

Conclusion

A World of People without a People

If we ask what men most owe to the moral practices of those who are called capitalists the answer is: their very lives.

—FRIEDRICH A. HAYEK, 1989

Two years after the fall of the Berlin Wall and one month short of the official dissolution of the Soviet Union, George H. W. Bush granted a Presidential Medal of Freedom to Wilhelm Röpke's correspondent and the defender of racial segregation in the U.S. South, William F. Buckley. Buckley had "raised the level of political debate in this country," Bush claimed. Without irony, he followed by granting a medal to a civil rights leader. The last medal of the day was offered to the ninety-two-year-old F. A. Hayek. "We honor" Hayek, Bush said, "for a lifetime of looking beyond the horizon. At a time when many saw socialism as ordained by history, he foresaw freedom's triumph. . . . Professor von Hayek is revered by the free people of Central and Eastern Europe as a true visionary, and recognized worldwide as a revolutionary in intellectual and political thought. How magnificent it must be for him to witness his ideas validated before the eyes of the world."¹ In another irony on a day

already rich with them, the man who saw his central discovery to be the fundamental unknowability of the world, the future, and the human mind was now being honored for his near-mystical foresight.

The implicit Cold War triumphalism of Bush's speech was also ironic considering how little the Cold War meant to Hayek. In his voluminous writings, the conflict scarcely appears. In one telling exception, he referred in 1979 to American foreign aid, which was "subsidizing on a large scale the socialist experiments of underdeveloped countries" because of a "silly competition with Russia."² An even more telling quote comes from his book *The Constitution of Liberty*, where he wrote: "While superficially it may seem that two types of civilization are today competing for the allegiance of the people of the world, the fact is that the promise they offer to the masses, the advantages they hold out to them, are essentially the same."³ Both sides wanted prosperity and they wanted the state's help to redistribute it. "With the knowledge of possibilities spreading faster than the material benefits," Hayek wrote, "a great part of the people of the world are today dissatisfied as never before and are determined to take what they regard as their rights. As their strength grows, they will become able to extort such a redistribution."⁴ Of course, the means the people of the world would use to "extort" redistribution would be democracy, and the way their strength would grow was through decolonization. In the neoliberal century, the Cold War was a sideshow to the main event of the rise of mass enfranchisement and the end of empire.

Hayek dedicated *The Constitution of Liberty* to "the unknown civilization that is growing in America." What were the parameters of the unknown civilization envisaged by the neoliberals described in these pages? It was necessarily global, designed with institutions to contain potential disruptions from the democratically empowered masses. It was a world without empires but with rules set by supranational bodies operating beyond the reach of any electorate. It was a world where the global economy was safely protected from the demands of redistributive equality and social justice. My narrative has traced a line that leads from the end of the Habsburg Empire to the foundation of the World Trade Organization. In the leading neoliberal journal *Ordo*, on the eve of the fall of the Berlin Wall, Röpke's nephew Hans Willgerodt offered

a fine summation of the century of ordoglobalism. After citing Hayek and Robbins's writings from the 1930s, he wrote that "as witnesses of the international declaration of bankruptcy by communism," it was time that nation-states realized they had "made too much use of their sovereignty."⁵ He wrote that the nineteenth century had achieved "world economic integration" through a "fundamental depoliticization of the economic domain."⁶ Quoting Röpke from 1952, he echoed Röpke's sentiment that if "the developing countries are granted by the UN a right to expropriate foreign property, this means, when they make use of such a 'right,' they not only detach themselves from the world-economic market . . . but [take themselves] out of the international legal community of the civilized nations."⁷

For the road to world economic integration, Willgerodt looked both ahead and back: "The path to the liberation of the world market from national regulation and trade barriers can be facilitated by institutions like GATT [General Agreement on Tariffs and Trade]."⁸ But he also invoked the old template of Hayek and Mises: Central European empire: "The international rule of law with curbed application of sovereignty is doubtless a difficult and unfamiliar idea for the proponents of centralist national states. The state must first forego authority over its citizens. It must also share its sovereignty downward with federal structures and bind itself upward within an international legal community. No doubt the international order is moving in this direction. It is in this context that the distorted judgment about the order of the long-lived Holy Roman Empire must be taken up again."⁹ Such literal nostalgia for empire was rare. Another notable exception, though, was Mont Pèlerin Society (MPS) president Deepak Lal, who, inspired by the U.S. invasion of Afghanistan and Iraq in the name of liberal democracy, wrote a paean to empire in 2004 for its ability to bring order, institute the rule of law, and "quell ethnic conflicts."¹⁰ He began by eulogizing the Habsburg Empire, condemning "the great deterioration of opportunities that has befallen the average citizen of the successor states."¹¹

Most neoliberals, however, acknowledged that the era of the nation was irreversible. They dreamt of decolonization without the destructive desire for economic autonomy displayed by the very successor states of East Central Europe that Lal cited. This book has told stories of the

neoliberal fix from the 1920s to the 1990s as institutional attempts to defend the world economy against democracy and nationalism. For Hayek, Robbins, and Mises, this meant blueprints for international federations of double government, granting political independence while preserving the reign of competition. For Heilperin, it was in the failed universal code of investment with its attempt to place law beyond the state. For Röpke and Hutt, it was forms of apartheid and weighted franchise. For Mestmäcker, it was the Treaty of Rome and the competition law that followed it. For Tumlrir and Petersmann, it was the GATT reformed with a jurisdiction that reached into domestic states.

