

Review

Reviewed Work(s): *Why Globalization Works* by Martin Wolf

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on *The Revision of the Statute of the International Court of Justice*. In it, he considers amendments to the Statute that the Court might consider proposing. He treats the composition of the Court, its jurisdiction, parties, and the organization of its work. These are delicate subjects, which Lauterpacht perceptively surveys. He offers suggestions cautiously and tactfully, as by reference to a pertinent resolution of the Institute of International Law that advocated lengthening a judge's term of service to fifteen years while debarring reelection:

[I]t might not be considered fitting for the Court to advance a proposal for . . . an amendment the principal motive of which seems to be the necessity of securing the maximum degree of independence of judges both of their own Governments and of other Governments entitled to participate in the election (P. 122)

He also submitted that

it is desirable . . . to examine the question of the possible extension of the existing Article 34 with the view to making it possible for private persons, natural or corporate, to appear as parties before the Court in cases in which the other party, being a State or an organization of States, initiates or consents to the proceedings (P. 166)

Professor Sir Elihu Lauterpacht, Sir Hersch's distinguished son who has made his own notable contributions to the practice and progressive development of international law, has, in the five volumes of which the one under review is the last, completed a fitting tribute to his great father. It will in due course be complemented by the publication of the biography of Sir Hersch on which he is currently engaged.

STEPHEN M. SCHWEBEL
Of the Board of Editors

Why Globalization Works. By Martin Wolf. New Haven: Yale University Press, 2004. Pp. xviii, 398. Index. \$30, cloth; \$18, paper.

Why Globalization Works is not specifically about international law. It's about the world economy and the benefits of globalization for humanity. Yet Martin Wolf's tome can provide value for anyone engaged in the field of international law, particularly economic law, because of the keen insights he offers as to how states can succeed or

fail internally and externally. The author is the chief economics commentator for the *Financial Times*.

Wolf sets his task as convincing skeptics that a global market economy is highly desirable. Although I was convinced before opening the book, I learned a great deal from Wolf's synoptic, persuasive, and balanced account of the superiority of open, liberal economies for individual freedom and economic growth. The book succeeds not in introducing entirely new ideas, but rather in helping the reader fit together what she already knows about transborder market failure, government failure, economic and social development, and international trade.

Quite rightly, Wolf commences his analysis of globalization with the individual. He declares that the "fundamental value that underpins a free society is the worth of the active, self-directing individual" (p. 24). To be free, individuals need protection by and from the state or, in other words, need to live under a strong, yet beneficent, government. Such a government can enable individuals, and the overall economy, to achieve higher income through long-term investments. Historically, Wolf explains, the beneficent state has most successfully emerged when three features are present—regulatory competition between states, constitutional democracy and the rule of law, and the symbiosis of merchants and rulers, with both groups accepting their distinct roles. Over the centuries, we have reached an understanding of the best type of political and economic system, and in that sense, Wolf expresses agreement with Francis Fukuyama's thesis about "the end of history."

Unfortunately, many of the world's inhabitants today do not live within beneficent states organized in a manner that is conducive to freedom and prosperity. Wolf perceptively observes that the end of history does not mean an "end of geography" and that the "quality of one's life [today] depends even more on where one is born than on the class into which one is born" (p. 86).

If that is the world we live in, then there are some important implications for international organization and treaty making. Wolf says that "markets want to be cosmopolitan; states do not" (p. 78). Yet markets are dependent upon states whose role in the modern market economy is pervasive. The state is asked to provide security of property, rule of law, sound money, infrastructure, interventions to internalize externalities, and various merit goods such as health and education. Much of this can be achieved by strong

states on their own, but this process can be supported by wisely designed and focused international agreements. The examples Wolf gives are agreements on trade, currency convertibility, investment, and competition policy. In such agreements, a government gains by constraining the actions of its stronger partners. Yet Wolf also explains that in accepting constraints on its own behavior, a state gains by increasing the credibility of its commitments to the private sector, both domestic and foreign.

