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Pax Mercatoria: Globalization as a Second Chance at “Peace for Our Time”

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Abstract

This Essay completes a scholarly cycle in which I have defended free trade and international economic cooperation against charges that globalization will harm the environment and drain jobs from the high-wage economies of western Europe, Japan, and the United States. The demolition of geographic and social barriers since the end of the Cold War has delivered not only material wealth but also physical tranquility, political stability, and personal freedom to vast portions of the world’s population. The path to peace lies today, as it did in 1938, not in a retreat to obsolete notions of local sovereignty, but in a commitment to lawmaking on a global scale.

PAX MERCATORIA: GLOBALIZATION AS A SECOND CHANCE AT "PEACE FOR OUR TIME"

*Jim Chen**

I. CRUZANDO FRONTERAS REALES Y METAFÓRICAS¹

Europe, no less than any other part of the earth, has known "rivers ancient as the world and older than the flow / of human blood in human veins."² In September 2000, as I traveled from the meeting of the European Association of Law and Economics in Ghent to a teaching visit at the Slovak Agricultural University, I had occasion to cross several of Europe's most historic rivers. Mindful of the lyrical power and metaphorical significance of watery boundaries,³ I took pains to note the rivers as I crossed them.

One day I awoke in Cologne, on the western bank of the Rhine. Roman *Colonia*, closer in space and in spirit to Charlemagne's Aachen than Bismarck's Berlin, represented the Empire's concession that its legions could penetrate neither the Rhine nor the Danube.⁴ Modern Köln is the largest city in the modern German *Land* of Nordrhein-Westfalen but not its capital, a distinction that belongs to Düsseldorf on the Rhine's Teutonic bank. From Cologne I drove the length of reunited Ger-

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1. See generally Margaret E. Montoya, *Border Crossings in an Age of Border Patrols: Cruzando Fronteras Metafóricas*, 26 N.M. L. REV. 1 (1996).

2. Langston Hughes, *The Negro Speaks of Rivers*, in THE COLLECTED POEMS OF LANGSTON HUGHES 23 (Arnold Rampersand & David Roessel eds., Vintage Books 1994).

3. WALKER PERCY, THE MESSAGE IN THE BOTTLE: HOW QUEER MAN IS, HOW QUEER LANGUAGE IS, AND WHAT ONE HAS TO DO WITH THE OTHER 83, 89-90 (1975); cf. WILLA CATHER, MY ANTONIA 6 (Houghton Mifflin 1995) (1918) ("[B]y that time I had crossed so many rivers that I was dull to them.").

4. See 1 Hugh Trevor Roper, *Introduction to EDWARD GIBBON, THE DECLINE AND FALL OF THE ROMAN EMPIRE* (Alfred A. Knopf 1900).

many into the *Länder* of Thuringen and Sachsen, past the cities of Erfurt and Weimar, never stopping at what was once one of the world's bitterest borders. The city of Dresden, roughly half-way between Berlin and Prague and squarely on the axis on which Eastern Europe's popular uprisings spun in 1989,⁵ was preparing to commemorate the tenth anniversary of German reunification. I crossed the Elbe and turned south toward the Czech Republic.

After completing a few chores at the border—presenting my passport, acquiring a Czech superhighway sticker, buying local currency—I took stock of my journey. I had already negotiated both the Rhine and the Elbe, completing between sunrise and sundown a feat that no liberating army accomplished during the Second World War. In symbolic terms, my trip embraced not mere decades, but centuries. My day had begun in Westphalia and would soon end near the site of the Second Defenestration of Prague. Better still, I had also reversed the Thirty Years' War in a metaphysical sense. In a day filled with border crossings, the notion of the nation-state—the bedrock principle of international law since 1648⁶—had played a trivial role.⁷ As I fell asleep near the banks of the Vltava, I realized that the world's collective “soul has grown deep like the rivers.”⁸

In the recent memory of Eastern Europe's rivers, from the Vltava to the Vistula and the Volga, September is the cruelest month. Of their own force, the events of September 1, 1939, would merit this distinction. But amid the calm of September 2000, I recalled an even earlier September. On September 30, 1938, eleven months and one day before the outbreak of World

5. See THOMAS L. FRIEDMAN, *THE LEXUS AND THE OLIVE TREE: UNDERSTANDING GLOBALIZATION*, at xii-xiv (1999) (describing those uprisings as the birth pangs of the contemporary, globalized world); LAWRENCE LESSIG, *CODE AND OTHER LAWS OF CYBERSPACE 3* (1999) (describing the death of communism from exhaustion and “the beginnings of a new political society”).

6. The Peace of Westphalia, which ended the Thirty Years' War in 1648, is widely regarded as the basis for the notion of the nation-state and the contemporary law of nations. See, e.g., HANS KOHN, *THE IDEA OF NATIONALISM* 188 (1944); Daniel Philpott, *Sovereignty: An Introduction and Brief History*, 48 J. INT'L AFF. 353, 364 (1995). See generally C.V. WEDGWOOD, *THE THIRTY YEARS' WAR* (1938).

7. See generally JEAN-MARIE GUÉHENNO, *THE END OF THE NATION STATE* (Victoria Elliott trans., 1995); ROBERT J. HOLTON, *GLOBALIZATION AND THE NATION-STATE* (1998); John O. McGinnis, *The Decline of the Western Nation State and the Rise of the Regime of International Federalism*, 18 CARDOZO L. REV. 903 (1996).

8. Hughes, *supra* note 2, at 23.

War II, Great Britain, France, Italy, and Germany brokered the Münchner Diktat, the agreement that enabled Germany to annex Sudetenland and eventually the rest of the Czech lands. The Second Thirty Years' War entered its final, traumatic spasm where its seventeenth-century counterpart had begun.⁹

Nearly sixty-two years later, the darkest cloud in Europe again hung over the Czech lands. This time, though, the threat stemmed not from Munich—where Oktoberfest had just begun—but from Prague itself. A coalition of antiglobalization activists, hoping to duplicate their success at the December 1999 meeting of the World Trade Organization¹⁰ (“WTO”) in Seattle, gathered in Prague to disrupt the September 2000 meeting of the International Monetary Fund (“IMF”) and World Bank.

Some symbolic events, like the color purple, are simply so striking that we ignore them at our peril.¹¹ From Seattle in December 1999¹² to Prague in September 2000, a trail of well-organized protesters taunted the WTO, the IMF, and the World Bank as the unholy trinity of globalization.¹³ The most civil voices of this increasingly powerful movement argue that globalization portends “disast[er]” for “American democracy—to say nothing of social justice throughout the world.”¹⁴ As in 1938, global opinion has divided starkly on the proper formula for “peace for our time.”¹⁵

The antiglobalization movement, to put it bluntly, is wrong. Even modest sensitivity to human welfare over time and across contemporary space exposes the remarkable nature of the antiglobalization protests in Prague. In the heart of a country and

9. See WINSTON S. CHURCHILL, *THE SECOND WORLD WAR: THE GATHERING STORM*, at xiii (1948) (describing World Wars I and II as the “Second Thirty Years’ War”).

10. Marrakesh Agreement Establishing the World Trade Organization, *LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND* vol. 1, 33 I.L.M. 1144 (1994) [hereinafter *WTO Agreement*].

11. Cf. ALICE WALKER, *THE COLOR PURPLE* 191 (Harcourt, Inc. 1982) (“I think it pisses God off if you walk by the color purple in a field and don’t notice.”).

12. Gerard Baker, *Starbucks Wars*, *FIN. TIMES*, Dec. 4, 1999, at 10 (describing the Seattle protests as “America’s first post-modern riot”).

13. In recognition of Hillary Rodham Clinton’s election to the United States Senate, I shall refrain, at least in text, from describing the antiglobalization movement as a “vast left-wing conspiracy.”

14. Elisabeth Lasch-Quinn, *Democracy Should Not Have Losers*, 9 *MINN. J. GLOBAL TRADE* 589, 590 (2000).

15. Neville Chamberlain, *Peace for Our Time*, in *THE PENGUIN BOOK OF TWENTIETH-CENTURY SPEECHES* 168, 169 (Brian MacArthur ed., Penguin Books 1992).

a region that paid dearly when an isolationist West chose “to go home and sleep quietly in [its] beds,”¹⁶ a group of self-appointed activists quite seriously tried to portray the rules and institutions of international economic relations as the greatest contemporary threat to human welfare and security. But multinational corporations do not belong in the same category as Adolf Hitler. Nor do the core institutions of international economic law, regardless of the extent to which they have facilitated the rise of the global economy, deserve the opprobrium that has hounded Neville Chamberlain since the failure of appeasement. A circumspect world, in the interest of peace, progress, and prosperity, should reject the normative claims of the antiglobalization movement.

This Essay completes a scholarly cycle in which I have defended free trade and international economic cooperation against charges that globalization will harm the environment¹⁷ and drain jobs from the high-wage economies of western Europe, Japan, and the United States.¹⁸ The demolition of geographic and social barriers since the end of the Cold War has delivered not only material wealth but also physical tranquility, political stability, and personal freedom to vast portions of the world’s population. The path to peace lies today, as it did in 1938, not in a retreat to obsolete notions of local sovereignty, but in a commitment to lawmaking on a global scale.

II. PEACE FOR OUR TIME

Before proceeding further, I hasten to add that I ascribe no real legal or intellectual significance to one traveler’s casual observations. Travelogue as academic critique is probably one of the more treacherous forms of scholarship by anecdote.¹⁹ I also have a confession to make. In earlier scholarship, I suggested that questions of legitimacy, especially constitutional legitimacy,

16. *Id.*

17. See Jim Chen, *Globalization and Its Losers*, 9 MINN. J. GLOBAL TRADE 157 (2000).

18. See Jim Chen, *Epiphytic Economics and the Politics of Place*, 10 MINN. J. GLOBAL TRADE 1 (2001).

19. See generally DANIEL A. FARBER & SUZANNA SHERRY, *BEYOND ALL REASON: THE RADICAL ASSAULT ON TRUTH IN AMERICAN LAW* (1997); Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807 (1993); Daniel A. Farber & Suzanna Sherry, *The 200,000 Cards of Dimitri Yurasov: Further Reflections on Scholarship and Truth*, 46 STAN. L. REV. 647 (1994).

should take priority over economic questions of efficiency and equity in trade law.²⁰ No less than environmental protection or any other enterprise under positive law, legal scholarship is a learning experience.²¹ By the time of the antiglobalization riots of 1999 and 2000, I had come to appreciate that economic efficiency, political legitimacy, and social justice are inextricably intertwined in a world without frontiers.²² Once again I must recite the law professor's rueful refrain: "Write today, regret tomorrow, renounce mañana."²³

The globalization debate is no casual matter, however, and if I would do it justice, my penance must give way to passion. The "technologically driven expansion of . . . markets well beyond the limits of even the largest national territories and the replacement of markets and hierarchies by relational networks"²⁴ triggered "a broad process of restructuring state and civil society."²⁵ "Economic globalization stands as an upheaval in the relief map of the political economy on an order comparable to the abolition of slavery and serfdom, or to the Industrial Revolution with its impacts on urbanization and the division of labor."²⁶ "The key political arguments of the next few years . . . will all be variations arising from one underlying conflict: the

20. See Jim Chen, *Appointments with Disaster: The Unconstitutionality of Binational Arbitral Review Under the United States-Canada Free Trade Agreement*, 49 WASH. & LEE L. REV. 1455, 1457 (1992) (declining to "dispute the benefits of free trade or of international arbitration" and stating "a belief that economic and political benefits . . . should not color constitutional analysis").

