

Globalism and Natural Law: A Brief History¹

Benn Steil

prepared for conference
Natural Law and Economics
Princeton University
May 7-9, 2009

The further backward you look, the further forward you can see.
- Winston Churchill

Globalism – broadly speaking, the view that increasing economic and cultural interconnections across the globe are a positive development, to be advanced rather than resisted – has a much older and historically esteemed pedigree than is widely recognized. In the context of the contemporary debate over the legitimacy of globalization, particularly as it relates to the sovereign powers of states *vis-à-vis* individuals, the historical development of Western law has been very much consistent with globalist thought; in particular, the notion that individuals have certain natural universal rights that transcend the will of rulers.

The Philosophy of Globalism

[T]here is . . . a broader need to wrench globalization from all the dry talk of markets penetrated, currencies depreciated, and GDPs accelerated and to place the process in its proper political context: as an extension of the idea of liberty and as a chance to renew the fundamental rights of the individual . . . The first principle [of liberalism] is that rights belong to individuals rather than to governments or to social groups. The second is that the essence of freedom lies in individual choice.

- John Micklethwait and Adrian Wooldridge (2000:336)

As with John Micklethwait and Adrian Wooldridge, authors of *Future Perfect: The Challenge and Hidden Promise of Globalization*, Martin Wolf identifies his convictions as being those of the “classical liberal.” He ends his book *Why Globalization Works* not with “dry talk” on economics, but with a defense of the Popperian liberal open society.² Deepak Lal, in a similar critical analysis of globalization, calls for a revival of “classical liberalism in the twenty-first century.”³ Tom Friedman begins his most recent bestseller explaining optimistically that “what

¹ This paper is based on chapter 2 of the author’s book *Money, Markets, and Sovereignty* (Yale University Press, 2009), co-authored with Manuel Hinds.

² Wolf (2004).

³ Lal (2006).

the flattening of the world means is that we are now connecting all the knowledge centers on the planet together into a single global network, which – if politics and terrorism do not get in the way – could usher in an amazing era of prosperity, innovation, and collaboration, by companies, communities, and individuals.”⁴ In his earlier globalization treatise, he even strays into what might be termed a classical liberal “theology” of global cyberspace: “God celebrates a universe of such human freedom, because he knows that the only way He is truly manifest in the world is not if He intervenes, but if we all choose sanctity and morality in an environment where we are free to choose anything.”⁵ In other words, globalization may or may not turn out well, but the only moral way to approach it is to allow individuals to seek each other out on their own terms.

Writers of the most prominent pro-globalization screeds do not simply applaud commerce. Rather, they celebrate technological and political forces advancing and deepening interaction among people across national boundaries for their consistency with, and advancement of, older ideas about human nature and society of which they approve. Generally speaking, these are the ideas of 18th and 19th century Scottish and English cosmopolitan liberals such as Adam Smith and John Stuart Mill.⁶ I would argue, however, that the idealistic roots of globalism actually go much deeper in history, and that much of what seems new and radical about the changing relationship between states and societies actually reflects a movement *back* to the way in which concepts such as law and sovereignty were widely understood in the West from the time of the deaths of Aristotle and Alexander to at least the late 19th century. What is truly new in Friedman’s flat world is the technological change in communications and transport encouraging a revival of the world’s oldest systematic body of cosmopolitan political thought.

Stoicism and the Rise of Natural Law

CREON: Now, tell me thou - not in many words, but briefly - knewest thou that an edict had forbidden this?

ANTIGONE: I knew it: could I help it? It was public.

CREON: And thou didst indeed dare to transgress that law?

ANTIGONE: Yes; for it was not Zeus that had published me that edict; not such are the laws set among men by the justice who dwells with the gods below; nor deemed I that thy decrees were of such force, that a mortal could override the unwritten and unfailing statutes of heaven. For their life is not of today or yesterday, but from all time, and no man knows when they were first put forth.

Sophocles, *Antigone*, 442 BC⁷

Whereas it is today commonplace to think of law as nothing more than the will of a legislator, such thought has been mightily resisted by great thinkers each time it has emerged throughout history. Such resistance is perhaps nowhere more eloquently displayed than by Sophocles’

⁴ Friedman (2005:8).

⁵ Friedman (1999:469-70).

⁶ Regarding Mill, this would be the Mill represented by “On Liberty,” rather than the Mill reflected in the more statist “Principles of Political Economy.”

⁷ Translated by R.C. Jebb: <http://classics.mit.edu/Sophocles/antigone.html>

female heroine Antigone, who refuses to obey her king's edict against burying her brother, asserting that such an edict, which is contrary to morality and custom, cannot possibly be law, and therefore cannot be obeyed.

In the Western tradition, “good law” – law worthy of the name, worthy of obedience – has always been law that was eternal, in the sense that it was rooted in human nature, or a divine design for mankind. The earliest coherent formal philosophy of law so understood can be traced back to ancient Hellenistic society. Widely known as “natural law,” this philosophy is embedded in the ideas that inspired the American Declaration of Independence and Constitution. It is also a philosophy that is indelibly linked with the development of commerce and trade over millennia.

Two great bodies of thought are commonly held to lie behind the development of western civilization, one deriving from classical Greece and the other from Christianity. Phillip Cary likens their roles to the left and right legs of the human body.⁸ The right, stronger leg represents the conservative moral tradition deriving from Judeo-Christian thinking. The left leg represents the ever-questioning, ever-critical older secular tradition deriving from Socrates, Plato, and Aristotle in 5th and 4th century BC Athens. (We relegate the rest of the anatomy of intellectual history to a footnote.⁹) Globalization can be said to have an important foundational philosophy, but it is not to be found in either the classical Greek or Christian traditions. Commerce and the pursuit of wealth – the driving forces behind globalization, even in its cultural manifestations - have no place in the portrait of the good society represented by either. The philosophy underlying the intellectual passion in pro-globalization thought is to be traced back to the historical period between the decline of classicism, with the death of Aristotle in 322 BC, and the emergence of Christianity. This interregnum is the high era of Stoicist thought, which, while its founding fathers, in particular Zeno and Chrysippus, have lacked the cachet of Socrates or Jesus, has been critical in the development of Western legal philosophy and tradition.

The fundamental changes taking place in Greek social and political relations in the course of the late 4th and 3rd centuries BC bear an important parallel with those taking place in global social and political relations today. The notion of man as a fundamentally political animal, a component of a self-governing city-state, the *polis*, steadily lost meaning after the death of Aristotle. Alexander the Great, who died a year before Aristotle, had ushered in a new era of much larger political units and distant rulers. Roman legions destroyed the distinction between Greek and barbarian, and broke down local and tribal loyalties. Political life could no longer be conducted on an intimate scale, and Greek thinkers struggled to redefine the understanding of man as an individual; one who was now more conscious of his isolated role in the universe, and simultaneously of his need to relate to many distant others whose values and motivations he did not know. Whereas the intimacy of the *polis* is today virtually unknown, it is the *relative* intimacy of the nation-state which is being challenged for our attention by foreigners with whom we trade, share, correspond, and mingle with ever greater frequency and intensity.

