to regionalism and using these regional trade and investment treaties to promote its preferred approach amongst allied states thereby challenging

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[25] For example, the agreement between the USA and Indonesia stipulates that the two states 'will negotiate facilitative rules of origin', 'will work together to address Indonesia's non-tariff barriers' and that the US 'may also identify certain commodities that are not naturally available or domestically produced in the United States': 'Joint Statement on Framework for United States-Indonesia Agreement on Reciprocal Trade' (22 July 2025) <www.whitehouse.gov/briefings-statements/2025/07/joint-statement-on-framework-for-united-states-indonesia-agreement-on-reciprocal-trade/> 28 February 2026.

[26] On different critical jurisprudential traditions that emphasise law's form alongside/instead of its substantive content see: Evgeny B Pashukanis, *The General Theory of Law and Marxism* (Transaction Publishers 2003 [1924]); Duncan Kennedy, 'Form and Substance in Private Law Adjudication' (1976) 89(8) Harvard Law Review 1685-1778. For an account that focuses on the shifts of legal forms at the WTO but questions whether these changes are as fundamental as I argue here see: Robert Howse, 'The World Trade Organization After Trump', < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5732222> 28 February 2026.

[27] For an influential articulation of these concerns: Mark Wu, 'The "China, Inc." Challenge to Global Trade Governance' (2016) 57 Harvard International Law Journal 261–324.

the authority of the WTO and its dispute settlement structure.[28] However, emphasising exclusively this continuity would be seriously misleading. These regional treaties remained within the paradigm of neo/liberal international law: they were multilateral instruments (even if they were not universal in nature or ambition); they were the product of prolonged negotiations between states; they relied on a rules-based model; and they put in place highly professionalised, technocratic models of dispute-settlement.[29] In contrast, the current wave of trade and investment deals do not exhibit any of these characteristics. They constitute a genuinely novel form of global economic governance where the personal authority of the US president, informal arrangements, anti-legalism, bilateralism and ad hoc arrangements predominate. Simply put, this is not a typical legal/institutional disagreement over the content of the rules but a move away from rules-based governance when it comes to international trade. This is a remarkable development: not only had the WTO developed a thoroughly legalistic culture where formal compliance with the Appellate Body's decisions was highly valued,[30] but also the US had been a decades' long advocate of legalism and judicialisation using each successive round of trade negotiations leading up to the Uruguay Round to advocate for a more formal and legalistic mechanism of dispute settlement.[31] This move away from legalism is not contained within international trade law. The recent US aggression against Venezuela and the kidnapping of the country's president has offered more insight into the current US administration's disinterest in justifying its actions using the vocabulary of international law. US recourse to brute force as an instrument of

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[28] For an outline and critique of this tactic see: Henry Gao and Weihuan Zhou, *Between Market Economy and State Capitalism: China's State-Owned Enterprises and the World Trading System* (Cambridge University Press 2022), Chapter 6. For a critique of the ultimately failed Transatlantic Trade and Investment Partnership as an assault against the commitment to multilateralism inherent in the structure of the WTO see: Aoife O'Donoghue and Ntina Tzouvala, 'TTIP: The Rise of 'mega-market' trade agreements and its potential implications for the Global South' (2016) 8 *Trade, Law and Development* 210–245. For a broader critique of fragmentation as a hegemonic technique of economic governance see: Eyal Benvenisti and George W Downs, 'The Empire's New Clothes: Political Economy and the Fragmentation of International Law' (2007) 60 Stanford Law Review 595–632.

[29] The Comprehensive and Progressive Agreement for Trans-Pacific Partnership is a typical example of such a regional treaty that was a direct response to China's economic rise and challenged some of the WTO Appellate Body's interpretations, while adopting these common forms of modern international trade treaties, <www.iilj.org/wp-content/uploads/2018/03/CPTPP-consolidated.pdf> accessed 28 February 2026.

[30] Pahis (n 2) 300.

[31] See: Ntina Tzouvala, 'Neoliberalism as legalism: International economic law and the rise of the judiciary' in Ben Golder and Daniel McLoughlin (eds), *The Politics of Legality in a Neoliberal Age* (Routledge, 2017).

foreign policy is nothing new, especially not in regards to the Americas.[32] Previously, this interventionism was often effectuated through 'proxies' that allowed the US to maintain a degree of plausible deniability about its involvement or was justified (in more or less convincing ways) through the language of international law. Indeed, as the International Court of Justice observed, despite the USA's rhetorical invocations of democracy or human rights, it tended to ultimately rely on expensive and controversial interpretations of conventional exceptions to the prohibition on the use of force, be it the right of self-defence or authorisation by the UN Security Council under Chapter VII of the UN Charter.[33] Although these arguments were often rejected on legal or factual ground by other states and international law scholars, their repeated articulation evidenced an ongoing investment in international law as a discursive framework.

The most prominent recent exception to this commitment to offering international legal justifications for imperial violence was the 1999 NATO intervention in Kosovo. In that instance, the USA openly acknowledged that its actions violated international law but nevertheless justified them by invocations of a supposedly morally superior duty to save lives through military action.[34] Even that instance, however, evidenced a broader commitment to the language of international law: NATO's, including the USA's, concern was to prevent its actions from being construed as state practice and *opinio juris* in support of a right to unilateral humanitarian intervention.[35] The US was willing to acknowledge the unlawfulness of its specific actions precisely because of its overarching commitment to a legal framework that it did not wish to see permanently altered. To acknowledge this prior US commitment to the language of international law is not to deny the imperialist nature of its actions. Rather, it is to affirm that international law was at least tolerable and at most actively

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[32] For a compelling account see: Greg Grandin, *Empire's Workshop: Latin America, the United States, and the Rise of the New Imperialism* (Picador 2021).

[33] 'The Court also notes that these justifications, advanced solely in a political context which it is naturally not for the Court to appraise, were not advanced as legal arguments. The respondent State has always confined itself to the classic argument of self-defence, and has not attempted to introduce a legal argument derived from a supposed rule of "ideological intervention" which would have been a striking innovation.' *Case Concerning Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v United States of America) (Merits) (1986) ICJ Rep 14, [266].

[34] Michael J Matheson, 'Justification for the NATO Air Campaign in Kosovo' (2000) 94 ASIL Proceedings 301.

[35] 'This was a pragmatic justification designed to provide a basis for moving forward without establishing new doctrines or precedents that might trouble individual NATO members or later haunt the Alliance if misused by others.' ibid.

complicit to prior iterations of US imperial power.[36]

In contrast, the current US administration's attitude toward international law is that of indifference or open hostility. In the aftermath of the US aggression toward Venezuela, President Trump insisted that his own personal morality offered him sufficient guidance and restraint rendering international law redundant.[37] Even in institutional settings, the US has generally been indifferent toward constructing a robust international legal justification for its actions. In his initial remarks delivered during the emergency meeting of the UN Security Council called by South Africa in response to the attack against Venezuela, the US representative to the United Nations Mike Waltz adopted a domestic law framing of the attack. His almost exclusive referent was US criminal law and domestic courts and his speech made no direct reference to the UN Charter and/or the prohibition on the use of force and its exceptions.[38] Instead, US domestic law and an emphasis on hemispheric order anchored the USA's justification: 'As Secretary Rubio stated just yesterday, this is the Western Hemisphere. This is where we live—and we're not going to allow the Western Hemisphere to be used as a base of operation for our nation's adversaries, and competitors, and rivals of the United States.' [39]

International law was indirectly present in Waltz's speech. The US representative put significant emphasis on the argument that Maduro is not the lawful president of Venezuela and, by implication, did not benefit from the personal immunities afforded to heads of state.[40] Similarly present were references to the Maduro government's record of

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[36] For a historical account see: Benjamin Allen Coates, *Legalist Empire: International Law and American Foreign Relations in the Early Twentieth Century* (Oxford University Press 2016). For some poignant critiques of the role of international law in the articulation of US imperialism in the aftermath of the Cold War see: Anne Orford, 'Muscular Humanitarianism: Reading the Narratives of the New Interventionism' (1999) 10 *European Journal of International Law* 679-711; China Miéville, 'Multilateralism as Terror: International Law, Haiti and Imperialism' (2008) 19 *Finnish Yearbook of International Law* 63-92; Vasuki Nesiah, 'From Berlin to Bonn to Baghdad: A Space for Infinite Justice' (2005) 17 *Harvard Human Rights Journal* 75–98.