21. See Daniel A. Farber, *Environmental Protection as a Learning Experience*, 27 LOY. L.A. L. REV. 791 (1994).

22. See generally Jim Chen, *Fugitives and Agrarians in a World Without Frontiers*, 18 CARDOZO L. REV. 1031 (1996).

23. Jim Chen, *The Magnificent Seven: American Telephony's Deregulatory Shootout*, 50 HASTINGS L.J. 1503, 1580 (1999).

24. Stephen J. Kobrin, *The Architecture of Globalization*, in GOVERNMENTS, GLOBALIZATION AND INTERNATIONAL BUSINESS 146, 163 (John H. Dunning ed., 1997); see also John H. Jackson, *Reflections on International Economic Law*, 17 U. PA. J. INT'L ECON. L. 17, 24-25 (1996) ("[Given] the difficulty of government regulation of international economic behavior . . . there is today hardly any subject that can be said to be effectively controlled by a single national sovereign."); cf. David Johnson & David Post, *Law and Borders—The Rise of Law in Cyberspace*, 48 STAN. L. REV. 1367, 1375 (1996) ("The rise of an electronic medium that disregards geographic boundaries throws the law into disarray by creating entirely new phenomena . . . that cannot be governed, satisfactorily, by any current territorially based sovereign.").

25. IAN CLARK, *GLOBALIZATION AND FRAGMENTATION* 6 (1997).

26. Henry H. Drummonds, *Transnational Small and Emerging Business in a World of Nikes and Microsofts*, 4 J. SMALL & EMERGING BUS. L. 249, 251 (2000).

one between globalizers who want to see the world reshaped in their own image and traditionalists who want to preserve fragments of traditional culture and local independence."²⁷ The dichotomy defines disputes over trade, political autonomy and sovereignty, cultural identity, and environmental protection.

Globalization's enemies have enjoyed amazing success in framing the debate. An anarchically inclined branch of the protest movement has established a dominant narrative of American popular culture run amok,²⁸ genetically engineered food,²⁹ and Third World sweatshops.³⁰ A parallel narrative stressing autarky targets free trade, developmental lending, and cooperation among central banks—the very *raison d'être* of the WTO, the World Bank, and the IMF.³¹ These intergovernmental bodies, so the complaint goes, advance the interests of multinational corporations at the expense of rights too precious to be left to the vagaries of the marketplace.³² The triumph of the new economy

27. JOHN MICKLETHWAIT & ADRIAN WOOLDRIDGE, *A FUTURE PERFECT: THE CHALLENGE AND HIDDEN PROMISE OF GLOBALIZATION*, at xvi (2000).

28. See, e.g., WALTER LAFEVER, MICHAEL JORDAN AND THE NEW GLOBAL CAPITALISM (1999); *THE BEAVER BITES BACK? AMERICAN POPULAR CULTURE IN CANADA* (David H. Flaherty & Frank E. Manning eds., 1993); Rosemary J. Coombe, *Authorial Cartographies: Mapping Proprietary Borders in a Less-Than-Brave New World*, 48 STAN. L. REV. 1357, 1365-1366 (1996); Oliver R. Goodenough, *Defending the Imaginary to the Death? Free Trade, National Identity, and Canada's Cultural Preoccupation*, 15 ARIZ. J. INT'L & COMP. L. 203, 207 (1998); CarrieLyn Donigan Guymon, *Mars Bars and Marlboros: Cultural Aspects of Foreign Investment in Russia*, 7 TRANSNAT'L L. & CONTEMP. PROBS. 495, 505 (1997); David R. McMahon, *Walter LaFeber, Michael Jordan and the New Global Capitalism*, 9 MINN. J. GLOBAL TRADE 641 (2000) (book review); Andrew M. Carlson, Note, *The Country Music Television Dispute: An Illustration of the Tensions Between Canadian Cultural Protectionism and American Entertainment Exports*, 6 MINN. J. GLOBAL TRADE 585 (1997); Amy E. Lehmann, Note, *The Canadian Cultural Exemption Clause and the Fight to Maintain an Identity*, 23 SYRACUSE J. INT'L L. & COMMERCE 187 (1997); Robin L. Van Harpen, Note, *Mamas, Don't Let Your Babies Grow Up to Be Cowboys: Reconciling Trade and Cultural Independence*, 4 MINN. J. GLOBAL TRADE 165 (1995).

29. See, e.g., Paul Raeburn, *Clamor over Genetically Modified Foods Comes to the United States*, 8 N.Y.U. ENVTL. L.J. 610 (2000); Jeffrey K. Francer, Note, *Frankenstein Foods or Flavor Savers?: Regulating Agricultural Biotechnology in the United States and European Union*, 7 VA. J. SOC. POL'Y & L. 257 (2000).

30. See, e.g., Claudia R. Brewster, *Restoring Childhood: Saving the World's Children from Toiling in Textile Sweatshops*, 16 J.L. & COM. 191 (1997); Maria Gillen, Note, *The Apparel Industry Partnership's Free Labor Association: A Solution to the Overseas Sweatshop Problem or the Emperor's New Clothes?*, 32 N.Y.U. J. INT'L L. & POL. 1059 (2000).

31. See Chen, *supra* note 18, at 23 (describing the argument against globalization as proceeding along two lines, anarchy and autarky).

32. Cf. Lasch-Quinn, *supra* note 14, at 593 (demanding "profound deliberation of" and a sharp distinction between "what properly belongs in the market—and what does not").

over the welfare state has allegedly spurred nations to undertake a ruinously competitive race to the bottom. Labor standards, environmental protection, and cultural identity allegedly hang in the balance. The protest movement denounces globalization as imperialist insofar as it projects the moral values of the United States and the military interests of the north Atlantic alliance.

To be sure, the localists have the easier task. Their strategy is appallingly simple and, from a globalist perspective, simply appalling. Wave the twin banners of "sovereignty" and "autonomy,"³³ recount a few anecdotes about corporate excesses,³⁴ accuse all opponents of "neocolonialism,"³⁵ and presto! Globalization becomes public enemy number one. Domestic support for free trade nevertheless remains strong. Americans view the WTO favorably by a two-to-one margin, and three-fifths of unionized American workers favor continued WTO membership.³⁶ (The latter figure is huge in light of American unions' tenacious resistance to free trade.)³⁷ So wide a gap between rhetoric and reality suggests that the legal agenda has been substantially and harmfully distorted.

The conventional case for trade rides on "essentially only one argument."³⁸ That argument, almost entirely economic in

33. See, e.g., Sara Dillon, *Fuji-Kodak, the WTO, and the Death of Domestic Political Constituencies*, 8 MINN. J. GLOBAL TRADE 197, 248 (1999) (describing the WTO as "at best a partial, and at worst a fraudulent, judicial system" because it does not "rest on a basis of complex legislation derived from competing social inputs"); Patti Goldman, *The Democratization of the Development of United States Trade Policy*, 27 CORNELL INT'L L.J. 631, 643-47 (1994); Robert F. Housman, *Democratizing International Trade Decision-Making*, 27 CORNELL INT'L L.J. 699, 705-10 (1994); cf. Phillip R. Trimble, *Globalization, International Institutions, and the Erosion of National Sovereignty and Democracy*, 95 MICH. L. REV. 1944, 1948 (1997) ("The loss of sovereignty does not trouble me, but the loss of democracy is another matter."). See generally Mark L. Movsesian, *Sovereignty, Compliance, and the World Trade Organization: Lessons from the History of Supreme Court Review*, 20 MICH. J. INT'L L. 775, 793-94 (1999) (reviewing the relevant legal literature).

34. See, e.g., Michael H. Shuman, *GATTzilla v. Communities*, 27 CORNELL INT'L L.J. 527 (1994).

35. See Keith Aoki, *Neocolonialism, Anticommons Property, and Biopiracy in the (Not-So-Brave) New World Order of Intellectual Property Protection*, 6 IND. J. GLOBAL LEGAL STUD. 11 (1998).

36. See Mike Moore, *Reflections on the Global Trading System* (Aug. 25, 2000), at http://www.wto.org/english/news_e/spmm_e/spmm35_e.htm (recounting the speech by the Director-General of the WTO at Jackson Hole, Wyoming, and citing surveys by the Angus Reid group and the Association of Women in International Trade).

37. See Christopher T. Wonnell, *The Influential Myth of a Generalized Conflict of Interests Between Labor and Management*, 81 GEO. L.J. 39, 83 (1992).

38. PAUL A. SAMUELSON, *ECONOMICS* 692 (11th ed. 1980).

tone; is nevertheless "exceedingly powerful": "Free trade promotes a mutually profitable division of labor, greatly enhances the potential real national product of all nations, and makes possible higher standards of living all over the globe."³⁹ The economic defense of trade is a variation of the general truism that competition allocates goods and services more efficiently than any other economic condition.⁴⁰ Even after nearly two centuries of refinement, the theory of comparative advantage still retains its power.⁴¹ This is the sense in which "David Ricardo was the true winner of the Cold War."⁴²

Despite its power, the conventional argument for free trade has failed to persuade its staunchest critics. The antiglobalization arguments made at and since Seattle evidently enjoy some sort of rhetorical advantage. Perhaps the problem stems from the widely held jurisprudential view that civil liberties are not only distinct from but also superior to their economic counterparts.⁴³

A rhetorical rescue of globalization therefore lies in some sort of substantially *noneconomic* set of arguments. I propose to capture the essence of those arguments in a single phrase: *pax mercatoria*. I quite deliberately intend to blend the spirit of *lex mercatoria*⁴⁴ with the legacy of *pax britannica* and *pax americana*. Since medieval times the law merchant has facilitated commercial transactions that might otherwise be frustrated by deep cul-

39. *Id.*

40. See, e.g., WILLIAM G. SHEPHERD, *THE ECONOMICS OF INDUSTRIAL ORGANIZATION* 36-39 (1979).

41. See generally PETER H. LINDERT, *INTERNATIONAL ECONOMICS* 15-39 (4th ed. 1991) (surveying the "new trade economics" and other refinements on the theory of comparative advantage); Paul R. Krugman, *Is Free Trade Passé?*, 1 *J. ECON. PERSP.* 131 (1987) (surveying models of trade that downplay the traditional rationale of comparative advantage).

42. Chen, *supra* note 17, at 190; cf. PAUL A. SAMUELSON & WILLIAM D. NORDHAUS, *ECONOMICS* 686 (15th ed. 1995) ("[T]he theory of comparative advantage is one of the deepest truths in all of economics.").

43. See, e.g., ROBERT D. COOTER, *THE STRATEGIC CONSTITUTION* 257-58 (2000); Ronald Dworkin, *Rights as Trumps*, in *THEORIES OF RIGHTS* 15 (Jeremy Waldron ed., 1984). But cf. Louis A. Kaplow & Steven Shavell, *Principles of Fairness Versus Human Welfare*, 114 *HARV. L. REV.* (forthcoming 2001) (arguing that human welfare should be the sole touchstone of legal analysis and that notions of fairness should receive no independent weight).

44. See, e.g., KLAUS PETER BERGER, *THE CREEPING CODIFICATION OF THE LEX MERCATORIA* (1999); *LEX MERCATORIA AND ARBITRATION: A DISCUSSION OF THE NEW LAW MERCHANT* (Thomas E. Carbonneau ed., 1997).

tural, linguistic, and political barriers.⁴⁵ In the public sphere, *pax mercatoria* represents the peace dividend that develops when free trade makes nations too busy and too rich to fight.⁴⁶ No less than war,⁴⁷ peace has its own implicit jurisprudence. Laws fostering globalization, free trade, economic development, and international economic cooperation provide the jurisprudential infrastructure for peace.

Alas, a proposition as broad as *pax mercatoria* eludes easy proof. "Some truths are so basic that, like the air around us, they are easily overlooked."⁴⁸ As Bill Clinton told an admiring crowd in Hanoi, globalization "is the economic equivalent of a force of nature" that Vietnam and other developing nations must learn to harness "like wind or water."⁴⁹ Globalization thus represents, to borrow a phrase from the elder George Bush, a "new world order."⁵⁰ The balance of this Essay will marshal evidence from diverse corners in support of the *pax mercatoria* hypothesis. First, the WTO, the IMF, and the World Bank were consciously designed to keep the peace and remain quite effective in this role. Second, the experience of the United States, the nation that has most aggressively promoted globalization, demonstrates that economic integration affirmatively enhances political well-being across the board, but most of all for the historically downtrodden. Finally, globalization promises to stabilize the least developed countries and countries undergoing the transition from central planning to capitalism.