⁸ Cary (2000).

⁹ The Middle Ages, nominally beginning in 312 AD with Constantine's conversion to Christianity, may be likened to the torso, or the conjunction of the traditions of Jerusalem and Athens. Scholastic thought may be said broadly to represent the intellectual merging of theology and philosophy, commonly dated from the early 6th century with the ascendance of the scholar Boethius and his injunction “as far as you are able, [to] fuse faith with reason,” and ending in the 14th century, represented by the thinking of William of Ockham, who rejected this conflation, and insisted instead on a radical logical separation between matters of fact and faith. The Renaissance, reclaiming and renovating the classical tradition, may then be likened to the left arm, and the Reformation, reclaiming and renovating the biblical tradition, to the right arm. Finally, modernity, the head, positions reason and faith as antagonists: with the Enlightenment, reason comes to despise faith, while in the Romantic epoch faith re-emerges as an elemental, pre-rational, human-centered truth, beyond and prior to reason.

Stoicism emerged from the flux of the early Hellenistic Age. It elevated reason as the only way to comprehend the order of the universe; an order which no longer seemed apparent in social and political life. At the base of Stoic moral theory was the vision of the individual as a world citizen; an early Davos man. It posited the value of each person and simultaneously the importance of a common human nature, so that all were bound to respect the intrinsic worth of others. For most contemporary Westerners, such an outlook is so ingrained as perhaps to seem banal, but it was not an integral part of the ethics of Aristotle's world, where the significance of an individual derived from his specific function and status as a citizen of the *polis*.¹⁰ But function and status are absent when the individual relates to the wider world, and so he must claim an *inherent* right if he wishes respect as an autonomous being from those residing outside the moral intimacy of the *polis*. Such a claim requires reciprocity, and therefore lends ethical meaning to the idea of universality.

As a moral philosophy, Stoicism is exceptionally well suited to a social and political space in which agreement on common ends cannot be assumed, and therefore locates ethics wholly in the *means* through which people interact rather than the ends they seek. This is where the Stoic doctrine of natural law becomes critically important, particularly in a globalizing world. Men can have their own purposes, but their fundamental moral equality, whether "Greek" or "barbarian," is manifested in all being subject to the highest possible authority, the law of nature, which is the product of universal reason and above the multiplicity of local customs. In the striking words of Stoicism's most influential thinker, Chrysippus of Stoa (280-206 BC),

Law is the ruler over all the acts both of gods and men. It must be the director, the governor and the guide in respect to what is honorable and base and hence the standard of what is just and unjust. For all beings that are social by nature the law directs what must be done and forbids what must not be done.¹¹

The parallels between the thinking of Chrysippus and the Dutch father of modern international law, Hugo Grotius, nearly 1900 years later is remarkable. When American politicians today invoke the notion that theirs is "a nation of laws and not of men," they are reprising thought that is distinctly Stoicist.

Stoic philosophy became part of normal life in the Hellenistic world. Arbitration developed into the accepted practice for adjudicating disputes across cities and kingdoms, which necessarily involved a comparison of customs and an appeal to a common standard of equity. The idea of natural law thus emerged as far more than a body of philosophical utopian principle; it emerged as a critical, practical means to promote harmony among civilizations, based on establishing common justice rather than common ends. Importantly, international private commercial arbitration, having all but disappeared during the age of the nation-state ideology of the 19th century,¹² saw a massive revival during the 1980s, *The Economist* in 1993 declaring arbitration "the Big Idea set to dominate legal-reform agendas into the next century."¹³ The social and commercial forces which led to the emergence of international arbitration in the Hellenistic world are identical to those which are driving its conspicuous revival today.

It was the accomplishment of Panaetius of Rhodes (c.180-109 BC) to restate Stoicism as a less austere philosophy of humanitarianism, one that was attractive to the Roman aristocratic class, which coveted the learning of Greece but knew little of philosophy. Stoicism appealed to the native Roman virtues of self-control, devotion to duty, and public spiritedness, and lent some

¹⁰ Sabine (1937).

¹¹ From *On Law*, quoted in Sabine (1937:150).

¹² Mattli (2001:919-947).

¹³ *The Economist* (1992:17).

universalist idealism to the gory business of imperial conquest. Stoic legal thinking also lent itself perfectly to the task of accommodating the proliferation of foreign traders in Rome, which required a new body of law based on what private business convention regarded as fair dealing, rather than one based on local custom and ceremony. Lawyers referred to this emerging body of law as *ius gentium* - the law of nations, or that law which natural reason establishes for all men.

Consistent with the commercial imperative behind its germination in republican Rome, *ius gentium* has been invoked throughout the ages in the context of trade. The famous 16th century Dominican theologian and international jurist Francisco de Vitoria (1480-1546), for example, justified Spanish trading rights in the Americas on the basis of the law of nations: “it is an apparent rule of the *ius gentium* that foreigners may carry on trade, provided they do no hurt to citizens. . . . neither may the native princes hinder their subjects from carrying on trade with the Spanish; nor, on the other hand, may the princes of Spain prevent commerce with the natives.”¹⁴ The great Spanish philosopher and theologian Francisco Suarez (1548-1617) argued that “it has been established by the *ius gentium* that commercial intercourse shall be free, and it would be a violation of that system of law if such intercourse were prohibited without reasonable cause.”¹⁵ The period’s greatest natural law thinker, Hugo Grotius (1583-1645), saw morality, law and trade as indelibly intertwined. “Under the law of nations,” he argued, “the following principle was established: that all men should be privileged to trade freely with one another.” This “freedom of trade is based on a primitive right of nations which has a natural and permanent cause; and that right cannot be destroyed, or at all events it may not be destroyed except by the consent of all nations.” Rulers could not prevent subjects from trading with subjects of other states, as the “right to engage in commerce pertains equally to all peoples.” This was self-evident in that “God has not willed that nature shall supply every region with all the necessities of life; and furthermore, He has granted preeminence in different arts to different nations.”¹⁶ It is not surprising that thinkers living in 16th and 17th century maritime powers like Spain and the Netherlands should see free trade as a dictate of natural law, much as thinkers in cosmopolitan republican Rome saw commerce generally in this light.

Free trade is not, of course, an idea etched in the eternal fabric of the cosmos. Such historical thought is important, however, as it highlights the fact that today’s trade mythology – that autarky is the natural state of affairs, and that people should not buy from foreigners except with dispensation from the state – is hardly one with a compelling pedigree.

