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Eleanor M. Fox
New York University School of Law

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Essay

Globalization and Its Challenges for Law and Society

The Wing Tat Lee Lecture*

*Eleanor M. Fox***

I. INTRODUCTION

We—lawyers, academics, and law students—are agents of change. Many of us will advance the liberalization process and make global transactions happen. Many of us will become technicians, trained to sweep away the debris and help the tide flow more swiftly.

There are many virtues of the globalization process. It promises to increase the flow of ideas and technology, to raise the level of economic welfare, to increase economic opportunity, and, by tearing down national boundaries, to foster nation-blind regard for people and to dissipate hostilities in the world.¹

* As a result of a gift to the School of Law by Wing-Tat Lee, a Hong Kong businessman and philanthropist, the Loyola University Chicago School of Law established a lecture series in the area of international and comparative law. The Wing-Tat Lee lectureship has enabled the School of Law to participate in ventures such as the Central and Eastern European Law Initiative (CEELI) of the American Bar Association and to invite other speaker to the campus.

** Eleanor M. Fox is Walter J. Derenberg Professor of Trade Regulation at New York University School of Law. This essay is based on Professor Fox's Wing Tat Lee Lecture, delivered at the Loyola University Chicago School of Law on March 19, 1997.

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1. Thomas L. Friedman gave a poignant example of how globalization can erode politically repressive governments in his *The Globalutionaries*, N.Y. TIMES, Jul. 24, 1997, at A21. The "globalutionaries," as Friedman defined them, are the young, democratic, pro-clean government opposition in Indonesia, who are relying on the "revolution from beyond." Friedman said:

Their strategy is to do everything they can to integrate Indonesia into the global economy on the conviction that the more Indonesia is tied into the global system, the more its government will be exposed to the rules, standards, laws, pressures, scrutiny and regulations of global institutions, and the less arbitrary, corrupt and autocratic it will be able to be. Their strategy, in short, is to Gulliverize the Suharto regime by globalizing Indonesian society.

A new orthodoxy has emerged, however, that so exults the unleashing of trade, investment and world competition, that new-era problems of sovereignty, federalism, fairness, legitimacy, and social cohesion are obscured. These emerging public policy issues are linked to the law. They relate to the kind of society that we are and might become. They implicate institutions and values.

This essay is a call to reflect on root questions about globalization and its impacts. What is this wave of globalization? Where is it carrying us? What are its costs? Should we, dare we, try to alter its course?

To set the stage for the inquiry, this essay first offers some stories of liberalization as points of reference. Next it considers counter-stories; the problems of shortfall, backlash, and threatened values. It concludes with an examination of challenges for law and policy, and a proposed role for law schools. While this essay describes some proposals and approaches, it does so not to provide answers but rather to stimulate the thought and imagination that are needed to address the legal and institutional questions of the twenty-first century. Ethan Kapstein has written: "The world may be moving inexorably toward one of those tragic moments that will lead historians to ask, why was nothing done in time?"² Our first challenge is to know what it is that we must do in time.

II. STORIES OF LIBERALIZATION—THREE POINTS OF REFERENCE

We begin after World-War II, in its devastating wake. Wanting to create a stable peace, visionary leaders in France and in Germany realized the power of trading, the power of a market without national fences. They accepted the premise that people who trade together in everyday life come to understand and to respect one another; they are no longer "foreigners."

In this spirit, in 1952, six Western European nations—France, Germany, Italy, Belgium, Luxembourg and the Netherlands—formed the European Coal and Steel Community, making into one market the coal and iron ore that lay seamlessly under the lands of France, Germany and Italy. In 1957, the same six nations founded the European Economic Community, based on free movement of goods, services and capital, and on the free movement of people. The Treaty establishing the European Economic Community (the "EC Treaty")

Id.

2. See Ethan B. Kapstein, *Workers & The World Economy*, 75 FOREIGN AFF. 16, 18 (1996).

tears down barriers in the internal market comprised of the member states, prohibits discrimination based on nationality, and bans member state laws that chill free movement.³ The adoption of the EC Treaty was courageous and is a visionary example of liberalization.