45. See HAROLD J. BERMAN, *LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION* 333-56 (1983); THEODORE F.T. PLUCKNETT, *A CONCISE HISTORY OF THE COMMON LAW* 657-70 (5th ed. 1956); cf. Ingrid Michelsen Hillinger, *The Article 2 Merchant Rules: Karl Llewellyn's Attempt to Achieve The Good, The True, The Beautiful in Commercial Law*, 73 *Geo. L.J.* 1141 (1985) (describing Llewellyn's effort to incorporate the law merchant into twentieth century commercial law).

46. See Chen, *supra* note 17, at 169; Chen, *supra* note 18, at 60.

47. See generally David A. Westbrook, *Law Through War*, 48 *BUFF. L. REV.* 299 (2000).

48. *New York v. United States*, 505 U.S. 144, 187 (1992).

49. David E. Sanger, *Huge Crowd in Hanoi for Clinton, Who Speaks of "Shared Suffering"*, *N.Y. TIMES*, Nov. 18, 2000, at A1 (quoting President Clinton).

50. President Bush evidently uttered this phrase in public for the first time at an August 30, 1990, news conference on the Persian Gulf crisis, see *Confrontation in the Gulf: Excerpts from the President's News Conference On Gulf Crisis*, *N.Y. TIMES*, Aug. 31, 1990, at A11, and repeated it in his 1991 State of the Union address. See generally William Safire, *The New, New World Order*, *N.Y. TIMES*, Feb. 17, 1991, § 6, at 14.

III. PAX MERCATORIA

A. *The Legacy of Bretton Woods*

War, needless to say, retards trade.⁵¹ Although the converse proposition—that trade retards war—may be less obvious, it happens to be the strongest *noneconomic* argument for free trade. Amid the devastation of World War II, this argument was dispositive. The rules and institutions that govern international economic relations today grew out of a belated understanding that peace cannot flourish in a world burdened by trade barriers. The October 1929 collapse of American stock markets destroyed the twin “cornerstone[s] of German prosperity: loans from abroad, principally from America, and world trade.”⁵² By “signing . . . the Smoot-Hawley Tariff Act into law in June 1930,” Herbert Hoover committed the “most disastrous single mistake any U.S. president [ever] made in international relations.”⁵³ Retaliatory tariffs helped transform a trade war into actual military conflict;⁵⁴ the destruction of trade accelerated a deflationary spiral that had begun with major powers’ collective retreat to the gold standard.⁵⁵ The ensuing “major world depression” energized “the nationalists in Japanese politics and paved the way for the electoral victory of the Nazis in Germany in 1932.”⁵⁶

When at last military victory seemed within reach, the allies convened at Bretton Woods, New Hampshire,⁵⁷ to lay the eco-

51. See Jim Chen, *Filburn’s Forgotten Footnote—Of Farm Team Federalism and Its Fate*, 82 MINN. L. REV. 249, 286 (1997).

52. WILLIAM L. SHIRER, *THE RISE AND FALL OF THE THIRD REICH* 192 (1959).

53. Richard N. Cooper, *Trade Policy and Foreign Policy*, in *U.S. TRADE POLICIES IN A CHANGING WORLD ECONOMY* 291, 291 (Robert M. Stern ed., 1987).

54. Cf. Glenn W. Harrison et al., *Costs of Agricultural Trade Wars*, in *MACROECONOMIC CONSEQUENCES OF FARM SUPPORT POLICIES* 330 (Andrew B. Stoeckel et al. eds., 1989) (providing a game-theoretic model of retaliatory tariffs). See generally PHILIP FRIEDMAN, *THE IMPACT OF TRADE DESTRUCTION ON NATIONAL INCOMES* (1974).

55. Compare PETER TEMIN, *LESSONS FROM THE GREAT DEPRESSION: THE LIONEL ROBINS LECTURES FOR 1989*, at 42 (1991) (blaming interwar reliance on the gold standard for the catastrophic deflation of the late 1920s and early 1930s), with *id.* at 80-81 (describing the destruction of world trade as aggravating rather than causing a deflationary cycle more properly attributed to bad monetary policy).

56. Cooper, *supra* note 53, at 291. See generally JOHN H. JACKSON, *WORLD TRADE AND THE LAW OF GATT* 38-41 (1969).

57. To be precise, from July 1 to July 22, 1944, at the Mount Washington Hotel. See Mount Washington Hotel and Resort, at <http://www.mtwashington.com/hotel/monetary.html>.

conomic foundation for postwar peace.⁵⁸ The three institutions born of that summit—the IMF, the World Bank, and the General Agreement on Tariffs and Trade⁵⁹ (or “GATT”), forerunner of the WTO—received an unequivocal mandate to keep the peace.⁶⁰

By and large, the Bretton Woods institutions have succeeded. Until NATO forces bombed Yugoslavia in 1999,⁶¹ Thomas Friedman’s “Golden Arches Theory of Conflict Avoidance” accurately described international relations after World War II: no two nations with a McDonald’s restaurant waged war against each other.⁶² Although the global economy would later destroy one of Bretton Woods’ most ambitious achievements—the system of fixed exchange rates for the world’s leading currencies⁶³—this peace dividend remains one of the strongest arguments in favor of free trade.⁶⁴

To be sure, a causal link between trade and peace eludes easy empirical verification. Nevertheless, the Golden Arches hypothesis rests on a sound theoretical foundation. At the simplest level, interaction across borders enhances cross-cultural understanding and reduces xenophobia.⁶⁵ Trade’s social and economic effects compound over time. Groups with a stake in the

58. See generally KENNETH W. DAM, *THE RULES OF THE GAME: REFORM AND EVOLUTION IN THE INTERNATIONAL MONETARY SYSTEM* (1982); Gerald M. Meier, *The Bretton Woods Agreement—25 Years Later*, 29 STAN. L. REV. 235 (1971); Andreas F. Lowenfeld, *Is There Law After Bretton Woods?*, 50 U. CHI. L. REV. 380 (1983) (reviewing DAM, *supra*).

59. Under the treaty concluding the Uruguay Round of multilateral trade talks, the WTO assumed all responsibilities theretofore exercised by GATT. See WTO Agreement. See generally Kevin C. Kennedy, *The GATT-WTO System at Fifty*, 16 WIS. INT’L L.J. 421 (1998).

60. See General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, T.I.A.S. 1700, 55 U.N.T.S. 194 [hereinafter GATT]; Articles of Agreement of the International Monetary Fund, July 22, 1944, *entered into force* Dec. 27, 1945, T.I.A.S. No. 1501, 2 U.N.T.S. 39; Articles of Agreement of the International Bank for Reconstruction and Development, *opened for signature* Dec. 27, 1945, 60 Stat. 1440, T.I.A.S. No. 1502, 2 U.N.T.S. 134.

61. See Thomas Friedman, *Was Kosovo World War III?*, N.Y. TIMES, July 2, 1999, at A17.

62. FRIEDMAN, *supra* note 5, at 195-98.

63. At least within Europe, this is an idea whose time may have come again.

64. See Robert W. McGee, *An Economic Analysis of Protectionism in the United States with Implications for International Trade in Europe*, 26 GEO. WASH. J. INT’L L. & ECON. 539, 552 (1993).

65. Quite remarkably, the contemporary American left readily accepts “diversity” as a defense of race-based university admissions but evidently rejects an analogous argument in the realm of international relations.

peaceable maintenance of open borders and open markets gain leverage over their parochial counterparts. Wealth decreases the taste for war,⁶⁶ just as wealth increases the taste for environmental amenities.⁶⁷ Finally, trade appears to be a one-way ratchet: once a country commits itself to the economic specialization implicit in the theory of comparative advantage, reverting to autarky and closed markets becomes prohibitively expensive.

GATT and the WTO are not the sole heirs of the legacy of Bretton Woods. Monetary stability and infrastructural reconstruction, the domains of the IMF and the World Bank, have made no small contribution to peace. Hyperinflation wrecked the German middle class during the 1920s and corroded the bourgeois virtue that ordinarily insulates civil society from extremist politics.⁶⁸ Insurance against a recurrence of that episode is chief among the benefits from "international monetary cooperation, exchange stability, . . . orderly exchange arrangements," and "temporary financial assistance to countries" experiencing an adverse "balance of payments" adjustment.⁶⁹ At the core of this stabilizing mission are crisis-defusing "multibillion-dollar rescue packages," cobbled together before "isolated economic woes in a few countries . . . gr[o]w into a global financial crisis."⁷⁰ Although the extent to which the IMF has "foster[ed] economic growth and high levels of employment" is debatable,⁷¹ Weimar-style hyperinflation has in fact all but disappeared from the developed world.

As for direct foreign aid, the tool by which the World Bank pledges to attain "a world free of poverty,"⁷² we need look no further than the opposite of Smoot-Hawley. The Marshall Plan was America's most important and most successful foreign aid

66. Cf. MIHALY CSIKSZENTMIHALYI, *FLOW: THE PSYCHOLOGY OF OPTIMAL EXPERIENCE* 69 (1990) ("[C]ruelty is a universal source of enjoyment for people who have not developed more sophisticated skills.")

67. See, e.g., GENE M. GROSSMAN & ALAN D. KRUEGER, *ENVIRONMENTAL IMPACTS OF A NORTH AMERICAN FREE TRADE AGREEMENT* 5 (1991); PETER HUBER, *HARD GREEN* 151 (2000); OFFICE OF TECHNOLOGY ASSESSMENT, U.S. CONGRESS, *TRADE AND ENVIRONMENT: CONFLICTS AND OPPORTUNITIES* 4-6, 22-24 (1992).

68. See generally D.N. McCloskey, *Bourgeois Virtue*, 63 *AM. SCHOLAR* 177 (1994).

69. See International Monetary Fund, at <http://www.imf.org/external/about.htm> [hereinafter IMF Profile].

70. Michael M. Phillips, *IMF Acts to Contain an Investor Exodus*, *WALL ST. J.*, Dec. 7, 2000, at A21.

71. *IMF Profile*, *supra* note 69.

72. See The World Bank Group, at <http://www.worldbank.org>.

program. Through both world wars and the Cold War, “the United States has consistently shown it is willing to expend its wealth, and even its citizens’ lives, to bring peace to Europe.”⁷³ The difference in developmental trajectories between the countries that accepted American aid and those that did not—invariably under Soviet pressure to refuse—almost defies belief. The countries of western Europe went on to establish prosperous, stable democracies. Until the end of the Cold War, their counterparts did not.⁷⁴

Such obvious lessons of history would not bear repeating if they were not so shamefully ignored by today’s isolationists. The American right has historically bemoaned almost all foreign aid, conveniently forgetting that the Marshall Plan and its counterparts fostered capitalism and liberal democracy, more or less on the American model, through much of the postwar world. For its part, the left-of-center critique of American-style globalization overlooks the crucial contribution of trade and direct aid in rebuilding western Europe after 1945.

Even after the successive crises of World War II and the Cold War, the Bretton Woods institutions continue to foster the legal conditions that promote orderly development—and deter war. Everything we really needed to know about globalization, we learned at Bretton Woods. This is especially true of the free trade rules that GATT and the WTO have enforced since 1947. Two remarkably simple principles in the original text of GATT laid a secure foundation for international trade law. First, the “most favoured nation” principle of Article I requires GATT members to treat other members no worse than any other state. Second, the “national treatment” principle of Article III requires GATT members to subject domestic producers to the same tax and regulatory burdens as those imposed on foreign producers. At its core, GATT prescribed two golden rules: Do unto others as you do unto others (Article I) and do unto others as you do unto yourself (Article III). Enhanced by the more sophisticated notions that tariffs are the least objectionable of trade barriers and that the community of nations can agree to negotiate tariffs

73. Bill Cash, *European Integration: Dangers for the United States*, 1 CHI. J. INT’L L. 315, 315 (2000).

74. See generally MANCUR OLSON, *POWER AND PROSPERITY: OUTGROWING COMMUNIST AND CAPITALIST DICTATORSHIPS* (2000).

downward over time,⁷⁵ GATT's golden rules formed the kernel of a trade-based charter for world law.⁷⁶ Though the 1947 treaty was provisional by design, the decision to adopt the original rules forty-seven years later as the basis for the World Trade Organization confirmed that the original GATT was indeed "a covenant running from [that] generation of [citizens] to us and then to future generations,"⁷⁷ a charter designed to palliate protectionist passions across the ages.⁷⁸

B. *Globalization U.S.A.*

It is no accident that the words to this paean on international economic law are drawn directly from the American constitutional tradition. All expressions of public law are intrinsically hopeful enterprises premised on the optimistic expectation "that rational individuals can design and agree to political and social institutions that channel and constrain individual self-interest to the betterment of all."⁷⁹ And the public law of the United States, in its broadest jurisdictional manifestation, befits a process of globalization justifiably described as being of America, for America, and by America.⁸⁰

American constitutional law's strong commitment to freedom of movement for goods and for persons advances personal liberty and political stability. Of the many permutations on federalism, the "oldest question of [American] constitutional law,"⁸¹ free trade among the states, may be the most important. The free trade guarantees implicit in the commerce clause,⁸² the

75. See GATT art. II.

76. See generally Harold J. Berman, *The Role of International Law in the Twenty First Century*, 18 *FORDHAM INT'L L.J.* 1617 (1995).

