
BOOK REVIEW

THE END OF THE GLOBALIZATION DEBATE: A REVIEW ESSAY

CAPITAL RULES: THE CONSTRUCTION OF GLOBAL FINANCE. By Rawi Abdelal. Cambridge, Mass.: Harvard Univ. Press. 2007. Pp. xi, 304. \$49.95.

IN DEFENSE OF GLOBALIZATION. By Jagdish Bhagwati. New York: Oxford Univ. Press. With new afterword, 2007. Pp. xiii, 330. \$16.95.

TERRITORY, AUTHORITY, RIGHTS: FROM MEDIEVAL TO GLOBAL ASSEMBLAGES. By Saskia Sassen. Princeton, N.J.: Princeton Univ. Press. 2006. Pp. xiv, 493. \$37.95.

MAKING GLOBALIZATION WORK. By Joseph E. Stiglitz. New York: W.W. Norton & Co. 2006. Pp. xxv, 358. \$16.95.

*Reviewed by Robert Howse**

I. INTRODUCTION

Since the end of the Cold War, scholars and citizens, politicians and pundits, have been trying to discern and define the structures and tendencies of a new world order. We bear witness to rapid and complex change: new threats and conflicts emerge just as old ones return and resurge unpredictably. Climate change; terrorism; the rise of religion as a global force; the ascent of China as an economic power; the Internet: how do we grasp the full implications of each for our lives today and tomorrow? The notion of globalization has emerged as one of the predominant conceptual constructs for understanding the tendencies of our age. Its range of meanings in our discourse is well captured in a recent definition by the philosopher Jürgen Habermas:

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By “globalization” is meant the cumulative processes of a worldwide expansion of trade and production, commodity and financial markets, fashions, the media and computer programs, news and communications networks, transportation systems and flows of migration, the risks generated by large-scale technology, environmental damage and epidemics, as well as organized crime and terrorism.¹

Significantly, Habermas leaves out of his definition the globalization of *law*. His omission reflects the general assumption — quite likely incorrect or at least too simplistic — that law’s role is to *react* to globalization as a given force, and that law has not itself been an element in that force.² At the same time, the breadth of Habermas’s definition raises the question of whether “economic globalization” ought to be analyzed separately, in the idioms of economics, as Jagdish Bhagwati does in *In Defense of Globalization*, or whether, as Saskia Sassen suggests in *Territory, Authority, Rights*, it is through understanding the many links between the economic and other dimensions of globalization that we will grasp the ways in which structures of human order are being recast globally.

In popular discourse, globalization is much more than something that explains and begs to be explained at the same time: it is a magnet for a range of deeply felt hopes and fears, and still produces intense polemics “for” and “against.” Many of us, though, can feel both a sense of loss and disorientation from the collapse or erosion of familiar structures fixed within the territorial nation-state model of human organization, and exhilaration at new possibilities of connectedness and human flourishing.

Already by the end of the Cold War, the old struggle between right and left over the governance of the economy and the redistribution of wealth within the advanced liberal democracies had yielded to a new pro-market consensus. The center-left embraced many of the center-right critiques of the postwar regulatory and welfare state as inefficient, wasteful, and dependency-inducing, and sought to pursue traditional progressive values through a more economically liberal (in the sense of pro-free market) approach to governance of the economy.³ Throughout much of the political spectrum, support declined for command-and-control regulation, trade protection and capital controls

¹ JÜRGEN HABERMAS, *THE DIVIDED WEST* 175 (Ciaran Cronin ed. & trans., 2006).

² For a complex and subtle view on the relation of globalization to law, see Sabino Cassese, *The Globalization of Law*, 37 N.Y.U. J. INT’L L. & POL. 973 (2005).

³ See, e.g., SUSAN ROSE-ACKERMAN, *RETHINKING THE PROGRESSIVE AGENDA: THE REFORM OF THE AMERICAN REGULATORY STATE* (1992); David Donnison, *The Progressive Potential of Privatisation, in PRIVATISATION AND THE WELFARE STATE* 45 (Julian LeGrand & Ray Robinson eds., 1984); Robert Howse, J. Robert S. Prichard & Michael J. Trebilcock, *Smaller or Smarter Government?*, 40 U. TORONTO L.J. 498 (1990).

as instruments of progressive governance that ensured the state's ability to maintain a stable and fair social contract with business, labor, and the disadvantaged.⁴ The regulatory reforms of the Carter Administration in the United States, the agenda of New Labor under Tony Blair in the United Kingdom, and the restructurings of the welfare state in the Netherlands and Denmark are examples of the trends in question. The discontents with these tendencies, mostly from the traditional left but not entirely, coalesced as a new counterculture, the antiglobalization movement.⁵ Even if many of the policies it opposed could not be originally or entirely attributed to globalization but rather to new thinking and experimentation with domestic economic governance, the antiglobalization movement understood itself as defending the traditional progressive regulatory and social welfare state against globalization.⁶ And there thus arose a great and intense debate about whether globalization was good or bad, inevitable or resistible, in relation to the ideal of the sovereign, progressive, democratic nation-state.⁷

This debate, I argue, is over, above all because the antiglobalizers have themselves gone global. In various sites of global law and policymaking, including those at the interstices of the global and local, they actually have found processes and institutions through which, unlike the case with the state in many instances, they can air their criticisms and express their values as global values. There is no longer an antiglobalization "side" in the debate, coherently representing the position that the territorial nation-state should remain the locus of control over economic activity and should retain a monopoly on legitimate governance. Today the protesters who march against globalization are not marching in favor of the state. Instead, they are mostly advocating a set of values and causes that transcend state boundaries and that require global action.⁸

More precisely, there are at least six reasons why "globalization vs. antiglobalization" turns out not to capture what is at stake. First of all, the state itself has been reshaped in ways that undermine its capacity to function as a secure repository of values such as democracy and distributive justice. This has happened partly due to globalization itself. (The strengthening of executive power in relation to legislative

⁴ See generally Howse et al., *supra* note 3.

⁵ Eddie Yuen, *Introduction to THE BATTLE OF SEATTLE: THE NEW CHALLENGE TO CAPITALIST GLOBALIZATION* 3, 7–8 (Eddie Yuen et al. eds., 2001).

⁶ For a clear illustration of such an understanding, see, for example, MAUDE BARLOW & BRUCE CAMPBELL, *TAKE BACK THE NATION* 165–89 (1991).

⁷ See, e.g., PAUL Q. HIRST & GRAHAME THOMPSON, *GLOBALIZATION IN QUESTION: THE INTERNATIONAL ECONOMY AND THE POSSIBILITIES OF GOVERNANCE* (1999).

⁸ See, e.g., Naomi Klein, *Free Trade Is War*, *THE NATION*, Sept. 29, 2003, at 10, available at <http://www.thenation.com/doc/20030929/klein> (describing a global "convergence" of activist movements); Vandana Shiva, *Earth Democracy*, 18 *TIKKUN* 43 (2003).

power is an example much discussed by Saskia Sassen.) This makes it incoherent to attack globalization on behalf of, or in defense of, the state.

Second, some of today's most pressing problems — indeed, problems which are of particularly intense concern to people who identify themselves with the antiglobalization movement — are problems that cannot be solved by the uncoordinated exercise of sovereignty by strong individual nation-states. The most obviously serious is climate change; another example is biodiversity.⁹ A national interest model of sovereign regulation, where the state is free to regulate to satisfy the balance of diverse constituencies within its borders without regard to external effects, does not take into account these kinds of global “commons” problems.¹⁰

While economic globalization has arguably exacerbated these problems by driving rapid industrial growth in the developing world, this very same growth has indisputably taken millions of people out of poverty, even if it has also exacerbated inequality and created new social tensions in some countries. In these circumstances, only a fair *global* governance system to address climate change, which establishes principles to determine the just contribution of each national community to solving the problem, can vindicate the underlying balance of relevant values.¹¹ However, this challenge raises the issue of how individual states should respond to states that “hold out” and insist that the problem be regulated on the basis of sovereign national interest.