I have argued that the turn to law was the most important re-orientation of German-speaking neoliberalism after the Second World War. What I have called ordoglobalism helped produce an understanding of the European Economic Community (EEC) and later the World Trade Organization (WTO) as apparatuses of juridical power to encase markets beyond democratic accountability even as it sought to create legitimacy through offering direct private rights to citizens beyond the nation. It is notable that, in the shift of ordoliberal attention to the global or international scale, their much-vaunted inclusion of aspects of the distributive state disappears.¹² Institutions like the International Labour Organization (ILO) that made workers' rights and social justice part of their mandate became the enemy again.¹³ At the exact same time that Röpke was envisioning a progressive income tax and diffusion of private property within the nation, he was prescribing an international order of constraints.¹⁴ Among other things, this shows again that the "social" in the social market economy might be seen more as a tactically necessary concession to the strength of organized labor and socialist sentiment in postwar West Germany than as an indication of a core aspect of their philosophy.¹⁵ Beyond the nation—where the levers of democracy and organized labor are weaker—the language of the social disappeared, and only the rules remained.

Scholars have given various names to the neoliberal fix. One calls it the "constitutional protection of capitalism."¹⁶ Another calls it the "Hayekian economic constitution" aimed at the "immunization of expanding capitalist markets against egalitarian-interventionist democratic politics."¹⁷ In an influential coinage, Stephen Gill calls it the "New

Constitutionalism" striving to "allow dominant economic forces to be increasingly insulated from democratic rule and popular accountability."¹⁸ As summarized by scholars, this constitutionalization "establishes a worldwide institutional grid that offers transnational capital multiple exit options."¹⁹

Others have written the history of the neoliberal fix in different ways. One scholar writes of the "nonmajoritarian" models of governance in port authorities and the idea of central bank independence.²⁰ Still others have seen this strain in the European Central Bank and the governance structure of the European Union.²¹ Other scholars have described the creation of an "offshore world" of tax havens through which nations compete to offer the least possible corporate tax, the greatest possible secrecy, and the best incentives for individuals and corporations to flee the clutches of their own redistributive states.²² Discussions in the 1990s and beyond have been dominated by "locational competition" and the idea of "policy competition."²³ At the root of the neoliberal idea of international order is the notion of so-called competitive federalism, with the possibility of capital following opportunities across borders wherever they arise. In an exploration of neoliberal federalism, one scholar notes that the American Enterprise Institute set up a Federalism Project in 2000, pursuing Buchanan's proposals from the 1990s to preserve "an effective exit option in market relationships."²⁴ An AEI resident scholar explained the vision of the project: "A world without borders is a world without exits. We need the exits."²⁵ These imaginaries are far from the borderless world or zero-state society in which neoliberals purportedly believed.²⁶ What has been described in these pages is much less easy to dismiss as a fanciful delusion. More realistic and, at least in theory, more realizable, is ordoglobalism's vision of a doubled world: divided and encased between imperium and dominium.

My narrative has pointed to a paradox at the heart of Hayek's thought and what I have called Geneva School neoliberalism. On the one hand, the world economy had to be defended against the excesses of democracy. On the other hand, the world economy itself was invisible and beyond reason and representation. Hayek was explicit when he wrote that "the only appropriate word" for the global market, or what he calls "the extended order," is "transcendent." In "its literal meaning," the world

market “far surpasses the reach of our understanding, wishes and purposes, and our sense perceptions, and that which incorporates and generates knowledge which no individual brain, or any single organization, could possess or invent.”²⁷ This sacred understanding of the world economy is not limited to Hayek. The word *Ordo*, in the title of the most important journal of neoliberalism, and from which the ordoliberalists take their name, comes from medieval theology.²⁸ Hayek referred to St. Augustine’s dialogues as the starting point for the concept of order.²⁹ In these discussions, Augustine notes that the extraordinary complexity of the universe is literally incomprehensible by any one individual. He describes not only the inevitable sense of powerlessness that humans feel in the face of this larger order but also the distortions that come from our individual and subjective perspective. “The situation,” he wrote, “is akin to that of one who, confined to surveying a single section of a mosaic floor, looked at it too closely and then blamed the artisan for being ignorant of order and composition.” The apparent disorder of the part is actually an artifact of the limited perspective of the viewer, who “failed to notice the larger mosaic world” that “comes together into the unity of a beautiful portrait.” The individual striving for a more synoptic perspective always runs the risk of misidentifying disorder for its opposite—and vice versa. He wrote that “unable to grasp the harmony and interaction of the universe as a whole, and hurt by what is beyond their ken, such people rashly conclude that things are inherently ugly and disorderly.”³⁰

Augustine suggests a counterintuitive mode of observation. The viewer must guard against being deceived by a part misrepresenting the whole. There is a call here for the potential of inverse observation: that which appears as order may in fact be disorder; and that which appears as disorder may in fact be order. It was a common neoliberal critique of socialism that they failed to see the greater order. As Franz Böhm put it in an article on “the idea of *Ordo*,” socialist thinkers “refused to catch sight of an order at all in the competitive economy, only saw anarchy and chaos, and denied the existence of any laws in it except the law of the jungle.”³¹ My narrative has shown that Geneva School neoliberalism is less a theory of the market or of economics than of law and the state.

Ordoliberalism can be thought of as a negative theology, contending that the world economy is sublime and ineffable.