The Romans distinguished *ius gentium* from *ius civile*, or the civil law peculiar to one state or people. Drawing such a distinction naturally led to the *ius gentium* being seen as higher law, which must through reason, the common faculty of humanity, be perceived as valid and just for all peoples. Although *ius gentium* had no particular philosophical meaning, it came naturally to fuse with the Stoic idea of natural law, translated into Latin as *ius naturale*, which lent the former an association with substantial justice, above and beyond mere ratification of observed practice.¹⁷ The latter had a revolutionary impact in bringing enlightened criticism to bear on custom and ceremony, and promoting the notion of all being equal before the law.¹⁸

¹⁴ Cited in Irwin (1996:21).

¹⁵ Suarez (1934, 2:347).

¹⁶ Cited in Irwin (1996:22-23).

¹⁷ It is interesting to note that the one area where the Romans drew a firm distinction between *ius gentium* and *ius naturale* is that of slavery, which the Romans recognized as something common to all ancient societies but not in any way supported by “natural reason.” See, for example, Stein (1999).

¹⁸ Sabine (1937).

Stoicism's conception of natural law became the foundation of Roman jurisprudence, as it developed from the first century BC onward. It also came to provide a new political theory of the state which was radically different from that of the classical Greek tradition. The idea of legalism - the state itself being a *product* of law, circumscribed by it, and separate from questions of the content of ethical good - was fundamentally a Roman one, and one which has profoundly influenced Western political thought right up to the present. This idea, as we will discuss, is also directly challenged by the Romantic and anti-Enlightenment thought of Rousseau and Hegel, in particular, as well as contemporary anti-globalist thinkers, who aim to elevate the moral status of the nation-state and to reclaim what is seen as its lost authority to impose law on commerce.

It is first and foremost to the great Roman statesman, lawyer, scholar, and writer Cicero (106-43 BC) that we owe the transformation of Stoicism from philosophical ideal to political blueprint. Cicero is the earliest influential expositor of the notion that men should be governed by the rule of law:

For as the laws govern the magistrate, so the magistrate governs the people, and it can truly be said that the magistrate is a speaking law, and the law a silent magistrate.¹⁹

The philosophical ideas expounded by the Stoics and Romanized by Cicero underpinned the development of Roman jurisprudence, the great compilation of which was brought to publication as the *Digest* by the Emperor Justinian in 529 AD. Whereas the *Digest's* authors were lawyers and not philosophers, their body of thought owed everything to the Stoical philosophy of law, and was unaffected by the growth of the Christian communities. (Christian influence in the development of law after Constantine is typically seen in pragmatic efforts to establish the legal position of the church and assist in advancing its policies.) Great Christian scholastic thinkers came, however, to adopt natural law thinking, and were to argue on that basis that rulers could not "make" law. The most important scholastic theologian, Thomas Aquinas (1224-74) saw natural law as part of a hierarchy of laws, beneath the "eternal law" by which God creates living beings and imprints them with a divine purpose, but, in its linking of human reason with God's creative will, standing morally above the civil law of states, which are circumstantial and valid only insofar as they are consistent with natural law. Thus, according to Aquinas, "we can only accept the saying that *the ruler's will is law*, on the proviso that the ruler's will is ruled by reason; otherwise a ruler's will is more like lawlessness."²⁰

Whereas the Napoleonic practice of codifying national law based on the Roman inheritance is today dominant in continental Europe and Latin America, Roman law itself shares with uncodified English common law a genesis wholly outside the realm of political legislation. The modern notion that law is nothing more than the expression of will of an authorized legislative body is of recent historical origin, having established itself in the popular consciousness over the course of the 19th century. This notion underlies much of the shock and awe visible in the anti-globalization movement today over the spread of transnational private commerce and financial contracting, which is commonly but confusingly often labeled "anti-democratic" specifically because it is not "authorized" by a competent law-making body. This is in spite of the fact that it is in "the practices of the ports and fairs that we must chiefly seek the steps in the evolution of law which ultimately made an open society possible."²¹

It is in a very tangible sense that law first took on great importance in allowing societies to expand because of the commercial need to accommodate outsiders. In the common law tradition, it is precisely the spread of new interactions among people that is held to form the basis of the

¹⁹ From *Laws*, III, 1, 2, quoted in Sabine (1937:166).

²⁰ Aquinas (1989:90.1).

²¹ Hayek (1973: 82).

establishment of reasonable expectations, which is then extrapolated by judges to determine what the law “must be.”

It is startling to note that Chrysippus and Cicero, in their conviction that a man must be treated as an end and never a means, are much closer to Kant and Hume than to Aristotle and Plato: “Society is made for man, not man for society . . . The individual is both logically and ethically prior,” according to George Sabine, summarizing the moral basis of natural law.²² Many contemporary anti-globalists, John Gray perhaps the most philosophically literate among them, clearly find a common law model for globalization repugnant precisely insofar as it leaves the emergent spontaneous social order, rather than a legislated general will, in the driver’s seat.²³

Though Christian writers through the late Middle Ages never denied or even doubted the existence of a fundamental, natural law, intrinsically just and therefore binding on all peoples, Christian doctrine did not provide stable ground for maintaining its validity. With the violent schism that emerged in the 16th century between the Catholic and Protestant peoples, neither the authority of the church nor appeals to Scripture could provide any basis for law inherently binding on both. Protestants in particular came, with justification, to fear that scholastic natural law would be used to undermine the legitimacy of Protestant rulers on the basis that their laws were inconsistent with Catholic theology and metaphysics, and the rulers themselves therefore heretics.²⁴

Law so grounded was, obviously, even less compelling as a basis for governing relations between Christian and non-Christian rulers. In detranscendentalizing and rejustifying natural law, and positioning it as the foundation of international law, or law regulating relations between sovereign states, its greatest Renaissance expositor, Hugo Grotius, therefore appealed back beyond Christianity to the Stoic notion of law; law which was valid because it sustained “the social order,” an order which, as man has “an impelling desire for society,” is an inherent and necessary good. In stark contrast, however, to modern invocations of “social justice” as a marker for any particular distribution of wealth adjudged beautiful by the beholder, Grotius’s notion of the just social order was that order which emerged *spontaneously* from the application of essential principles of just, voluntary interaction among people:

To this sphere of law belong the abstaining from that which is another’s, the restoration to another of anything of his which we may have, together with any gain which we may have received from it; the obligation to fulfil promises, the making good of a loss incurred through our fault, and the inflicting of penalties upon men according to their deserts.²⁵

Although this post-scholastic idea of natural law still had religious overtones, Grotius actually placed such law above and beyond God. Natural law would be valid “even if we were to suppose . . . that God does not exist or is not concerned with human affairs.” And “Just as even God . . . cannot cause that two times two should not make four, so He cannot cause that which is intrinsically evil be not evil.”²⁶ As man is intrinsically a social animal, an observation Grotius traced back to the Stoics, natural law was to be identified with the maintenance of the social

²² Sabine (1937:433).