Third, and directly related to the last observation, the demands that those associated with an antiglobalization position now place on the state itself have less and less to do with the state's classic role of protecting its own citizens and redistributing wealth internally. They increasingly relate to the projection of the power of the state outside its boundaries, often to pressure or discipline other states that are unwilling to have their own policies reflect the values in question. This is nowhere more evident than in the evolution of the debate concerning the relationship between environmental and labor standards and globalization.¹²

⁹ See generally THE CARTAGENA PROTOCOL ON BIOSAFETY: RECONCILING TRADE IN BIOTECHNOLOGY WITH ENVIRONMENT & DEVELOPMENT? (Christoph Bail et al. eds., 2002).

¹⁰ For a definition of global “commons,” see ORAN R. YOUNG, INTERNATIONAL GOVERNANCE: PROTECTING THE ENVIRONMENT IN A STATELESS SOCIETY 20 (1994).

¹¹ See INT'L TASK FORCE ON GLOBAL PUB. GOODS, MEETING GLOBAL CHALLENGES 39–43 (2006) (proposing a set of international strategies to deal with climate change).

¹² See Robert Howse & Michael J. Trebilcock, *The Free Trade–Fair Trade Debate: Trade, Labor and the Environment*, in ECONOMIC DIMENSIONS IN INTERNATIONAL LAW 186 (Alan O. Sykes & Jagdeep S. Bhandari eds., 1997).

Traditionally, the antiglobalization position was strongly focused on the problem of a “race to the bottom” — with global mobility of goods, services, and capital, the ability of the state to maintain strong domestic environmental and labor standards was thought to be threatened by businesses’ capacity to move production to jurisdictions with lower standards, or to jurisdictions prepared to lower their standards in order to attract investment and make their goods and services more competitive in global markets.¹³ Within this frame, the concern of the antiglobalizers with other countries’ standards was directly related to the concern about the loss of the state’s capacity to protect domestic interests in the face of global competition and the purported race to the bottom.¹⁴ However, the emphasis among activists has now shifted towards a concern with vindicating environmental protection and labor rights as global values. Major campaigns have led to the use of economic sanctions against regimes such as Burma, where the concern does not appear to be any competitiveness-based threat to domestic standards in the sanctioning countries.¹⁵ Once one recognizes the shift in emphasis, one realizes that economic globalization is a premise of, not a threat to, the kind of action that the supposed antiglobalizers are demanding of the state: without high degrees of global economic interdependence, the use of economic sanctions to pressure countries to conform to global values would be much less plausible.

Fourth, as this last observation illustrates, there is a growing awareness of the complexity of the effects of globalization on the realization of the values of those constituencies identified or self-identified as antiglobalizers. It is possible to show, across a range of examples, as Jagdish Bhagwati does in *In Defense of Globalization*, that globalization has promoted the realization of those values. But this still leaves many counterexamples. The result is indeterminacy — the impossibility of creating a comprehensive ledger or balance sheet. Indeed, the more one appreciates the complex and dynamic nature of globalization, the more premature such an accounting seems. This undermines the plausibility of any general claim that globalization is benign or malign overall in relation to the relevant values or goals.

The fifth point has precisely to do with the very phenomenon of global values. The classic debate between globalization and antiglob-

¹³ See Robert Howse, *From Politics to Technocracy — and Back Again: The Fate of the Multilateral Trading Regime*, 96 AM. J. INT’L L. 94, 101–03 (2002).

¹⁴ See Drusilla K. Brown, *Labor Standards: Where Do They Belong on the International Trade Agenda?*, 15 J. ECON. PERSP. 89, 100–03 (2001).

¹⁵ On the human rights concerns motivating the Burma sanctions, see, for example, ALTERNATIVE ASEAN NETWORK ON BURMA, SPECIAL REPORT: READY, AIM, SANCTION! (2003), available at <http://www.altsean.org/Docs/PDF%20Format/Special%20Reports/Ready%20Aim%20Sanction.pdf>.

alization largely assumed that the nation-state was the repository of legitimacy — thus, the question was whether economic globalization threatened or unduly constrained the legitimate, “democratic” choices made in and by the nation-state.¹⁶ Yet, while the democratic deficit remains an important subtheme in discussions about globalization, the legitimacy of the claims of the supposed antiglobalizers increasingly sounds not in the democratic self-determination of national communities, but in values and norms thought to belong to or inhere in the global “community” itself, often reflected in multilateral regimes of international law, whether environmental treaties such as Kyoto,¹⁷ biodiversity regimes such as Rio¹⁸ and Cartagena,¹⁹ the International Labour Organization (ILO) declaration on core labor rights,²⁰ or the U.N. covenants on human rights.²¹ The invocation of such norms depends at least implicitly on a shift in the scope of moral concern beyond the boundaries of the territorial nation-state. In these circumstances, a defense of state sovereignty against globalization makes little sense; often what one ends up defending is the state’s capacity to advance *global* values, including its capacity to influence decisions of other states that would traditionally have been understood as “sovereign” choices. Globalization in important ways may enhance capacity in this last sense.

Sixth and lastly, and perhaps flowing logically from the idea of global values, the supposed antiglobalization movement has constituted itself on a global scale and learned to operate in global sites of power, whether the World Trade Organization (WTO) in Geneva or the World Bank in Washington, D.C.²² Yet the original method of organizing resistance to globalization entailed mobilizing *nationalistic* sentiment and internal constituencies, such as unionized workers in vulnerable industries or recipients of social assistance or cultural sub-

¹⁶ See NOREENA HERTZ, *THE SILENT TAKEOVER: GLOBAL CAPITALISM AND THE DEATH OF DEMOCRACY* (2003).

¹⁷ Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, 37 I.L.M. 22.

¹⁸ U.N. Conference on Environment and Development, June 3–14, 1992, Rio Declaration on Environment and Development, U.N. Doc. A/CONF.151/5/Rev. 1. (June 14, 1992).

¹⁹ Cartagena Protocol on Biosafety to the Convention on Biological Diversity, Jan. 29, 2000, 39 I.L.M. 1027.

²⁰ International Labour Organization, ILO Declaration of Fundamental Principles and Rights at Work, June 19, 1998, 37 I.L.M. 1237.

²¹ International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

²² See DAVID HELD, ANTHONY MCGREW, DAVID GOLDBLATT & JONATHAN PERRATON, *GLOBAL TRANSFORMATIONS: POLITICS, ECONOMICS AND CULTURE* 49–62 (1999) (describing the globalization of politics and social movements).

sidies — groups traditionally dependent upon protection by the state.²³ This method has given way to the formation of global networks of activists who intervene in struggles surrounding the terms of economic and social life in communities throughout the world, engaging and linking constituencies in different locales, notwithstanding vestiges of cultural nationalism and communitarian rhetoric in some antiglobalization quarters.²⁴

Each of the works under review here contributes in a distinctive and significant way to understanding the end of the globalization debate. Jagdish Bhagwati, in *In Defense of Globalization*, displays a number of aspects in which the globalization debate has ended. While explicitly framing his argument as a defense of globalization, Bhagwati ends up arguing forcefully against several crucial elements of globalization, including the liberalization of short-term capital controls and the harmonization of intellectual property rights in the WTO. At the same time, he defends equally forcefully other elements, especially trade liberalization. Ultimately, Bhagwati's analysis reveals that the real debate has shifted to the complex effects of different aspects of globalization.