Rather than the economism of which they are sometimes accused—in the sense of seeing the economy as machine-like, autonomous, and capable of producing certain desired outcomes—Geneva School neoliberals saw the economy as cosmic, encased in legal and political institutions, and always in an open-ended process of becoming. Hayek scoffed at the use of mathematics in macroeconomics to “impress politicians . . . which is the nearest thing to the practice of magic that occurs among professional economists.”³² He said that he always felt he should have written a critique of Milton Friedman’s *Essays in Positive Economics*, “every bit as dangerous as that of Keynes.”³³ Unlike the Chicago School, the Geneva School opposed the mathematization of economics and thus foreclosed the possibility of extensive forecasting and modeling of the economy. It rejected both rational expectations and perfect competition and held the claim of determining “efficiency” or “optimal” outcomes to be both quixotic and hubristic. In recent years Petersmann has even laid the blame for the financial crisis of 2008 at the feet of the “efficient markets hypothesis” of the Chicago School that “market prices reflect all relevant information.”³⁴ As represented by Petersmann’s own advocacy for the WTO as a “worldwide economic constitution,” what I call the Geneva School combined the Austrian emphasis on the limits of knowledge and the global scale with the German ordoliberal emphasis on institutions and the moment of the political decision.³⁵

To disavow the existence or visibility of “economies” themselves intentionally makes projects of social justice, equality, or redistribution unthinkable. But it does not make power disappear. It is sometimes claimed that the main sleight of hand for neoliberals is to hide the state, but even a cursory reading of the main theorists shows that a positive vision for the state is everywhere. The main thing the Geneva School neoliberals hide is not the state but asymmetries of power. Indeed, the invocation of complexity and unknowability is a useful practice of government. After the global financial crisis, German finance minister Wolfgang Schäuble said, “We have learned from Friedrich August von Hayek . . . that society and the economy are not machines. Anyone who believes it is possible to acquire comprehensive knowledge enabling him

to control events has no knowledge, but only a pretense of knowledge.³⁶ Contrary to the notion of our present-day knowledge society, scholars have noted, it is professions of ignorance and unknowability that are most helpful in exonerating those putatively responsible for global systemic risk, as, for example, in the world of finance.³⁷

Not knowing the totality while knowing the rules needed to maintain it is the essence of the Geneva School variety of neoliberalism described in this book. As the example of Schäuble's subsequent conduct in the Eurozone crisis showed, conceding the unknowability of the economy does not mean a willingness to exercise pragmatic open-mindedness or arrive at new management strategies through negotiation and compromise among diverse constituencies. Instead it meant an even more rigid tendency to default to the principle and the rule. Accepting the economy as an internal limit to government means inflexible adherence to the laws seen as necessary to encase the unknowable economy itself.

Looking back at the century, one notes that it was at points when there was an attempt at comprehensive oversight over the economy that neoliberals mobilized most directly. The two most prominent were in the 1930s and 1970s—both moments at the end of empire. In the 1930s neoliberals mobilized against planning at the national level and the belief that the economy could be seen and directed without a harmonized global framework. In the 1970s they criticized computer-aided reformists who sought to see the world economy as a whole. Scholars have pointed out the irony that it was at the exact moment that the world's majority of nonwhite people claimed legal equality through decolonization that influential branches of social science concluded that the individual did not exist.³⁸ We have seen something similar here: at the moment of the assertion of autonomy, the response of neoliberals was to assert individualism—but even more so, systemic interdependence that negated the possibility of national or regional action with a logic inconsistent with the dictates of free movement of capital and goods.

In the neoliberal vision of world order, the world economy exercises discipline on individual nations through the perpetual threat of

crisis, the flight of investment that punishes expansion in social policy, and speculative attacks on currencies in reaction to increases in government spending. The competition for citizens between states remains a lasting vision. The declared project of liberating the market was also one of institutional design. As Petersmann put it, "Rules do not enforce themselves."³⁹ The Hayekian disavowal of design does not transform his proposals into anything other than precisely that. Even understood as an information processor and a self-organizing system, the world economy requires intervention to calibrate the rules. Röpke's demand from 1942 is an enduring one: "If we desire a free market, the framework of conditions, rules and institutions must be all the stronger and more inflexible. Laissez-faire—yes, but within a framework laid down by a permanent and clear-sighted market police in the widest sense of this word."⁴⁰ The moral force for an important school of the neoliberal movement came from the commitment to protect the complex and even unknowable interdependence of the global trading system through the identification of—even creation of—a market police cut to the dimensions of the world.

The essence of Geneva School neoliberalism can be summarized in a series of points. These are meant not as commandments but as propositions. Although one could split hairs by pointing to variations, they offer a basic consensus shared by the intellectuals at the core of this book:

1. There is no perfect market because no knowledge is perfect. The sublime status of the economy means that only a "thin layer" of rules can be the objects of human design.
2. Globalism trumps nationalism. Only capitalism is internationalist; socialism is always nationalist.
3. World economic order depends on the protection of dominium (the rule of property) against the overreach of imperium (the rule of states).
4. Consumer sovereignty trumps national sovereignty. The public/private distinction is more important than the foreign/domestic.

5. World law trumps a world state. International institutions should act as mechanisms for protecting and furthering competition without offering spaces for popular claims-making.
6. Democracy is a potential threat to the functioning of the market order. Therefore, safeguards against the disruptive capacity of democracy are necessary.
7. Democracy's danger is its legitimation of demands for redistribution. All world economic problems are rooted in domestic distribution struggles.
8. Laws are grown, not made. Adjudication by judges and scholars is preferable to legislation created by parliaments.
9. Isonomy (same law) trumps autonomy (own law). Humans follow rules by nature. Therefore, rules-as-regularities must be protected by rules-as-regulation.
10. Law must ensure predictability as a guide to future human action. Specifically, it must protect the role of prices in transmitting knowledge about the future.
11. Rules create the conditions for global feedback mechanisms of human action and the framework for the spontaneous order of the market.
12. Humans respond to knowledge, much of it unconscious. Central to that knowledge is the prohibition, the rule that says no. Thus, the role of international institutions is primarily negative.
13. Integration is also primarily negative, devoted to the removal of barriers between territories. Yet the project of negative integration is itself an active and ongoing undertaking. Institutions are required to keep this process functioning smoothly.
14. Trade over borders must be enshrined in legal code and is required for the coalescence of the overall order.
15. Integration is not the creation of something new but the restoration of something lost.