77. *Planned Parenthood v. Casey*, 505 U.S. 833, 901 (1992).

78. Cf. *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 415 (1819) ("[A] Constitution [is] intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs.").

79. DENNIS C. MUELLER, *CONSTITUTIONAL DEMOCRACY* 48 (1996).

80. See FRIEDMAN, *supra* note 5, at 308 ("With the end of the Cold War, globalization is globalizing Anglo-American-style capitalism . . . It is globalizing American culture and cultural icons. It is globalizing the best of America and the worst of America.").

81. *New York v. United States*, 505 U.S. 144, 149 (1992); accord H. Jefferson Powell, *The Oldest Question of Constitutional Law*, 79 *VA. L. REV.* 633 (1993); see also *United States v. Lopez*, 514 U.S. 549, 575 (1995) (Kennedy, J., concurring) ("[F]ederalism was the unique contribution of the Framers to political science and political theory.").

82. U.S. CONST. art. I, § 8, cl. 3.

privileges and immunities clause,⁸³ and the import-export and export clauses,⁸⁴ are perhaps the oldest and most important of American industrial policies. The dormant commerce clause in particular guarantees an American “common market” premised on the “economic interdependence of the States.”⁸⁵ It ensures that interpersonal and commercial transactions within the United States remain “free from all invidious and partial restraints.”⁸⁶ “The free trade regime established by the Constitution reduces the influence of protectionist groups. . . , thus promoting both economic growth and accountable government.”⁸⁷

The Supreme Court’s dormant commerce clause jurisprudence establishes a judicially managed, domestic equivalent of international trade law.⁸⁸ The states of the American union must presumptively grant the domestic equivalent of “most favored nation” status and the national treatment privilege to their sister states. America’s constituent states “must sink or swim together,” for “in the long run [their] prosperity and salvation are in union and not division.”⁸⁹ Unlike member-states of the WTO, however, American states may not unilaterally retaliate when aggrieved by a violation of the United States’ internal free trade

83. *Id.* art. IV, § 2, cl. 1 (“The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.”); *United Bldg. & Constr. Trades Council v. Mayor of Camden*, 465 U.S. 208 (1984).

84. *See* U.S. CONST. art. I, § 9, cl. 5 (“No Tax or Duty shall be laid on Articles exported from any State.”); U.S. CONST. art. I, § 10, cl. 2 (“No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws”); *United States v. United States Shoe Corp.*, 523 U.S. 360 (1998); *United States v. International Bus. Machs. Corp.*, 517 U.S. 843 (1996)

85. *E.g.*, *C&A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383, 423 (1994) (Souter, J., dissenting); *accord* *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980); *Hunt v. Washington State Apple Advertising Comm’n*, 432 U.S. 333, 350 (1977). *See generally* Daniel J. Gifford, *Federalism, Efficiency, the Commerce Clause, and the Sherman Act: Why We Should Follow a Consistent Free-Market Policy*, 44 EMORY L.J. 1227 (1995).

86. *Camps Newfound/Owatonna, Inc. v. Town of Harrison*, 520 U.S. 564, 571 (1997); *see also* *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 224 (1824).

87. John O. McGinnis & Mark L. Movsesian, *The World Trade Constitution*, 114 HARV. L. REV. 511, 538 (2000).

88. *See* Daniel A. Farber & Robert E. Hudec, *Free Trade and the Regulatory State: A GATT’s-Eye View of the Dormant Commerce Clause*, 47 VAND. L. REV. 1401, 1401-1402 (1994).

89. *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 523 (1935). *See generally* Daniel A. Farber, *Pleading a New Allegiance: An Essay on Sovereignties and the New Federalism*, 75 NOTRE DAME L. REV. 1133 (2000).

norms. Instead, they must rely either on constitutional litigation or congressional relief.⁹⁰ Moreover, the Supreme Court has expressed a willingness to limit the states' role in international economic relations insofar as it acknowledges that "the President's maximum power to persuade rests on his capacity to bargain for the benefits of access to the entire national economy without exception for enclaves fenced off willy-nilly by [the states'] inconsistent political tactics."⁹¹

In the early American republic, economic crisis supplied the impetus for political union. Under the Articles of Confederation, the newly independent states freely abused property rights and pursued inflationary policies.⁹² The states also repeatedly denied Congress the power to regulate interstate and foreign commerce and to replenish the depleted Treasury through duties on imports.⁹³ The 1787 Constitution's vastly stronger commitment to federalism reflected the framers' determination to reinforce political union through economic integration.⁹⁴ American history has vindicated James Madison's belief that the commerce clause was principally "a negative and preventive provision against injustice among the States themselves, rather than . . . a power to be used for the positive purposes of the General Government."⁹⁵ Oliver Wendell Holmes, Jr., undoubtedly agreed: "I do not think the United States would come to an end if we lost our power to declare an Act of Congress void. I do think the Union would be imperiled if we could not make that

90. See *Sporhase v. Nebraska*, 458 U.S. 941, 957-58 & n.18 (1982); *A&P Tea Co. v. Cottrell*, 424 U.S. 366, 379-81 (1976).

91. *Crosby v. National Foreign Trade Council*, 120 S. Ct. 2288, 2298-2299 (2000).

92. See FORREST McDONALD, *NOVUS ORDO SECLORUM: THE INTELLECTUAL ORIGINS OF THE CONSTITUTION* 155-57 (1985).

93. See *id.* at 169-71.

94. See, e.g., *United Bldg. & Constr. Trades Council v. Mayor of Camden*, 465 U.S. 208, 226 (1984) (Blackmun, J., dissenting) (describing Shay's Rebellion of 1786-1787 and the Whiskey Rebellion of 1794 as threats to the United States under the Articles of Confederation and the newly adopted Constitution of 1787); *Duncan v. Kahanamoka*, 327 U.S. 304, 320-21 (1946) (same). See generally CHARLES A. BEARD, *AN ECONOMIC INTERPRETATION OF THE CONSTITUTION OF THE UNITED STATES* (1913); Marc Egnal & Joseph Ernst, *An Economic Interpretation of the American Revolution*, 29 *WM. & MARY Q.* 3 (1972); Allison Olson, *The London Mercantile Lobby and the Coming of the American Revolution*, 69 *J. AM. HIST.* 21 (1982); Joseph Reid, Jr., *Economic Burden: Spark to the American Revolution?*, 38 *J. ECON. HIST.* 81 (1978).

95. James Madison, Letter to J.C. Cabell (Feb. 13, 1829), reprinted in 3 *MAX FARRAND, THE RECORDS OF THE FEDERAL CONVENTION OF 1787*, at 478 (1911); accord *West Lynn Creamery, Inc. v. Healy*, 512 U.S. 186, 193 n.9 (1994).

declaration as to the laws of the several States."⁹⁶ *E pluribus unum* and hallelujah.⁹⁷

The economic and political integration of the states has advanced the civil rights of Americans. If indeed the framers of the Constitution "split the atom of sovereignty,"⁹⁸ an invaluable relief valve for political energy lies with maintaining the power of central authorities to check local abuses.⁹⁹ During the early days of the United States, the few women and slaves entitled to vote supported a strong union among the states because economic and political integration gives rise to complex social structures and liberates groups who would otherwise remain disempowered in simpler, more traditional settings.¹⁰⁰ The American polity that was most explicitly born of devotion to localism mercifully "[d]ied of [that] [t]heory."¹⁰¹

In our time, the implied freedom to trade across state lines has spawned an extensive jurisprudence on the constitutional right to travel.¹⁰² Commitment to personal freedom of movement has become an essential element of civil rights in America.¹⁰³ By contrast, ferocious hatred of upward devolution

96. OLIVER WENDELL HOLMES, *Law and the Court*, in COLLECTED LEGAL PAPERS 291, 295-96 (1920).

97. Chen, *supra* note 51, at 262.

98. *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 838 (1995) (Kennedy, J., concurring); *accord Saenz v. Roe*, 526 U.S. 489, 504 n.17 (1999).

99. *See, e.g., U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 838 (1995) (Kennedy, J., concurring) (asserting that the federalism envisioned in the original Constitution gave "our citizens . . . two political capacities, one state and one federal, each protected from incursion by the other"); *United States v. Lopez*, 514 U.S. 549, 556-57 (1995) (declaring the democratic interest in preserving the United States' "dual system of government" so as not to "obliterate the distinction between what is national and what is local"); *Gregory v. Ashcroft*, 501 U.S. 452, 458-59 (1991) (arguing that a "healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front"); *cf. New York v. United States*, 505 U.S. 144, 157 (1992) (stating that the task of confining Congress to its enumerated powers "would be the same even if one could prove that federalism secured no advantages to anyone").

100. *See* Rosmarie Zagari, *Gender and the First Party System*, in *FEDERALISTS RECONSIDERED* 118, 131-34 (Doron Ben-Atar & Barbara B. Oberg eds., 1999).

101. 3 SHELBY FOOTE, *THE CIVIL WAR: A NARRATIVE: RED RIVER TO APPOMATTOX* 766 (1974) (quoting Jefferson Davis).

102. *See Saenz v. Roe*, 526 U.S. 489 (1999); *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985); *Shapiro v. Thompson*, 394 U.S. 618 (1969); *Edwards v. California*, 314 U.S. 160 (1941); *cf. Kent v. Dulles*, 357 U.S. 116, 125-26 (1957) (articulating an interest in the right to travel abroad).

103. *See Katzenbach v. McClung*, 379 U.S. 294 (1964); *Heart of Atlanta Motel v. United States*, 379 U.S. 241 (1964). *But cf. United States v. Morrison*, 120 S. Ct. 1740

of political power characterizes not only the antiglobalization crusade but also America's militia movement.¹⁰⁴ Once we realize that the extreme left and the extreme right are both willing to resort to violence, the antiglobalization protests at Seattle and Prague can no longer masquerade as paragons of populist virtue. They differ from the 1995 bombing of federal offices in Oklahoma City in intensity, mayhem, and political polarity, but not in kind.

Freedom to travel also has an environmental dimension. Aggressive environmental protection safeguards the freedom of movement by severing decisions to travel or to move from variations in environmental quality.¹⁰⁵ The same Commerce Clause that protects trade among the states enables Congress to address environmental problems that affect multiple states or otherwise impair the movement of goods and persons in interstate commerce. This connection becomes all the more critical in an era of unprecedented constitutional pressure on federal environmental law.¹⁰⁶ Civil liberties of the first order wither when the ordinary citizen "must be afraid to drink freely from his [or her] country's rivers and streams."¹⁰⁷ In this sense, official complicity in environmental degradation violates the international human

(2000) (striking down the Violence Against Women Act for want of a substantial relation to interstate commerce).

104. See CONOR CRUISE O'BRIEN, *THE LONG AFFAIR: THOMAS JEFFERSON AND THE FRENCH REVOLUTION, 1785-1800*, at 304, 309-10 (1996).

105. See Daniel C. Esty, *Revitalizing Environmental Federalism*, 95 MICH. L. REV. 570, 596 (1996); Richard B. Stewart, *Environmental Quality as a National Good in a Federal State*, 1997 U. CHI. L.F. 199; cf. A. Dan Tarlock, *Safe Drinking Water: A Federalism Perspective*, 21 WM. & MARY ENVTL. L. & POL'Y REV. 233, 252 (1997) (describing amendments to the Safe Drinking Water Act as an "exercise in congressional protection of the implied right to travel").