[37] Maya Yang, '"I don't need international law": Trump says power constrained only by "my own morality"' (The Guardian, 9 January 2026) <www.theguardian.com/us-news/2026/jan/08/trump-power-international-law> accessed 28 February 2026.

[38] Ambassador Mike Waltz, 'Remarks at a UN Security Council Briefing on Venezuela' (United States Mission to the United Nations, 5 January 2026)< https://usun.usmission.gov/remarks-at-a-un-security-council-briefing-on-venezuela-2/> accessed 28 February 2026.

[39] ibid. Besides the quote above, Waltz's short speech contained three additional references to the Western hemisphere and the USA's implicitly unlimited authority to act within it. On the convert survival of regional orders after the adoption of the UN Charter see: Anne Orford, 'Regional Orders, Geopolitics, and the Future of International Law' (2021) 74 (1) *Current Legal Problems* 149–194.

[40] 'Colleagues, Maduro is not just an indicted drug trafficker; he was an illegitimate so-called president. He was not a head of state. For years, Maduro and his cronies have manipulated Venezuela's electoral system to maintain their illegitimate grip on power.' Waltz (n 38).

authoritarianism and human rights abuses. This was, arguably, the closest that the USA got to embracing the version of neo/liberal interventionism that predominated in the 1990s and early 2000s by positing that certain heads of state should enjoy more rights under international law compared to other states: 'If the United Nations and this organ confer legitimacy on an illegitimate narco-terrorist and the same treatment in the Charter of a democratically elected President or Head of State, what kind of Organization is this?'. [41]

In many ways, this rhetoric is reminiscent of scholarly and state rhetoric about 'rogue' and 'failed' states in the 1990s and early 2000s, when the idea of gradating international legal protections of sovereignty in accordance with substantive criteria about states' internal organisation gained prominence within international law.[42] These arguments were fiercely resisted by many postcolonial states and scholars, and have since largely lost their influence.[43] Notably, even though the USA always flirted with legal arguments that gradated sovereignty and its protections (including, notably, the prohibition on the use of force) depending on states' economic and political organisation, ultimately it tended to rely on conventional justifications, be it self-defence or prior authorisation by the UN Security Council, to justify its imperial adventures.[44] In contrast, Waltz's 2026 speech did not perform this double move of alluding to formal legal hierarchy while also falling back to conventional legal justifications of the use of force. The omission of the second part of an otherwise familiar pattern indicates a significant transformation of the USA's engagement with international law. Moreover, it is notable that Waltz's indirect engagement with the field does not concern the rights of states, but rather that of individual leaders. This emphasis has practical domestic legal implications, since US courts will need to decide whether Maduro enjoys personal immunity before proceeding with the substance of his case. This emphasis can also be seen as symptomatic of a broader shift toward personalism under the Trump administration: within this

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[41] ibid.

[42] John Yoo, 'Fixing Failed States' (2011) 99 *California Law Review* 95–150. For a contemporaneous history and critique see: *Gerry Simpson, Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (Cambridge University Press 2004).

[43] James Gathii, 'Failing Failed States: A Response to John Yoo' (2011) 2 California Law Review Circuit 40-51; Isobel Roele, 'We Have not Seen the Last of the Rogue State' (2012) 13 German Law Journal 560–578

[44] See n33. The USA nevertheless attempted to construct these arguments in ways that foreclosed their mobilisation by its geopolitical adversaries. See: Robert Knox, 'Race, Racialisation and Rivalry in the International Legal Order' in Alexander Anievas and others (eds), Race and Racism in International Relations: Confronting the Global Colour Line (Routledge 2014).

emerging framework, international relations are conceptualised as interactions between charismatic leaders, and international law—if at all relevant—concerns the distribution of rights and privileges to (some of) these leaders. States, of course, remain materially relevant as the USA's organised show of force in Venezuela evidences. Indeed, what makes these leaders relevant in the first place is their positioning at the helm of complex and lethal state apparatuses. I will return to the significance of the ongoing material importance of states in the next section. For now, it is worth observing that this significance notwithstanding, the Trump administration's interaction with international ordering and institutions at least partially departs from the modern conceptualisation of international law that centres states as abstract legal persons that exist independently of the identity of their leaders.[45]

This shift toward personalism and charismatic authority and away from legalism as the bedrock of international order is also evident in my third example for this paper, UN Security Council (UNSC) Resolution 2803 and the so-called called Board of Peace that it establishes. Adopted in late 2025, Resolution 2803 concerns the future of Gaza in light of Israel's escalating violence across occupied Palestine.[46] The resolution endorsed the US-led *Comprehensive Plan*, which envisaged the establishment of a civilian (Board of Peace) and a military body (International Stabilization Force) that would be responsible for development and reconstruction and peace-keeping respectively until the Palestinian Authority completes an indeterminate list of reforms and is allowed to assume control over the Strip.[47]

In some ways, Resolution 2803 is not unprecedented: throughout the 1990s and the early 2000s the UNSC adopted a series of resolutions that established or endorsed international forms of authority as the interim governments of post-conflict states, be it in East Timor, Kosovo or Iraq.[48] When UN forces led these missions, they insisted that the laws of occupation did not apply to them as a matter of law and that, by implication, they were not bound by the 'conservationist principle' that only allows the amendment of the laws of occupied territories

[45] For a canonical formalist account see: James R Crawford, *The Creation of States in International Law* (2nd edn, Oxford University Press 2007). For a critical engagement see: Rose Parfitt, *The Process of International Legal Reproduction: Inequality, Historiography, Resistance* (Cambridge University Press 2019).

[46] UN Security Council Resolution 2803(2025) S/RES/2803 (2025) (17 November 2025).

[47] ibid. para 2.