This book has told the story of the emergence of neoliberalism along the fault line of Global North and Global South through the genealogy of the Geneva School, whose solution to the end of empire was to promulgate one law for the world economy. Reflecting back as an elderly

man in 1984 on the founding of the MPS, Hayek did not use the high-flown language of foresight that Bush would in granting him the Medal of Freedom. Instead he said that his goal in 1947 had been "to form an international association" to discuss "the problems of constitutional constraints on government."⁴¹ In the metaphor to which he frequently returned, the goal was to tie the Ulysses of the democratic postcolonial state to the mast of the world economy through frameworks of government and law.

SEATTLE AND THE FIX FROM BELOW

It is a great irony that ordoglobalism entered a crisis at nearly the precise moment of its most significant victory. The transformation of the GATT into the WTO was the crowning moment in the twentieth century for the Geneva School. This was true despite the fact that the creation of the institution was the outcome, not of their superior intellectual vision or powers of political persuasion, but of the brute economic interests of the world's leading power, the United States. Competition from emerging economies in its traditionally strong sectors of manufacturing, and a fear that the U.S. advantage in entertainment, pharmaceuticals, and software would be bootlegged and imitated away, led the United States to cajole, pressure, and intimidate the world's countries to agree to an arrangement that clearly favored the hegemon.⁴² Yet whatever the conditions were for the realization of the WTO, Geneva School neoliberals could rightly celebrate having put their stamp on the details of its structure. In the ways outlined in these pages, the world trading system under the WTO scaled up the rules and institutions governing Europe to the global scale.

Six months before 123 nations signed the agreement to create the WTO, its future director, Peter Sutherland, gave credence to this claim when he delivered the Third Hayek Memorial Lecture at the Institute of Economic Affairs in London. The drafters of the WTO, he said, "drew on two of Hayek's key insights—the role of the price system in conveying information and the importance of the rule of law."⁴³ Sutherland was the perfect spokesperson for the Hayekian message. An

Irishman trained as a lawyer, he took the position as European competition commissioner from 1984 to 1988 because he saw that competition law was the most powerful tool available for federal European integration. His activism earned him the nickname “the sheriff” from Jacques Delors, because he used competition law aggressively to liberalize trade within the European Community and bring individual nations to the European Court of Justice.⁴⁴ One scholar calls him the “embodiment of neoliberal ideas in the European Commission” as he used the European Court of Justice to end state funding of national industries and ramp up competition.⁴⁵

Hayek’s normative vision of the rule of law contained the features of a means of enforcement, judicial review, and isonomy. Sutherland could point to the Appellate Body as a mechanism of enforcement, the individual trading rights protected for intellectual property under the terms of the WTO Agreement, and the isonomy produced by the subjection of all nations—including those of the Global South—to trade disciplines. Sutherland’s invocation of the price system connected to Hayek’s belief in the world economy as a giant depository of knowledge to be accessed through the information of price signals. Hayek’s argument for free trade and free movement of capital was about tapping the knowledge of the world’s inhabitants. As Hayek put it at the end of his 1979 trilogy: “If we are to make use of the distinct factual knowledge of the individuals inhabiting different locations on this world, we must allow them to be told by the impersonal signals of the market how they had best use them in their own as well as in the general interest.”⁴⁶ The philosophy behind the WTO reflected a Hayekian belief in the organization as the guardian of the cybernetic legal order, ensuring unimpeded transmission of price signals across the strata of nested spaces of regulation.

From this perspective the WTO looked like a triumph, offering the rule of law and calibrating the circuitry of the price mechanism to allow for ever more precise reception of information. Yet even as Hayek praised information of prices, he also conceded that knowledge was dangerous. It could imperil the system. As he put it in *The Constitution of Liberty*, it was the global spread of the “knowledge of possibilities” that required a countermovement to lock in policies of competition

and perpetual adjustment. Hayek had made clear since the 1930s that two necessities for global capitalism were the invisibility and the anonymity of the world economy. The WTO transgressed those rules. Indeed, just four years after it began its work, it was the spread of knowledge about the organization led to a shutdown engineered from below.⁴⁷

In 1999, massive protests led to the cancellation of the meeting of the WTO in Seattle. In a lecture series devoted to Jan Tumlir, Sutherland called Seattle a "watershed for the institution" that created "a fundamental deficit in effective political support for the WTO system." "Seattle created a generation and a legion of WTO-haters," he said, "and they have votes."⁴⁸ Martin Wolf noted in the same lecture series, "As decision-makers transformed the size, economic scope, impact and legal potency of the trading system, they also increased its political visibility. What had previously been the play thing of a limited group of highly knowledgeable policy-makers and technocrats has become the focus of fierce pressure from a wide range of non-governmental organisations." The old foe of "majoritarianism" returned as people claimed "that the present inter-governmental arrangement is 'undemocratic.'"⁴⁹

Scholars realized only later, some ruefully, that global economic governance may have worked best when it was performed in an ad hoc, backroom manner, through negotiation, with many exit options, rather than through legalization.⁵⁰ Making the rules consistent at a global scale was such a necessarily large undertaking that the public could not help but notice. When they did, they asked why so many decisions were being made in their name with so little of their input. The very attempt to depoliticize international economic relations ended up requiring a highly visible project that could not help but make itself the object of political controversy. This was one of the core problems of the neoliberal fix that Mestmäcker was one of the few to see clearly. It was by appealing to Schmitt that he perceived the necessarily political nature of depoliticization and did not fall for the empirically falsifiable idea that simply relegating certain matters to the "rule of law" would somehow raise them permanently above the possibility of popular contestation. To deny the possibility of politics in the WTO in the interest of a notion of the guardians of the constitution of the world economy did not actually banish politics, it merely offered no frame of reference when actions

like the Seattle protests did erupt. People will use their voice, it seemed, even—or especially—if no nameplate or microphone is provided.⁵¹