For a second benchmark, we move to the United States. In the 1960s and early 1970s, law and regulation were expanding. Meanwhile, trade barriers were falling and U.S. trading partners, especially Germany and Japan, had finally recovered from World War II's destruction. By the end of the 1970s, foreign firms had become strong competitors for the business of American buyers. U.S. businesses complained that they were competitively disadvantaged by too much law. In 1980, Ronald Reagan ran for president on a platform that promised to get government off the back of business, and he won. The belief that best government is least government had gained ascendancy. Chicago School law and economics—in existence for twenty years and finally moving into mainstream—offered support for the additional belief that not only are free markets efficient, but they are fair; efficiency is fairness (or so it was said).⁴

Our third benchmark is the democracy revolutions of 1989-90. Soviet communism had failed, economically and politically. Spectacularly, the nations of the former Soviet Union and of Central and Eastern Europe moved from communism to democracy and from command-and-control economies to freedom of enterprise. With freedom of enterprise came privatizations and liberalization. Barriers to trade were lowered in response to the nations' need for foreign investment and foreign technology. The Central European countries wanted integration with, and membership in, the European Union.⁵

The lowering of barriers to trade and investment is a phenomenon not limited to industrialized and post-communist nations. Liberalization has spread across the world. Even China welcomes foreign investment and is encouraging its own brand of markets and competition.⁶ Jamaica's Michael Manley, who, in the 1970s, was a

3. See GEORGE BERMANN, ROGER GOEBEL, WILLIAM DAVEY AND ELEANOR FOX, *CASES AND MATERIALS ON EUROPEAN COMMUNITY LAW* pts. I & II (1998 Supp.).

4. See Richard A. Posner, *The Ethical and Political Basis of the Efficiency Norm in Common Law Adjudication*, 8 *HOFSTRA L. REV.* 487 (1980).

5. See JOHN FINGLETON, ELEANOR FOX, DAMIEN NEVEN AND PAUL SEABRIGHT, *COMPETITION POLICY AND THE TRANSFORMATION OF CENTRAL EUROPE* (1996); Eleanor M. Fox, *The Central European Nations and the EU Waiting Room—Why Must the Central European Nations Adopt the Competition Law of the European Union?*, 23 *BROOK. J. OF INT'L L.* 351, 352 (1997).

6. See NICHOLAS R. LARDY, *CHINA IN THE WORLD ECONOMY* (Institute for International Economics 1994); *China's Next Steps: The Long March to Capitalism*, *ECONOMIST*,

leading advocate of a new economic order that would redistribute the world's wealth to the poor countries of the world, shifted allegiance.⁷ In his second term as Prime Minister, Manley privatized state-owned businesses, relaxed restrictions on foreign investment, and adopted orthodox free market policies for Jamaica.⁸ As quoted in his obituary last year, Manley said:

I kept thinking that you could make the world economy submit to a system of political management to safeguard against injustice and inequity I didn't realize the forces of production are too powerful, and their inherent logic too irresistible, to be made subservient to political barriers on a permanent basis.⁹

The dramatic shift to markets in the last decade, and the liberalization that accompanies belief in markets, has led many observers to proclaim that the market has won.

III. COUNTER-STORIES: SHORTFALL, BACKLASH AND TRAMPLED VALUES

A. *The Shortfall*

It is nearly ten years now since the communist-block nations have adopted free enterprise systems. In 1989 and 1990, the people of these nations had great expectations for a new life of economic opportunity. But could the nations reach the market before they reached anarchy? Some nations—Poland, Hungary, the Czech Republic—have done quite well; though still with massive disappointed expectations. Others—such as Russia—are experiencing an exploding rate of poverty, murder, extortion, exploitation and chaos, while critical masses of their people continue to condemn capitalistic profit-taking and to massively evade (the extraordinarily heavy) taxes needed to fund the tasks of state.¹⁰

The story of Albania is a symbol of transition gone awry. Masses of Albanians—most earning no more than twenty dollars per month—

Sept. 13-19, 1997, at 23.

7. See Larry Rohter, *Michael Manley, Ex-Premier of Jamaica, Is Dead*, N.Y. TIMES, Mar. 8, 1997, at 52.

8. See *id.*

9. *Id.* See generally, DANIEL YERGIN & JOSEPH STANISLAW, *THE COMMANDING HEIGHTS: THE BATTLE BETWEEN GOVERNMENT AND THE MARKETPLACE THAT IS REMAKING THE MODERN WORLD* (1998) (providing a history of the evolution from statism to markets).