[48] See: UN Security Council Resolution 1272(1999) S/RES/1272 (1999) (25 October 1999); UN Security Council Resolution 1244(1999) S/RES/1244(1999) (10 June 1999); UN Security Council Resolution 1483(2003) S/RES/1483 (2003) (22 May 2003).

by occupying powers in limited circumstances.[49] Legally empowered by this argument and politically legitimised by a political atmosphere that pathologised local political actors and non-neoliberal economies (especially socialism-real or proclaimed), these administrations embarked upon comprehensive programs of neoliberal reforms that led to the haphazard privatisation of state-owned enterprises, the sudden and drastic lowering or abolition of tariffs and other trade barriers, and the adoption of extremely low taxes, especially for foreign investors.[50]

A closer analysis of these past resolutions could help us grasp what is novel and what is continuous regarding Resolution 2803. In the case of Resolution 1483(2003), the Security Council granted the occupying powers of Iraq seemingly more limited powers by calling the Coalition Provisional Authority to 'comply fully with their obligations under international law including in particular the Geneva Conventions of 1949 and the Hague Regulations of 1907'. At the same time, the UNSC involved in the reconstruction process institutions such as the IMF and the World Bank that by 2003 had clearly established their 'credentials' as promoters of comprehensive economic reforms at odds with the conservationist principle.[51] In addition, Resolution 1483 made multiple references to the people of Iraq both as victims of war and oppression and as future rulers of themselves and the country.[52] In contrast, Resolution 2803 dictates that the International Stabilization Force will carry out its mandate in conformity with international law, including international humanitarian law, but makes no similar reference to international legal constraints when it comes to the Board of Peace. The only reference to international law regarding the Board is a brief mention to 'relevant international legal principles' (note: not rules) without further elaboration.[53] The Charter

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[49] For a contemporaneous discussion: Christopher Greenwood, 'International Humanitarian Law and United Nations Military Operations' (1998) 1 Yearbook of International Humanitarian Law 3–34.

[50] The literature on the neoliberal reforms undertaken by the Coalition Provisional Authority in Iraq and international territorial administrations in Bosnia, Kosovo and East Timor is voluminous: Maj Grasten and Luca J Uberti, 'The politics of law in a post-conflict UN protectorate: privatisation and property rights in Kosovo (1999–2008)' (2017) 20 Journal of International Relations and Development 162–189; Stef Jansen, 'The Privatisation of Home and Hope: Return, Reforms and the Foreign Intervention in Bosnia-Herzegovina' (2006) 30 Dialectical Anthropology 177–199; Ralph Wilde, International Territorial Administration: How Trusteeship and the Civilizing Mission Never Went Away (Oxford University Press 2008); Ntina Tzouvala, 'Food for the Global Market: The Neoliberal Reconstruction of Agriculture in Occupied Iraq (2003–2004) and the role of international law' (2016) 17 Global Jurist 1.

[51] UN Security Council Resolution 1483 (2003) S/RES/1483 (2003) (22 May 2003), para 12.

[52] 'Calls upon the Authority … to promote the welfare of the Iraqi people through the effective administration of the territory, including in particular working towards the restoration of conditions of security and stability and the creation of conditions in which the Iraqi people can freely determine their own political future.' ibid., para 4.

[53] UN Security Council Resolution 2803 (2025), para 2.

of the Board contains a long reference to international law in its first article that sets out its purpose and functions, but the vast majority of its provisions concerns the architecture and decision-making of the Board that, as I will show below, starkly depart from established practices of international law and institutions. In addition, as Burghis-Kasthala has noted, references to Palestinian statehood in Resolution 2803 remain tentative, conditional and noncommittal—a constantly receding horizon.[54] The resolution's only reference to self-determination frames it as a 'reward' to be granted rather than as a right that Palestinians enjoy as a matter of law: 'After the PA reform program is faithfully carried out and Gaza redevelopment has advanced, the conditions may finally be in place for a credible pathway to Palestinian self-determination and statehood.'[55] It is notable (and confounding) that the Resolution was supported by numerous states that recognise the State of Palestine, including the UK and France.

The most distinctive feature of Resolution 2803 though is that it departs from current international legal practice insofar as it reflects and legitimises the personalism that distinguishes the Trump presidency. This includes both flattery, a common aesthetic of personalist regimes of rule ('welcoming the historic Trump Declaration for Enduring Peace and Prosperity of 13 October 2025') and the concrete personalisation of authority by naming Trump (as opposed to a US representative) as the head of the Board of Peace. None of the previous UNSC resolutions that established or legitimised international territorial administrations made explicit reference to specific individuals nor did they vest a specific person with the expansive authority that Trump appears to enjoy under Res. 2803. For example, despite his expansive powers as the chief civilian administrator of the Coalition Provisional Authority of Iraq, Paul Bremer was not mentioned in Resolution 1483: his authority flowed from his position within the institutional structure of the principal occupying power, the USA, and not from his personal identity. In contrast, President Trump managed to mobilise the formal authority of the UNSC, which is a thoroughly modern form of authority that relies on specified procedures and positive international law (the UN Charter), to bolster his own

[54] Michelle Burgis-Kasthala, 'UNSC Resolution 2803' (*EJIL:Talk*! 28 November 2025) <www.ejiltalk.org/unsc-resolution-2803/> accessed 28 February 2026.

[55] UN Security Council Resolution 2803 (2025), para 2.

personalist power that is by definition in conflict with formal authority.[56] To the extent, then, that Resolution 2803 mobilises the authority of international law to legitimise not only economic reconstruction or international territorial administration but also personalist power, it constitutes a significant departure from earlier analogous resolutions and potentially signifies an effort by the current administration to transform not only the contours of the US constitutional order but also of international law. The Charter of the Board makes this departure from formal, impersonal authority easier to comprehend. Following the authorisation of Resolution 2803, it names Donald J. Trump as the Board's chairman and vests in his person far-reaching authority: the chairman has exclusive authority to invite states to participate in the Board and international organisations to participate in its proceedings; he can terminate a state's membership subject to the veto of two-thirds of the Board's members (Article 2.3); he has effective veto rights over the Board meetings' agenda and all its decisions (Article 3.1 (c) and Article 3.1 (e); has unlimited authority to designate his successor (Article 3.3); and has final authority regarding the meaning, interpretation, and application of the Board's charter (Article 7).[57] Importantly, the Board's Charter articulates an intention to create a blueprint for 'peace-building' beyond Gaza.[58] Given that the UN Charter vests the UNSC with primary responsibility for the maintenance of peace and security and and taking into account its decades-long record of peacekeeping and peace-building, the Board of Peace has positioned itself not simply as an exceptional body to handle the supposedly exceptional case of Gaza/Palestine, but as a more comprehensive rival to the authority of the UNSC.

As with the other two examples above, what is notable here is the Board's departure from established forms of international governance through the open and combined embrace of hierarchy and personalism. Of course, neo/liberal international law is no stranger to hierarchical structuring of international bodies: the existence of the Permanent 5

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[56] This reliance on formal authority to solidify personalism is a typical tactic of contemporary personalist regimes: Xavier Márquez, 'The mechanisms of personalization' (2024) Democratization 1–21. For a similar critique of the Board's personalism see: Chimène Keitner, 'Countries should reject Trump's Board of Peace' *The Opinion Pages* (31 January 2026)<https://theopinionpages.com/2026/01/countries-should-reject-trumps-board-of-peace/> accessed 28 February 2026.

[57] See Jacob Magid, 'Full text: Charter of Trump's Board of Peace' *Times of Israel* (18 January 2026) <www.timesofisrael.com/full-text-charter-of-trumps-board-of-peace/> accessed 28 February 2026.