²³ In spite of Gray, in his recent anti-globalist incarnation, expressing profound contempt for Enlightenment thinkers such as Thomas Jefferson, it is notable that he shares with Jefferson a respect only for law determined and imposed from above, by an empowered legislature, with a precise social end in mind. Jefferson loathed common law (see, for example, Jefferson’s letter to Edmund Randolph, August 18, 1799: <http://odur.let.rug.nl/~usa/P/tj3/writings/brf/jefl128.htm>).

²⁴ Hunter and Saunders (2002).

²⁵ From *Prolegomena*, sect. 6, quoted in Sabine (1937:423).

²⁶ Quoted in Sabine (1937:424).

order. It is a “dictate of right reason,” to be discovered, as it could in no sense be “invented” by anyone. As God, should he exist (which Grotius passionately believed he did), cannot make true a proposition that is logically false, religious sanction can neither make edicts into natural law nor negate it.

The development of natural law thinking in the 17th century was, as in the 16th century, fundamentally shaped by major contemporary political and social movements. In particular, there was a widely and deeply felt desire among philosophers to accommodate, first, moral principle; second, the political need to found an intellectual basis for justifying sovereign powers in the coalescing nation states; and, third, the practical imperative of stopping religious wars. In the English context, Richard Cumberland (1631-1718) attempted the accommodation by asserting that it was impossible to have metaphysical insight into God’s willing of natural law, thereby undercutting the absolute authority of the priests, while asserting that human reason could only allow acquisition of “probable” knowledge of its essence, thereby undercutting claims of absolute moral authority by an Hobbesian sovereign to impose all law.²⁷ The moral balance between the spheres of church and state was therefore perilously fragile in this thinking, but its maintenance was nonetheless essential to limit the social dangers of either the church or the state attempting to crush dissent.

David Hume (1711-1776) argued for an understanding of the laws of nations based on utility, rather than any principles of justice that could be derived either from so-called natural theology or sentiments intrinsic to human nature. Governments come to interact with each other according to certain principles because they find it in their interest to do so. But this conception of the laws of nations shared with Grotius’s conception of natural law among nations the notion that it was the contribution to the maintenance of a certain *social order* that defined the content of such laws. In Hume’s thought, this content became apparent only after the rise of commerce between nations, as it was only then that principles of just conduct became useful. He noted that when nations go to war these laws are routinely violated, as the order and therefore principles undergirding it are no longer useful, and violations therefore no longer excite any sentiment of approbation. The implication is clearly that it is *commerce itself* that gives rise to notions of justice between peoples, and that attempts to establish enduring principles of just interaction prior to the emergence of mutual commercial interest are wholly inconsistent with human nature as observed over millennia. To the extent, then, that we wish to inculcate enduring international law, commercial ties among people must be permitted to develop.

The first half of the 20th century marked a dramatic turning away from Stoic ideas of universality. Enlightenment thinking had undermined natural law as a moral system, replacing that system with a utilitarian logic that rendered departures from behavior consistent with natural law mere symptoms of a change in the incentives of international actors, rather than censorable departures from Stoic “right reason.” This moral vacuum in political philosophy left considerable intellectual *lebensraum* to Romantic nationalist thinkers like Hegel, a virulent critic of natural law, who shifted the unit of moral analysis from the individual to the state, and in so doing altered the basis for evaluating ethical action. The nation-state became the guiding principle of the historical development of civilization, with each nation-state having a unique telos toward which it tended according to historical “necessity.” However confused was Hegel’s notion of the dialectic as a logical law underlying history, the idealized state at its apex proved a potent vehicle for 20th century reactionary nationalism. It took two world wars for Western Europe to turn its back on this dark development.

²⁷ Hunter and Saunders (2002).

From Natural Law to Global Commercial Law

Between contracting parties there is a closer society than the common society of mankind.

- Hugo Grotius²⁸

Throughout recorded history new forms of trading have disturbed the established political order. Through all the groupings and regroupings of peoples, the shifts in power and the development of political ideas, the trader has woven and rewoven his web of international economic integration.

- J.B. Condliffe²⁹

Stoicism, in the words of a classic 1937 text on political theory, “had boldly undertaken to reinterpret political ideas to fit the Great State”,³⁰ essentially the whole Mediterranean world. Pro-globalists today are making similar, if as of yet inchoate, attempts to refashion political ideas to fit the modern Great State. James Bennett’s *The Anglosphere Challenge* is the most direct in seeing the growth of cross-border forms of organic law as being fundamental to generating international “harmony without homogenization.”³¹ He sees the English-speaking world as being the most natural laboratory in which such a process would develop, owing to a shared heritage of ever-evolving, non-statute-based common law. Indeed, the tradition of English common law shares much with the natural law notion of legitimate law being “discovered” by judges rather than “created” by rulers. Historically, the most influential statement of the primacy of common law over legislation is the decision of the Chief Justice of England’s Common Court of Pleas, Sir Edward Coke, in *Bonham’s Case* of 1610: “In many cases the Common Law will control Acts of Parliament and some times adjudge them to be utterly void; for when an Act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it and adjudge such Act to be void.”

In the common law tradition, life comes first, and law follows in train according to the expectations established by repeated social interactions. Former French foreign minister Hubert Védrine sees common law as one of globalization’s essential principles; “principles that correspond neither to the French tradition nor to French culture.” Védrine sees globalization, not surprisingly, as inconsistent with a French identity “built upon a strong central state [that] was painstakingly built by jurists.”³² It is indeed difficult to reconcile a state so characterized to the spread of organic forms of law.

Even outside the realm of common law systems, commercial practice has throughout history driven the codification of systems of law, and not vice-versa. “[T]he merchants who began the process of transforming European feudal society into the commercial, democratic, international trading world of our day,” argued historian J.B. Condliffe, “were merchant adventurers in the crudest sense. Unless we realise this fact, we cannot understand the continuous struggles between them and the church in its efforts to apply the doctrines of Canon law.”³³

²⁸ Quoted in Wight (1977:127).

²⁹ Condliffe (1951:832).

³⁰ Sabine (1937:158).

³¹ Bennett (2004:250).

³² Védrine (2001:17).

³³ Condliffe (1951:23).

The Rise of the Lex Mercatoria

Contract law has long and largely been driven by the shared needs of international traders.³⁴ The hugely important *Lex Mercatoria*, or the international “laws merchant,” which developed privately and spontaneously to govern commercial transactions, dates from the 12th century, before the consolidation of states.