106. See *Solid Waste Agency v. U.S. Corps of Eng'rs*, 121 S. Ct. 675 (2001) (invalidating the Corps of Engineer's assertion of jurisdiction over intrastate waters based solely on the presence of migratory birds); *Gibbs v. Babbitt*, 214 F.3d 483 (4th Cir. 2000) (questioning the constitutionality of the Endangered Species Act as applied to restrict habitat destruction and other activities that harm red wolves in Virginia), *cert. denied*, No. 00-844 (U.S. Feb. 20, 2001); *American Trucking Ass'n v. Browner*, 195 F.3d 4 (D.C. Cir. 1999), *cert. granted*, 120 S. Ct. 2003 and 120 S. Ct. 2193 (2000); *National Association of Home Builders v. Babbitt*, 130 F.3d 1041 (D.C. Cir. 1997), *cert. denied*, 524 U.S. 937 (1998); *United States v. Olin Corp.*, 107 F.3d 1506 (11th Cir. 1997); *Virginia v. Browner*, 80 F.3d 859 (4th Cir. 1996), *cert. denied*, 519 U.S. 1090 (1997).

107. EDWARD ABBEY, *DESERT SOLITAIRE: A SEASON IN THE WILDERNESS* 185 (1971); accord Eric T. Freyfogle, *Owning the Land: Four Contemporary Narratives*, 13 J. LAND USE & ENVTL. L. 279, 305 (1998).

rights norm against "arbitrary . . . exile."¹⁰⁸

"[A]cross-the-board globalism"¹⁰⁹ is the best way of coordinating free trade and environmental protection as "complementary" policies.¹¹⁰ Admittedly, simultaneously advocating free trade and environmental integrity typically earns a deluxe suite at the "very small hotel" that will be hosting the next "global convention of rabid free trade environmentalists."¹¹¹ Yet this jarring juxtaposition is unavoidable in a world of falling frontiers. The creation of "transboundary communities" causes "environmental interconnection" and in turn the "inevitabl[e]" abandonment of "localism in all spheres."¹¹² Strictly localist solutions will not suffice; "haphazard local encouragement" cannot replace coordinated responses to "diffuse, cross-jurisdictional" problems such as mobile source emissions and nonpoint-source runoff.¹¹³

Environmental integrity as a human right, so central in the localist critique of globalization, is more effectively advanced by free trade than by protectionism. In the absence of clearly defined, consistently enforced trade rules, "environmental standards" rapidly become "especially attractive candidates for disguised protectionism."¹¹⁴ Standards as vague as multifunctional-

108. Universal Declaration of Human Rights, art. 9, G.A. Res. 217, U.N. GAOR, 3d Sess. 7, U.N. Doc. A1810 (1948); see also Arthur C. Helton, *Forced International Migration: A Need for New Approaches by the International Community*, 18 *FORDHAM INT'L L.J.* 1623 (1995).

109. Chen, *supra* note 17, at 192; see also Daniel A. Farber, *Stretching the Margins: The Geographic Nexus in Environmental Law*, 48 *STAN. L. REV.* 1247, 1273 n.192 (1996) (observing that most "[f]ree trade advocates" and "[e]nvironmentalists" unwittingly "accept [globalist] arguments in one sphere," whether economic or environmental, "that they regard as illegitimate in the other").

110. John H. Jackson, *World Trade Rules and Environmental Policies: Congruence or Conflict?*, 49 *WASH. & LEE L. REV.* 1227, 1228 (1992) ("[I]ncreasing world welfare can lead to citizen demands and governmental actions to improve protection for the environment.").

111. Daniel A. Farber, *Environmental Federalism in a Global Economy*, 83 *VA. L. REV.* 1283, 1284 (1997).

112. Farber, *supra* note 109, at 1271.

113. Stephen M. Nickelsburg, Note, *Mere Volunteers? The Promise and Limits of Community-Based Environmental Protection*, 84 *VA. L. REV.* 1371, 1409 (1998).

114. C. Ford Runge, *Trade Protectionism and Environmental Regulations: The New Nontariff Barriers*, 11 *Nw. J. INT'L L. & BUS.* 47, 47 (1990); see also DANIEL C. ESTY, *GREENING THE GATT* 45 (1994); Howard F. Chang, *An Economic Analysis of Trade Measures to Protect the Global Environment*, 83 *GEO. L.J.* 2131, 2164-2165 (1995); Alan O. Sykes, *Regulatory Protectionism and the Law of International Trade*, 66 *U. CHI. L. REV.* 1, 3-4 (1999); cf. Marsha A. Echols, *Food Safety Regulation in the European Union and the United States: Different Cultures, Different Laws*, 4 *COLUM. J. EUR. L.* 525, 540 (1998) (describing food safety law as another fertile source of protectionist regulation); Frieder Roessler, *Domestic Pol-*

ity or sustainability are “far more susceptible to political capture” than specific and transparent environmental measures.¹¹⁵ Perhaps no controversy depicts this dynamic as vividly as the transatlantic tussle over beef from hormone-fed cattle.¹¹⁶ One attractive alternative to parochial, intrinsically protectionist measures lies in the adoption of uniform global standards.¹¹⁷ That project, however, presumes a continued commitment to integration rather than isolation in matters affecting the global economy and the global environment.

C. World Party

John Rawls’s difference principle poses one final obstacle. *Pax mercatoria* is legitimate only if it advances the welfare of society’s least advantaged class.¹¹⁸ Free trade may promote freedom and environmental quality in a country justly described as “the Michael Jordan of geopolitics,”¹¹⁹ but what does it promise beyond the shores of the United States? Far from undermining the legitimacy of *pax mercatoria*, a look at the developing world and at formerly Communist countries confirms the metaphysical

icy Objectives and the Multilateral Trade Order: Lessons from the Past, 19 U. PA. J. INT’L ECON. L. 513, 514 (1998) (observing that regulatory burdens on foreign competitors are routinely rationalized as being in the public interest).

115. Pamela Isela Hansen, *Transparency, Standards of Review, and the Use of Trade Measures to Protect the Global Environment*, 39 VA. J. INT’L L. 1017, 1063 (1999).

116. See *EC Measures Concerning Meat and Meat Products (Hormones)*, Report of the Appellate Body, WT/DS26/AB/R, WT/DS48/AB/R (Jan. 16, 1998); Dale E. McNeil, *The First Case Under the WTO’s Sanitary and Phytosanitary Agreement: The European Union’s Hormone Ban*, 39 VA. J. INT’L L. 89 (1998); Michele D. Carter, Note, *Selling Science Under the SPS Agreement: Accommodating Consumer Preferences in the Growth Hormones Controversy*, 6 MINN. J. GLOBAL TRADE 625 (1997).

117. See Thomas J. Schoenbaum, *International Trade and Protection of the Environment: Irreconcilable Conflict?*, 86 AM. J. INT’L L. 700, 703 (1992); Mark J. Spaulding, *Transformation of Environmental Regulation and Public Parties in the Resolution of International Environmental Disputes*, 35 SANTA CLARA L. REV. 1127, 1142 (1995). But cf. Henry N. Butler & Jonathan R. Macey, *Externalities and the Matching Principle: The Case for Reallocating Environmental Authority*, 14 YALE J. ON REG. 23, 25 (1996) (arguing that the jurisdiction affected by environmental damage, and not the jurisdiction most able to harmonize standards, should be empowered to establish environmental standards).

118. See JOHN RAWLS, *POLITICAL LIBERALISM* 6 (1993); JOHN RAWLS, *A THEORY OF JUSTICE* 60 (1971). See generally Daniel J. Gifford, *Interpersonal Distrust in the Modified Rawlsian Society*, 48 SMU L. REV. 217 (1994) (assessing the difference principle); Daniel J. Gifford, *The Relevance of the Complexity of Social Arrangements to the Attainment of Rawlsian Justice*, 51 TUL. L. REV. 510, 527-46 (1977).

119. Thomas L. Friedman, *Medal of Honor*, N.Y. TIMES, Dec. 15, 2000, at A29.

benefits of international economic coordination for nations rich and poor.

Although the exact relationship between political freedom and economic growth remains ambiguous,¹²⁰ certain constants have emerged since Bretton Woods. Chief among these is the recognition that neither wealth nor liberty can flourish unless private parties can realistically expect that courts will decide cases according to reasoned law and free of interference from the political branches of government. Rule of law, taken for granted in the United States and its peer nations, remains the *sine qua non* for development.¹²¹

Perhaps no element of rule of law is as critical as an independent judiciary.¹²² Corrupt or politically captive judiciaries impair development.¹²³ The kleptocracies that have arisen in the former Soviet Union demonstrate all too clearly how corruption in judicial administration and law enforcement can stunt growth and freedom.¹²⁴ By contrast, the restoration of Chinese sovereignty over Hong Kong in 1997 has not drained the wealth from the former Crown Colony. The difference lies in the Chinese government's respect for the independence of Hong Kong's judiciary, however fitfully and grudgingly China honors that pledge.¹²⁵

120. See Adam Przeworski & Fernando Limongi, *Political Regimes and Economic Growth*, 7 J. ECON. PERSP. 51 (1993) (documenting ambiguous empirical evidence of the link between political freedom and economic growth).

121. See Viet D. Dinh, *What Is the Law in Law & Development*, 3 GREEN BAG 19 (1999).

122. See, e.g., Frank B. Cross, *The Relevance of Law in Human Rights Protection*, 19 INT'L REV. L. & ECON. 87, 96-97 (1999); Michael J. Trebilcock, *What Makes Poor Countries Poor: The Role of Institutional Capital in Economic Development*, in THE LAW AND ECONOMICS OF DEVELOPMENT 40 (Edward Buscaglia et. al, 1997).

123. See THOMAS CAROTHERS, *AIDING DEMOCRACY ABROAD: THE LEARNING CURVE* 173 (1999).

124. See, e.g., Michael A. Heller, *The Tragedy of the Anticommons: Property in the Transition from Marx to Markets*, 111 HARV. L. REV. 621 (1998) (assigning blame for the stagnant Russian economy to the flowering of rights to exclude, many of them corruptly acquired, after the fall of the Soviet Union); John M. Litwack, *Legality and Market Reform in Soviet-Type Economies*, 5 J. ECON. PERSP. 77 (1991). See generally THE ECONOMICS OF CORRUPTION AND ILLEGAL MARKETS (Gianluca Fiorentini & Stefano Zamagni eds., 1999); Helmut Sohmen, *Critical Importance of Controlling Corruption*, 33 INT'L LAW. 863 (1999).

125. See, e.g., Albert Chen, *The Constitutional Crisis in Hong Kong*, 33 INT'L LAW. 1025 (1999); Lin Feng, *The Constitutional Crisis in Hong Kong—Is It Over?*, 9 PAC. RIM L. & POL'Y 281 (2000); Owen Fiss, *Hong Kong Democracy*, 36 COLUM. J. TRANSNAT'L L. 493 (1998); Ted Hagelin, *Reflections on the Economic Future of Hong Kong*, 30 VAND. J. TRANSNAT'L L. 701 (1997).

On balance, increases in wealth do enhance human rights.¹²⁶ Economically vibrant societies tend to adopt and maintain beneficent laws and legal institutions.¹²⁷ Cheaper, easier communication empowers the heretofore oppressed and dispossessed.¹²⁸ Through these channels globalization achieves its indirect but positive impact on political freedom.¹²⁹ “Globalization is not only the creation of world markets and transnational companies; it also means the extension of justice and democratic values into regions where barbarism still flourishes.”¹³⁰

Much work nevertheless remains. Because human beings must secure their physiological needs before they can debate abstract notions of liberty,¹³¹ many politicians and intellectuals in the developing world “espouse the priority of economic and social rights over civil and political rights.”¹³² For example, Lee Kuan Yew, the former prime minister of Singapore best known as the leading proponent of “Asian values,” has argued that “freedom, human rights and democracy do not add up to much” for those who “are hungry [and] . . . lack basic services.”¹³³ Sub-Saharan Africa is another region where “pressing economic and

126. See, e.g., Partha Dasgupta & Martin Weale, *On Measuring the Quality of Life*, 20 WORLD DEV. 119 (1992); T.R. Gurr, *On the Political Consequence of Scarcity and Economic Decline*, 29 INT’L STUD. Q. 51 (1985); R.D. McKinlay & A.S. Cohan, *A Comparative Analysis of the Political and Economic Performance of Military and Civilian Regimes*, 8 COMP. POL. 1 (1975); Neil J. Mitchell & James M. McCormick, *Economic and Political Explanations of Human Rights Violations*, 40 WORLD POL. 476 (1988).