Joseph Stiglitz and Saskia Sassen are theorists who decisively move our understanding beyond that of the old globalization debate. While Bhagwati usually displays an optimistic faith that political and economic rationality can ensure the achievement of “globalization with a human face,” Stiglitz is mindful of the puzzles and limits of rationality in economics and policy, and thus sees a need for innovative solutions that may challenge conventional economic wisdom. The very title of Stiglitz's book, *Making Globalization Work*, takes us beyond the usual framing of the debate as globalization versus antiglobalization. Stiglitz illustrates how many of the problems with global economic liberalism identified by the antiglobalizers — such as environmental commons issues, the democratic deficit, and weak and corrupt states — require solutions at the global level through innovative mechanisms of global governance.

Sassen, in *Territory, Authority, Rights*, explains how the state itself has been transformed, in part by globalization itself, such that it is intrinsically more hospitable to pro-globalization forces. In this sense, one can no longer conceive of the state as the adversary of globalization or the repository of a legitimate counter-perspective. At the same time, Sassen also shows how activists representing values often understood as “antiglobalization” move between the local and the global, of-

²³ See generally SUSAN ARIEL AARONSON, TAKING TRADE TO THE STREETS: THE LOST HISTORY OF PUBLIC EFFORTS TO SHAPE GLOBALIZATION (2001).

²⁴ See, e.g., MAUDE BARLOW & TONY CLARKE, GLOBAL SHOWDOWN: HOW THE NEW ACTIVISTS ARE FIGHTING GLOBAL CORPORATE RULE 21–50 (2002).

ten operating through global networks and interpenetrating global sites of power, decision, and deliberation.

Rawi Abdelal supplies a valuable historical perspective. He explains that the liberalization of capital markets emerged not from a conspiracy of global financiers or the hegemony of Wall Street, but from a turn towards liberal economics by the French Socialists under François Mitterrand. The shift was based in part on the view that resisting global markets was impossible or too costly — one could not effectively operate the progressive social democratic state *against* the forces of globalization.

II. THE LAST WARRIOR HERO OF THE GLOBALIZATION DEBATE?

Jagdish Bhagwati's *In Defense of Globalization* starts off as a polemic against the antiglobalization movement. He distinguishes two branches of this movement: one that is implacably and irrationally hostile to globalization, and therefore in Bhagwati's mind unworthy of engagement, and another that is more open-minded but locked into illogical thinking about globalization. Bhagwati describes the second group as "critics of globalization whose discontents are well within the parameters of mainstream dissent and discourse" but whose critiques amount "in my view to a gigantic non sequitur" (p. 4). The "non sequitur" is that globalization is responsible for a wide variety of social ills, including increasing poverty, gender inequality, environmental degradation, inhuman conditions of work, and the decline of indigenous cultures. At one point Bhagwati claims that he will show that, on balance, globalization contributes to the solution of these problems, not their aggravation — in other words, that it is "socially benign" (p. 30). But only "on balance" — which seems like a considerable qualification of the view that critiques of globalization are "a gigantic non sequitur." A few pages later, though, he concludes that "[o]ccasionally globalization will do harm that requires attention" (p. 32).

Bhagwati offers a combination of conceptual arguments and empirical evidence to show how globalization can have a positive impact on progressive causes. He takes on a range of issues, including climate change (international trading of carbon permits would encourage reduction of emissions where it is least costly to do so (p. 161)) and gender equality (international competition puts pressure on employers to narrow the wage gap between men and women; employers cannot afford a prejudice that prevents wages from tracking productivity (pp. 75–76)).

At the same time, Bhagwati himself is critical of aspects of globalization that have also been denounced by the same antiglobalization activists he characterizes as fanatics or fools or both. He agrees with the activists' attack on the intellectual property rules of the WTO (the

TRIPS Agreement), which emphasizes the harmful effects on poor countries, such as limiting access to patented lifesaving medications.²⁵ Bhagwati declares, “For virtually the first time, the corporate lobbies in pharmaceuticals and software had distorted and deformed an important multilateral institution, turning it away from its trade mission and rationale and transforming it into a royalty collection agency” (p. 183).

His account of Gerber baby food in Guatemala sounds even more like something right out of an antiglobalization tract, depicting the sinister use of corporate and American power to harm innocent children in South America. As Bhagwati explains, the provision of free samples of baby formula in poor countries ended up killing many children, as mothers had diluted the food with unboiled water. And switching to formula, even if properly handled, deprived children of the immunity created through breastfeeding (pp. 187–88). When Guatemala tried to address these issues through labeling regulations, including a prohibition on the use of images of infants on the label, the following occurred:

Gerber, which had introduced baby foods as long ago as 1928, used the “Gerber baby” face for its advertising campaigns worldwide. Parents in Guatemala even had been found naming their children Gerber, illustrating the power of such cheerful images in selling one’s wares. Alone among the foreign firms, therefore, Gerber objected to the new law. The matter went up before the Guatemalan Administrative Tribunal, which ruled in favor of the Ministry of Health. But then an obliging U.S. government threatened to take away Guatemala’s MFN [Most Favored Nation] status for violating trademark agreements. Faced with such threats, the Guatemalan government was under serious pressure; not surprisingly, Guatemala’s supreme court found in favor of Gerber. (p. 188)

Are the TRIPS and Gerber narratives more or less representative of the real world of globalization than are the narratives that show socially benign or beneficial effects? Despite claiming to demonstrate that globalization is on balance socially benign, or that its downside effects are merely “occasional,” Bhagwati does not offer a ledger sheet or any way of really figuring out where the balance lies.

Unlike that of the economic right in the United States, Bhagwati’s optimism is not about markets let loose. Rather, Bhagwati believes that publicly interested policies can judiciously combine openness, especially in trade and immigration policy, with strong and effective domestic regulation of or intervention in capital markets, labor stan-

²⁵ For more on TRIPS, see MICHAEL J. TREBILCOCK & ROBERT HOWSE, *THE REGULATION OF INTERNATIONAL TRADE* 397–438 (3d ed. 2005), and UNITED NATIONS CONFERENCE ON TRADE AND DEV. & INT’L CTR. FOR TRADE AND SUSTAINABLE DEV., *RESOURCE BOOK ON TRIPS AND DEVELOPMENT* (2005).

dards, health, innovation, and even culture. (Bhagwati endorses subsidies for domestic cultural industries as both necessary and effective against the dominance of Americanized “global” culture (pp. 116–19).) In addition, Bhagwati deems a graduated pace of transition to openness — with policies such as worker adjustment assistance — as crucial to avoiding the downsides of globalization, which, as he enumerates them throughout the book, start appearing to be anything but “occasional.”

According to Bhagwati, globalization has been driven by two main forces: technical change (to which he does not pay much attention, apart from acknowledging its importance in many places) and “state action.” He believes that governments created globalization and can accelerate or reverse it (p. 11). At the same time, many of Bhagwati’s examples show governments (and international financial institutions such as the World Bank and the International Monetary Fund (IMF)) not getting right the policy mix of openness and regulation.

Bhagwati’s rationalist outlook wants to attribute these “mistakes” to ignorance or stupidity, and he genuinely believes that policymakers can learn from economists the correct answers that will get globalization right. And yet the globalization policy most criticized by Bhagwati is liberalization of short-term capital movements, which he blames for the Asian financial crises and the volatility and instability often emphasized by globalization’s critics. Bhagwati attributes this policy to a “Wall Street–Treasury Complex” (pp. 204–07), an explanation that suggests that the terms of globalization, and its effects for good or ill, can be decisively influenced by concentrated combinations of public and private power.