Wolf highlights this value of treaties to states in their efforts to achieve self-restraint, and points out that “[c]onstraints on sovereignty are, therefore, the aim of the exercise” (p. 91). In a discussion of trade agreements, he goes on to say that “[t]his self-imposed constraint on the freedom of legislatures does not subvert democracy. It is an expression of it” (p. 209).

One of the most interesting parts of the book is Wolf’s analysis of the causes of continued poverty and underdevelopment in many countries. He is at pains to note that neither the transnational corporation nor excessive globalization is the culprit. Rather, the main causes are the dysfunctional policies pursued by such governments, including the lack of openness and attention to the opportunities from globalization. “Outsiders will not contract with people who live in countries that lack the rule of law and at least a basic infrastructure” (p. 79). He also claims that political fragmentation (that is, too many sovereign states) is another handicap suffered by low-income countries.

In assessing the blame for extensive and unjust global poverty, Wolf points a finger at the hypocrisy of the high-income countries that claim to be for development but will not make obvious policy changes toward that end. No reader will be surprised at Wolf’s condemnation of agricultural subsidies and tariff-based protectionism. But some readers may be surprised that he criticizes the introduction of intellectual property rules into the World Trade Organization’s Agreement on Trade-Related Intellectual Property Rights (TRIPS Agreement). For Wolf, that Agreement operates as a rent-extraction device against low-income countries, “with potentially devastating consequences for their ability to educate their people (because of copyright), adapt designs for their own use (ditto) and deal with severe challenges of public health” (p. 217). Wolf argues that the TRIPS Agreement occurred because the trade negotiators were “captured by special interests” in the intellectual property coalition (p. 318). That coalition got its way because the U.S.

government needed its political support to gain congressional approval of the Uruguay Round of trade negotiations. This situation would not have happened, Wolf laments, “[i]f the left had retained its historic understanding of the value of liberal trade” (p. 247).

Another target of criticism by Wolf is the restrictive immigration controls of high-income countries. He opines that such “controls have locked a large part of humanity into failed states and economies, with inevitably adverse consequences for their incomes and so for global inequality” (p. 117). He calls such controls “the world’s biggest economic distortion” (*id.*). Yet he seems doubtful that major reform is feasible.

Of the many implications of *Why Globalization Works* for debates about international law, let me highlight just one. At a time when some champions of the market and the state are questioning the need for international rules, Wolf makes a strong economic case for them. He emphasizes the way in which governments use treaties to reinforce their own policies rather than merely to secure concessions for others. Although this point emerges specifically in relation to international economic agreements, Wolf interprets it in the context of a somewhat broader vision. He suggests that the “basis for peaceful relations derives not only from the objectives and internal political structure of a liberal democracy, but from its nature” as a “law-governed state” where international agreements “made by governments have become part of their domestic laws and, as such, are binding upon them” (p. 35). For Wolf, then, law provides a vital interface between the cosmopolitan market and the territorial state.

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The Law of State Immunity. By Hazel Fox. Oxford: Oxford University Press, 2002. Pp. lxiv, 572. Index. \$135, cloth; \$55, paper.

Not so long ago, a book on the immunity of foreign states came along once a generation, if that often. Such books, while perhaps not common, are no longer rare.¹ In 2004, *The Law of*

¹ See, e.g., GAMEL MOURSI BADR, *STATE IMMUNITY: AN ANALYTIC AND PROGNOSTIC VIEW* (1984); JÜRGEN BRÖHMER, *STATE IMMUNITY AND THE VIOLATION OF INTERNATIONAL LAW* (1997); JOSEPH W. DELLAPENNA, *SUING FOREIGN GOVERNMENTS AND THEIR CORPORATIONS* (2d ed. 2003); CHARLES LEWIS, *STATE AND DIPLOMATIC IMMUNITY* (2d ed. 1985); CHRISTOPH SCHREUER,