[58] 'The Board of Peace shall undertake such peace-building functions in accordance with international law and as may be approved in accordance with this Charter, including the development and dissemination of best practices capable of being applied by all nations and communities seeking peace.' ibid.

members of the UNSC vested with veto rights and the unequal distribution of voting rights amongst the membership of the International Monetary Fund and the World Bank prove as much. What is novel, however, is that Trump is vested with such extraordinary powers personally and not in his capacity as representative of the USA. Indeed, Article 3.2 (a) of the Board's Charter makes it clear that he will serve on the Board in a dual capacity being simultaneously its chairman and the representative of the USA.[59]

All in all, the combined examples of international trade governance, the use of force against Venezuela, and Resolution 2803 indicate a significant transformation of the role of international law within US foreign policy and, more broadly, for international relations. The present conjuncture differs from past US efforts to justify its imperial violence and/or material interests through creative uses of international law. Rather, we can observe a marked decline in the USA's willingness to justify its actions using the vocabulary and grammar of international law. This sidelining of international law as a practice of justification is not total: rather, as Resolution 2803 evidences, the USA remains engaged with some international rules and institutions but only insofar as it can mobilise them to authorise its own, parallel structures. This utilisation of the formal authority of the UNSC to establish and legitimise Trump's personalist form of authority constitutes a genuinely novel development that sets Resolution 2803 and the Board of Peace apart from previous examples of international territorial administration authorised by the UNSC. In the context of this emerging paradigm of managing international dis/order, what matters is the charismatic authority and inter-personal interactions between leaders, with one leader being placed explicitly at the top of an unapologetically hierarchical system. This shift does not necessarily entail the disappearance of formal and abstract rules, of proceduralism and bureaucratically-mediated interactions between states. For now, it entails the co-existence of two distinct ways of creating global order/managing global disorder that differ in form as well as in substance: one is formal and legalist and the other is ad hoc and personalist. Given the USA's sheer material power and its prior importance for the rise of international legalism, this coexistence of two modes of governance is both a political problem and an intellectual riddle. The next section of this paper will outline an explanation for this epochal shift away from legalism

[59] 'Donald J. Trump shall serve as inaugural Chairman of the Board of Peace, and he shall separately serve as inaugural representative of the United States of America.' ibid.

III. POLITICAL ECONOMY, EMPIRE AND THE CRISIS OF NEO/LIBERAL LEGALISM

As I have argued elsewhere, the analytical and political purchase of standard critical legal arguments, including the presumption that international law is centrally complicit with imperial violence, inequality and environmental collapse, has diminished in light of this marked decline of neo/liberal legalism as a method of organising international affairs and creating consensus around such organisation.[60] This declining purchase of existing arguments and sensibilities raises the question of what should be the response of international legal scholars to the present juncture. The first, and obvious, answer is that our duties are both descriptive and explanatory. We ought to track the uneven disintegration of the international legal order and construct rigorous explanations for this shift. This is particularly urgent because much liberal and doctrinal scholarship lacks the analytical tools for so doing. Notably, liberal scholars approach this move away from rules-based governance and toward personalism mainly through analogies, notably ideas of medieval rule and neo-royalism. Two recent publications by Goddard & Newman and Fox &Hollis exemplify this tendency. Both pairs of scholars agree that the second Trump administration constitutes a departure from the immediately preceding paradigm of international order but their diagnosis relies almost entirely on metaphor and historical analogy: the Trumpian practice of 'deals' is analogised with the personalised nature of inter-national law and relations during the medieval times, and Trump is analogised to a royal figure surrounded by 'hyper-elites' analogous to medieval aristocracy.[61] There are various problems with these analogies: they forego all effort to think concretely about Trumpism as a phenomenon that arose not out of a complicated system of feudal land tenure but out of the contradictions and aporias of modern capitalism; they misunderstand both the ideological and material sources of Trumpist power, including the right-wing pivot of Silicon Valley, reactions against distinctly modern egalitarian movements, and dislocations produced by neoliberalism; they invisibilise the fact that in many ways (see my

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[60] Ntina Tzouvala, 'Critical International Law Amongst the Ruins' in Emilios Christodoulidis and others (eds), *Research Handbook on Critical Legal Theory* (2nd edn, Edward Elgar, forthcoming).

[61] Gregory H Fox and Duncan B Hollis, 'Is Trump Taking Treaties Back to the Middle Ages?' *Foreign Policy* (23 September 2025) < https://foreignpolicy.com/2025/09/23/trump-congress-power-treaties-trade-deals-peace-agreement-king/> accessed 28 February 2026; Stacie E Goddard and Abraham Newman, 'Further Back to the Future: Neo-Royalism, the Trump Administration, and the Emerging International System' (2025) 79 International Organization 12–25.

discussion of Res. 2803 above) contemporary personalist rule relies on modern/ist sources of authority to establish and legitimise itself; and, by so doing, they bracket explanation and, by implication, the development of intellectual tools that may assist a political strategy against modern authoritarianism.

In this context, critical (legal) scholarship is better placed to offer persuasive explanations for the crisis of the rules-based model of global governance. To do so, though, critical legal scholars will need abandon an earlier posture of post-structuralist suspicion toward explanation,[62] and re-embrace the emancipatory potential of 'why questions'. At a time when power is becoming unanchored from specialised knowledge, algorithmic modes of governance create 'black box societies' where 'why' questions become not only unanswerable but non-sensical,[63] and ignorance and uncertainty are mobilised to attack the administrative state and environmental, social and other regulation,[64] affirming the fundamental possibility and desirability of constructing causal claims about our social world is a reaffirmation of the basic impulse that our shared lives are knowable, evaluable and, therefore, changeable. Articulating causal questions about both the content of international law and about the rise and fall of its symbolic and material power is necessary if we want to understand its interaction with other social phenomena (politics, economics, ideas etc) and in order to make informed decisions about what tactical engagements with its rules and procedures are feasible and effective.

The construction of an exhaustive account of the causes of the ongoing collapse of neo/liberal legalism will be an arduous and collective process that cannot be reduced to the confines of this brief paper. However, I want to propose three explanatory matrixes, one ideational and internal to the discipline of international law and two material and external to our field.

The ideational, disciplinary matrix concerns the complex but ever-expanding embrace of American supremacy and racial and geo/political hierarchy by professional international lawyer and world leaders alike. As many TWAIL and other critical international law scholars have

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[62] For some examples see: Anne Orford, 'In Praise of Description' (2012) 25 *Leiden Journal of International Law* 609–625; Sundhya Pahuja, 'Practical Methodology: Writing about How we do Research' in Rossana Deplano and Nicholas Tsagourias (eds), *Research Methods in International Law: A Handbook* (Edward Elgar 2021).

[63] Frank Pasquale, *The Black Box Society: The Secret Algorithms That Control Money and Information* (Harvard University Press 2015); Dimitri van de Meerssche, 'Virtual Borders: International Law and the Elusive Inequalities of Algorithmic Association' (2022) 33(1) *European Journal of International Law* 171–204.

[64] Linsey McGoey, *The Unknowers: How Strategic Ignorance Rules the World* (Zed Books 2019).

highlighted, both the optimistic era of neo/liberal internationalism and the post-9/11 'war on terror' were accompanied by and justified through legal and political arguments that assumed a hierarchical understanding of the world, one indisputably predominated by the US and, secondarily, its allies.[65] Despite its ongoing commitment to conventional legal arguments that relied on a surface acceptance of legal equality, the US repeatedly advanced legal arguments that relied on a tiered understanding of humanity: 'savages' and 'rogues'—invariably located in the Global South—were the indispensable antagonists of a supposedly universal political, economic and legal order.[66] As the US attempted to justify the expansion of its policing powers across the globe, international lawyers had to articulate increasingly bold arguments that embraced ever-increasing levels of open and unapologetic hierarchy. As I have argued elsewhere, the 'unwilling or unable' doctrine in the realm of international law on the use of force came dangerously close to embracing an openly hierarchical visions of the international legal order.[67] Supporters of the 'unwilling or unable' doctrine include US, UK and Australian governments and academic lawyers, and they propose that it is permissible for a state to use defensive force in the territory of another if the latter is 'unwilling or unable' to put an end to armed attacks (present or future, real or probable) by non-state actors located in its territory.[68] As Gurmendi Dunkelberg has argued, the function of this argument has been to mark certain parts of the world as always 'bombable'[69]: both in legal literature and in legal practice, unwillingness and inability are not equally spread across states; only certain states can even be marked as 'unwilling or unable' based on whether they are US allies, whether their preferred counter-terrorism policies are agreeable to the US, or

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[65] For some powerful critiques see: Antony Anghie, 'On making war on the terrorist: imperialism as self-defence' in Imperialism, *Sovereignty, and the Making of International Law* (Cambridge University Press 2005); Antony Anghie, 'The War on Terror and Iraq in Historical Perspective' (2005) 43 Osgoode Hall Law Journal 45–66.