Indeed, Bhagwati provides a similar explanation for what he regards as the other great corruption of globalization: the WTO intellectual property rules. When it comes to aspects of globalization he likes, Bhagwati writes of the far-seeing vision of publicly interested statesmen; when it comes to aspects he does not like, he adopts the rhetoric of the antiglobalizers, declaiming against a conspiracy of global financiers, greedy multinationals, and the American hegemon.

In addition to publicly interested and well-advised governments that are relatively autonomous from pressure by large foreign powers and big business, Bhagwati’s globalization that “has a human face” (p. 31) also presupposes a world where governments have not bound themselves to legal rules that unduly constrain experimentation with the optimal mix of policies required for globalization to be socially benign. As is clear when he defends the WTO against accusations of a democratic deficit, with the regrettable exception of TRIPS, Bhagwati views the rules in the WTO as fundamentally oriented to open nondiscriminatory trade, leaving enormous policy space in which states may get the domestic policy mix right. He mentions the “safeguards” provision in the General Agreement on Tariffs and Trade (GATT), Article

XIX, as allowing for reversal of trade liberalization, and he presents the WTO generally as “allowing policy reversals when a policy runs into unanticipated problems” (p. 260). However, the WTO Appellate Body has interpreted Article XIX extremely narrowly, so that the conditions for its use have become virtually impossible to meet, requiring proof of unforeseen developments and a causal test that rigorously links such developments with harm to domestic interests.²⁶ And Article XIX has virtually nothing to do with domestic policy space — it applies to traditional trade restrictions at the border, such as tariffs.²⁷

The new agreements in the Uruguay Round, which constitute much of the WTO legal regime, such as the Agreement on Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade (TBT), do not contain the same kind of safeguards and flexibilities that were built into the GATT. Many of the subsidies policies supported by Bhagwati would potentially fall afoul of the Agreement on Subsidies and Countervailing Measures, in which the category of innocent or legal (“non-actionable”) subsidies, such as those for basic research and development, has automatically expired due to a sunset clause.²⁸ Most notably, the General Agreement on Trade in Services (GATS), which calls for governments to make individual liberalization precommitments that go beyond nondiscrimination to include demonopolization and regulatory reform of domestic industries (including economic and social infrastructure industries like telecoms and financial services), has no safeguards provision like Article XIX. There was a promise in the treaty to negotiate such safeguards, but the United States and other developed countries strongly resisted the advancement of such negotiations and the deadline in question has long been exceeded.²⁹

Similarly, when Bhagwati excoriates the liberalization of short-term capital controls, he does not seem to recognize fully the extent to which states have tied their own hands in this area. As Rawi Abdelal suggests in *Capital Rules*, such liberalization has become enshrined in le-

²⁶ See Appellate Body Report, *United States — Definitive Safeguard Measures on Imports of Certain Steel Products*, paras. 273–280, WT/DS253/AB/R (Nov. 10, 2003) [hereinafter *Steel Safeguards*]. See generally ALAN SYKES, *THE WTO AGREEMENT ON SAFEGUARDS: A COMMENTARY* (2006).

²⁷ See *Steel Safeguards*, *supra* note 26, para. 275.

²⁸ Agreement on Subsidies and Countervailing Measures arts. 8, 31, Marrakesh Agreement Establishing the World Trade Organization annex 1A, Apr. 15, 1994, 1869 U.N.T.S. 14.

²⁹ TREBILCOCK & HOWSE, *supra* note 25, at 374. Another leading trade policy economist, Dani Rodrik, has much more fully appreciated the actual limitations on policy space in the WTO treaties. See DANI RODRIK, *THE GLOBAL GOVERNANCE OF TRADE AS IF DEVELOPMENT REALLY MATTERED* (2001), available at <http://ksghome.harvard.edu/~drodrik/UNDPtrade.PDF> (Background Paper to the United Nations Development Programme Project on Trade and Sustainable Human Development).

gal norms, making reversibility or correction very difficult, even in a crisis.

This is one respect in which the “state” to which the antiglobalizers appeal against the forces of globalization no longer exists in the form they imagine or wish for, in part due to globalization itself. Bhagwati at one point acknowledges that the antiglobalizers have themselves started to go global. He writes, “the older domestically oriented NGOs have felt, in some instances, that their efficacy requires international coordination and hence networking with others sharing these beliefs; and new NGOs with a global focus have sprung up for similar reasons” (p. 42).

In many respects, the world of globalization with a human face as Bhagwati understands it is not today’s post–Cold War world of globalization. It turns out to be the post–World War II world of what John Ruggie calls “embedded liberalism,”³⁰ where growth and prosperity — and social welfare — are attained through combining free trade with the guarantee of policy autonomy. This freedom allows the interventionist regulatory state to engage in and experiment with any nonprotectionist policy of its choice, and also provides the stabilizing influence of a financial system anchored in coordination and consensus through institutions such as the IMF, where the fundamentals of national economies are not vulnerable to the vagaries of day-trading speculators. Indeed, apart from liberalized immigration — largely a dream today — there is little about what we call economic globalization that Bhagwati likes *besides* free trade. His globalization with a human face really asks us to consider what globalization would look like if it had not deviated from the vision of the Bretton Woods planners and the founding generation of leaders in the international institutions, the GATT, IMF, and World Bank — “legendary men of vision,” as he justly praises them (p. 23).

Thus, for Bhagwati, as we have seen, many of the other effects and aspects of globalization are ambiguous or even negative in combination with bad domestic policies; but as to the benign effects of free trade on poverty and prosperity, the evidence is “massive” (p. 82). Indeed, the accumulation of this evidence has been a significant aspect of Bhagwati’s scholarly legacy. But in a striking qualification to the case based on “evidence,” Bhagwati reminds us that “evidence” from the past does not necessarily predict correctly the impact of *future* trade liberalization. This is especially true when it is based on negotiating proposals influenced heavily by producer lobbies in rich countries; it turns out that state-of-the-art economic modeling produces contradic-

³⁰ JOHN GERARD RUGGIE, *Embedded Liberalism and the Postwar Economic Regimes*, in *CONSTRUCTING THE WORLD POLITY* 62, 62 (1998).

tory results as to who will lose or gain (and how much) within each economy from the tariff liberalization proposals on the agenda in the current round of WTO negotiations. So we are back to the faith that the balance of losses and gains can always be made positive through appropriate public policies and “safeguards” such as Article XIX of the GATT. Here again, when he marshals the evidence, Bhagwati reveals the extent to which the real debate is no longer about globalization versus antiglobalization but rather the complex effects — upsides and downsides — of globalization.

III. FROM THE GLOBALIZATION DEBATE TO THE GLOBAL GOVERNANCE DEBATE: STIGLITZ, SASSEN, AND ABDELAL

Joseph Stiglitz’s *Making Globalization Work* is grounded in a subtle appreciation of the ways in which governance today is fractured domestically and globally across different policy issues. This fragmentation makes effective political control over the shape and consequences of globalization no longer possible at the nation-state level. The challenge of responding to the concerns of the “antiglobalizers” is therefore one of strengthening and guiding global governance toward the realization of progressive values. Stiglitz thus takes us explicitly from the end of the globalization debate to the global governance debate. He observes:

In effect, economic globalization has outpaced political globalization. We have a chaotic, uncoordinated system of global governance without global government, an array of institutions and agreements dealing with a series of problems, from global warming to international trade and capital flows. Finance ministers discuss global finance matters at the IMF, paying little heed to how their decisions affect the environment or global health. Environment ministers may call for something to be done about global warming, but they lack the resources to back up those calls. (p. 21)

Furthermore, globalization itself has challenged the capacity of the state to respond to the downsides of globalization:

But while globalization has led to more insecurity and contributed to the growing inequality in both developed and less developed countries, it has limited the ability of governments to respond. Not only does liberalization require removing tariffs, which are an important source of public revenue for less developed countries, but to compete a country may have to lower other taxes as well. As taxes are lowered, so are public revenues, forcing cuts in education and infrastructure and expenditures on safety nets such as unemployment insurance at a time when they are more im-

portant than ever, in order both to respond to the competition and to help people cope with the consequences of liberalization. (p. 69)³¹

Not only does Stiglitz draw on a wider and more complex range of economic concepts, but he differs from Bhagwati in that he does not analyze “economic globalization” in relative abstraction or isolation from other apparently “noneconomic” structural features of contemporary global order or disorder. Such features may be partly endogenous to economic globalization itself or may be exogenous factors in shaping the real-world effects of economic globalization. In these ways, Stiglitz’s analysis also takes us considerably beyond the globalization debate, based on his understanding of how complexly intertwined are the forces of globalization with a range of cultural and social tendencies that are reshaping the meaning of the national and local.

