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Rejoinder

Epiphytic Economics and the Politics of Place

Jim Chen*

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They talked of the past, really — always about the past. Even the future seemed like something gone and done with when they spoke of it. It did not seem an extension of their past, but a repetition of it. They would agree that nothing remained of life as they had known it, the world was changing swiftly, but by the mysterious logic of hope they insisted that each change was probably the last; or if not, a series of changes might

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bring them, blessedly, back full-circle to the old ways they had known. Who knows why they loved their past? It had been bitter for them . . . , they had questioned the burdensome rule they lived by every day of their lives, but without rebellion and without expecting an answer.

— Katherine Anne Porter, *The Old Order*¹

I. LOSERS IN THE LIMELIGHT

A. NATURE OVER NURTURE, LEISURE OVER LABOR

A specter is haunting academia, the specter of globalization.² In *Globalization and Its Losers*,³ an essay published in the winter 2000 issue of the *Minnesota Journal of Global Trade*, I described legal and economic integration across borders as an epochal moment for a broad array of ecological, cultural, and economic interests. The summer 2000 issue of this journal published replies by two historians, an agricultural ethicist, and an advocate of regional self-reliance. At their mildest, my critics accused me of misusing Darwinian metaphors and of misconstruing the agricultural stake in international economic disputes. At their most vehement, my critics accused me of arrogance, intolerance, and even totalitarian proclivities.

Because this debate has now spanned three issues of this journal, I shall restate my own position as well as those of my critics. *Globalization and Its Losers* rested on simple premises but reached tough normative conclusions. Globalization increases total wealth. Like any other change in the terms and conditions of economic interaction, however, globalization has also shifted wealth and political power. There are, in short, winners and losers. Moreover, globalization often pits environmental, cultural, and labor interests not only against the international legal norm of free trade, but also against each other.

In a passage that evidently offended at least one critic's aesthetic sensibilities,⁴ I summarized my prescription for resolving conflicts sparked by free trade and globalization. Counseling "enormous reverence for genes . . . , measured respect

1. KATHERINE ANNE PORTER, *The Old Order*, in *THE OLD ORDER: STORIES OF THE SOUTH* 11, 13-14 (1988).

2. Cf. Karl Marx & Friedrich Engels, *Manifesto of the Communist Party*, in *THE MARX-ENGELS READER* 469, 473 (Robert C. Tucker 2d ed. 1978) [hereinafter *Communist Manifesto*].

3. Jim Chen, *Globalization and Its Losers*, 9 MINN. J. GLOBAL TRADE 157 (2000).

4. See *infra* note 57 and accompanying text.

for memes, and little to no regard for jobs,”⁵ I concluded:

Behold then the unholy trinity of international trade law, the three remaining lines of argument by which trade liberalization can be derailed. Now abide labor, culture, and ecology, these three. And the least of these is labor.⁶

I am pleased to clarify my views, but I shall not retreat from them. I unequivocally defend the primacy of free trade as the bedrock principle of international economic law. I also acknowledge the existence and propriety of legal exceptions devised to protect the environment, culture and morality, and certain rights of laborers *vis-à-vis* employers. Tougher questions arise when the three exceptions to the free trade norm - environment, culture, and labor - conflict with each other. My critics and I dispute the value judgments that such conflicts demand. We disagree on how international law should respond, if at all, to economic, environmental, and social dislocations effected by globalization.

My solution can be summarized aphoristically: nature over nurture, leisure over labor. First, in privileging environmental claims over cultural claims, I unapologetically assign priority to nature over nurture. Within the cultural realm, I favor the preservation of threatened languages, which are after all the most striking expressions of *Homo sapiens*' genetic endowment, over claims based on less precise (and therefore more politically malleable) definitions of culture. Moreover, in preferring cultural concerns over the well-being of incumbent workers, I elevate the fruits of human leisure over the fruits of human labor. In so doing, I invoke the longstanding strain of Western intellectualism, from Aristotle to contemporary evolutionary psychology, that recognizes the primacy of leisure over labor.⁷ I freely admit that combining

5. Chen, *supra* note 3, at 217.

6. *Id.*

7. Compare Francis Fergusson, *Introduction*, in ARISTOTLE'S POETICS 1, 32 (S.H. Butcher trans., 1961) (“[Aristotle] accepted . . . the Greek notion that the fine arts have no end beyond themselves. The useful arts . . . provide transportation or shelter, but a play or symphony cannot be used for anything but ‘pleasure.’”) with GEOFFREY F. MILLER, THE MATING MIND: HOW SEXUAL CHOICE SHAPED THE EVOLUTION OF HUMAN NATURE 267 (2000) (acknowledging that “[f]ine art may be strictly useless in pragmatic terms” while attempting to reconcile “the aesthetic made useless” with “the useful made aesthetic”). See also GEORGE BERNARD SHAW, THE INTELLIGENT WOMAN'S GUIDE TO SOCIALISM AND CAPITALISM 91 (Ayot St. Lawrence ed., 1931) (“Labor is doing what we must; leisure is doing what we like; rest is doing nothing whilst our bodies and our

these positions leads me straight to a deluxe suite at the “very small hotel” that will be hosting the next “global convention of rabid free-trade environmentalists.”⁸