Some scholars argue that the most enduring challenge for the WTO and other efforts at encasing global markets has been the absence of a demos for the world economy.⁵² Yet to look for a demos in the world economy is to pose the question wrong. It is also to commit a category error. As my narrative has shown, liberals and later neoliberals thought of the space of the world economy through the twentieth century as being a space separate from that of representative government. The many variations of the neoliberal fix were designed in the spirit, not of “undoing the demos” per se, but of sequestering and leashing it, penning it into prescribed areas.⁵³ If the world economy did not have a demos, this was precisely the point. It was a world of people but a world without a people.

Eager to reframe the institution after Seattle, the director-general Mike Moore declared, “We’ve got to get this fuckin’ show back on the road. . . . We’ve got to rebrand!”⁵⁴ The subsequent trade round, still not completed, was dubbed the “Doha Development Round” in what participants later conceded was a blatant act of public relations. The new brand was given another name when Pascal Lamy used the term “the Geneva Consensus” for the first time in 2005 during his successful campaign for director general of the WTO.⁵⁵ He was working from his experience as the EU trade commissioner and, true to the spirit of ordoglobalism, contended that “the building of Europe is in fact the most ambitious experiment in supranational governance ever attempted” and that, as “a laboratory,” “the European experience . . . offers interesting avenues for the global level.”⁵⁶ Lamy claimed that the Geneva Consensus, against the Washington Consensus that it putatively replaced, would be dedicated to “humanizing globalization and establishing further justice and equity.”⁵⁷ Like the IMF, which began to pay lip service to poverty reduction while continuing to focus on the old key issues of cutting public budgets, the WTO sought to add new rhetoric without changing the basic structure of the organization.⁵⁸

Seattle was an existential crisis for ordoglobalism. It brought the sublime world economy down to earth. The prospect of a popular rejection of the encasement of markets has always posed a problem for neoliberal

thought. Many critics have noted that the turn to an authoritarian solution always seems close at hand, with Hayek and Friedman's visits to Augusto Pinochet's Chile being exhibit A. Referring to Pinochet, Hayek said he would "prefer a liberal dictator to a democratic government lacking liberalism" and that "it is possible for a dictator to govern in a liberal way"—while qualifying that this should be only a "temporary transitional arrangement."⁵⁹ Hayek's statements recalled both Röpke's discussion of "dictatorial democracy" in 1940 and Mises's point in 1927 that Italian "fascism and similar movements aiming at the establishment of dictatorships are full of the best intentions and that their intervention has, for the moment, saved European civilization. The merit that Fascism has thereby won for itself will live on eternally in history."⁶⁰ Following the logic of the lesser evil, the suppression of a disruptive force from the left periodically made support for dictators thinkable for some neoliberals. Mises wrote in 1922, "Our whole civilization rests on the fact that men have always succeeded in beating off the attack of the re-distributors."⁶¹

The leading thinkers of the Geneva School after the assault on the WTO took neither the Pinochet option nor the recourse to a "liberal dictator" in their theorizing. Rather, they turned to the language of Pinochet's most effective opponents: that of human rights. The response of Geneva School neoliberals was one of co-optation and redefinition. With echoes of Philip Cortney's postwar calls for the human right of capital flight, they doubled down on the very language of human rights scorned by Hayek to buttress their project. This book has shown that the recasting of trading rights, market rights, and capital rights as *individual* rights was proposed by the International Chamber of Commerce (ICC) and neoliberals against the United Nations' idea of social and economic rights around 1945, incorporated as the market freedoms and market citizens of the European integration project in the 1950s and 1960s, and scaled up to the WTO in the course of GATT reform in the 1970s and 1980s. After Seattle, Ernst-Ulrich Petersmann became the most visible and vocal spokesperson for yet another renovation of liberalism with human rights at its core. In a flood of publications, he propagated the idea of a normative world economic order built of stratified institutions protecting the individual right to trade and move

capital. Thrust into the public eye, the project of neoliberal federalism was reimagined as one of protecting universal human rights.

It is a revealing irony that Petersmann was a critic of the language of rights in the hands of the Global South in the G-77 and advocated rights only when redefined as free movement of capital and goods, especially in the context of European integration. One can track a similarly instrumental change in his tone after Seattle. In the last article he published before the protests—based in part on his consulting for the government of Hong Kong—Petersmann's key term was "competition." Citing Hayek three times, he denounced the absence of competition laws in less developed countries and called for "'competition advocacy' within the WTO . . . and promoting a 'competition and entrepreneurship culture' in the WTO."⁶² His first article after Seattle was framed very differently. It was titled "Time for Mainstreaming Human Rights into WTO Law."⁶³ Writing as a professor at the Graduate Institute of International Studies in Geneva, he wrote that the "failure of the WTO's ministerial conference at Seattle and the 'Seattle Tea Party' by violent protesters against world trade based on WTO rules, have been described as a 'wake up call' for trade diplomats who need to explain more convincingly the legitimacy and 'human rights functions' of WTO rules to domestic citizens."⁶⁴ This statement was presented in the *Journal of International Economic Law*, a publication launched in 1998 in the wake of the apparent victory of the WTO. In the journal's first issue, Petersmann had praised the "constitutional functions" of the WTO in promoting the "international rule of law," including centrally "private intellectual property rights . . . as basic individual rights."⁶⁵ His description of Seattle as a "wake up call" just two years later suggests the seriousness of the challenge to the Geneva School imagination.