This understanding is well illustrated by a brilliant chapter that analyzes the pathology of the “resource curse” — the interconnections between corruption, conflict, repression, and economic underdevelopment in resource-rich countries. As Stiglitz suggests, the capacity of the regimes in question to engage the capital and networks of multinational energy corporations to maximize rents from their resources depends on globalization (pp. 133–59). At the same time, while globalization contributes in certain ways to the pathology of weak and corrupt states, the remedies themselves are, as he suggests, likely to involve significant global action. These include, according to Stiglitz, international arrangements to curb arms sales and activities that fund arms purchases, such as trade in conflict diamonds, as well as better targeting of development aid and other financial assistance (pp. 156–57).

Stiglitz also recognizes that how governments respond to globalization is profoundly shaped by their citizens’ perceptions of global — and domestic — security and insecurity. And he notes:

The full potential implications of security for globalization are enormous. Worries about the availability of anything essential (like energy or food) bought from abroad in times of emergency are a rationale for restricting imports and subsidizing domestic production. . . . Does each country simply accept these risks as part of the price we face for a more efficient global economy? Does Europe simply say that if Russia is the

³¹ An endnote has been omitted. Despite acknowledging evidence that conditions of globalization facilitate tax evasion, such as that provided by the work of IMF economist Vito Tanzi, Bhagwati tends to dismiss this problem through the citation of a single statistic, namely that the overall tax burden in OECD countries increased from 26% of GDP to 37% from 1965 to 1997 (p. 101). But this information tells us little about which economies are able to manage the combination of openness and adequate social spending, and abstracts from the very phenomenon with which Tanzi is concerned (the ability to use tax havens and other offshore methods under conditions of globalization to avoid domestic tax regimes), as well as the vulnerability of (non-OECD) developing countries, with which Stiglitz is particularly concerned.

cheapest provider of gas, then we should buy from Russia regardless of the implications for its security, or is it allowed to intervene in the energy market to reduce dependence? (p. 290)

Again here, the recognition of the inherent inseparability today of national security and global security illustrates the end of the globalization debate: national security cannot protect people against global insecurity.

The weakness of international institutions of governance and the collective action problems involved in dealing with challenges of the global commons (for example, climate change), or realizing human rights, lead Stiglitz to accept the desirability, under certain circumstances, of unilateral sanctions-type countermeasures. In the case of global commons problems, such countermeasures could be applied, for example, to the holdout and free-rider problems that burden effective cooperation to deal with climate change. While every nation benefits from addressing the problem, a regime without adequate “sticks” will lead some nations to hold out, hoping they can either free-ride on a solution that depends on the discipline of other nations or achieve significant payments as inducements to participate. Under information asymmetries, it is impossible to know just how much or how little is required to induce cooperation in the way of payoffs. Stiglitz suggests:

Europe must use the foundations of the international trade law we have created to force any recalcitrant country, any rogue state — including the United States — to behave responsibly. Europe has to be willing to use the enormous power of economic globalization to address the world’s most important global environmental problems. (p. 185)

This could include the imposition of countervailing duties or taxes on imports, based on carbon emissions entailed in the production of these imports, from free-rider countries.

Some of the vehicles suggested by Stiglitz for achieving this result, such as the imposition of countervailing duties, would raise complex issues of law under the WTO. The path for other measures, such as taxes and special tariffs, has been cleared by an immensely significant decision of the WTO Appellate Body, the *Shrimp/Turtle*³² ruling. In that case, it was held that, subject to certain procedural and substantive limitations aimed at the avoidance of protectionist, discriminatory abuse, it was permissible to condition imports on countries of exportation having adopted particular public policies, where such trade restrictions furthered objectives listed in the general exceptions clause of Article XX of the GATT.³³ These policies include, notably, the

³² Appellate Body Report, *United States — Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R (Oct. 12, 1998).

³³ See *id.* paras. 135–142.

conservation of exhaustible natural resources (the provision applied by the Appellate Body in *Shrimp/Turtle*) and the protection of public morals.³⁴

In conventional trade policy circles, there was outrage at this ruling; in these circles, such measures are viewed as either hidden protectionism or a form of unilateralism that allows the straightforward imposition of the standards or policies of rich and powerful countries on poor and weak ones.³⁵ And this is exactly Bhagwati's view (pp. 153–58). The problem with Bhagwati's perspective is that, unlike Stiglitz, he has not thoroughly grasped the end of the globalization debate: he looks at the problem of environmental and labor standards from the perspective characteristic of that debate, arguing against fears of a race to the bottom, in which the sovereign choices of (largely) developed countries for high environmental and labor standards are thought to be undermined or constrained by competition from jurisdictions with lower standards. Thus, Bhagwati's chapter on the environment deals mostly with local or domestic environmental problems, with "global pollution" discussed almost as an afterthought in the last few pages (pp. 158–61). Seen in this way, trade measures against jurisdictions with lower environmental or labor standards impose on those jurisdictions a tradeoff between competitiveness and other values that is contrary to their sovereign choice of how to manage affairs within their borders. This shows the limits of the appeal to sovereignty in the globalization debate — because the protection of the sovereignty of the (developed postwar regulatory and welfare) state against globalization could easily be shown to imply placing limits on the sovereign control of other (mostly developing) states over their own encounters with globalization.

Stiglitz clearly sees *global* values and problems as being at the core of the "antiglobalization" movement's concerns with respect to the environment. From this perspective, the desired result from unilateral action is not the affirmation of the choices of the sovereign state against the pressures of globalization, but global action to address a global problem. Nations then bargain in light of a default rule permitting unilateral action, where necessary, as a last resort in response to holdout or free-riding behavior. Significantly, all but one of the original complainants in the *Shrimp/Turtle* case chose to cooperate in the negotiation of a multilateral agreement to protect sea turtles in Asian

³⁴ See *id.* paras. 120, 135–142; see also Appellate Body Report, *United States — Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS285/AB/R (Apr. 7, 2005).

³⁵ Susan Esserman & Robert Howse, *The WTO on Trial*, FOREIGN AFF., Jan.–Feb. 2003, at 130, 134.

waters, in light of the WTO ruling.³⁶ There is no evidence that such cooperation entailed an unfair or unreasonable burden on the developing states in question to protect the global commons (and in some instances, cooperation included technology transfer and technical assistance by the United States).³⁷

In many respects, Stiglitz splits the difference between a truly dark view of globalization — that the possibilities for democratic control of economic outcomes have been fatally diminished by globalization’s unleashing the power of markets and multinationals — and Bhagwati-like optimism that the state and democracy remain much as they were through the halcyon days of postwar “embedded liberalism.” Splitting the difference here means being open to new realities of governance, new constellations and combinations of power, private and public. And this is another dimension of the end of the globalization debate: the antiglobalizers going global, or more precisely, being able to move between local and global sites of power, sometimes even eluding the state.