127. See Thomas G. Moore, *An Economic Analysis of the Concept of Freedom*, 77 J. POL. ECON. 532 (1969); cf. Milton Friedman, *The Relation Between Economic Freedom and Political Freedom*, in THE LIBERTARIAN READER: CLASSIC AND CONTEMPORARY READINGS FROM LAO-TZU TO MILTON FRIEDMAN 292 (David Boaz ed., 1997) (arguing that economic freedom fosters broad social norms that in turn promote political freedom).

128. See Jack L. Goldsmith, *Against Cyberanarchy*, 65 U. CHI. L. REV. 1199, 1237 (1999); Eugene Volokh, *Cheap Speech and What It Will Do*, 104 YALE L.J. 1805 (1995).

129. A.T. KEARNEY, INC., GLOBAL BUSINESS POLICY COUNCIL, GLOBALIZATION LEDGER 9-10, at <http://www.atkearney.com> [hereinafter KEARNEY GLOBALIZATION LEDGER].

130. Mario Vargas Llosa, *Crossing the Moral Boundary*, N.Y. TIMES, Jan. 7, 2001, § 4, at 17.

131. See ABRAHAM H. MASLOW, MOTIVATION AND PERSONALITY 35-46 (2d ed. 1970); cf. Karl Marx, *The German Ideology*, in THE MARX-ENGELS READER 110, 114 (Robert C. Tucker ed., 1972) (arguing that human civilization, as distinct from threadbare survival, begins with production of means to satisfy the need for physical sustenance). See generally BRUCE E. MOON, THE POLITICAL ECONOMY OF BASIC HUMAN NEEDS (1991).

132. Adamantia Pollis, *Liberal, Socialist, and Third World Perspectives of Human Rights*, in TOWARD A HUMAN RIGHTS FRAMEWORK 1, 20 (Peter Schwab & Adamantia Pollis eds., 1982).

133. Philip Shenon, *Singapore, the Tiger Whose Teeth Are Not Universally Scorned*, N.Y. TIMES, April 10, 1994, at A5 (quoting Prime Minister Lee).

social development needs" allegedly privilege "economic-based rights over civil and political freedoms."¹³⁴

But pitting civil liberties against economic development is a false dichotomy. Economic development, after all, is also a human right.¹³⁵ Reconciling democracy with development fits squarely within the established legal framework for assessing and securing human rights. A sounder view of the developmental dynamic treats wealth as a precondition for rights, not a competitor or a substitute.¹³⁶

Even clear economic successes, however, do not directly advance human rights. Economic progress in developing countries can "foment ethnic envy and hatred" toward an economically dominant but politically disadvantaged minority.¹³⁷ Regrettably, much of the world still regards human rights at best as a luxury item and at worst as a badge of Western imperialism.¹³⁸ Globalization has not yet realized its "potential to neutralize inequities

134: Ronald St. J. MacDonald, *Constitutionalism and Rights: The Influence of the United States Constitution Abroad*, 86 AM. J. INT'L L. 192, 195 (1992) (book review).

135. See, e.g., Vienna Declaration and Programme of Action, U.N. Doc. A/CONF.157/24, adopted at Vienna, June 14-25, 1993, reprinted in 32 I.L.M. 1661 (1993); cf. Convention on Biological Diversity art. 20(4), 31 I.L.M. 818 (1992) (declaring the "eradication of poverty" to be a paramount developmental objective under the Convention). See generally AMARTYA SEN, DEVELOPMENT AS FREEDOM (1999).

136. See Daniel A. Farber, *Rights as Signals* (unpublished manuscript). "The Troubles" in Ireland provide tangential support for this proposition. Irish patriot Michael Collins believed wholeheartedly that Ireland would know no peace until it enjoyed economic prosperity independent of Britain's. See TIM PAT COOGAN, MICHAEL COLLINS: THE MAN WHO MADE IRELAND 422-23 (1996). The current peace process in Northern Ireland began with the emergence of Ireland as the "Celtic Tiger." "The question of Protestant or Catholic is giving way to new ones: Visa or MasterCard,? Cash or Charge? Expanding markets and lines of credit breed good will toward men. . . . And Ireland's lively new economy—the Celtic Tiger purring in the Republic—trumps the old begrudgers and hateful rhetoric." Thomas Lynch, *A Hero of Celtic Renaissance*, N.Y. TIMES, Dec. 15, 2000, at A29. On the other side of the Atlantic, residents of the world's largest island understand all too well how economic dependency keeps Greenland within Denmark's colonial orbit. See James Brooke, *Greenland Is Pampered But Ponders Cutting Free*, N.Y. TIMES, Nov. 30, 2000, at A7 (suggesting that "[i]f there were oil, independence would come in about a quarter of an hour").

137. Amy L. Chua, *Markets, Democracy, and Ethnicity: Toward a New Paradigm for Law and Development*, 108 YALE L.J. 1, 5-6 (1998).

138. See Frank B. Cross, *International Determinants of Human Rights and Welfare: Law, Wealth or Culture?*, 7 IND. INT'L & COMP. L. REV. 265, 276 (1997); Lisa J. Bernt, Note, *Measuring Freedom? The UNDP Human Freedom Index*, 13 MICH. J. INT'L L. 720 (1992); cf. Raj Bhala, *Mrs. WATU and International Trade Sanctions*, 33 INT'L LAW. 1, 21 (1999) (observing that the developing world sometimes regards the environmental imperatives of the developed world as imperialism in green drag); Bartram S. Brown, *Developing Countries in the International Trade Order*, 14 N. ILL. U. L. REV. 347, 376-77 (1994) (same).

based on gender and race and to make such factors irrelevant in the calculation of opportunities available for economic advantage."¹³⁹

Globalization advances democracy not only by raising overall wealth, but also by improving the political climate within nations. The ability of multinational corporations and skilled workers to adopt "fight or flight" strategies encourages governments to adopt transparent policies and to broaden political participation.¹⁴⁰ Businesses and nongovernmental organizations respond by cooperating with the government to form "transnational epistemic communities."¹⁴¹ Even where they are despised as scourges against local businesses, multinational corporations introduce moral values in countries that have yet to realize globalization's full benefits.¹⁴² At the opposite end of the ideological spectrum, even as unstable governments plunge into kleptocracy and anti-Western terrorists flourish,¹⁴³ nongovernmental organizations have stepped into the resulting power vacuum in order to help police the morals of globalized society.¹⁴⁴

Global markets for capital and labor can discipline rogue governments swiftly and effectively.¹⁴⁵ They do so by carrot and by stick. First, the carrot: "states keep their promises" because "they receive payoffs" within the community of nations "when other states successfully rely on their actions."¹⁴⁶ Because global

139. Ruth Gana Okediji, *Copyright and Public Welfare in Global Perspective*, 7 *IND. J. GLOBAL LEG. STUD.* 117, 181 (1999).

140. Dan L. Burk, *Virtual Exit in the Global Information Economy*, 73 *CHI.-KENT L. REV.* 943, 944 (1998) (quoting KENT VAN DE GRAAF, *HUMAN ANATOMY* 399, 429 (2d ed. 1988)).

141. See generally Peter Haas, *Epistemic Communities and International Policy Coordination*, 46 *INT'L ORG.* 1 (1992).

142. See, e.g., Robert T. Kudrle, *No Entry: Sectoral Controls on Incoming Direct Investment in the Developed Countries*, in *MULTINATIONALS IN THE GLOBAL POLITICAL ECONOMY* 142 (Lorraine Eden & Evan H. Potter eds., 1992).

143. See FRIEDMAN, *supra* note 5, at 267-83 (describing the rise of both Russian kleptocracy and terrorists such as Osama Bin Laden).

144. See, e.g., Peter J. Spiro, *New Global Potentates: Nongovernmental Organizations and the "Unregulated" Market Place*, 18 *CARDOZO L. REV.* 957 (1996); A. Dan Tarlock, *The Role of Non-Governmental Organizations in the Development of International Environmental Law*, 68 *CHI.-KENT L. REV.* 61 (1992).

145. See STEVEN SOLOMON, *THE CONFIDENCE GAME* 39 (1995); cf. FRIEDMAN, *supra* note 5, at 86-87 (describing a "Golden Straitjacket" of narrow fiscal and monetary choices imposed on national governments by international capital markets).

146. Jack L. Goldsmith & Eric A. Posner, *A Theory of Customary International Law*, 66 *U. CHI. L. REV.* 1113, 1137 (1999).

markets ostracize states that fail to secure and maintain "civilized" status, national governments still tend to pay "lip service" to international law in order if only "to avoid the inference that they are rogue states."¹⁴⁷ Only "serious intent" to comply with the rules of international monetary cooperation and free trade can secure "good standing in the international economic community."¹⁴⁸ The global capital markets measure compliance with these norms quite precisely through the "interest-rate premium" that investors "demand for buying developing-country bonds instead of U.S. Treasurys."¹⁴⁹ In the long run, compliance with globalization's underlying legal structure fosters an "across-the-board, indivisible obligation to heed the rule of law."¹⁵⁰ "[R]epeated compliance gradually becomes habitual obedience" as international law "penetrates . . . [local] legal system[s]."¹⁵¹ *Pax mercatoria*, in short, becomes domesticated as part of national law.¹⁵²

The primary institutions of international economic law differ only in degree and not in kind from their domestic counterparts. Like national courts, the WTO, the IMF, and the World Bank "limit the flexibility of [domestic] decision makers" even though the Bretton Woods institutions "carry no arms and hold no independent purse strings."¹⁵³ "[I]t must be in the interest of [political] actors who establish such institutions and protect their autonomy to abide by the limits imposed by those institutions."¹⁵⁴

Multigovernmental institutions face many of the constraints

147. *Id.*

148. Beth A. Simmons, *Money and the Law: Why Comply with the Public International Law of Money?*, 25 YALE J. INT'L L. 323, 324 (2000).

149. Phillips, *supra* note 70, at A21. On the use of the "Brady bond" mechanism to collateralize Third World debt with U.S. Treasury notes, see John E. Rodgers & Jonathan R. Hodes, *Using the "Brady Bond" Approach in Mexican Corporate Financing*, 2 MEX. TRADE & L. RPTR. 5 (1990); Ruth Rosauer, *Emerging Market Debt Instruments Play Siren Song for Pension Plans*, 7 MINN. J. GLOBAL TRADE 211, 216-17 (1998).

150. Simmons, *supra* note 148, at 360.

151. Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106 YALE L.J. 2599, 2603 (1997).

152. *Cf.* Philip P. Frickey, *Domesticating Federal Indian Law*, 81 MINN. L. REV. 31 (1996) (reconciling federal Indian law with international law of nations).

153. Ran Hirschl, *The Political Origins of Judicial Empowerment Through Constitutionalization: Lessons from Four Constitutional Revolutions*, 25 LAW & SOC. INQUIRY 91, 103 (2000).