10. See Michael R. Gordon, *On the Road to Capitalism, Tax Breakdown for Russia*, N.Y. TIMES, Feb. 19, 1997, at A1; *Russia's Reforms in Trouble: The Humbling of Chubais*, ECONOMIST, Nov. 22-28, 1997, at 23.

were lured by promises of thirty percent monthly return on investment.¹¹ Investing all they could garner, they were swindled out of hundreds of millions of dollars in pyramid schemes, causing crisis in the government and disillusionment with capitalism.¹²

Jumping across the abyss from communism to markets is a terrifying challenge and there are terrible shortfalls. This is, however, not the major problem of liberalization—these are shoals along the path.

B. The Backlash: Protectionism and Xenophobia

A second problem is the backlash—the protectionism and xenophobia that is triggered by the prospect of open borders. There are those who do not love globalization and will fight it. The champions of border barriers fall into two quite separate camps, symbolized on the one hand by Ross Perot, and on the other by Ralph Nader.

Opposing the North American Free Trade Agreement (“NAFTA”), Ross Perot created the anticipation of “the giant sucking sound.”¹³ As soon as NAFTA is adopted, he predicted five years ago, we would hear the roar of jobs being sucked out of the United States and into Mexico.¹⁴ U.S. businesses would migrate south of the border where costs were low, environmental laws were not enforced, and labor was exploited. The sub-message—really the main message, from Perot, Pat Buchanan and others—was to keep the foreigners out.¹⁵ Keep the United States for U.S. Americans. This stream of opposition to liberalization is xenophobic. It is laden with an ungenerosity of spirit. The posture is also political. Protect the investment of U.S. businesses from the competition.

Ralph Nader, to the contrary, is the conscience of (a view of) the public interest. Modest, giving and generous, he wants to help the down-trodden, the workers, the environment, the entrepreneur. He fears that open borders will accelerate the race to the bottom. For example, Mexico has low environment standards and therefore low costs of environmental compliance. In addition, it has cheap and

11. See Editorial, *Eastern Europe's Wild Capitalism*, N.Y. TIMES, Feb. 18, 1997, at A18.

12. See *id.*

13. Bob Herbert, *NAFTA and the Elite*, N.Y. TIMES, Nov. 10, 1993, at A27.

14. See *id.*

15. See Robert Kuttner, *The American Prospect—A Pause to Debate the Merits of Global Trade*, SAN DIEGO UNION TRIB., Nov. 26, 1997, at B5, available in LEXIS, News Library, Sdut File.

exploited labor. As tariffs dissolve, U.S. producers would be forced into head-to-head competition with Mexican producers as the cheap Mexican goods would flow into the United States. In the name of competitiveness, the United States (Nader feared) would be pressured to lower its standards for environment and labor. Other U.S. producers would move to Mexico to get the direct benefits of the low costs. These producers not only would shrink the U.S. job base, but also they would become producers in Mexico of products sold cheaply in the United States, eliminating more U.S. jobs, putting more pressure on standards, and accelerating the race to the bottom. These concerns led to NAFTA side agreements on labor and the environment; but the side agreements are considered by free trade antagonists to be poor and flimsy stop-gaps.

William Greider, author of *One World, Ready or Not: The Manic Logic of Global Capitalism*, attacks globalization by predicting economic chaos.¹⁶ Counting himself as a member of the Cassandra school, he foresees that the huge emerging markets—China, and if not China, producers from India to Malaysia to Eastern Europe—will produce a flood of low-cost exports, such as cars, that will overwhelm the production capacity of the West and destroy the global system.¹⁷

Whether or not there is reason for the backlash, the backlash is a problem because it induces a hostile isolationism—a disregard, if not hatred, of the “outsider.”

C. Trampling on Values and People: Spawning New Undisciplined Power

Globalization is not all benign. Relentless pressure from global competition on businesses to cut costs to be “competitive,” combined with the pressure of multinationals on governments to sweeten tax obligations, can tend to squeeze out things that we care about but for which we do not have the fighting power (or money) to pay. These include the environment, labor standards, social welfare and education.