A touching and brilliant example given by Stiglitz is worth quoting at length, because it illustrates the promising links between gender and development, law and institutions, public and private, local and global, in the real world in which we live:

In August 2003, I visited a chicken-feed factory run by BRAC[an NGO, the Bangladesh Rural Advancement Committee, engaged in micro-finance and rural development activities]. One of the first things women had done with the loans they got from BRAC was to buy newborn chicks, so they could raise chickens for meat and eggs. It soon turned out that many of the baby chicks died, because raising chicks in the first few days of life required skills and attention that the women could not provide. Instead of shutting the project down, the BRAC workers set up a program to take care of the baby chicks and pass them on to the women when the chicks were old enough to survive. They found that higher-quality chicken feed was necessary, so they opened an animal feed company and sold the feed to the women raising the chicks. Thus BRAC created wealth and jobs throughout the supply chain: from eggs to baby chicks, to processing nutritious feed for those chicks.

Were it not for BRAC and Grameen[, a microfinance bank in Bangladesh], the Bangladeshi farmers would be even poorer than they are now. Health is better and birth rates are lower as a result of their efforts and those of similar organizations. . . . The micro-finance model used by

³⁶ The one outlying state, Malaysia, unsuccessfully pinned its hopes on the Appellate Body’s narrowing the ruling in further litigation to clarify the original opinion. See Appellate Body Report, *United States — Import Prohibition of Certain Shrimp and Shrimp Products — Recourse to Article 21.5 of the DSU by Malaysia*, WT/DS58/AB/RW (Oct. 22, 2001).

³⁷ See Robert Howse, *The Appellate Body Rulings in the Shrimp/Turtle Case: A New Legal Baseline for the Trade and Environment Debate*, 27 COLUM. J. ENVTL. L. 491, 509–11 (2002).

BRAC and Grameen has been copied all over the world. What makes their programs so successful is that they come out of the communities that they service and address the needs of the people in those communities.

Grameen Bank and BRAC knew, for instance, that success wasn't just a matter of raising chicks. It was about changing the power structure within the community by giving more economic resources to the poorest of the poor, especially to the women, who had for so long been treated as second-class citizens. The community was strengthened by the health, legal aid, and education programs they established. I was taken to an elementary class in family law set up by BRAC, which taught women their basic legal rights, including the rudiments of divorce law, so that they knew what protection they had from physical abuse and abandonment by their husbands. Many had not known that Bangladesh law does not allow quick Islamic divorce. BRAC's classes empowered them, not only by teaching them about their rights but by helping them realize those rights. Grameen's lending programs reinforced this: by only providing mortgages on houses that were put in a woman's name, they provided an economic incentive for men to stay with their wives. (pp. 52–53)

This passage reflects the insight of an economist who, like Keynes, is endowed with a humane sensibility and an uncanny sense of how subtle changes in law and institutions can make major differences to human outcomes.

Saskia Sassen's *Territory, Authority, Rights: From Medieval to Global Assemblages* deploys complementary analytical tools from other social science disciplines in order to theorize the meaning of the end of the globalization debate for governance and government and their relation to markets and other social institutions, local, global, or national. Sassen cautions us that to see clearly how globalization is reshaping social order we should not focus our attention primarily, much less exclusively, on levels that are beyond the national — for example, multilateral treaty norms such as those in the WTO. In fact, such norms are influential, but largely through the ways in which they penetrate the national and subnational, rearranging constellations and combinations of power and interest. She writes:

The epochal transformation we call globalization is taking place inside the national to a far larger extent than is usually recognized. It is here that the most complex meanings of the global are being constituted, and the national is also often one of the key enablers and enactors of the emergent global scale. A good part of globalization consists of an enormous variety of micro-processes that begin to denationalize what had been constructed as national — whether policies, capital, political subjectivities, urban spaces, temporal frames, or any other of a variety of dynamics and domains. Sometimes these processes of denationalization allow, enable, or push the construction of new types of global scalings of dynamics and institutions; other times they continue to inhabit the realm of what is still largely national. (p. 1)

Here Sassen's analysis displays very clearly the end of the globalization debate. State sovereignty has neither disappeared nor been surrendered to global actors or forces; rather, sovereignty has been reshaped by globalization, and its exercise occurs in tandem and interconnection with global actors and forces. For example, Sassen observes that power has been redistributed within the American state towards the Executive, and within the Executive towards those agencies most congenial to economic liberal values and agendas (such as the Treasury Department) (p. 171) and away from those traditionally responsive to progressive constituencies. As Sassen suggests, the globalization debate tended to focus on whether the state was weakened or weakening itself by globalization. Instead, the real issue is how the state has been remade and reordered and the resulting degree of tractability of the new or emerging state and its institutions to the underlying normative agenda of the antiglobalizers. According to Sassen, "the increased complexity and technicality of the economy, whether national or global, is a key factor in the internal state redistribution of power" (p. 171). From this perspective, it would seem utterly unrealistic to try to take back the state, as it were, for the cause of antiglobalization.

Sassen builds her theorizing out of careful observation, drawing on a wide variety of empirical projects that use social science tools to understand the patterns of globalization. This approach has the advantage of closeness to the phenomena as they emerge but arguably also runs the risk of drawing general rules from a snapshot of current patterns. Readers will judge for themselves how well Sassen manages this tension, especially how well she fits her reading of recent developments within a more general theory about the transformation of social, economic, and political structures. She looks carefully, for instance, at the impact of the Internet and digital media, which is crucial in explaining the capacity of global finance to get ahead of the ability of governments to contain and control it, but crucial also in allowing local initiatives, such as the microfinance methods in Stiglitz's chicken-raising example, to have a global impact. She is not hesitant to delve into the details of how law and regulation (the Basel Capital Accord in this case), technology, and the interests of capital have shaped the way that risk is managed and understood in global markets (pp. 352–55). Sassen also brings in the relevance of "epistemic communities" or technical bureaucracies in circulating norms globally and intermediating private behavior and public power, a theme early on in the

work of John Ruggie³⁸ and more recently in that of Anne-Marie Slaughter.³⁹

Sassen's analysis also extends to the changing role of religion in global order:

The multiplication of partial, specialized, and applied normative orders is unsettling and produces distinct normative challenges in the context of a still prevalent world of nation-states. Just to mention one instance, I would induce from these trends that normative orders such as religion assume great importance where they had been confined to distinct specialized spheres by the secular normative orders of states. I would posit that this is not a fallback on older cultures but is, on the contrary, a systemic outcome of cutting-edge developments. This is not pre-modern but a new type of modernity. It arises out of the partial unbundling of what had been dominant and centripetal normative orders into multiple particularized segmentations. (p. 423)

What this phenomenon undermines is the architectonic normative ordering function of the state, as much an assumption of classic international law (Westphalian sovereignty)⁴⁰ as of post-World War II Keynesian welfare state economics. This goes hand in hand with the ascent of "global" values as legitimating claims in political and economic life, and the reality that balancing and ordering such values in public and private life is no longer the sovereign prerogative or monopoly of the state. Here, too, Sassen's analysis points to the end of the globalization debate, the irrelevance or marginalization of "anti-globalization" — a return to the sovereign state or closed political community — as a response to globalization.