154. *Id.*

that handcuff domestic decisionmakers. Acknowledging this reality all but guts the common complaint that the WTO does not permit, much less welcome, full participation by nongovernmental organizations.¹⁵⁵ Vis-à-vis domestic courts, the WTO enjoys no greater leverage over elected lawmakers. If anything, it has far less insofar as the WTO's only means of securing compliance is its threat to authorize retaliatory sanctions by other nations.¹⁵⁶ But protest follows power uphill as surely as water flows downhill. As "power seeps upwards" out of national governments to international organizations, "the attention of interest groups" will follow.¹⁵⁷ Interest groups hate the WTO precisely because it is more transparent, because the rules of free trade expose the destructive nature of domestic legislation effecting interest-group transfers.¹⁵⁸ Granting standing to nongovernmental organizations before the WTO would gouge the public for the benefit of "a select group of well-monied interest groups,"¹⁵⁹ particularly those whose "street demonstrations at the Seattle ministerial meeting" telegraphed their belief that "the WTO has been too successful."¹⁶⁰

IV. BY THE RIVER OF SWIRLING EDDIES¹⁶¹

A. Boom Times in Bratislava

Let us return now to the Czech and Slovak Republics. The frontier between these formerly federated nations represented a real divide circa September 2000. In a development vastly qui-

155. See, e.g., G. Richard Shell, *Trade Legalism and International Relations Theory: An Analysis of the World Trade Organization*, 44 DUKE L.J. 829, 907 (1995).

156. See GATT art. XXIII(1); Understanding on Rules and Procedures Governing the Settlement of Disputes, Apr. 15, 1994, WTO Agreement, Annex 2, LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND vol. 31, 33 I.L.M. 1226 (1994). See generally Joost Pauwelyn, *Enforcement and Countermeasures in the WTO: Rules Are Rules—Toward a More Collective Approach*, 94 AM. J. INT'L L. 335 (2000).

157. Spiro, *supra* note 144, at 958.

158. See Judith Hippler Bello, *The WTO Dispute Settlement Understanding: Less Is More*, 90 AM. J. INT'L L. 416, 417 (1996).

159. Philip M. Nichols, *Participation of Nongovernmental Parties in the World Trade Organization*, 17 U. PA. J. INT'L ECON. 295, 319 (1996).

160. Daniel K. Tarullo, *Norms and Institutions in Global Competition Policy*, 94 AM. J. INT'L L. 478, 494 (2000).

161. EZRA POUND, *THE RIVER-MERCHANT'S WIFE: A LETTER*, LL. 16-17 (1915) ("You went into far Ku-to-en, by the river of swirling eddies, / And you have been gone five months"); cf. PETER GABRIEL, *Washing of the Water, on Us* (UNI/Geffen 1992) ("River, o river, carry me on").

eter than the Prague protests but ultimately more significant, Slovakia signed an agreement on September 28, 2000, that would enable it to become the thirtieth member of the Organisation for Economic Co-operation and Development (or "OECD").¹⁶² Ivan Miklos, Slovakia's deputy prime minister, said that this step toward OECD accession "signifies Slovakia's desire and readiness to share the . . . market principles and democratic orientation" embraced by the OECD and its members.¹⁶³

Slovakia has not enjoyed comparable success in its efforts to join NATO and the European Union. Soon after the dissolution of the former Czechoslovakia, Slovakia applied for membership in NATO and the EU.¹⁶⁴ The Czech Republic, Hungary, and Poland joined the OECD between 1995 and 1996.¹⁶⁵ In 1999, these countries joined NATO, extending the Western military alliance deep into the heart of the defunct Warsaw Pact.¹⁶⁶ Slovak membership will come, if at all, in a later wave of NATO expansion that would include Bulgaria, Romania, and Slovenia. The European Union has left Slovakia off its fastest track for membership. The OECD has acknowledged that Slovakia is taking longer to complete the OECD's "Partners in Transition" program for "assistance . . . in building the institutions and legal and regulatory structures needed for a market economy" in central and eastern Europe.¹⁶⁷ The five-year gap between Czech and Slovak accession to the OECD suggests that Slovakia may endure as much as a decade of delayed integration vis-à-vis its central European neighbors.¹⁶⁸

This is the price that Slovakia is paying for the instability

162. Organisation for Economic Co-operation and Development, *Slovakia Signs Agreement Paving the Way for Membership of OECD* (Sept. 28, 2000), at <http://www.oecd.org/media/release/slovaksigning.htm> [hereinafter *OECD/Slovakia*].

163. *Id.*

164. See European Commission, Commission Opinion on Slovakia's Application for Membership of the European Union, at http://europa.eu.int/comm/enlargement/slovakia/op_07_97/index.htm; Martin Fletcher & Michael Evans, *Aspiring Members Urged to Show Patience*, *TIMES LONDON*, Jan. 6, 1994.

165. See Jane Perlez, *Poland Joining O.E.C.D.: A Step Further into Europe*, *N.Y. TIMES*, July 11, 1996, at D3.

166. See Jane Perlez, *Poland, Hungary and the Czechs Join NATO*, *N.Y. TIMES*, Mar. 13, 1999, at A1; see also Craig R. Whitney, *Three Former Members of Eastern Bloc Invited into NATO*, *N.Y. TIMES*, July 9, 1997, at A1.

167. *OECD/Slovakia*, *supra* note 162.

168. See Edmund L. Andrews, *European Union's Tough but Relentless Drive to Expand*, *N.Y. TIMES*, Dec. 20, 1999, at C22.

that marred the earliest stages of its independence. “[C]rony politics” in the new republic’s first years made Slovakia “a pariah left out of the first round of NATO expansion and shunned for entry negotiations by the European Union.”¹⁶⁹ Although the “rapidity with which [Eastern Europe’s] Communist regimes had fallen [in 1989] was an indication of fundamental and widespread opposition to the Communist system,” no “consensus [emerged] on what should replace it.”¹⁷⁰ The former Czechoslovakia disintegrated on January 1, 1993, largely because of the political ambitions of one Czech and one Slovak. Vladimír Mečiar wanted to be the founder of an independent Slovak state; Václav Klaus, the Czech economist-turned-prime minister, seized the opportunity to rid the former federation of its poorer Slovak territories. As a result, Czechoslovakia broke in two even though neither the Czech nor the Slovak population had a chance to vote directly on the issue.¹⁷¹

To this day, one potential source of danger lurks in the legacy of central planning. A growing gap between public and private sector wages in the transitional economies of central and eastern Europe may compromise these governments’ ability to attract new talent, retain skilled employees, and combat corruption.¹⁷² In Slovakia as in the rest of the world, “it is not the mere rise in per capita income . . . that is of greatest importance, but rather the changes in the class and social structure caused by industrialization and urbanization which are most consequential for democracy.”¹⁷³

By September 2000, though, more than the proverbial seven years had passed since the Velvet Divorce of 1993. Wireless phones ruled Slovak airwaves, and superstores across Slovakia stocked consumer goods whose variety and abundance were un-

169. Steven Erlanger, *Arrest May End Slovakia Ex-Premier’s Influence*, N.Y. TIMES, May 3, 2000, at A6.

170. STANISLAV J. KIRSCHBAUM, *A HISTORY OF SLOVAKIA: THE STRUGGLE FOR SURVIVAL* 251 (1995).

171. *See id.* at 268-71.

172. *See* Vera A. Adamchik & Arjun S. Bedi, *Wage Differentials Between the Public and the Private Sectors: Evidence from an Economy in Transition*, 7 LABOUR ECON. 203 (2000) (deriving these conclusions from a study of Poland).

173. Evelyne Huber, Dietrich Rueschmeyer & John D. Stephens, *The Impact of Economic Development on Democracy*, 7 J. ECON. PERSP. 71, 85 (1993). *See generally* DIETRICH RUESCHMEYER, EVELYNE HUBER STEPHENS & JOHN D. STEPHENS, *CAPITALIST DEVELOPMENT AND DEMOCRACY* (1992).

thinkable even one decade before.¹⁷⁴ On what seemed like every corner in Nitra, the same sign suggested that the old dream of multiethnic *Mittleuropa* (or *stredaevropa*, if you prefer the Slovak to the German) had been reborn with a slightly different accent—*privátna jazyková škola*.¹⁷⁵ In Košice, U.S. Steel's US\$450 million acquisition of the VSZ steel mill may prove "crucial to re-establishing Slovakia's credibility with the West and repairing a national image damaged by corruption and crony capitalism."¹⁷⁶ With OECD membership virtually in hand, Slovak accession to the European Union and full membership within the ranks of developed nations suddenly loomed, not as remote possibilities, but rather as distinct probabilities. Suffice it to say that Slovakia in September 2000 was easing toward *pax mercatoria*.

B. *Never Before Have So Many Been So Wrong About So Much*

The antiglobalization movement has made some extraordinary claims. Let us transplant a precept of natural science into this social realm:¹⁷⁷ extraordinary claims demand extraordinary proof.¹⁷⁸ From Seattle to Prague, protesters have argued that the organs of international economic law conspire with multinational corporations to sap national and local governments of legitimate power, to destabilize global security, and to poison workplaces as well as ecosystems.¹⁷⁹ That case has not met even the most generous standard of proof. The antiglobalization movement has failed to refute the following:

Dramatic improvements in welfare at every wealth and income

174. Cf. John H. Barton & John S. Fisher, *Traditional Trade Theory and Its Limitations*, in INTERNATIONAL TRADE AND INVESTMENT 5, 15 (1982) (observing that free trade typically enhances diversity and consumer choice).

175. Private language school.

176. Edmund L. Andrews, *Steel City, Slovakia: An American Giant Places a Bet in Eastern Europe*, N.Y. TIMES, Nov. 30, 2000, at C1.

177. *But cf.* Robert Wolf, *The Regionalist Answer*, 9 MINN. J. GLOBAL TRADE 610, 610 (2000) (protesting, from an antiglobalist perspective, that "[r]elating a possibility in human history to a fact of natural history is a mistake").

178. See Thomas S. Kuhn, THE STRUCTURE OF SCIENTIFIC REVOLUTIONS 7 (2d ed. 1970).

179. See generally GLOBALIZE THIS! THE BATTLE AGAINST THE WORLD TRADE ORGANIZATION AND CORPORATE RULE (Kevin Danaher & Roger Burbach eds., 2000) [hereinafter GLOBALIZE THIS!] (collecting antiglobalist essays on the significance of the Seattle riots).

level.¹⁸⁰ Since 1820 global wealth has expanded tenfold, thanks largely to technological advances and the erosion of barriers to trade.¹⁸¹ The world economic order, simply put, is lifting people out of poverty. According to the World Bank, the percentage of the world's population living in extreme poverty fell from 28.3 to 23.4% between 1987 and 1998.¹⁸² (The World Bank defines extreme and absolute poverty according to "reference lines set at \$1 and \$2 per day" in 1993 terms, adjusted for "the relative purchasing power of currencies across countries.")¹⁸³ A more optimistic study has concluded that "the share of the world's population earning less than US\$2 per day shrank by more than half" between 1980 and 1990, "from 34 to 16.6 percent."¹⁸⁴ In concrete terms, "economic growth associated with globalization" over the course of that decade helped lift 1.4 billion people out of absolute poverty.¹⁸⁵ Whatever its precise magnitude, this improvement in global welfare has taken place because of, not in spite of, flourishing world trade.¹⁸⁶

The meaning of American victory in the Cold War. The liberal democracies of the north Atlantic alliance decisively defeated their primary political rivals in the Eastern bloc. Capitalism coupled with generous civil liberties crushed central planning coupled with dictatorship of the proletariat. "America, so the world supposes, won the Cold War."¹⁸⁷ And the world is right.

The true nature of the environmental crisis. The most serious environmental problems involve "the depletion and destruction of the global commons."¹⁸⁸ Climate change, ozone depletion,

180. See generally ROBERT W. FOGEL, *THE FOURTH GREAT AWAKENING AND THE FUTURE OF EGALITARIANISM* (2000).

181. See ANGUS MADDISON, *MONITORING THE GLOBAL ECONOMY, 1820-1992* (1995); Deirdre McCloskey, Thomas L. Freidman, *The Lexus and the Olive Tree: Understanding Globalization*, 9 MINN. J. GLOBAL TRADE 121, 130-31 (2000) (book review).

182. See WORLD BANK, *GLOBAL ECONOMIC PROSPECTS AND THE DEVELOPING COUNTRIES* 36 (2001) [hereinafter *GLOBAL ECONOMIC PROSPECTS*].

183. World Bank, *Measuring Poverty*, at <http://www.worldbank.org/poverty/mission/up2.htm> [hereinafter *Measuring Poverty*]. See generally Amartya K. Sen, *Poverty: An Ordinal Approach to Measurement*, 44 *ECONOMETRICA* 219 (1976) (defining poverty, inequality, and welfare and distinguishing these three concepts from each other).