After Seattle, a term appeared in Petersmann's writings that was previously almost entirely absent: "legitimacy." He responded directly to the protest, saying that "in the now regular street demonstrations at the ministerial conferences of the IMF, the World Bank and WTO, citizens are reminding governments of the need to adjust the state-centered traditional international law and international organizations to their human rights and to the emerging 'right to democracy.'"⁶⁶ He effectively agreed with the protesters but went on to interpret their language of

human rights in a very particular way. It was truly a scandal, he argued, that UN human rights covenants "offer no effective protection of economic freedoms, property rights and rule of law."⁶⁷ Even as he sought to ground WTO in human rights language, he sought to insert economic language into dominant human rights talk. "The traditional disregard in WTO law of human rights is becoming as outdated as the persistent disregard in international human rights instruments for economic liberty and freedom of trade as preconditions for individual welfare."⁶⁸

The agreement that Petersmann had praised in 1997 as a triumph of Hayekian constitutional design was, by 2001, disparaged for the fact that "many national parliaments in WTO member countries ratified the 25,000 pages of the Uruguay Round Agreements within a few hours without proper parliamentary review and transparent discussion."⁶⁹ Even though, as he put it, "from a constitutional perspective, the transition from GATT 1947 to the WTO offers an example of a successful 'constitutionalization' of international trade law," it was becoming a failure in practice.⁷⁰ The central problem people saw in the WTO was, as other legal scholars see it, "the absence of a legitimate and legitimating purpose."⁷¹ The about-face was fascinating—the very absence of democratic pressures was now being seen as an Achilles' heel of the institution. Democratic legitimacy, it seemed, could not be designed away.

Petersmann's own solution for the legitimacy problem was to ramp up the emphasis on human rights. He claimed human rights as a new frontier for activism: "Following the 'democratic grass-root revolution of 1989,'" he wrote, "economic and legal globalization (including the global integration law of the WTO) offer the possibility for another 'human rights revolution' in favor of non-discriminatory open markets, global competition and more effective protection of human rights."⁷² In an idiosyncratic interpretation, he read the string of revolts in the Arab Spring as part of just such a revolutionary demand for business and market rights.⁷³ Unlike the earlier form of Geneva School neoliberalism, which often saw the individual as a disruptive political actor, the multi-level constitutionalist version opened the possibility of a positive bottom-up political role for individuals. This is an angle often missed in the denunciations of the WTO as a detached distant bureaucracy

and by those seeking to track the mutations of the neoliberal world project. Whereas Hayek had called for the "dethronement of politics," the Geneva School of the year 2000 was talking about a reconfiguration of politics, seeing market citizenship and its claims as the way in which the global system could be knit together from the level of the individual to the world. Petersmann wrote after Seattle, "Citizen participation in consultative WTO bodies and other multi-levelled international governance mechanisms could strengthen the legitimacy and political support for the world trading system."⁷⁴

One scholar notes that "unlike most people, a market can function quite well without being loved."⁷⁵ But the exact reverse might be true. Many people persist without love, and experience has shown that some attention to the legitimacy of a given order is necessary for it not to descend into chaos and popular revolt. If not loved, the market needs to be accepted. The importance of the "citizen-centered" aspect is often overlooked by scholars who see the neoliberal constitution "solely as a means to impose limits on state authorities."⁷⁶ The positive side of the equation exists—it is the right to trade. One critic called this approach an attempt by Petersmann "to hijack, or more appropriately to Hayek, international human rights law."⁷⁷ Petersmann was proposing the possibility of a fix from below.

Yet what does the fix from below look like in practice? The Geneva School idea of individuals reinforcing the legitimacy of the governing structures by appealing above their own nations, or to world law within their nations, has been a path taken largely by corporations only. An inability to pay a team of trade lawyers—whose numbers have grown exponentially since the 1990s—ends up being a bar to entering this form of market citizenship. Far from being detached nomothetes above the possibility of capture by special interests, the negotiators of trade agreements like the WTO have close and formal relationships with corporate lobbies. The "private sector advisory process" in the United States, for example, comprised over thirty committees, involving nearly one thousand individuals from the private sector, that met regularly to advise the U.S. trade representative on what they needed from the legal architecture of world trade.⁷⁸ The actual existing version of the "bottom-up" legitimation described by

Petersmann included only a select slice of the world economy's market citizens.

As part of their post-Seattle rebranding, the WTO restored the old paintings that had been covered and removed when the GATT first moved into the offices of the International Labour Organization at the Centre William Rappard in the late 1970s. Murals showing heroic workers in acts of labor and leisure once again saw the light of day.⁷⁹ In 2012 Petersmann looked at the building himself and asked why nobody in his sixteen years working at the WTO had commented on the two statues at the entrance—allegorical figures of “peace” and “justice.”⁸⁰ Unmentioned was the fact, which he would have surely known, that the statues were relics of the days of the ILO. The failure of employees or negotiators to remark on the statues was no mystery. WTO's mandate was not to achieve peace or justice but to lock in liberal trade rules to calibrate multilevel politics and allow for perpetual adjustment in response to price signals. For Petersmann's mentor, Hayek, the only permissible form of justice was procedural justice that treated all participants equally regardless of history. When paired with equity as social justice as in the mandate of the ILO—or in Lamy's Geneva Consensus—justice was worse than a non sequitur. Social justice was a teleocratic demand that paved the way to totalitarianism, and an atavistic spasm sending humanity from the extended order and Great Society back to the “tribal society.”⁸¹