These preferences — nature over nurture, leisure over labor — embody two criteria for assessing claims for exceptions to free trade as an international legal norm. First, the interests to be shielded should be *incommensurate*. If no amount of economic growth or increase in political liberty can offset the threatened loss, trade should be constrained. On the other hand, international trade law should view with extreme suspicion any claims that are easily manipulated vehicles for economic protectionism. This second criterion, *skepticism*, counsels vigilance against protectionist wolves cloaked in woolly talk about “national interests,” “public order,” and “precautionary prudence.”⁹

B. WORLD WAR 2.5

Globalization and Its Losers triggered vigorous criticism. Syracuse historian Elisabeth Lasch-Quinn, outraged at what she calls my “crass attempt to apply Darwinism to social life,”¹⁰ denounces my “offhand” disregard of “jobs and culture[s]” threatened by globalization.¹¹ She decries my putatively “starved conceptions of democracy and culture,” particularly my “diminished notion of culture as a collection of commodities vying for consumption.”¹² Professor Lasch-Quinn describes me as a shill for the shrewd but deceptive marketing of globalization as “a massive movement of economic self-interest” favoring “multinational corporations” and “other world elites.”¹³

John Miller, a history professor at South Dakota State University, also criticizes the metaphorical prominence of

minds are recovering from their fatigue.”); OSCAR WILDE, *THE PICTURE OF DORIAN GRAY* 42 (Norman Page ed., Broadview Press 1998) (1890) (“All art is quite useless.”).

8. Daniel A. Farber, *Environmental Federalism in a Global Economy*, 83 VA. L. REV. 1283, 1284 (1997).

9. See generally Jonathan H. Adler, *More Sorry Than Safe: Assessing the Precautionary Principle and the Proposed International Biosafety Protocol*, 35 TEX. INT’L L.J. 173 (2000); Frank B. Cross, *Paradoxical Perils of the Precautionary Principle*, 53 WASH. & LEE L. REV. 851 (1996).

10. Elisabeth Lasch-Quinn, *Democracy Should Not Have Losers*, 9 MINN. J. GLOBAL TRADE 589, 593 (2000).

11. *Id.* at 590-91.

12. *Id.* at 592.

13. *Id.* at 593.

"Darwinian evolution" in my essay.¹⁴ He couches his concern for industries such as "steel, petroleum, and agricultural production"¹⁵ within a more comprehensive defense of "the importance of place in the quality of [human] lives."¹⁶ Ultimately unpersuaded by my "central metaphor,"¹⁷ Professor Miller suggests a variety of rhetorical alternatives, such as theater, sports, and education.¹⁸

Paul B. Thompson, a philosophy professor at Purdue and the author of a treatise on agricultural ethics,¹⁹ criticizes my failure to recognize alternative "way[s] of defining property rights and market structure" in a globalized economy.²⁰ "[M]arket structure and incentives," he observes, "are an artifact created by government, not natural or unchangeable characteristics of an ecological niche."²¹ He praises the European Union's agricultural policies, particularly those which engage citizens as consumers and as voters, in stark contrast with the industrial, commodity-centered model of agricultural regulation in the United States.²² He advocates a "neo-agrarian" philosophy that views agriculture as a "multi-functional" activity, with cultural and environmental components independent of its economic significance.²³

Finally, Robert Wolf, executive director of Free River Press and the editor of a recent anthology of folk literature,²⁴ condemns me as the embodiment of "the centralized world-view of modern-day rationalism."²⁵ He disputes the factual premises of *Globalization and Its Losers*, arguing instead that globalization has fueled gross economic inequality,²⁶ occasioned "great ecological

14. John Miller, *Globalization and Its Metaphors*, 9 MINN. J. GLOBAL TRADE 594, 594 (2000).

15. *Id.* at 597.

16. *Id.* at 599.

17. *Id.* at 601.

18. *See id.* at 600-01.

19. *See* PAUL B. THOMPSON, *AGRICULTURAL ETHICS: RESEARCH, TEACHING, AND PUBLIC POLICY* (1998).

20. Paul B. Thompson, *Globalization, Losers and Property Rights*, 9 MINN. J. GLOBAL TRADE 602, 602 (2000); *see id.* at 606 ("Like many economic analysts, Chen appears to presume that . . . [the] U.S. market structure is 'natural' or perhaps an instance of emergent order.").