[66] Makau wa Mutua, 'Savages, Victims, and Saviors: The Metaphor of Human Rights' (2001) 42(1) Harvard International Law Journal 201–245; Orford (n 36); Simpson (n 42).

[67] Ntina Tzouvala, 'TWAIL and the "Unwilling or Unable" Doctrine: Continuities and Ruptures' (2015) 109 AJIL Unbound 266–270; Ntina Tzouvala, 'The "Unwilling or Unable" Doctrine and the Political Economy of the War on Terror' (2023) 14(1) *Humanity: An International Journal of Human Rights Humanitarianism and Development* 19–38.

[68] For the most influential contemporary defences of the doctrine see: Ashley S Deeks, 'Unwilling or Unable: Toward a Normative Framework for Extraterritorial Self-Defense' (2012) 52 *Virginia Journal of International Law* 483–550; Daniel Bethlehem, 'Self-Defense Against an Imminent or Actual Armed Attack By Nonstate Actors' (2012) 106 *American Journal of International Law* 770–777.

[69] Alonso Gurmendi Dunkelberg, '"Bombable geographies" and the International Monroe: a Global South History of the Unwilling or Unable Standard' (2024) 11(1/2) *Journal on the Use of Force and International Law* 240–274.

depending on their political system and social organisation.[70] Although the 'unwilling or unable' doctrine has generally been positioned by its proponents as part of the nominally egalitarian right to self-defence, its theoretical and practical elaboration have been in direct tension with this egalitarianism. My argument here is not there is no meaningful difference between international lawyers who advocated for the doctrine and Trump's open embrace of global hierarchy or his administration's open denunciation of the process of decolonisation.[71] As I have argued above, the discontinuity between the two is real and significant. Rather, I suggest that the exigencies of US imperial power put constant pressure on the US's rhetorical embrace of legalism, universalism, and egalitarianism in ways that not only created a gap between rhetoric and practice,[72] but it ultimately transformed rhetoric itself along more openly hierarchical lines that became increasingly hard to reconcile with the nominal egalitarianism of the UN Charter and, especially, the international legal order that emerged in the aftermath of decolonisation.[73] Although it is impossible to attribute the rise of Trumpism primarily to such 'creative' uses of international law by US lawyers, it is important to acknowledge that this particular brand of neo/liberal legalism contributed to its own demise through its constant willingness to expand the limits of what is sayable and thinkable in international law and international relations.

In addition to this discursive shift, two material shifts can also help explain the crisis of neo/liberal legalism. First, in her recent work, Melinda Cooper has focused on factions of US capital and identified a clear divide between US capitalists: public corporations largely continue to support the Democratic Party while privately-held enterprises constitute the backbone of the political coalition that propelled Trump to power.[74] Privately-held corporations represent a personalist model of power in

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[70] Tzouvala 'The "Unwilling or Unable" (n 67).

[71] See: Jonathan Allen, 'Pro-Colonialism Talking Points Get a Boost from Top Trump Aide Stephen Miller' NBC News (8 January 2026) <www.nbcnews.com/politics/trump-administration/colonialism-talking-points-top-trump-aide-stephen-miller-rcna252437> accessed 28 February 2026.

[72] This gap has been central to accounts of hypocrisy in international law and international relations: Robert Knox, 'Imperialism, Hypocrisy and the Politics of International Law' (2023) 3 TWAIL Review 25–67; George Lawsonand Ayşe Zarakol, 'Recognizing injustice: the "hypocrisy charge" and the future of the liberal international order' (2023) 99(1) *International Affairs* 201–217; Sophie Duroy and Luca Trenta, '"Hypocrisy Implies a Moral Code": The Abduction of Nicolás Maduro and the Systemic Costs of Non-Justification' *Verfassungblog* (27 January 2026) <https://verfassungsblog.de/venezuela-us-international-law/> accessed 28 February 2026.

[73] Umut Özsu, *Completing Humanity: The International Law of Decolonisation, 1960-1982* (Cambridge University Press 2023).

[74] Melinda Cooper, 'Patrimonial Capitalism: Agency Theory and the Return of Dynastic Wealth'<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5103131> accessed 28 February 2026.

the realm of economic activity: they are centred around the power and often charismatic authority of a handful of founders (almost entirely men), they operate unencumbered from 'shareholder activism', notably pushes toward climate commitments or diversity, equality and inclusion (DEI) demands, and they rely on familial bonds for the maintenance and perpetuation of their market power thereby embracing a socially conservative ideology that reaffirms 'traditional' family values, gender roles and even an open embrace of eugenics and biological explanations of wealth and power. The pivot of Silicon Valley toward the Trump coalition in the lead-up to the 2024 US Presidential election does not undermine Cooper's argument, since, as Cooper shows, many US tech corporations might be publicly traded, by they adopted early on legal arrangements that ensured unrestrained founder power before their first initial public offerings.[75] The rise of the privately-held corporation constituted, according to Cooper, a reaction against left-liberal efforts to mobilise 'stakeholder democracy' in the service of progressive social goals in the 1970s and 1980s.[76] A range of legal innovations, including dual-class share structures, minority veto rights, elaborate rules on proxy voting, public stock devoid of all voting rights etc, were mobilised to diminish the power of shareholders and expand that of corporate management.[77] The structure of many systemically important US corporations was altered significantly as founder-CEOs assumed almost unlimited powers over these corporations. As Cooper shows, these corporations have been the backbone of Trumpism and, more broadly, of conservative or even reactionary ideology insofar as they rely on a cult of personality, ideologies of supposed genetic superiority and an affirmation of 'traditional' familial structures and bonds to both transmit and justify wealth accumulation.[78]

This rise of the autocratic firm has not remained contained in the realm of corporate governance. Far-right intellectuals, notably those with ties to Silicon Valley, have articulated scathing criticisms of democracy and bureaucratic government alike and a desire to structure political life along the lines of the autocratic corporation. Curtin Yarvin, a

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[75] ibid 14.

[76] ibid 3–6.

[77] Ann Lipton, 'Corporate Governance Authoritarianism' *Business Law Prof Blog* (16 January 2026) <www.businesslawprofessors.com/2026/01/corporate-governance-authoritarianism/> accessed 28 February 2026.