In Europe’s pre-national stage, the *Lex Mercatoria* consisted of a “body of truly international customary rules governing the cosmopolitan community of international merchants”³⁵ on the high seas and at commercial fairs.³⁶ Its emergence corresponded with a rapid expansion of European agricultural production, the accompanying dramatic increase in city size, and the consequent rise of a new class of professional merchants that marked the 11th and 12th centuries. Europe’s urban population grew roughly tenfold from 1050 to 1200, while its general population perhaps doubled, and its merchant class grew from a few thousand to several hundreds of thousands. “Outsourcing” was already emergent nearly a millennium before Lou Dobbs declared it treason. English merchants bought wool from local manors and, instead of processing it locally, sold it on to Flemish merchants. They in turn distributed it to Flemish spinners and weavers to be worked into cloth, which was then re-imported back into England to be sold at international fairs. All aspects of the commerce, from transport to insurance to financing to sale, were governed by the transnational *Lex Mercatoria*.³⁷

Merchant law as it evolved was based on the customs of maritime port cities and inland fairs and markets. It came to be codified in a number of different forms. The Amalfitan Table of 1095, a collection of maritime laws, was an example of merchant custom becoming written legislation. Adopted by the Republic of Amalfi on the Italian coast, its authority spread throughout all the city republics of Italy. A compilation of maritime judgments by the court of Oléron, an island off the French Atlantic coast, became a form of judge-made common law. It was adopted by seaport towns of the Atlantic Ocean and North Sea, including those of England, around 1150. Norms of merchant practice also evolved into written commercial instruments of standardized character, disputes over which came to be adjudicated in specialized mercantile courts, presided over by elected representatives of the merchants themselves.³⁸

The importance of the *Lex Mercatoria* as transnational law was reflected in the fact that by the late 11th century transnational trade, generally conducted at large international fairs held at regular intervals throughout Europe, or more regularly in the leading market towns and cities, predominated over local trade across much of Europe. Its universal character is stressed in much early writing on it. For example, the Chancellor of England wrote in 1473 that foreign merchants who brought suits before him would have them determined “by the law of nature in chancery . . . which is called by some the law merchant, which is the law universal of the world.” Gerard Malynes, author of the first English book on the *Lex Mercatoria*, wrote in 1622: “I have entitled the book according to the ancient name of *Lex Mercatoria* . . . because it is customary law approved by the authority of all kingdoms and commonweals, and not a law established by the sovereignty of any prince.” Its enduring nature is attested to by Lord Blackstone writing in the mid-18th century: “The affairs of commerce are regulated by the law of their own called the Law Merchant or *Lex Mercatoria*, which all nations agree in and take notice of, and it is particularly held to be part of the law of England which decides the causes of merchants by the general rules

³⁴ See, for example, Berman and Kaufman (1978).

³⁵ Schmitthoff (1961).

³⁶ Wiener (1999).

³⁷ Berman (1983).

³⁸ See, for example, Berman (1983) and Mather (2001).

which obtain in all commercial matters relating to domestic trade, as for instance, in the drawing, the acceptance, and the transfer of Bills of Exchange.”³⁹

The *Lex Mercatoria* became part of national law, while maintaining its transnational character and authority, through the patronage provided to it by emerging national political authorities. The Magna Carta of 1215 provided that “All merchants shall have safe conduct to go and come out of and into England, and to stay in and travel through England by land and water for purposes of buying and selling, free of legal tolls, in accordance with ancient and just customs.” Such ideas came to be reflected in reciprocal rights of individual property holding and commerce provided for in treaties, such as those which evolved among Italian cities from at least the 12th century on. So-called “staple towns” in 14th century England, Wales, and Ireland – where trade in wool, leather, lead and other staple products was conducted – were required to apply the *Lex Mercatoria* in all matters relating to the staple, and granted resident foreign merchants political rights which today would be considered incredible. Such foreigners were legally entitled to vote in elections for the local mayor, who was required to have knowledge of the *Lex Mercatoria*, and comprised half the jury in all trials involving a merchant stranger and an Englishman.⁴⁰

The *Lex Mercatoria* was absorbed into English common law in the 17th century, where judges, who were paid out of litigation fees, initially treated it with some contempt. Competition from Continental civil law countries, however, which frequently proved more accommodative to the *Lex Mercatoria*, ultimately forced English judges to recognize commercial custom in international trade in order to attract cases.⁴¹ In the United States, widespread early adoption of the practice of commercial arbitration, as well as the history of state jurisdictional competition, contributed to greater acceptance of the *Lex Mercatoria* than in England. The U.S. Uniform Commercial Code thus reflects the fact that business practice and custom are the primary source of substantial law.⁴² “The positive law of the [American] realm,” Leon Trakman notes in his history of the *Lex Mercatoria*, “was forced to conform to the mandate of the merchants, not vice-versa.”⁴³

The Modern Lex Mercatoria

The *Lex Mercatoria*, even in today’s world of autonomous nation-states, still has vital importance as a form of commercial law. The *Lex Mercatoria* today is a combination of trade usages, model contracts, standard clauses, general legal principles, and international commercial arbitration, underpinned by a body of expert legal writing intended to facilitate its coherence and precision. It is arguably of considerably more consequence today than it was in medieval times, as non-simultaneous trade was much rarer then, owing to difficulties of enforcement where international merchants interacted only infrequently.

Of the modern *Lex Mercatoria*’s components, trade usages is the most important. Defined in the US Uniform Commercial Code as “any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question,”⁴⁴ its importance lies in the fact that

³⁹ Quoted in Berman (1983:342).

⁴⁰ Berman (1983).

⁴¹ See, for example, Benson (1989:644-661).

⁴² Benson (1989).

⁴³ Trakman (1983).

⁴⁴ See, for example, Volckart and Mangels (1999).

commercial behavior considered normal in a given industry will guide the application of both private arbitration and public common law litigation. In other words, today, as throughout Western history, the way in which people freely choose to conduct commercial transactions with each other across borders is examined by both private and public tribunals in order to *discover* what the commercial law must be.

To what extent is the *Lex Mercatoria* truly “law”? Legal scholars holding an “autonomist” view of the governance of international commerce maintain that the fact that traders conduct cross-border business in a consistent manner and act as if bound by behavioral precedents is evidence of an autonomous legal order in operation⁴⁵ – a “Grotian regime,” in the vocabulary of International Relations scholarship. Those holding a “positivist” view agree that the modern *Lex Mercatoria* is effectively law, but insist that this is so *because* it has become codified in national laws.⁴⁶ They share with autonomists the conviction that international custom and standard forms of contract effectively create law unto themselves, and note that private commercial parties routinely choose the law under which their relations will be governed and utilize international commercial arbitration – through bodies such as the London Court of Arbitration, the International Chamber of Commerce in Paris, and the World Bank’s International Center for the Settlement of Investment Disputes - in lieu of state courts. Furthermore, commercial trade law has become substantially harmonized across nations through conventions on international commercial arbitration, institutional rules for arbitral tribunals, and legislation recognizing awards based on the *Lex Mercatoria*. The French Arbitration Decree of 1981, for example, forbids French courts reviewing arbitration awards from interfering with arbitrator decisions regarding applicable rules, provided that they are consistent with the choice of the parties. The decree reflects the fact that governments today compete to have both business and arbitration conducted within their jurisdictions - just as medieval lords did, generating revenues from sales levies and entry tolls associated with merchant fairs.⁴⁷ The force of the cosmopolitan principles of the *Lex Mercatoria* ultimately relies, however, according to the positivists, on the willingness of states to confront non-compliance with coercive sanction.⁴⁸ But this fact is entirely consistent with the centuries-old argument of law scholars, such as Grotius, that rulers traditionally obtained their legitimacy through their commitment to *enforcing* the law – law being coeval with society itself – and only undermined it through attempts to impose law which was not already recognized as such by the populace.