184. KEARNEY GLOBALIZATION LEDGER, *supra* note 129, at 8.

185. *Id.* at 1.

186. See *GLOBAL ECONOMIC PROSPECTS*, *supra* note 182, at 1, 17.

187. Jim Chen, *The American Ideology*, 48 *VAND. L. REV.* 809, 809 (1995).

188. Chen, *supra* note 17, at 186.

and the loss of species, habitats, and biodiversity are today's top environmental priorities.¹⁸⁹ None can be solved without substantial economic development and intense international cooperation. The systematic degradation of the biosphere respects no political boundaries. Worse, it is exacerbated by poverty. Of the myriad environmental problems in this mutually dependent world, "persistent poverty may turn out to be the most aggravating and destructive."¹⁹⁰ We must remember "above all else" that "human degradation and deprivation . . . constitute the greatest threat not only to national, regional, and world security, but to essential life-supporting ecological systems."¹⁹¹

The enhancement of individual liberty through globalization. By dislodging local tyrants and ideologies, globalization has minimized the sort of personal abuse that too often seems endemic to one place, one population.¹⁹² The twenty-first century will witness "people voting with their feet to escape from some village elder's idea of how to live, or some London School of Economics graduate's idea of protecting Indian folkways."¹⁹³ This changing social reality will undermine the conventional assumption that capital is mobile but labor is immobile. Generations of scholarship on trade and international relations hang in the balance. At the very least we will have to recalibrate existing race-to-the-bottom models and their sensitivity to "giant sucking sounds."

189. See ENVIRONMENTAL PROTECTION AGENCY, SCIENCE ADVISORY Bd., REDUCING RISK: SETTING PRIORITIES AND STRATEGIES FOR ENVIRONMENTAL PROTECTION 13 (1990); cf. ESA Oversight, *Hearings Before the Subcomm. on Environmental Pollution of the Senate Environment and Public Works Comm.*, 97th Cong., 1st Sess. 366 (1981) (quoting Edward O. Wilson for the proposition that "the loss of genetic and species diversity by the destruction of natural habitats" is probably the contemporary crisis whose mismanagement "our descendants [will] most regret" and "are least likely to forgive"); E.O. WILSON, THE DIVERSITY OF LIFE 254 (1992) ("I cannot imagine a scientific problem of greater immediate importance for humanity [than the destruction of biodiversity].").

190. Patrick Low, *Trade and the Environment: What Worries the Developing Countries?*, 23 ENVTL. L. 705, 706 (1993).

191. James A. Lee, *Conservation in a World in Search of a Future*, in CONSERVATION FOR THE TWENTY-FIRST CENTURY 284, 287 (David Western & Mary C. Pearl eds., 1989).

192. Cf. THE FEDERALIST NO. 10, at 54, 60-61 (James Madison) (Edward Meade Earle ed., 1937) (urging the creation of a large republic as a public-regarding counterweight to self-serving "faction[s]").

193. McCloskey, *supra* note 181, at 132; cf. Chen, *supra* note 17, at 172 ("[I]n America, it is the losers who stay put, who never leave their hometowns in pursuit of education, adventure or opportunity." (emphasis in original)).

Nor has localism propounded plausible solutions to challenges such as food security,¹⁹⁴ AIDS and other epidemiological crises, and barriers to full equality for women and children.¹⁹⁵ The localist package of autarky, retaliatory protectionism, and isolationism would be catastrophic. It really is a shame that Ralph Nader will probably not be named “the first U.S. ambassador to North Korea,” where he could “get a real taste of what a country that actually follows [his] insane economic philosophy—high protectionism, economic autarky, anti-markets, antiglobalization, anti-multinationals—is like for the people who live there.”¹⁹⁶ The policies preferred by the protesters at Seattle and Prague guarantee penury for most, security for some, and power for an unjustly privileged few. That way runs anew the road to serfdom.¹⁹⁷

One last aspect of the antiglobalization narrative deserves mention. The protest movement’s plea for a return to strict localism cannot be taken at face value. If restoring local sovereignty and ensuring accountability to geographically defined political communities were the primary objectives of the antiglobalization movement, we would be witnessing a wholesale rejection of international law. Human rights law, United Nations peacekeeping, and ambitious multilateral environmental agreements such as the Montreal Protocol,¹⁹⁸ the Convention on Biological Diversity,¹⁹⁹ and the Kyoto Protocol²⁰⁰ would draw vehement protests as infringements on national sovereignty. The

194. See C. Ford Runge & Benjamin Senauer, *A Removable Feast*, *FOREIGN AFF.*, Apr. 2000, at 39, 41 (2000) (“[T]he hard truth is that developing countries need freer trade to feed themselves.”).

195. See Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* Dec. 18, 1979, G.A. Res. 34/180, U.N. GOAR, 34th Sess., U.N. Doc. A/34/830 (1979); Convention on the Rights of the Child, *adopted* Nov. 20, 1989, G.A. Res. 44/25, U.N. GOAR, 44th sess., Supp. No. 49, U.N. Doc. A/49/736, 28 I.L.M. 1448 (1989).

196. Thomas L. Friedman, *Original Sin*, *N.Y. TIMES*, Nov. 10, 2000, at A33.

197. See generally F.A. HAYEK, *THE ROAD TO SERFDOM* (1994).

198. See Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution Concerning the Control of Emissions of Nitrogen Oxides or Their Transboundary Fluxes, 28 I.L.M. 212 (1989), *entered into force*, Feb. 14, 1991; see also Helsinki Declaration on the Protection of the Ozone Layer, 28 I.L.M. 1335 (1989).

199. 31 I.L.M. 818 (1992).

200. Kyoto Protocol to the United Nations Framework Convention on Climate Change (Dec. 10, 1997); see also United Nations Framework Convention on Climate Change, 31 I.L.M. 849 (1992), *entered into force*, Mar. 21, 1994.

United Nations' Millenium Declaration,²⁰¹ issued during the summer of 2000, would have drawn localist protesters from around the world, and Manhattan's East Side would have resembled the set of "Escape from New York."

In an ironic reversal of the familiar progressive slogan, the antiglobalization movement thinks locally and acts globally. Much of the protest against globalization treats the WTO, the IMF, and the World Bank as proxies for complaints over "the direction of national government policies," especially those affecting labor and employment in the developed world.²⁰² As Justice Harry Blackmun said in a completely different context, the localist complaint "reeks of wages."²⁰³

Despite their impressive magnitude, gains from globalization attract scant scholarly notice and even less popular attention. Globalization's benefits are distributed among too many people and across too much geographic space to compete for attention in an affluent but self-absorbed First World.²⁰⁴ Why indeed were the demonstrators who swamped the WTO in Seattle "overwhelmingly Anglo?"²⁰⁵ By contrast, real and imagined job losses from globalization easily captivate a First World populace that sympathizes much more readily with relatively wealthy, media-savvy First World workers than with any group in developing or formerly socialist countries. "If patriotism is . . . the last refuge of the scoundrel, wrapping outdated industry in the mantle of national interest is the last refuge of the economically dispossessed."²⁰⁶ And given the human propensity to notice strife over serenity, it hardly surprises that one bad week in Seattle has overshadowed half a century of earnest work toward *pax mer-*

201. See *In Statement by the U.N.: The Need for Balance*, N.Y. TIMES, Sept. 9, 2000, at A4 (resolving to halve by 2015 the populations "whose income is less than \$1," who "suffer from hunger," and "who are unable to reach, or to afford, safe drinking water").

202. Cf. Barbara Crossette, *Globalization Tops 3-Day U.N. Agenda for World Leaders*, N.Y. TIMES, Sept. 3, 2000, § 1, at 1 (quoting Malloch Brown of United Nations Development Program).

203. *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601, 619 (1975) (Blackmun, J., dissenting).

204. See, e.g., MICHAEL T. HAYES, *LOBBYISTS AND LEGISLATORS: A THEORY OF POLITICAL MARKETS* 101-02 (1981) (describing the wealth transfers that government can be expected to effect whenever benefits are concentrated and costs are distributed).

205. Elizabeth (Betita) Martinez, *Where Was the Color in Seattle? Looking for Reasons Why the Great Battle Was So White*, in *GLOBALIZE THIS!*, *supra* note 179, at 74.

206. KENICHI OHMAE, *THE END OF THE NATION STATE: THE RISE OF REGIONAL ECONOMIES* 62 (1995).

catoria. "To attain any genuine measure of social justice on a global scale, we must eliminate First World localism."²⁰⁷ We must fight it in the hills, we must fight it in the streets, we must fight it even in the law reviews.

C. *Peace for Our Time (Reprise)*

Globalization is "the particularization of the universal and the universalization of the particular."²⁰⁸ Let us bid farewell to Neville Chamberlain, the singular but timeless politician whose misplaced sense of pacifism inspired this Essay's title. By yielding to Hitler's demands at Munich, Chamberlain earned permanent disdain as the architect of appeasement. He did not, as he had fervently hoped, "come back from Germany to Downing Street . . . with honour."²⁰⁹

In a broader historical sense, however, his declaration of "peace for our time" should rank a remote second in notoriety to another of his pronouncements preceding the annexation of Czechoslovakia. In his radio broadcast to the British people three nights before the announcement of the Münchner Diktat, Chamberlain declared it "horrible, fantastic, incredible" that the Western powers "should be digging trenches . . . because of a quarrel in a faraway country between people of whom we know nothing."²¹⁰ He thereupon erected the ultimate rhetorical monument to isolationism. The next six years of world war sacrificed millions upon that altar.²¹¹

To this horror the international community has solemnly responded, "Never again." Absent *pax mercatoria*, how credible is that pledge? In its place, what does the antiglobalization realistically propose?

207. Chen, *supra* note 18, at 11.

208. ROLAND ROBERSON, GLOBALIZATION: SOCIAL THEORY AND GLOBAL CULTURE 177-78 (1992); accord Fredric Jameson, *Preface*, in THE CULTURES OF GLOBALIZATION, at xi, xi (Fredric Jameson & Masao Miyoshi eds., 1992).

209. Chamberlain, *supra* note 15, at 169.

210. JOHN W. WHEELER-BENNETT, MUNICH: PROLOGUE TO TRAGEDY 151-52 (1948) (quoting the Prime Minister's radio address).

211. In fairness to Chamberlain, there is a respectable argument that the year he bought at Munich proved indispensable in enabling Britain to prepare adequately for war against Germany. See C.B. PYPER, CHAMBERLAIN AND HIS CRITICS: A STATESMAN VINDICATED 78-79 (1962). The military merits of appeasement aside, the bitter irony in the description of the events at Munich as "peace for our time" secures Chamberlain's place in contemporary rhetoric.

The protesters quit have Prague. Let us return. Look back on the river, now that the IMF, the World Bank, and their antagonists evacuated the Czech capital. "[T]he Vltava ha[s] already flowed through the city, leaving behind the glory of the Castle and churches; like an actress after a performance, it [is] tired and contemplative; it flow[s] on between its dirty banks, bounded by walls and fences that themselves bounded factories and abandoned playgrounds."²¹² Little do passersby "care that a river flow[s] from century to century through their ephemeral city."²¹³ "[T]he sight of the [Vltava's] flow [is] soothing and healing. The river flow[s] from century to century, and human affairs play themselves out on its banks. Play themselves to be forgotten the next day, while the river flows on."²¹⁴

"[H]umankind, in the aftermath of two world wars, has reached a turning point in its history, . . . a new era of global interdependence . . ."²¹⁵ No man, no woman, no child, no nation is an island. "For you, too, feed the River timelessly. / And few evade full measure of their fate . . ."²¹⁶

212. MILAN KUNDERA, *THE UNBEARABLE LIGHTNESS OF BEING* 171 (Michael Henry Heim trans., Faber & Faber 1984).

213. *Id.*

214. *Id.* at 170.

215. Berman, *supra* note 76, at 1621.

216. HART CRANE, *THE BRIDGE: A POEM* 20 (Waldo Frank & Thomas A. Vogler eds., Liveright 1970) (1933).