There is a magnetic draw of capital to lowest cost markets, with corresponding withdrawal of the capital from the home country’s tax base. The magnet drew Nike, Walt Disney, Wal-Mart, and others to

16. See WILLIAM GREIDER, *ONE WORLD, READY OR NOT: THE MANIC LOGIC OF GLOBAL CAPITALISM* 11-26 (1998).

17. See *id.* at 112-15, 146-62. Nationalistic strategies include not only isolationist policies at home but also interventionism abroad, as exemplified by the Helms Burton Act. See Wolfgang H. Reinicke, *Global Public Policy*, 76 *FOREIGN AFF.* 127, 130-31 (1997).

strike deals in Indonesia, China, Thailand, and Vietnam. Avoiding taxes and evading costs of a cleaner environment, they hired sweatshop child labor to make sneakers, Pocahontas T-shirts, and Kathie Lee Gifford clothes. Wal-Mart reportedly enforced seventy-hour workweeks; Nike allegedly punished fifty-six Vietnamese workers by forcing them to run in the hot sun until some collapsed.¹⁸

At the same time, on other fronts, industrialized countries try to export *their* standards for deregulation and laissez faire efficiency. Less developed countries fear that free market policies of the West threaten to disarm them economically, and that unleashed multinational enterprises—subject to no rules but the rule of efficiency—will steamroll their cultures and economies. Some fear that the global economy is spawning new monopolies and oligopolies—huge mergers of almost whole industries, unchecked by home nations, which are happy to launch “national champions.” As Giuliano Amato observes in his book *Antitrust and the Bounds of Power*, the checks and balances of the state vis-a-vis private power are eroding as markets become larger than states.¹⁹

D. The Fault Lines

Economics has answers for all of the above concerns. Globalization increases world welfare. Free trade lifts all boats. People must make choices; we pay for what we get. We cannot hold back the tide. Those who try to do so are protectionists, taxing the many for the privilege of the few.

Professor Dani Rodrik of the John F. Kennedy School of Government at Harvard, while respecting the huge benefits of globalization, has pierced the rhetoric of economists. In his book *Has Globalization Gone Too Far?*, Rodrik demonstrates that globalization is exposing the fault line between those who have skills and mobility to flourish in global markets, and those who do not.²⁰ Globalization is threatening social stability and deeply held norms. The challenge, says Rodrik, is to make globalization compatible with social and political stability and to assure that it does not lead to social disintegration.²¹

Economists downplay the problems. Rodrik observes that economists “have tended to take an excessively narrow view of the

18. See Steven Greenhouse, *Accord to Combat Sweatshop Labor Faces Obstacles*, N.Y. TIMES, Apr. 13, 1997, at 1.

19. See GIULIANO AMATO, *ANTITRUST AND THE BOUNDS OF POWER: THE DILEMMA OF LIBERAL DEMOCRACY IN THE HISTORY OF THE MARKET* 113-129 (1997).

20. See DANI RODRIK, *HAS GLOBALIZATION GONE TOO FAR?* chs. 1, 5 (1997).

21. See *id.*

issues,”²² discrediting all criticisms of liberalization as stemming from self-interested protectionists.

Rodrik’s book identifies three sources of tension between the global market and social stability. First, the reduction of barriers to trade and investment accentuates the asymmetry between those who can easily cross national borders and take their resources where they are most demanded (capital and highly skilled workers) and those who cannot (unskilled and semi-skilled workers, and middle management). Freer movement makes the demand for the least mobile more elastic; the services of unskilled workers can be more easily substituted across national borders. Therefore, not only will unskilled workers lose jobs, but those who keep their jobs will be exploited. They will have to bear a larger share of the costs of improvements in work conditions; they stand to get lower wages, or at least not to share as before in the benefits of more efficient production, and they will have to absorb a greater share of the risks of downsizing.²³

“Second, globalization engenders conflicts within and between nations over domestic norms and the social institutions that embody them.”²⁴ It threatens to change norms and rules, such as rules against child labor and bribery and norms for meaningful social safety nets. It induces firms to go abroad to evade their own norms, thus undercutting fundamental beliefs that form the fabric of society.