[78] Cooper (n 74) 14–16; Melinda Cooper, 'Family Capitalism and the Small Business Insurrection *Dissent Magazine* (Winter 2022) <https://dissentmagazine.org/article/family-capitalism-and-the-small-business-insurrection/> accessed 28 February 2026.

software engineer, self-described reactionary and central figure of the modern US Right, has offered one of the more detailed outlines of this vision.[79] His understanding of what a corporation is reflects his own immersion in the corporate world of Silicon Valley, where founders and CEOs indeed exercise almost unlimited powers and shareholders benefit from these decisions but are not entitled to influence them substantively: 'The shareholders select a chief executive, to whom all employees report, and whose decisions are final. In no cases do they make management decisions directly.'[80] This is not a neutral description of transhistorical corporate law and structures, but rather the naturalisation of a historically specific development: the ascendance of what Ann Lipton has described as 'corporate governance authoritarianism' through the removal of internal and external checks on corporate executives, especially in systemically crucial industries like (private) finance and technology.[81] Crucially, Yarvin considers this model of authoritarian corporate governance to be the ideal blueprint for political life writ-large: a multitude of sovereign corporations where citizens-shareholders can enjoy prosperous and, especially, secure lifestyles under the unlimited authority of a CEO-monarch. Indeed, Yarvin envisages that it will be present-day CEOs who will assume the positions of monarchs in these future experiments in corporate-sovereign management: 'A joint-stock realm simply cannot have anything comparable to a weak monarch of the classical era. Realms will certainly recruit their executives from the same talent pool large companies now draw from. How many Fortune 500 CEOs today are regularly bullied and led by coalitions of their nominal subordinates, as (for just one example) the French monarchy so often was?.'[82]

Once again, my assertion is not that there is a straight line connecting the rise of the privately-held corporation, the popularity neo-monarchism amongst the new US Right, and the Board of Peace. However, the parallels between the three are stark: although nominally an international organisation,[83] the structure of the Board of Peace resembles more closely that of a founder-centric corporation given the extraordinary, essentially unlimited powers concentrated at the hands of one person,

[79] Yarvin has produced this work under the pen name Mencius Goldbug: Mencius Moldbug, 'Patchwork: A Political System for the 21st Century' *Unqualified Reservations* (13 November 2008) <www.unqualified-reservations.org/2008/11/patchwork-positive-vision-part-1/> 28 February 2026.

[80] ibid.

[81] See Lipton (n 77).

[82] Moldbug (n 79).

[83] See 'Charter of Trump's Board of Peace' (n 57), Article 6(a).

Donald Trump. This structure departs starkly from the structure of other international organisations, such as the United Nations, where executive organs (the UN Security Council) co-exist with deliberative, democratic bodies (the UN General Assembly) and a complex bureaucracy (the Secretariat). Rather, the Board of Peace attempts to put in motion Yarvin's dream of governing without even the pretence of egalitarianism, democratic control or bureaucratic complexity.[84] All in all, the roots of modern personalism in domestic and international law cannot be attributed to some feudal renaissance, despite the fact that its proponents use the language of divine right and medieval kings and to justify autocratic corporate rule.[85] Rather, the material and ideological matrixes of personalist rule lie with the distinctly modern, capitalist structure of the privately-held or public but nevertheless CEO-centric corporation and its centrality for contemporary US capitalism.[86]

Secondly, the crisis of neo/liberal legalism is directly linked to an understanding of the world economy as a zero-sum game mentality that has become prominent within the current US administration.[87] Much of existing literature, especially that on 'geoeconomics', attributes this marked shift to the rise of national security concerns within the US administration and to their (supposedly) novel coexistence with economic considerations at the heart of global economic governance.[88] The problem with this line of thought is that it restates the question rather than answering it: it is not obvious why national security concerns rose so prominently at this particular juncture; why national security came to be conceptualised in such stark zero-sum terms; and finally, why and how there is now a bipartisan US consensus around the fact that the ongoing existence of the Appellate Body is against its economic and, more broadly,

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[84] Yarvin has supported the retirement of the entirety of the US public service as a way of 'rebooting' the US government: Mencius Moldbug, 'How to Reboot the US Government' *You Tube* (21 October 2012) <www.youtube.com/watch?v=ZluMysK2B1E> 28 February 2026.

[85] 'Note, however, that we are not considering anything like the watered-down "constitutional" (i.e., again, ceremonial) monarchies of the democratic period. If the joint-stock realm is like a monarchy, it is like a true, "absolute" or (most pejoratively) "divine-right monarchy."' Moldbug (n 79).

[86] Here, I assume that these corporations and their business model are not 'neo-feudalist' as some critics have posited. For a clear case against the moniker of 'techno-feudalism' see: Evgeny Morozov, 'Critique of Techno-Feudal Reason' (2022) 133/134 *New Left Review* 89–126.

[87] Denouncing the 'Liberation Day tariffs', the Chinese government described them as a typical example of such zero-sum thinking: 'This is a typical act of unilateralism, protectionism and economic bullying. Under the guise of "reciprocity" and "fairness," the United States is playing a zero-sum game to pursue in essence "America First" and "American exceptionalism."' 'Chinese Government's Position on Opposing U.S. Abuse of Tariffs' (5 April 2025) <https://na.china-embassy.gov.cn/eng/sgxw/202504/t20250411_11593058.htm> accessed 28 February 2026.

[88] See: Anthea Roberts and others, 'Toward a Geoeconomic Order in International Trade and Investment' (2019) 22 *Journal of International Economic Law* 655676.

national interests. My intuition is that the rise of this zero-sum economic thinking in this particular moment needs to be understood in the broader context of the global slowdown of economic growth. Known as 'secular stagnation' this trend plagues not only advanced capitalist economies (the US, the EU, Japan) but also emerging economies, notably China. Even though Chinese economic growth remains robust compared with the rates of Western capitalist economies, it has experienced an undeniable slowdown since 2010.[89] Political economists have offered a broad range of explanations of this long-term trend ranging from increased income inequality that has concentrated money in the hands of people with a lower propensity to spend,[90] to the role of IP rights that have created a cadre of elite firms that rely less on mass employment and continuous investment and more on collecting rents from previous innovation,[91] to the suppression of the rate of profit due to the entry of new capitalist powers in the global market (initially, Korea, Taiwan and Japan and more recently China),[92] the rise of the service economy that renders productivity gains extremely difficult,[93] or the ascendence of a corporate law and culture that prioritised dividends stock buybacks, and executive compensation over continuous investment.[94]

These explanations have markedly different domestic political and legal implications, which partly explain the fervour of the relevant debates. However, one need not pick one of these explanations to acknowledge that an explicit (in the case of the Western far-right) or implicit (in the case of many Western centre-left and centre-right parties) acknowledgement of the reality of secular stagnation, is incompatible with international (economic) law as it emerged after 1945 and (in the case of international economic law) after 1990. Although deeply biased in favour of the capitalist core, international law has assumed that continuous and robust economic growth is not only desirable but also

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[89] See: Amy Hawkins, 'Chinese Economy Slows Amid Trump Trade War and Weaker Consumer Spending' The Guardian (15 September 2025) <www.theguardian.com/business/2025/sep/15/chinese-economy-weakens-as-consumer-spending-and-factory-output-slows> accessed 28 February 2026.

[90] Łukasz Rachel, Lawrence H Summers, 'On Secular Stagnation in the Industrialized World' (2019) National Bureau of Economic Research Working Paper 26198 <http://www.nber.org/papers/w26198> accessed 28 February 2026.

[91] Herman Mark Schwartz, 'Global secular stagnation and the rise of intellectual property monopoly' (2022) 22 Review of International Political Economy 1448–1476.

[92] Robert Brenner, *The Economics of Global Turbulence: The Advanced Capitalist Economies from Long Boom to Long Downturn, 1945-2005* (Verso 2006); Dylan Riley, Robert Brenner, 'The Long Downturn and its Political Results: A Reply to Critics' (2025) 155 New Left Review 25–70.

[93] Aaron Benanav, 'A Dissipating Glut?' (2023) 140/141 New Left Review 53–81.