One of Sassen's distinctive strengths is in studying in their full complexity the local sites of globalization, including financial centers like New York and London. Such places not only circulate money and power globally — they also are crucibles of human mobility and transition and have multiple iconic significances in modern and postmodern culture. As sensitive to the art and architecture of urban commerce as she is to the design of state-of-the-art financial instruments, Sassen is a master phenomenologist of the "lifeworld" of globalization. But her analysis steers clear of the pessimism and near-despair of what one might call the culture-theory left — writers like Pierre Bourdieu

³⁸ John Gerard Ruggie, *The New Institutionalism in International Relations*, in CONSTRUCTING THE WORLD POLITY 45, 55 (1998); see also Emanuel Adler & Peter M. Haas, *Conclusion: Epistemic Communities, World Order, and the Creation of a Reflective Research Program*, 46 INT'L ORG. 367 (1992); Sol Picciotto, *Networks in International Economic Integration: Fragmented States and the Dilemmas of Neo-Liberalism*, 17 NW. J. INT'L L. & BUS. 1014 (1996-1997).

³⁹ ANNE-MARIE SLAUGHTER, A NEW WORLD ORDER 42 (2004).

⁴⁰ See Ruti G. Teitel, *Humanity's Law: Rule of Law for the New Global Politics*, 35 CORNELL INT'L L.J. 355, 362 & nn.30-32 (2002).

who see little but new forms of oppression and brutalization in globalization's evolving (dis)order.⁴¹

In all this, Sassen's work clearly reflects an understanding of the end of the globalization debate. She explains in detail how the activists often associated with "antiglobalization" values or causes have themselves become effective global actors. She writes hopefully:

There are many examples that illustrate the new possibilities and potentials for action. . . . The New Tactics in Human Rights Project of the Center for Victims of Torture has compiled a workbook with 120 antitorture tactics, including exclusively online forms of action The Web site of the New York-based Electronic Disturbance Theater, a group of cyberactivists and artists, contains detailed information about electronic repositories for action The International Campaign to Ban Landmines, officially launched in 1992 by six NGOs from the United States, France, Britain, and Germany evolved into a coalition of over 1,000 NGOs in 60 countries. . . .

An important feature of this type of multiscalar politics of the local is that it is not confined to moving through a set of nested scales from the local to the national to the international but can directly access other such local actors in the same country or across borders. (pp. 370-71)

The state's loss of its architectonic role and the corresponding multiplication of "partial, specialized, and applied normative orders" create the challenge of realizing the values of rule of law and democracy in contexts removed from the classic institutional structure of the state: a unified judicial system, formal representative institutions, and so on. Some scholars take this up as an exciting intellectual task, as exemplified by the project of Global Administrative Law developed by Benedict Kingsbury and Richard Stewart, among others.⁴² But this new order is threatening to those who do not see possibilities for fundamental values breaking out of anachronistic forms and infusing themselves into new ones.

In *Capital Rules: The Construction of Global Finance*, Rawi Abdelal shows how the liberalization of capital controls became a pervasive practice and a global orthodoxy, originating not from the projection of American or corporate power, but from the strategizing of a particular set of French Socialist politicians and officials who had been shaken by the Mitterrand Administration's failure at the beginning of the 1980s to use classic tools of governance to effectively control economic fundamentals. Abdelal explains:

⁴¹ See, e.g., PIERRE BOURDIEU, *FIRING BACK: AGAINST THE TYRANNY OF THE MARKET* 2 (Loïc Wacquant trans., 2003).

⁴² Benedict Kingsbury, Nico Krisch & Richard B. Stewart, *The Emergence of Global Administrative Law*, *LAW & CONTEMP. PROBS.*, Summer/Autumn 2005, at 15 (2005).

Before globalization seemed to be inescapable and inevitable, French Socialists sought to reestablish the policies of Keynesian reflation and redistribution. The ambitions of Mitterrand and the Socialists knew few bounds, and their efforts to remake the French economy were heroic.

Soon after the Mitterrand experiment began, however, it started to unravel, in part because the financial markets did not trust the new French government. So, capital fled France. (p. 58)

The French government responded through strict capital controls, but these constrained the middle class, while having limited impact on the ability of big money to move assets outside of France. The government was then faced with a choice: either it could opt out of the European Monetary System (EMS) and allow the franc to fall, maintaining its policy course while thumbing its nose at global markets, or France could undertake a course of financial austerity, reversing its macroeconomic direction, in order to sustain the value of the franc, given the demands of globalization.

The key protagonists in favor of the latter course of action somehow believed that in the new world of globalization, France's credibility as an economic power, and indeed its national strength, could no longer be won through going its own way against the direction the winds were blowing. Instead, by changing course and embracing the discipline of the EMS, France could, with the sacrifice of immediate sovereign assertion and the apparent grasp of new realities inherent in its shift in direction, win considerable legitimacy to influence the building of a European financial space with liberalization of capital movements at its core. This was a classic instance of a set of political actors believing that they could regain relevance and prestige by consecrating the forces that nearly brought them and their project down.

Let us suppose that the other side had prevailed in the debate. For all we know, France could have floated its currency, the Keynesian boost might have actually worked when given the time to do so, and the markets could have come around. We can say that the shift in direction by the French leadership proves the inevitability of globalization, or we might say alternatively that the shift helped to create such a belief, and that the alternative policy course, if successful, might have led to an opposite belief on the part of politicians and officials in the 1980s and 1990s, with the consequence that many decisions taken assuming that global markets cannot be stared down might not have been taken. Mitterrand himself appears to have understood the choice to back off as a means of preserving French pride — pride in the strength of the currency, which would have to be sacrificed if France were to return to an independent course (p. 71).

Abdelal's analysis, like Sassen's, thus shows the limits of the appeal to the state *against* globalization presupposed in the antiglobalization position. Partly due to globalization itself, the calculus of the most relevant actors within the state concerning *national* interest, even na-

tional self-assertion, caused them to embrace and take ownership of financial globalization, rather than to resist it.

As Abdelal explains, France's decision elevated the strategy of legitimizing a capitulation to the supposedly inevitable to the European level, where it eventually led to an effort to make the policy of nonresistance to market movements into a set of legal norms. While empowering for the lawyers in the European Commission, converting the policy of full liberalization of capital movements into a matter of legal principle paved the way for an inflexible attitude towards the situation of candidate countries from the East (pp. 216–17) and for Europe to press for the adoption of such a principle as a global standard, using the Organization for Economic Cooperation and Development (OECD) as a principal forum. The result was that

the EU, OECD, and, to some extent, the IMF helped to define many capital account restrictions as illegitimate policy practices. These international organizations disseminated the practice of full capital mobility to existing and new members, thereby fixing the meanings of capital controls as policy tools for the international financial community. (p. 222)

Abdelal does not miss the irony here: policymakers responding to a sense that they could not resist markets converted their perceived impotence into a norm. Markets, in turn, used this norm to make their own decisions concerning the risks posed by particular countries' policy choices, looking askance at capital controls even in crisis situations when they might be plausible means of managing short-term financial instability (pp. 182–89). The freezing of strategic policy choices based on debatable interpretations of reality into legal norms exemplifies how law, and the rule of law, often idealized by globalizers such as Bhagwati as an antidote to a "power-based" system, can actually create or strengthen a sense of false necessity. It can confer on contingent policy choices a contextless normative force and limit the capacity of the political imagination to learn and adjust to real-world risks and possibilities for action.⁴³

IV. CONCLUSION: GLOBALIZATION'S LAWS?

Now the focus, after the globalization debate, shifts to the terms and conditions of *global* law — as illustrated, for example, by the successful campaign to have the WTO rules on intellectual property rights, or at least their interpretation, adjusted in order to facilitate access to HIV/AIDS medications for poor people in developing coun-

⁴³ See ROBERTO MANGABEIRA UNGER, *FREE TRADE REIMAGINED* 213–21 (2007).

tries.⁴⁴ Here again, the contrast between Bhagwati and Stiglitz is instructive: Bhagwati agrees with what he assumes to be the position of the antiglobalizers that intellectual property rules should be a matter for state sovereignty (or, at most, bargained arrangements such as the intellectual property conventions under WIPO), not harmonized rules under liberalization arrangements like the WTO. But, as Stiglitz observes, the movements that Bhagwati characterizes as “antiglobalization” have gone beyond the state-versus-global dichotomy of the globalization debate, and have recognized that in fact new *global* rules may be needed to protect the values and interests they care about against the behavior of global capital.