People around the globe today have been conditioned to see *governments* as the creators of cross-border commerce, in agreeing with other governments to remove trade barriers which their predecessors imposed to assert sovereignty. State prohibition of trade with foreigners is widely seen as the natural state of affairs, leading to the inference that globalization of business is being deliberately created by trade liberalization policies, rather than being ratified by them. But the development of the *Lex Mercatoria*, as with its conspicuous revival today, was driven from below by traders – stimulated, for example, by the rapid expansion of European agricultural productivity in the 11th and 12th centuries. – rather than from above by rulers decreeing some hitherto unknown right to trade. And just as medieval trade could not have expanded and flourished without the foundation of a cosmopolitan private commercial law – standing in for conflicting and inappropriate local public laws – so globalization of trade today would never be possible on the basis of agreements among governments simply to allow private trade or to reduce taxes on it.

⁴⁵ See, for example, Carbonneau (1990)

⁴⁶ Wiener (1999).

⁴⁷ See, for example, Ruggie (1993:154-55)

⁴⁸ Clive Schmitthoff is the primary advocate for this positivist view of the *Lex Mercatoria*. See Wiener (1999) for a literature review.

A legal framework for the actual conduct of trade is necessary, and that framework is a spontaneous private creation.

Many anti-globalists see the deliberate creation of new law as necessary precisely to preempt the organic development of common international commercial practice and expectations, and instead to dictate *ex nihilo* the form and scope of permissible facets of globalization. Political philosopher John Gray goes so far as to argue that the actual content of such law is less important than the fact that there be a regime capable of imposing it:

A regime of global governance is needed in which world markets are managed so as to promote the cohesion of societies and the integrity of states. Only a framework of global regulation – of currencies, capital movements, trade and environmental conservation – can enable the creativity of the world economy to be harnessed in the service of human needs. The specific policies that should be implemented by such institutions are less important, for the purposes of the present inquiry, than the recognition of the need for a new global regime.⁴⁹

If Gray were to be taken seriously, the coercive power that would have to be bestowed upon this new regime – regulating “currencies, capital movements, trade and environmental conservation” with the express purpose of “promot[ing] the cohesion of societies and integrity of states”⁵⁰ – would be such that it is difficult to imagine what aspects of private interaction with foreigners could any longer be considered the prerogative of individuals themselves. Gray’s thinking embodies the primal constructivist belief, which he fiercely derided two decades ago, that only actions that deliberately aim at purported common purposes can serve common needs. There is perhaps no realm of global social interaction in which such thinking is so demonstrably mistaken as in that of money. Historically, governments observing the political and economic importance of money have chosen in consequence to monopolize it, and in the process have wreaked far more damage on people’s livelihoods than any private economic behavior condemned by Gray. As a matter of historical experience, it is also critical to understand that Gray, and not the globalists, is the radical in calling for the legal cart to be put in front of the commercial horse.

Global Private Law with Private Enforcement

In an article entitled “Private Justice in a Global Economy: From Litigation to Arbitration,” Oxford political economy professor Walter Mattli traces the re-emergence of private nationless law, which is a striking and almost wholly neglected aspect of globalization. “Today’s scene,” Mattli observes, “calls to memory the flourishing era of arbitration practices and institutions associated with the international trade fairs of medieval Europe.” British Lord Justice Kerr in 1990 described the rise of international arbitration as “something of a world movement.”⁵¹ Roughly 90% of all cross-border contracts now contain a private arbitration clause.⁵² Scholarly neglect of the phenomenon is largely a reflection of the myopic focus of international relations writing on what *governments* do, under the assumption that the way in which private actors manage their commercial relations cross-border must necessarily have been deliberately enabled by governments.

The number of commercial arbitration forums has grown about tenfold since the 1970s, to over one hundred today. One of the most popular of these, the International Court of Arbitration (ICA), releases basic data, though infrequently, on the volume of cases coming before it. ICA

⁴⁹ Gray (1998:199-200).

⁵⁰ Gray (1998:199).

⁵¹ Mattli (2001:920).

⁵² See, for example, Volckart and Mangels (1999).

saw 580 filings in 2003, up from 450 in 1997, 333 in 1991, an annual average of 272 between 1977 and 1987, and an annual average of 55 between 1923 and 1977. The 1,584 litigants in 2003 came from 123 different countries. The organization has over 7,000 member enterprises across these countries.⁵³

Just like the medieval merchant courts which sat in fairs, markets, and seaport towns, today's private tribunals provide arbitrators with specialist industry knowledge to resolve commercial disputes. In the absence of an agreement between the parties on the applicable rules of law, the arbitral tribunal determines them on the basis of the specific contract provisions and, importantly, general trade practice. In other words, the law *follows* accepted behavior in the industry, rather than *dictating* it. Tribunals often deal with highly technical matters, such as intellectual property in software, where applicable public law can be very limited, as illustrated in a seminal 1983 case involving IBM and Fujitsu. The privacy, speed and flexibility of arbitration, relative to public courts, are major attractions for commercial enterprises, just as they were in medieval private courts: medieval sea merchants, for example, typically demanded that cases be settled "from tide to tide according to the ancient law marine and ancient customs of the sea . . . without mixing the law civil with the law marine."⁵⁴ And just like the medieval merchant courts, arbitration forums like ICA rely on reputation and commercial ostracism as enforcement tools. ICA decisions have a strong record for implementation, with only about 6 percent of awards being challenged by the losing party in a national court, and 0.5 percent ultimately being set aside by such a court.⁵⁵

As successful as arbitration has been in the private sphere, states have proven exceptionally reluctant to use it; or where they have used it, they have typically asserted absolute immunity when it comes to enforcement. Hostility to arbitration is sustained by the doctrine of inviolable state sovereignty.

Global Private Law with Public Enforcement

Public common law courts are also used to adjudicate and enforce private law, particularly where the question is well defined, the law is clear, and the benefits of clarity outweigh those of flexibility. This is typically the case in the international financial markets, where the subject of dispute is typically whether one party has defaulted on an obligation.

There is no better example of James Bennett's international common law in operation than the global market in financial instruments. As far back as 1842, US Supreme Court Associate Justice Joseph Story wrote that "The law respecting negotiable instruments may be truly declared in the language of Cicero, adopted by Lord Mansfield . . . to be in great measure, not the law of a single country only, but of the commercial world."⁵⁶ Today, it is the over-the-counter (OTC) derivatives market that is the embodiment of global private law.