[94] Tim Barker, 'Some Questions about Political Capitalism" (2023) 140/141 New Left Review 35-51.

possible and, therefore, gains in the global economic can be distributed amongst multiple actors (even if their distribution is fundamentally lopsided in favour of particular factions of capital and advanced capitalist states). Otherwise put, international law and international economic law imagine the global political economy as a positive-sum game, even as they ensure that benefits accrue toward the class and geographic top. However, this imaginary is hard to sustain in light of sluggish growth rates: the Western far-right has been quick to articulate a response to this malaise both ideologically and practically: ideologically, the far-right has embraced across the board a zero-sum rhetoric that portrays gains by others (be it immigrants, women, racial minorities or Chinese capital and the Chinese middle classes) as being in some way 'taken away' from its rightful owners, usually white men and their allies. This is a reactionary but rational response to the real material constraints posed by secular stagnation: all forms of international (and domestic) cooperation are rendered ideologically suspect and arguments about positive-sum mentality ring hollow in light of persistent evidence to the contrary.

In terms of the practicalities of economic governance, slow economic growth makes direct state intervention for the benefit of favoured political allies a preferred method for ensuring continued profitability.[95] Not all such methods of state interventionism are incompatible with international (economic) law, but many are: international law is largely agnostic about bailouts, but only permits the reintroduction of tariffs in exceptional circumstances and, usually, as a transitional measure. As a result, many modalities of economic government preferred both by the Western far-right and, increasingly, by other parts of the political spectrum are both practically incompatible, say, with the GATT disciplines and, perhaps more fundamentally, they enact an entirely different paradigm of economic thinking and governance that implicitly or explicitly acknowledges secular stagnation as an inescapable horizon and opts for distributing the diminishing returns of economic activity to political insiders, be it factions of national capital, 'racial' kin or even direct clients.[96] In this political and economic context, economic governance through abstract rules applicable to an indeterminate series of scenarios becomes increasingly untenable, as ad hoc intervention, the ability to act quickly and decisively in times of (real or perceived) crisis, open discrimination and favouritism become increasingly prominent in states' economic management. It remains to be seen whether this

[95] Riley and Brenner, 'The Long Downturn' (n 92).

[96] ibid.

new model of economic intervention will acquire international legal or quasi-legal dimensions, as states might attempt to co-ordinate or put limits to this emerging model of economic governance. For the time being, it is clear that neo/liberal legalism relied on both the reality of and the ongoing faith in economic growth and that growthless capitalism produces forms of state-capital co-ordination that are incompatible with the legalism of the previous decades.

All in all, the crisis of neo/liberal legalism is not best understood as a form of neo-royalism or a return to the Middle Ages. Rather, it needs to be conceptualised as the outcome of discursive and material transformations taking place within capitalist states due to distinctly modern trends, including the contradictions of US imperialism, the rise of corporate authoritarianism and the slowdown of global economic growth. These phenomena created discursive and material conditions inimical to legalism and multilateralism and conductive to personalist rule. These epochal shifts raise fundamental questions about the future orientation and continuing relevance of international legal scholarship, which will be the focus of the final section of this paper.

IV. WHERE TO FROM HERE FOR INTERNATIONAL LEGAL THOUGHT

If the arguments presented so far are correct even in part, then it becomes evident that international law scholarship cannot go on with business as usual.[97] Both formalist and (much of) theoretical work over the past few decades have taken the real-life importance of the field for granted,[98] and proceeded to clarify the meaning of international legal rules, theorise about nature or source of authority, or critique it political, economic and cultural functions taking this relevance for granted. This is now an untenable starting point. In what follows, I sketch four potential pathways that will allow our work to remain rigorous and relevant: documenting and explaining the crisis; constructing a pragmatic universalism; engaging in selective, politically-targeted formalist work; and exiting the field.

Many will find the explanations of the current crisis offered above

[97] For an early argument to that effect see: Anne Orford, 'The Crisis of Liberal Internationalism and the Future of International Law' (2020) 38 Australian Year Book of International Law 3–38. See also Tzouvala (n 60); Ntina Tzouvala, 'International Law as a Discipline in Crisis' (2025) 79 *Australian Journal of International Affairs* 71–78.

[98] The honourable exception to this rule being work grounded on the social sciences: Jonathan Bonnitcha, Zoe Phillips Williams, 'The Impact of Investment Treaties on Domestic Governance in Developing Countries' (2024) 46 Law & Policy 140-169; Mavluda Sattorova, The *Impact of Investment Treaty Law on Host States: Enabling Good Governance?* (Hart Publishing 2018); Taylor St John and others, 'Bargaining in the Shadow of Awards' (2024) 35 *European Journal of International Law* 603-622.

unpersuasive or incomplete. They are certainly the latter. For the past four decades, the expansion of international law's thematic and geographical reach and ideological prowess seemed unshakeable both to its advocates and its critics.[99] This conjuncture made it hard to envisage that this seemingly unstoppable rise of international law could be stopped, let alone reversed. Consequently, an indispensable task of our times is to soberly describe, evaluate and explain which aspects of the international legal order have lost their power and authority, which remain relevant, and what material and ideological explain these differences. This mapping exercise cannot be carried out with the goal of restoration in mind: there are extensive areas of international law that have been actively detrimental to humans and the planet;[100] that have—as I argued above—actively contributed to the rise of the far-right; or that are simply not possible to restore due to the emergence of new constellations of power. Rather, the goal of this exercise ought to be descriptive and explanatory. In the process, we will also be able to construct better histories of international law's recent and distant past. The current crisis of neo/liberal legalism allows us to identify with greater precision the factors the led to the rise and fall of different fields, the convergences necessary for the legalisation of global economic governance and the political-economic-disciplinary coalitions with enough material and discursive power to sustain the rise and precipitate the fall of neo/liberal legalism.

The fact that we should not assume that every aspect of international law is a positive social force or, more pragmatically, that it is possible to preserve or resurrect does not mean that we should assume the opposite either. Aspects of the international legal order reflect, in however incoherent ways, the demands and victories of subaltern actors, be it formerly colonised peoples, the working class, peasants, Indigenous peoples, women etc. For these rules, institutions and fields to survive it is important that international legal scholars construct a renewed, pragmatic universalism in support of (parts of) international law. Drawing from post-structuralist and post-colonial thought, many critical legal scholars have shown suspicion, if not outright scorn, toward universalism. This was prudent and justified at a time when universalist narratives, such as 'the end of 'history', legitimised imperial strategies within and beyond the field. TWAIL, feminist and other scholars rightly observed that the

[99] Ironically, it has perhaps been the critics who have held on most steadfastly to the idea of international law's lasting power and influence.

[100] For a convincing case on the need to terminate (rather than simply reform or temporarily suspend) the TRIPS agreement see: Anne Orford, 'The 2022 Annual Kirby Lecture in International Law: Why It's Time to Terminate the *TRIPS Agreement*' (2023) 41 *Australian Year Book of International Law* 3–30.

form of universalism that was ascendant in the 1990s and early 2000s erased or pathologised difference, ignored history (notably the history of imperialism and colonialism), and falsely equated Western or international authority with universal values, while they represented particularistic worldviews and (at times) material interests.[101] Although intellectually and politically fruitful at its time, this posture has run its course. As openly parochial discourses of superiority are gaining traction both in the Global North and in the Global South and they legitimise reactionary projects of dispossession, violence, exploitation, and removal, it is imperative for international lawyers to reaffirm by re-articulating the (problematic and limited/ing, but currently disruptive) universalist aspirations of international law.[102] The precise contours of this affirmation are not pre-determined: tactically, one can imagine how affirming the ICJ's advisory opinion on the Occupied Palestinian Territories as an alternative canon to Resolution 2803 might not lay the groundwork for the full liberation of historic Palestine,[103] but it can affirm the fundamental status of self-determination under international law and the juridical equality of Palestinians as a people entitled not only to physical survival but to full political subjectivity. Even though there are many reasons to be suspicious of juridical equality, Resolution 2803 arguably departs from it altogether signalling the (re)emergence of an international legal order that is centred around not only material but also legal inequality. Re-making the case for the progressive elements of the international legal order is, then, a worthwhile intellectual and political exercise.