Petersmann's selective reading of history was displayed again in his gloss on the cover of a book he published in 2012. The cover featured Mexican painter Diego Rivera's *Calla Lilly Vendor* (1941), depicting a woman bowed under the weight of a mountain of beautiful white flowers. In the text, he called it an icon of “the freedom to sell in the market place.”⁸² The fact that Rivera was a card-carrying Communist best known for his workerist murals was no obstacle to Petersmann's misrepresentation of Rivera's work to reinforce his own dedication to market rights as the most fundamental of human rights.⁸³ A more fitting choice was made by Lamy for his book on the Geneva Consensus: one of the newer paintings that decorated the WTO's walls, from the *Danaé World Suite*, 2001 by Jean-Claude Prêtre. The painting shows a Mercator projection of the world beneath a grid of crosses and flecks of

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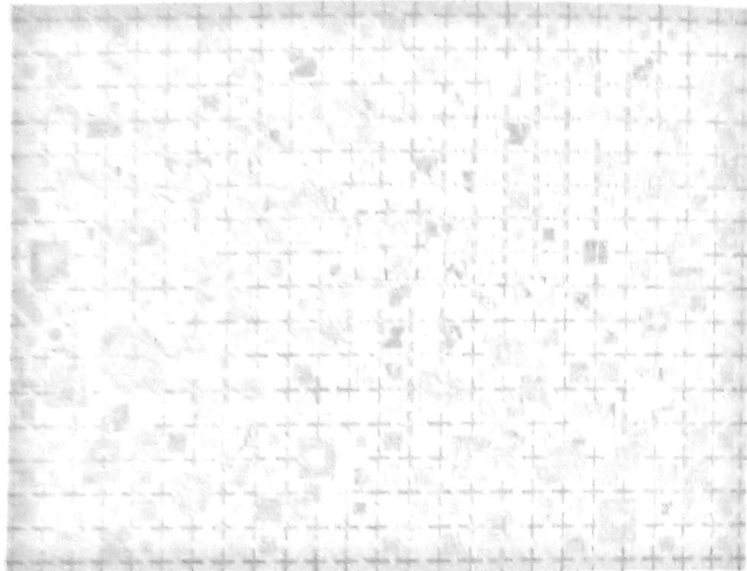
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The Geneva Consensus

MAKING TRADE WORK FOR ALL

Pascal Lamy



CAMBRIDGE

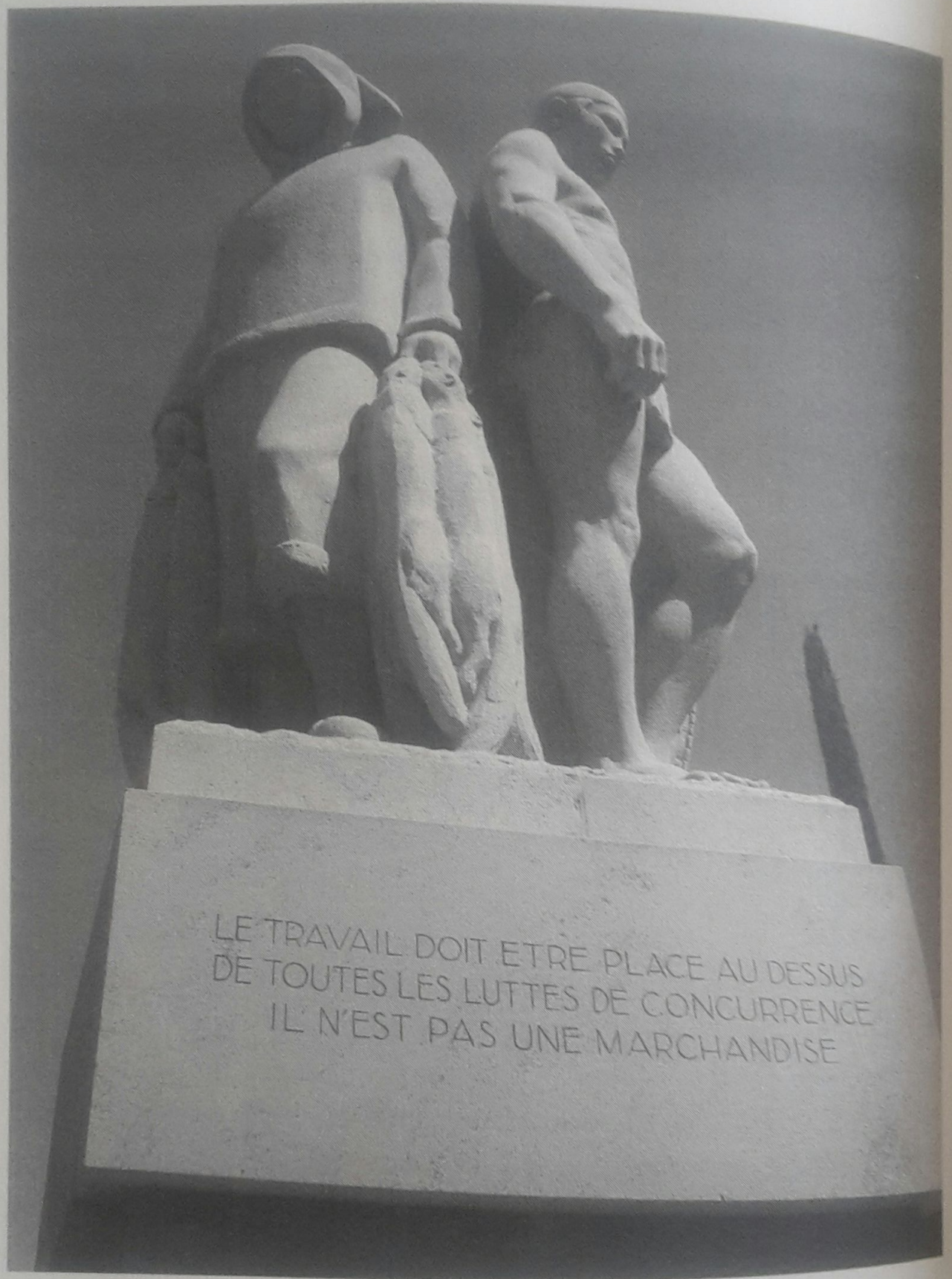
The world at the edges of representation. Pascal Lamy, *The Geneva Consensus: Making Trade Work for All* (Cambridge: Cambridge University Press, 2013). Reprinted by permission of the publisher.