“Third, globalization has made it exceedingly difficult for governments to provide social insurance—one of their central functions and one that has helped maintain social cohesion and domestic political support for ongoing liberalization throughout the postwar period.”²⁵ The most open economies have most distinctly felt the need and obligation to insulate their citizens from excessive risks of the market. The pressures of globalization, however, have forced states to shrink their support. In turn, the shrunken welfare nets threaten to erode domestic consensus in favor of open markets.²⁶

The current crisis in the financial markets of Asia underscores all three of these points. Brazil, the largest country in South America and

22. *Id.* at 4.

23. *See id.* at 4-5; *see also* Kapstein, *supra* note 2 (reporting the dramatic drop in wages and decline in unionization, and recommending ways in which the government can combat inequality and unemployment).

24. RODRIK, *supra* note 20, at 5.

25. *Id.* at 6; *see also* George Soros, *Toward a Global Open Society*, ATLANTIC MONTHLY, Jan. 1998, at 20, 23-24 (arguing for a global open society in which universal values reflecting our fallibility, protecting our freedoms, and protecting the fabric of community overlay raw market values).

26. *See* RODRIK, *supra* note 20, at 6.

the fifth largest in the world, is bracing itself to avoid becoming the next domino. In Brazil, which is regarded as the anchor to a stable South America, forty percent of the people are poor and one in every four people lives on less than one dollar a day. In the last decade, Brazil opened its economy to world trade. The New York Times reports:

But with this shift, . . . the country now seems poised on a knife edge. In stark terms, Brazil poses the question of whether global economic pressures exact too high a cost in stability in societies that are among the most unequal in the world.

The measures Brazil has taken to save its currency—steps that have thus far satisfied fast-moving global markets—are hurting the poor and the lower middle class [E]fforts to attract international capital have pushed interest rates close to 40 percent a year.²⁷

The president of Brazil's land reform institute said, "[S]ocialism is dead. We're in the international dance hall now, and we have no choice but to dance."²⁸

The problem of fault lines is exasperated by a further insight. International mobility reduces the willingness of the mobile groups to cooperate to resolve conflicts. It is easier for a member of the mobile class to move offshore than to become a participant in revitalizing the economy of the local community. Yet community spirit is generated, if at all, "through the experience of tending the conflicts that are typical of that society."²⁹

IV. THE CHALLENGES FOR LAW AND POLICY

We must marry knowledge, foresight, and imagination as we search for approaches to solve the problems of globalization and to realize its opportunities. In this spirit, this section is divided into three parts. First, it gives examples of selected solutions. Second, it describes a model for accommodating needs of nationalism with needs of federalism. Third, it presents some challenges for the law schools.

27. Roger Cohen, *Brazil Pays to Shield Currency, and the Poor See the True Cost*, N.Y. TIMES, Feb. 5, 1998, at A1. These efforts have essentially wiped out consumer credit and many people have lost their jobs. *See id.*

28. *Id.*

29 RODRIK, *supra* note 20, at 70 (quoting Albert Hirschman, *Social Conflict as Pillar of Democratic Society*, 2 POL. THEORY 22, 25 (1994)).

A. Solutions

1. No Sweat

One of the most daunting challenges to values has come in the form of footloose capital moving to Asian sweatshops to employ unskilled people for wages below subsistence level. For example, Walt Disney reportedly manufactured its *Pocahontas* and *101 Dalmatians* apparel at factories in Haiti for twenty-seven cents per hour.³⁰ Walt Disney defended its practice on grounds that their wage was higher than the nation's minimum wage.³¹ A labor executive rejoined that "[m]any third-world countries set minimum wages below subsistence because they are trapped in a competition with each other to attract jobs."³²

The United States organized a Presidential task force to consider setting voluntary minimum labor standards for the U.S. apparel industry.³³ The task force included representatives of business (including Liz Claiborne, L.L. Bean, Reebok, and Nike), labor unions, consumer advocates, and human rights groups.³⁴