The above route seeks to rethink and legitimise anew the foundations of certain aspects of the international legal order. However, this intellectual exercise will only be practically useful if international lawyers also take up the task of deploying arguments based on these progressive elements in practice. Theory and history have been the preferred modes of engagement with the discipline for progressive international legal

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[101] 'Informed by their deep attentiveness to the fact that "universality" and "common humanity" claims have long facilitated and justified Europe's colonial subjugation and continuing exploitation of much of the Third World, TWAIL scholars are wary of glib assertions of universality that tend to elide or mask underlying politics of domination.' Obiora Okafor, 'Newness, Imperialism, and International Legal Reform in Our Time: A TWAIL Perspective' (2005) 43(1/2) *Osgoode Hall Law Journal* 171–191, 179; Vasuki Nesiah, 'Resistance in the Age of Empire: Occupied Discourse Pending Investigation' (2006) 27 *Third World Quarterly* 903–922.

[102] What I am advocating for here draws from Gilroy's idea of 'strategic universalism': Paul Gilroy, *Against Race: Imagining Political Culture Beyond the Color Line* (Harvard University Press 2002) 327–356.

[103] For a sympathetic but critical engagement with the ICJ's OPT Advisory Opinion see: Elliott Dolan-Evans and others, 'The Keys to the Door and the Tools We Inherit: Palestine, International Law, and the International Court of Justice' *Melbourne Journal of International Law* (forthcoming).

scholars at least since the 1990s. This has been a marked departure from earlier generations of politically-committed international legal work, which might have been theoretically grounded but was orientated toward legal reform and advocacy.[104] The turn away from doctrine was motivated (primarily) by a political distrust toward international law's emancipatory potential and (secondarily) by a digestion of the critique of indeterminacy that made doctrinal scholarship theoretically untenable in the eyes of many.[105] Although the second problem remains unsolved, the shifting political conjuncture should prompt the re-evaluation of the former position. For example, the recent work of Anne Orford offers an example of building on the historical sensibility of critical legal scholarship to advance formalist legal arguments in the service of progressive political causes.[106] In this instance, Orford intervenes in the debate about the relationship between climate treaties and general international law to show that the developed states' argument that the conclusion of the former excludes the application of the latter is not supported by the historical record.[107] Although the matter had already been addressed by the ICJ by the time that Orford's article was eventually published, its detailed historical argumentation adds substantially to the legal arsenal of those developing states, especially small Pacific island states, that have been advancing this doctrinal position to ground their demands for climate reparations by industrialised powers.[108] Critical work, especially by Julia Dehm, has questioned the doctrinal and political power of some of Orford's arguments, notably her analogy with the property law doctrine of nuisance.[109] These tensions between critique and progressive formalism are real, but they should not deter us from either doctrinal or critical/

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[104] Amongst many: Mohammed Bedjaoui, *Law and the Algerian Revolution* (International Association of Democratic Lawyers 1961); U Oji Umozurike, *International Law and Colonialism in Africa* (UNESCO 1979); Mohammed Bedjaoui, *Towards a New Economic Order* (Holmes & Meiers Publishers 1979). For a provocative defence of progressive lawyering in juxtaposition to TWAIL's theorising impulses see: Naz Khatoon Mordizadeh, '"Let Us All Agree to Die a Little": TWAIL's Unfulfilled Promise' (2023) 65(1) Harvard International Law Journal 79–131.

[105] The most influential articulation of the indeterminacy critique in international law remains: Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (2nd edn, Cambridge University Press 2005).

[106] Anne Orford, 'Reparations, Climate Change, and the Background Rules of International Law' (2025) 119American Journal of International Law 452–483.

[107] ibid.

[108] For an early articulation of the demand see: Fitilagi Ioane Fa'anunu, 'A Breach of Fundamental Human Rights as the Legal Basis for Reparations for Climate Change-Damages and Injuries under International Law: Case Study of Ha'apai Islands (Tonga) Following Cyclone Ian' (2015) 17 Journal of South Pacific Law 41–58.

[109] Julia Dehm, 'Climate Injustice, Racial Capitalism, and the Contradictions of Property' (2025) 5 *Journal of Law and Political Economy* 652-688.

theoretical work: rather, critical reflection can support the refinement of formalist legal arguments both from a legal and a political point of view.

The final option open to international lawyers is the most demanding on a personal-professional level. Since the early 2000s (especially since the 2003 invasion of Iraq), there has been a marked concentration of critical scholars in international law, at least in some jurisdictions (the UK and Australia being typical examples). Even if the Trumpian offensive against international law turns out to be an outlier, it is doubtful that international law will command the ideological and material power that it did between 1990 and the early 2010s any time soon. Therefore, there is an argument to be made that progressive legal scholars ought to turn our attention to those legal fields (be it property, contract, or corporate law or more specialised fields such as the law of central banking, securities or procurement law) that are more important for contemporary constructions of political and economic power. The personal/professional costs of retraining and re-establishing one's disciplinary are significant and this may prevent many from emigrating out of the field, but this should not prevent both collective discussion and personal reflection on the continued merits of ongoing engagement with the field whose real-world relevance is on the decline.

V. CONCLUSION

In this paper, I have advanced three arguments: first, neo/liberal legalism is in crisis in ways that are fundamentally dissimilar from previous junctures, such as the 2003 invasion of Iraq. The second Trump administration's unwillingness to formulate even superficial international legal justifications of its actions departs from a long history of US imperialism being primarily articulated through the language of international law rather than against it. Given the centrality of the US for the post-Cold War international legal order, this shift does not simply constitute an exit from an otherwise stable system, but has destabilised the order as a whole. More than offering a haphazard reaction against legalism, the second Trump administration has begun to articulate an (chaotic and incoherent but real) affirmative vision of global governance, one that is explicitly rooted in hierarchy, personalism, ad hoc arrangements, and zero-sum thinking. Such a marked departure from the legalist paradigm of the past forty years demands an explanation. Bringing together discursive and material elements, my second argument posits that liberal explanations

of Trumpism are mistaken and misleading in their reliance on metaphors about neo-royalism or feudal revival. Rather, the origins of the current crisis lie with three distinctly modern and capitalist phenomena: the discursive contradictions of US imperialism, the rise of the private corporation and the concomitant rise of authoritarian thinking amongst Silicon Valley intellectuals, and the persistent slowdown of economic growth and the accompanying rise of zero-sum thinking amongst Western far-right parties. Finally, the magnitude of change identified supports my third argument, which concerns the future of international legal thought. The four options that I propose (documenting and explaining the crisis; constructing a pragmatic universalism; engaging in selective, politically-targeted formalist work; and exiting the field) are not mutually exclusive or exhaustive. Rather, they seek to register the fact that as our object of study changes, so should our disciplinary pursuits.

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