The OTC derivatives market is an inter-bank market for two types of financial contract in particular, known as swaps and options - promises to trade one set of future financial flows for another, in a given currency or across currencies. At the end of 2007, the notional value of interest rate swaps, cross-currency swaps, interest rate options, credit default swaps, and equity derivatives outstanding was \$454 trillion, or 26 times what it was in 1995 and 525 times what it

⁵³ Data from ICA and Mattli (2001).

⁵⁴ Mitchell (1904).

⁵⁵ Craig et. al. (1990) and David (1985).

⁵⁶ *Swift v. Tyson*, 16 Peters (41 U.S.) 1, 19 (1842).

was in 1987. OTC derivatives account for 83% of aggregate derivatives trading, the remainder being traded on organized exchanges.

Whereas \$454 trillion is a staggeringly large number, it is important not to overstate its economic significance. Notional values vastly exceed the actual risk exposure that market participants take. For example, a swap of a variable interest rate for a five-percent fixed rate on a \$10 million notional amount commits the parties to annual payments to each other of about \$500,000, with differences in future payments depending on how interest rates move in the future. Consequently, the typical derivative involves a credit exposure equal to only a small fraction of its notional value.⁵⁷ Nonetheless, booming portions of this market, in particular credit default swaps, have seen a dramatic increase in counterparty risk, which has thereby compelled major participants to collaborate in the establishment of centralized trade netting and clearing facilities, of the type found on organized exchanges.

What is truly remarkable about the size of this market and its growth is the fact that it has no territory. It is not a US market or a UK market, or even an “offshore” market. Its legal foundation is a privately produced document of about 32 pages – unimaginably brief by the standards of US statutory regulation – laying out the common rules for each derivatives transaction, and specifying that any dispute resulting from the transaction will be adjudicated by a common law English or New York State court, as per the specified preference of the parties. This “ISDA Master Agreement” can be downloaded for free from the web site of the International Swaps and Derivatives Association,⁵⁸ a global industry body founded in 1985, with about 670 member institutions located in 50 countries.

The fact that people from around the globe, the vast majority of whom have never met, would agree routinely to exchange millions of dollars in financial assets based on 32 downloadable pages of Anglo-American market and legal jargon, unauthorized by any sovereign body, and to subject any disputes arising therefrom to a UK or New York court is nothing short of an astounding sociological phenomenon. Just how astounding was brought to life in the mid-1990s, after passage of the French language law colloquially called “*la loi Toubon*,” after the name of the French culture minister. The law (subsequently partially struck down by the French constitutional court) caused a brief panic in the French financial markets in appearing to undermine the legal validity of English-language contracts such as the ISDA Master Agreement. Whereas one might suppose that French bankers would prefer French-language contracts, at least among themselves, this is not the case where a common understanding of the legal meaning of French contract provisions is absent. An ISDA contract is understood, in the deepest sense, by virtue of a global pattern of behavior having established itself around the contract’s repeated bilateral exchange, and has been reinforced by decisions of common law UK and New York courts.⁵⁹

This phenomenon of global private law developing around financial contracts has been virtually ignored by legal scholars,⁶⁰ which is testimony to the degree to which the profession has

⁵⁷ See, for example, this statement of the Financial Economists Roundtable for an overly sanguine perspective:

<http://www.stanford.edu/~wfsarpe/art/fer/fer94.htm>

⁵⁸ <http://www.isda.org/>

⁵⁹ To be sure, the utility of the ISDA Master Agreement could be diminished in jurisdictions that refused to confirm the enforceability of certain of its provisions. Dozens of countries, however, have given assurances that its provisions would, if challenged, be enforced as law, with some countries, such as France and Mexico, passing legislation drafted by ISDA itself (Partnoy, 2002).

⁶⁰ Frank Partnoy is perhaps alone in calling attention to its importance. See Partnoy (2002).

been trained to think of law as being the exclusive handiwork of governments. The effect of this mindset is that there is little general knowledge of the degree to which growing international exchange is producing enduring patterns of common behavior and expectation, which are in turn forming the basis for new law.

What is striking about the financial markets in an age of instant global communication is that they could only have been created and sustained internationally on such a scale to the degree that all the primary elements of Grotius's natural law among peoples had come to be widely accepted among the myriad dispersed participants, irrespective of their cultural upbringings: the sanctity of private property, contracting in good faith, accepting responsibility for harm to another, and sanction in accordance with harm done. The banker in London and Dubai may have vastly different understandings of the Good Life and the origins and purpose of existence, but they must nonetheless adopt a common commitment to fair dealing in order to participate in the same global commercial network. Those that do not are invariably obliged to depart, as no one will deal with them.

Past and Future Linked

The view that law transcends politics - the view that at any given moment, or at least in its historical development, law is distinct from the state – seems to have yielded increasingly to the view that law is at all times basically an instrument of the state, that is, a means of effectuating the will of those who exercise political authority.

- Harold Berman (1983:38)

The technology of modern globalization is clearly new and consequential, socially as well as economically. Computerization and the internet in particular have vastly lowered communications and production costs, enabling the creation of new global markets and supply chains, and changing the way each of us lives his or her life in consequence. Innovations in telegraph and shipping technology in the late 19th century were comparably important in expanding global commerce and changing lifestyles.

Dubious, however, is the popular notion that modern globalization is new in its challenging of timeless tenets of state sovereignty and authority. The constructivist mythology that law worthy of the name must be, and must have been, consciously *designed* to achieve specific ends, which emerged in the 17th and 18th centuries, has in our time come to dominate popular thinking, and has been bluntly confronted by the spontaneous, “unauthorized” emergence of economic and social orders across national legal jurisdictions. Scholars and the public intelligentsia who reflect on the palpable manifestations of globalization are typically struck by its emergence in an institutional vacuum – national law appears impotent, and supranational law is yet to emerge. The implication frequently drawn is that there is therefore something fundamentally illegitimate about globalization.

Yet the history of law in the Western world, going back to ancient Greece, shows clearly that it is not possible to separate the activity of private exchange from the evolution of law, and the evolution of thought about law. It is property that first gives rise to established notions of justice among people. Trade is much older than states; indeed it is older than agriculture itself.⁶¹ Principles of just interaction emerge only after sentiments of mutual commercial interest take hold. And it is specifically in dealings with foreigners that it was necessary for law to develop

⁶¹ See, for example, Hayek (1988:38-47) and Leakey (1981:212).

which was independent of any ruler's will. Good law was always old law, and old law is what emerged by dint of its consistency with what people came to expect as just behavior from others. Legitimacy is the cornerstone of stable government, and rulers established legitimacy by demonstrating appropriate reverence for the law and the ability to enforce it.