Eventually the task force reached agreement on a voluntary code of conduct for wages and working conditions in apparel factories that American companies use or operate anywhere in the world. Under the code, (1) producers would not require apparel workers to work more than sixty hours a week, (2) factories would not hire workers under fourteen years of age, (3) factories would pay at least the minimum wage of the country but also enough to cover workers' basic needs, (4) workers could unionize, (5) outside monitors including local church and human rights groups would police the practices of the companies that signed the code, and (6) companies that followed the code could label their apparel: "No Sweat."³⁵

Economists (and some others) typically criticize such a "fair practices" code. It is anticompetitive. Competitors—the textile producers—agree not to use a low-cost input,³⁶ and therefore the pact

30. See Steven Greenhouse, *Voluntary Rules on Apparel Labor Prove Hard to Set*, N.Y. TIMES, Feb. 1, 1997, at 1.

31. See *id.*

32. *Id.*

33. See Steven Greenhouse, *Apparel Industry Group Moves to End Sweatshops*, N.Y. TIMES, Apr. 9, 1997, at A14.

34. See *id.*

35. See Editorial, *Watching the Sweatshops*, N.Y. TIMES, Aug. 20, 1997, at A22 (reporting that a major obstacle at the time was whether the group would agree to outside monitors); Greenhouse, *supra* note 18, at 1; Greenhouse, *supra* note 33, at A14.

36. But see Steven Greenhouse, *Duke to Adopt a Code to Prevent Apparel from Being Made in Sweatshops*, N.Y. TIMES, Mar. 8, 1998, at 16 (noting that Duke University will

raises consumer prices. Moreover, the low-wage policy is the means by which the host country competes and develops its economy. It *chooses* to pay the human costs in order to move the country to a higher economic rung. Most industrialized countries used sweatshop labor for just this purpose at the time of their industrial revolutions.³⁷

Professor Jagdish Bhagwati, a distinguished economist, has made three points in response: (1) free markets are not the answer to all problems; (2) altruism should not be a verboten word; and (3) just because some individuals might advocate a course of action to protect themselves from competition does not mean that the course of action is bad for the people.³⁸ The course of action might in fact be the moral position. Bhagwati said:

Sweatshops indeed existed in 19th-century Britain during early industrialization, leading to a burst of social legislation to rid the country of these ills. But nothing requires us to go that route again. Nations should join nongovernmental groups like the International Labor Organization to rid the world of sweatshops. In addition, we can require multinationals to apply our own labor, safety and environmental standards when they manufacture abroad. In Rome, they must do not as Romans do but as we do. Their example would spread.³⁹

Bhagwati and Rodrik might add: the moral position might turn out to be the efficient position, for it might be a necessary step to preserve social cohesion and to foster stability.

2. Steam Valves and Linking Solutions

Arguing that social disintegration need not be the price of economic integration, Professor Rodrik makes several proposals that involve international institutions. He notes that mobile firms tend to play the tax authorities of various countries against each other, and the tax competition among countries can be a source of negative cross-border externalities. This exercise of monopsony-like power “undercuts the revenue sources needed to maintain social and political cohesion and

prohibit products bearing Duke’s name, from T-shirts to gym bags to hardware, from being made in sweatshops). When *buyers* demand “no sweat” apparel, it is not anti-competitive; it is consumer choice.

37. See R. M. HARTWELL, *THE INDUSTRIAL REVOLUTION AND ECONOMIC GROWTH* (1971); see also Louis D. Brandeis, *The Constitution and Minimum Wage*, in *THE CURSE OF BIGNESS* 52 (Osmond K. Fraenkel ed., 1965).

38. Jagdish Bhagwati, *Do as We Do*, N.Y. TIMES, June 25, 1997, at A18 (letter to the editor).

39. *Id.*

ultimately erodes support for free trade."⁴⁰ The problem might be addressed, he suggests, by an international convention.