Another example of such interests is the protection of the value inherent in “traditional knowledge” against firms that, in the absence of enforceable rules, take such knowledge as a free public good and make it their own property through patent law (so-called “bio-piracy”). Without global rules it is impossible effectively to prevent the taking and patenting of such knowledge outside the country from which it has been taken. This is due to the domestic intellectual property laws of jurisdictions such as the United States and the European Union, which tend, with some trend to the contrary in the EU, to recognize such patentability without any entitlement to compensation to the communities in which the traditional knowledge resides (pp. 116–17). Thus, while Bhagwati presents himself as a “globalizer” and Stiglitz presents himself as a friend of the “antiglobalizers” or sympathetic to their critiques, Stiglitz ends up calling for more and different global rules: “There ought to be an international agreement recognizing traditional knowledge, and prohibiting bio-piracy” (p. 127).

The centrality of the global rule of law to the overcoming of the globalization debate poses an interesting predicament for conservatives, especially American conservatives. They were likely to side with the globalizers against antiglobalization activists from the left, where globalization was seen as curbing the state’s control over the market.⁴⁵ Now, however, the global rule of law has become the evident implication of globalization, and the right tends to see this as a threat to national sovereignty.⁴⁶

Today’s globalization has generated or reinforced political instability and even violence (as in Stiglitz’s account of the “resource curse,”

⁴⁴ See generally Carlos Correa, *Access to Drugs Under TRIPS: A Not So Expeditious Solution*, BRIDGES (Int’l Ctr. for Trade and Sustainable Dev., Geneva, Switz.), Jan. 2004, at 21, available at <http://www.ictsd.org/monthly/bridges/BRIDGES8-1.pdf>.

⁴⁵ AARONSON, *supra* note 23, at 4–7.

⁴⁶ See, e.g., ROBERT H. BORK, *COERCING VIRTUE: THE WORLDWIDE RULE OF JUDGES* (2003); JEREMY RABKIN, *WHY SOVEREIGNTY MATTERS* (1998).

for example), which seem in opposition to the global rule of law.⁴⁷ At the same time, globalization has weakened or undermined the architectonic ordering function of the state and fragmented power into specialized networks and communities that operate between the state and local and global levels, as described by Sassen. This development arguably makes the total state, which completely flouts the global rule of law, impossible, or at least pushes it to the margins.

China's attempt to adapt the model of the total state to the contemporary era of globalization does not disprove but rather illustrates this thought. As Bhagwati observes, one example is China's attempted control of the free flow of information, which is required by its commitment to a decayed model of the total state, but which at the same time limits its ability to make strides in innovation in knowledge-intensive industries (p. 278). And even China can only stem, not stamp out, the circulation of people, information, and ideas in the current age of globalization. China may spurn the global rule of law as far as it concerns human rights, but it depends on the global rule of law (free trade rules) for its economic strategy.

Our globalization, unlike the last century's — though consistent and even complicit with some horrific acts of violence — on balance makes less rather than more likely the collapse of a large part of the world into inhumanity and darkness of the kind seen in the twentieth century's worst moments. This is a further illustration of the respects in which we are beyond the globalization debate: antiglobalization is today for the most part a variant of cosmopolitanism. It is a drive to realize a set of global values transnationally and indeed globally, and the state itself (in much of the world) is structured so as to make it not easily amenable to mass mobilization of nationalistic reactions to globalization.

All of the books under review are the work of nonlawyers. With the partial exception of Saskia Sassen, who sees the highly developed legal system of the modern regulatory state as an *essential* "capacity" for making globalization work, that is, for sustaining the needed complex cooperation and coordination between diverse actors on which a global economy depends, the authors tend to view law as following rather than leading the process of globalization.

I have suggested how the works under review display how the debate has ended. Where these books are less revelatory, understandably given that none are works of legal scholarship, is in displaying how or to what extent the globalization debate has in fact morphed into a series of debates or struggles *internal* to the politics and processes of

⁴⁷ On the relationship between increased violence and heightened legalism in the contemporary world, see Teitel, *supra* note 40.

global law. These include the interpretation of trade rules in environmental contexts such as the *Shrimp/Turtle* dispute, the question of developing country and U.S. participation in Kyoto and the future of that process, and the debate over intellectual property rights and access to HIV/AIDS medications. Instead of a battle between “doers” and “critics” or “discontents,” we have a range of agents — states developed and developing, multinational corporations, activists and NGOs, judges, arbitrators, international civil servants — staking out positions and appealing to multiple and shifting constituencies, local and global, in seeking to shape, interpret, and revise the law according to their own interests, conceptions of legitimacy, and global values.

The debates, instead of exhibiting the character of open-ended ideological conflict, come to be constrained and channeled by processes of legality, and sometimes these processes turn out to be more open-ended and more capable of influence by diverse interests than the processes of representative democracy in the nation-state.⁴⁸ These legal processes can be viewed as simply one aspect of global “governance” — as essentially instruments of policy elites. But on many issues, whether “odious” debt, intellectual property rights, climate change, or special trade treatment for developing countries, the legal processes bring questions of global *justice* front and center. The semantic focus today on “governance” shifts the conceptualization of the heart of the matter from the expert *management* of global markets (if in part through legal instruments or techniques) to one of global justice and fairness.⁴⁹

Now the activists find themselves positioned not as an outsider counterculture simply opposed to the technocracy, but as advocates of legal interpretation and change within institutions and regimes. They can find themselves advising developing country governments in WTO negotiations on intellectual property; lobbying governments on the text of a convention concerning genetic engineering and biodiversity (Cartagena); suing a multinational corporation for complicity with massive human rights violations under the Alien Tort Claims Act (the *Unocal* case⁵⁰); or working with the United Nations human rights institutions to bring normative considerations such as the right to water and the right to health into negotiations to liberalize trade in services, including public services.

Properly mapping the internalization of the globalization debate(s) within global legal processes where they become debates about global

⁴⁸ Here I have been influenced by the pioneering work of Benedict Kingsbury and Richard Stewart, developing the concept of Global Administrative Law. See Kingsbury, Krisch & Stewart, *supra* note 42.

⁴⁹ See, e.g., AMERICO BEVIGLIA ZAMPETTI, FAIRNESS IN THE WORLD ECONOMY (2006).

⁵⁰ *Doe I v. Unocal Corp.*, 395 F.3d 932 (9th Cir. 2002).

justice is a relevant task for legal scholarship, and a necessary complement and supplement to the kind of analysis found even in the best of the works under review. We need to articulate how the distinctive features of global legal processes (including not just purely international processes such as WTO adjudication and rulemaking, but also processes that bring global justice to bear locally) structure and constrain a global *politics*. This politics engages and balances the executive- and elite-dominated politics of the post-globalization nation-state, supplementing nation-state democracy not through formal representative institutions detached from state participation, but by providing sites of empowerment for those marginalized in contemporary nation-state politics. How do the structures and processes of global lawmaking and interpretation function to make this possible? And what are the sources of legitimacy — procedural and substantive — that allow global law to function while internalizing the contest over global *justice* that has replaced the globalization debate?