The glue that melded the Greek and barbarian peoples under the Macedonians and Romans was commerce. The creation of the Hellenistic world, the earliest "globalization," was founded on an historically remarkable degree of economic freedom, underpinned by the development of a Roman civil law which was almost entirely the product of law-finding by jurists, rather than legislation.

The fact that belief in a "natural law" rooted in the intrinsic social nature of human existence, true irrespective of even the wishes of God or gods, persisted from Chrysippus to Grotius with few credible intellectual challenges, is testimony to a powerfully enduring conviction that a healthy society cannot be governed by the unfettered will of legislators. But what relevance can that have to our day and age, when practical people know full well that legislators can and will use their powers to control international commerce as they wish? The answer lies in Hume's observation that it is *commerce itself* that gives rise to symmetrical sentiments among people of different nations that there are identifiable principles of just conduct between them. Legislation does not give rise to such sentiments. New rules may or may not be enforceable, but they do not change what people view as being just or unjust behavior between them.

Sovereign legislatures are, of course, generally empowered to ban virtually any and all forms of exchange with foreigners. Irrespective of current passions against "outsourcing" to foreigners or receiving capital flows from them, however, an art director in New York will never see it as just for her government to stop her contracting a website designer in Buenos Aires, nor will the designer see it as just for his government to restrict his access to foreign money. As Hume believed of all international law, any sustainable bonds of cooperative human behavior will ultimately be fashioned on shared feelings of economic interest. Globalization is simply what we choose to call the ongoing spontaneous creation of such bonds of shared interest across borders.

References

- Aquinas, Thomas. 1989. *Summa Theologiae: A Concise Translation*. Edited by Timothy McDermott. Westminster, MD: Christian Classics.
- Bennett, James C. 2004. *The Anglosphere Challenge: Why the English-Speaking Nations Will Lead the Way in the Twenty-First Century*. Lanham, MD: Rowman and Littlefield.
- Benson, Bruce L. 1989. "The Spontaneous Evolution of Commercial Law." *Southern Economic Journal*, Vol. 55, No. 3, January.
- Berman, Harold J. 1983. *Law and Revolution*. Cambridge, MA: Harvard University Press.
- Berman, Harold J., and Colin Kaufman. 1978. "The Law of International Commercial Transactions (Lex Mercatoria)." *Harvard International Law Journal*, Vol. 19, No. 1.
- Carbonneau, Thomas E., ed. 1990. *Lex Mercatoria and Arbitration*. New York: Transnational Juris Publications.
- Cary, Phillip. 2000. "Lecture 13." In *Great Minds of the Western Intellectual Tradition: Part 2*. Chantilly, VA: The Teaching Company.
- Condliffe, J. B. 1951. *The Commerce of Nations*. New York: George Allen & Unwin.
- Craig, W. Laurence, William W. Park, and Jan Paulsson. 1990. *International Chamber of Commerce Arbitration*. 2nd ed. New York: Oceana Publications.
- David, René. 1985. *Arbitration in International Trade*. Boston: Kluwer Law and Taxation Publishers.
- The Economist*. 1992. "Survey on the Legal Profession." *The Economist*, July 18–24.
- Friedman, Thomas L. 1999. *The Lexus and the Olive Tree*. New York: Anchor Books.
- . 2005. *The World Is Flat: A Brief History of the Twenty-First Century*. New York: Farrar, Straus and Giroux.
- Gray, John. 1998. *False Dawn: The Delusions of Global Capitalism*. New York: The New Press.
- Hayek, Friedrich. 1973. *Law, Legislation and Liberty*. Vol. 1. Chicago: University of Chicago Press.
- . 1988. *The Fatal Conceit: The Errors of Socialism*. London: Routledge.
- Hunter, Ian, and David Saunders. 2002. "Introduction." In Ian Hunter and David Saunders, eds., *Natural Law and Civil Sovereignty*. New York: Palgrave Macmillan.
- Irwin, Douglas A. 1996. *Against the Tide: An Intellectual History of Free Trade*. Princeton, NJ: Princeton University Press.
- Lal, Deepak. 2006. *Reviving the Invisible Hand: The Case for Classical Liberalism in the Twenty-First Century*. Princeton, NJ: Princeton University Press.
- Leakey, Richard E. 1981. *The Making of Mankind*. New York: Dutton.
- Mather, Henry. 2001. "Choice of Law for International Sales Issues Not Resolved by the CISG." *Journal of Law and Commerce*, Vol. 20, Spring. Available at: <http://www.cisg.law.pace.edu/cisg/biblio/mather1.html>.
- Mattli, Walter. 2001. "Private Justice in a Global Economy: From Litigation to Arbitration." *International Organization*, Vol. 55, No. 4, Autumn.
- Micklethwait, John, and Adrian Wooldridge. 2000. *A Future Perfect: The Challenge and Promise of Globalization*. New York: Random House.

- Mitchell, W. 1904. *An Essay on the Early History of the Law Merchant*. Cambridge: Cambridge University Press.
- Partnoy, Frank. 2002. "ISDA, NASD, CFMA, and SDNY: The Four Horsemen of Derivatives Regulation?" *Brookings-Wharton Papers on Financial Services*. Washington DC: The Brookings Institution.
- Ruggie, John Gerard. 1993. "Territoriality and Beyond: Problematizing Modernity in International Relations." *International Organization*, Vol. 47, No. 1, Winter.
- Sabine, George H. 1937. *A History of Political Theory*. New York: Holt.
- Schmitthoff, Clive M. 1961. "International Business Law: A New Law Merchant." *Current Law and Social Problems*, Vol. 129.
- Sophocles. *Antigone*. Translated by R. C. Jebb. Available at:
<http://classics.mit.edu/Sophocles/antigone.html>.
- Stein, Peter. 1999. *Roman Law in European History*. Cambridge: Cambridge University Press.
- Suarez, Francisco. 1934. *De Legibus, Ac Deo Legislatore* (1612). In *Selections from Three Works of Francisco Suarez, S.J.* Vol. 2. Oxford: Clarendon Press.
- Swift v. Tyson*, 16 Peters (41 U.S.) 1, 19 (1842).
- Trakman, Leon E. 1983. *The Law Merchant: The Evolution of Commercial Law*. Littleton, CO: Fred B. Rothman and Co.
- Védrine, Hubert. 2001. *France in an Age of Globalization*. Translated by Philip H. Gordon. Washington, DC: Brookings Institution Press.
- Volckart, Oliver, and Antje Mangels. 1999. "Are the Roots of the Modern *Lex Mercatoria* Really Medieval?" *Southern Economic Journal*, Vol. 65, No. 3, January.
- Weiner, Jarrod. 1999. *Globalization and the Harmonization of Law*. London: Pinter.
- Wight, Martin. 1977. *Systems of States*. Leicester, U.K.: Leicester University Press.
- Wolf, Martin. 2004. *Why Globalization Works*. New Haven, CT: Yale University Press.