Rodrik also suggests a broader use of "safeguard" trade restraints (temporary protection authorized by the General Agreement on Tariffs and Trade) while limiting the use of the blunter, more protectionist, anti-dumping laws. He writes: "A broader interpretation of safeguards would acknowledge that countries may legitimately wish to restrict trade for reasons going beyond competitive threats to their industries. Distributional concerns or conflicts with domestic norms or social arrangements are among such legitimate reasons."⁴¹

While Rodrik focuses on mending the problems of nations so that their fabric stays intact, Wolfgang Reinicke focuses on the need for world linkages and, ultimately, a multifaceted global public policy to fill the gap created by the shrinking nation state. If corporations and social problems (e.g., financial, environmental) cut across the world and are no longer defined by territory, then we must accept that "[t]he nation-state as an externally sovereign actor in the international system will become a thing of the past."⁴²

Reinicke proposes global public policy as an alternative to nationalistic intervention. He writes:

The world economy consists of a growing number of global corporate networks. The current state of global governance, however, resembles at best a cross-national policy patchwork, conspicuous for its missing links and unnecessary overlaps. If global public policy is to be an alternative to interventionism, governments must ensure that these patchworks evolve into networks of governance. Their first step should be to commission a global governance audit that would map global obligations and responsibilities along different dimensions, including functional, financial, institutional, and structural.⁴³

40. RODRIK, *supra* note 20, at 81.

41. *Id.* at 81-85. There is much support for Professor Rodrik's observation that antidumping laws are excessive in keeping competitively priced imports out of national markets and they seriously undermine world trade and competition. See Robert A. Lipstein, *Using Antitrust Principles to Reform Antidumping Law*, in GLOBAL COMPETITION POLICY 405 (Edward M. Graham & J. David Robinson eds., 1997) (proposing ways in which the antidumping laws might be revised to be less contradictory to open market goals).

Indeed, one may go further and suggest that industrialized countries' strategies to protect their producers by barring competitively low-priced goods from developing countries deprives the developing countries of one of the most effective means of ratcheting up their standard of living by hard work and good performance.

42. Reinicke, *supra* note 17, at 137.

43. *Id.* at 136.

After the mapping of global obligations and responsibilities, Reinicke would fill the gaps identified in each policy area. Next, he would urge governments and international organizations to "create and use cross-national structures of public interest . . ." Appreciation of the global dimension, Reinicke writes, "requires political elites to dissociate themselves to some degree from territory and create more dynamic and responsive institutions of governance."⁴⁴

B. *An Evolving Model*

All daunting problems need a vision from the top. The European Union ("EU") provides such a vision. Though many interests are always on the EU table, there is one overarching question: What is good for the citizens of Europe? The EU provides the richest model as well as the richest body of intellectual and pragmatic resources for thinking about issues of federalism involving sovereignty, subsidiarity and internationalization. For example, when is supranational regulation necessary to do the job, and when does supranational regulation unacceptably impair the sovereign rights of states and their obligations to respond to the needs of their citizens? On almost every issue involving the scope and limits of states' rights, EU law and policy offers both reflective debate and legal formulations.⁴⁵ To be

44. *Id.* at 137; see also Jessica T. Mathews, *Power Shift*, 76 FOREIGN AFF. 50 (1997). "The evolution of information and communications technologies" and the nonterritorial nature of today's problems and solutions is shifting power from state to non-state actors. *Id.* at 16. We need "international institutions that can efficiently serve the dual masters of states and citizenry, and, above all, new institutions and political entities that match the transnational scope of today's challenges while meeting citizens' demands for accountable democratic governance." *Id.*

Yet there is much resistance to internationalization. Internationalization of law and policy may involve moving decision-making to a higher level and therefore may involve loss of sovereignty and concerns about remote, faceless, unaccountable bureaucracy. These concerns are not trivial. See Joel I. Klein, Assistant Attorney General, Antitrust Division, *Anticipating the Millennium: International Antitrust Enforcement at the End of the Twentieth Century*, in FORDHAM CORPORATE LAW INSTITUTE, 24TH ANNUAL CONFERENCE ON INTERNATIONAL LAW AND POLICY (B. Hawk ed., forthcoming). The concerns must be considered, as should means to minimize their impact. See Eleanor Fox, *Toward World Antitrust and Market Access*, 91 AM. J. INT'L L. 1 (1997).