colorful paint. Barely visible underneath are the outlines of the continents. The image suggests something closer to what the institution was built on. Notwithstanding the late conversion to a language of human rights, it is a conception of the world economy at the edges of representation, in a perpetual state of morphing and transformation, encased by a grid of rules.

Had Petersmann looked across the street from the Centre William Rappard past the ten-foot metal barriers and armed guards, in the traffic circle, he would have seen something that would be more difficult than the Rivera painting to transform from labor into trade. Erected in 1937, the year Hayek published his essay "Economics and Knowledge," Robbins his deplanning manifesto, and Lippmann *The Good Society*, the monument commemorated the ILO's founder, Albert Thomas. The base shows images of work: miners picking at a coalface, fishers at sea, farmers tilling and hauling crops. The four figures on top are a skull-capped Asian man carrying a rice sieve, a hooded indigenous man carrying pelts, a man in worker's apron holding pincers, and a black African man with a hoe. Etched into the plinth are words difficult to spin: "Labor exists above all struggles for competition. It is not a commodity." Small protests assemble here. In 2005 a demonstration of protesters from five continents gathered there and a Brazilian woman gave a speech about the "struggle against capitalism." One of the banners suggested the very world against which the neoliberals had organized: "Building a world of solidarity."⁸⁴

The 1990s were the high point of neoliberal globalism as an institution-building project. In the decade's endless globalization talk, "the world economy" was granted a power beyond any single nation. Politicians grew accustomed to deferring to the world economy to justify cuts to welfare benefits and restructuring. It was convenient to have an extranational disciplinarian to which they could gesture apologetically and shrug as they shaved off another condition of the postwar settlement. Blaming the world economy was a sustainable strategy because the disciplinarian was only one of its two political faces. In its inverse incarnation, the world economy was summoned as a cornucopia of affordable consumer goods irrigated by a stream of cheap credit. The perils of this strategy were made clear only in the early 2000s and especially after 2008. When the world economy stopped giving, it was left wearing only the mask of the scapegoat. Voters reacted predictably: by voting against it.

One could argue that Geneva School neoliberals ended up being institutional determinists in spite of themselves. Though often claiming a commitment to "liberalism from below" and the need for what Röpke



Labor is not a commodity. The monument to the founder of the International Labour Organization in a traffic circle facing the World Trade Organization, Geneva, Switzerland. Photo by the author / Quinn Slobodian.

called the humus of cultural values, the most enduring intellectual contribution of these purported "anti-planners" to the twentieth century may have been their blueprints and plans. It may be that Geneva School neoliberals were so busy building crystalline fortresses for the world economy that they failed to heed Mises's advice about reinforcing a mass mentality that would favor global rather than national markets as an absolute good rather than a pragmatic good to be favored or rejected as fortunes changed. They did not plan for the downturn, nor did they ever figure out a way to placate populations cleft by vast gaps of inequality. Luckily for them, the well-being of capitalism does not rely on their interventions, and never had. But if Geneva School neoliberals saw a popular commitment to free-trade globalism as not just one feature of many but the central necessary feature, then they would have reason to worry in the early twenty-first century. These pages have told the story of the long road to the current crisis.

To diagnose a crisis of neoliberalism is not to suggest that economic inequality has ceased to advance. Nor that the application of market solutions to social problems or the calculation of all human value in monetary terms has ceased, nor that we have witnessed a return to a pattern of redistribution or a turn to Keynesian welfare state ideology. The state absorption of private debt and policies of quantitative easing have not reversed the long-standing realities of "private Keynesianism" that exacerbate the gap between the hyperwealthy and the rest.

Yet the legitimacy crises that have plagued the WTO since its creation suggest that ordoglobalism as a distinct strain of neoliberalism may have overreached. If the goal was to fine-tune the rules to prevent disruptive demands for social justice or redistribution, then victory is nowhere in sight. In a late echo of the activism following the 1958 Haberler Report, emerging countries have created global gridlock by demanding that the United States and Europe live up to their own free-trade rhetoric, thereby using the WTO in ways that the United States itself had not anticipated.⁸⁵ Other nations have begun rejecting the bilateral investment treaties designed to lock in xenos rights for foreign investors.⁸⁶ One recent book writes of "world trade law after neoliberalism."⁸⁷ Demands for evenness, sometimes expressed in inclusionary and sometimes in exclusionary ways, continue to roil the political landscape

against all attempts to introduce a formal equality that disavows historically determined real inequality.

Neoliberals criticize socialists for their dream of a world economy without losers, but they had their own dream of a world economy without rule breakers and more importantly without idealistic—or, in their opinion, atavistic—alliances of rule breakers who seek to change the system of incentives, obligations, and rewards. In the mid-2010s, the popular referendum in favor of Brexit and the declining popularity of binding trade legislation suggests that even if the intentions of the neoliberals was to “undo the demos,” the demos—for better or for worse—is not undone yet.⁸⁸