45. See Eleanor M. Fox, *Vision of Europe: Lessons for the World*, 18 FORDHAM INT'L L.J. 379, 382-86 (1994); see also EUROPE AFTER MAASTRICHT: AN EVER CLOSER UNION? (Renaud Dehousse ed., 1994) (collection of essays on the scope and limits to community competencies and the search for legitimacy of institutions and decision-making that is removed from the pulse of the people); PAUL KAPTEYN, THE STATELESS MARKET: THE EUROPEAN DILEMMA OF INTEGRATION AND CIVILIZATION (1996) (analyzing the European Community's history as liberal inter-governmentalism, freeing up markets for the greater empowerment of the community, but creating the dilemma of the erosion of nation-state powers); MICHAEL NEWMAN, DEMOCRACY, SOVEREIGNTY AND THE EUROPEAN

sure, market integration, and the free movement that serves it, are in the forefront of EU concerns, and the world may not embrace such deep integration as a goal. But this is a difference of no importance to the point that we need to embrace global thinking. The balance and allocation of powers may be struck differently for the EU and for the world, but the issues of markets, non-market values, social cohesion and the problem of the shrinking state are, in concept, the same.

C. *The Law School*

The subject of globalization and its impacts are highly relevant to the law school. This is so for two very different reasons. I began this essay with one reason. We who are lawyers, especially lawyers who deal with the economy, are agents of liberalization. We participate in the unleashing of capital in a globalized world. We are (most of us) members of the mobile class. We may naturally accept the view that we are agents of the angels or at least useful technicians to help our clients get the job done. These assumptions must be questioned.

Second, life is complex, and law reflects its complexities. In a global society, the complexities multiply. As lawyers, we are trained to dig to the depths of the technicalities and become masters of our specialties. Technicians speak to technicians.

The problems of the global world call for vision across fields and across the world's societies; perception at a high level of generality. We need to bridge the gap between the technician and the visionary. We need to dig out of our specialized trenches and experience interrelationships. A new type of Renaissance lawyer must be trained.

As law schools, we need to bridge this gap not only to train better lawyers. We need to prepare the architects of the new concepts and institutions we will need to address the challenges of the global economy, the shrinking nation state, and the emerging but still fragile networks of global public policy.

How can a law school prepare to meet these needs? We (as providers of legal education) must find means to develop a greater consciousness about our own parochialism—our tendency to see all issues and evaluate all norms through the lens of our own culture. We

UNION (1996) (disagreeing that the European Union can be explained as liberal inter-governmentalism, in view of the political purpose to contain Germany and the varying levels of popular support for power at the center); Walter van Gerven, *Drawing the Line in the Area of Free Movement of Good*, in *THE EUROPEAN UNION AND THE UNITED STATES: CONSTITUTIONAL SYSTEMS IN EVOLUTION* (Roger Goebel, ed., forthcoming) (analyzing how European Community law can achieve its goals of integration and market access while giving appropriate regard to national sovereign rights).

must provide environments conducive to understanding and absorbing other perspectives and experiences, particularly those of people from distinctly different cultures.

Faculty interactions, student interactions, and curriculum development can contribute to these environments. Faculty can be enriched by appointments, including visits by and co-teaching and writing with scholar/teachers from other nations. Student admissions policies can be formulated with an eye to enrichment from non-U.S. students. U.S. masters programs are increasingly attractive to international students, who should be integrated into programs with domestic students. But the integration of graduate law students is not enough; the exposure must permeate the Juris Doctorate program.

Both comparative and global perspectives can enrich the curriculum. Law schools might encourage development of curriculum by pairs of faculty, domestic and foreign, designed both to develop insights from comparisons of the laws of different nations and to explore needs for over-arching law, as well as the new issues of federalism and sovereignty that attend proposals for over-arching law. Finally, faculty can develop courses that bring political science, sociology, economics, the humanities and legal disciplines to bear in examining world welfare with a "vision from the top" and in exploring questions of fairness and social cohesion where these values are put at risk by the forces of globalization.⁴⁶

V. CONCLUSION

The challenges of the global society are many and disparate. They include the need for global vision to address global problems, the problems of world markets, federalism and sovereignty, the concern for the new "losing class," and the threat to the social cohesion of communities. The law schools have a special opportunity and a special responsibility to study the impacts of globalization, empirically and conceptually, and to prepare architects as well as technicians for the new century.

46. See John Edward Sexton, *The Global Law School Program at New York University*, 46 J. LEGAL ED. 329 (1996) (describing the model developed at New York University School of Law).