21. *Id.* at 604.

22. *See id.* at 606.

23. *Id.* at 609.

24. *See* AN AMERICAN MOSAIC: PROSE AND POETRY BY EVERYDAY FOLK (Robert Wolf ed., 1999) [hereinafter AMERICAN MOSAIC].

25. Robert Wolf, *The Regionalist Answer*, 9 MINN. J. GLOBAL TRADE 610, 610 (2000).

26. *See id.* at 612-13.

devastation in Third World countries,"²⁷ and eroded democratic values.²⁸ Mr. Wolf proposes a comprehensive "quiltwork of regional economies" as an antidote to a worldwide "process of [economic and cultural] homogenization which an increasing number of people perceive as soulless and dehumanizing."²⁹

All four critics condemn globalization as an evil phenomenon. Professor Lasch-Quinn summarizes my critics' collective attitude: trade and economic integration bear the blame for the "cheapening of the cultural environment" and "drastic inequalities of wealth and attendant social divisions, together with tremendous economic instability."³⁰ These complaints echo the "darker voices" that have haunted the otherwise triumphant history of the American republic, the voices that have decried economic concentration and the decay of traditional institutions.³¹ My critics repeat the funereal note struck by Robert Frost in "The Death of the Hired Man": globalization's losers have "Nothing to look backward to with pride, / And nothing to look forward to with hope."³²

Even by legal scholarship's tough standards, this is bare-knuckled criticism.³³ The harsh tone may stem partly from certain epistemological differences. Three of my critics are humanities professors; none has a law degree. All four express varying degrees of disagreement with the evolutionary metaphor. By resorting to economics and evolution, the most dismal of social and biological sciences, I have invited the wrath of an elite corps of "natural Luddites," the "Western intellectuals [who] have never tried, wanted, or been able to understand the industrial revolution, much less accept it."³⁴

27. *Id.* at 613.

28. *See id.* at 614-15.

29. *Id.* at 621.

30. Lasch-Quinn, *supra* note 10, at 592.

31. CHRISTOPHER LASCH, *THE TRUE AND ONLY HEAVEN: PROGRESS AND ITS CRITICS* 39 (1991); accord Jon Lauck, "The Silent Artillery of Time": Understanding Social Change in the Rural Midwest, 19 GREAT PLAINS Q. 245, 245 (1999); cf. Samuel Taylor Coleridge, *Kubla Khan, or a Vision in a Dream*, in *THE COMPLETE POETICS WORKS OF SAMUEL TAYLOR COLERIDGE* 295, 298 at ll. 29-30 (Ernest Hartley Coleridge ed., Oxford University Press 1912) (1816) ("Ancestral voices prophesying war!"). *See generally* ROBERT D. PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* (2000).

32. Robert Frost, *The Death of the Hired Man*, in *COMPLETE POEMS OF ROBERT FROST* 49, 52 at ll. 103-04 (Holt, Reinhart and Winston 1962) (1914).

33. Cf., e.g., Alan D. Freeman, *Truth and Mystification In Legal Scholarship*, 90 YALE L.J. 1229, 1230 (1981) ("[T]rashing is fun. I love trashing."). *See generally* Mark G. Kelman, *Trashing*, 36 STAN. L. REV. 293 (1984).

34. C.P. SNOW, *THE TWO CULTURES: AND A SECOND LOOK* 22 (2d ed. 1965). Snow

At bottom, though, this is a debate whose very nature stirs intense emotions. Globalization is probably the most contentious philosophical issue underlying the law of trade and development. Like anti-Communist hysteria and identity politics, it triggers fighting words³⁵ and fosters zealotry.³⁶ It is an ideological struggle more than half a century in the making. Opposing combatants promote irreconcilable solutions for the secular salvation of billions. Stakes this high are bound to inspire vehemence worthy of Egon Schiele, and perhaps also incoherence worthy of Jackson Pollock.

Thanks to the collapse of the Soviet Union and the United States' *de facto* victory in the Cold War, debates over globalization are the primary, perhaps exclusive, battlegrounds where the legacy of the Second World War is still contested. Anticipating victory, the allied powers convened in Bretton Woods in 1944 to stabilize the postwar economy. The resulting institutions — the General Agreement on Tariffs and Trade (GATT), the International Monetary Fund, and the International Bank for Reconstruction and Development (the "World Bank") — have facilitated a period of unprecedented prosperity.³⁷ Arguably as important to international peacekeeping as NATO, the European Union, and the United Nations, these institutions have heralded what I call *pax mercatoria*.³⁸

Although the capital-exporting, tax-evading multinational

wrote of competing literary and scientific cultures, but he acknowledged the rise of a social science culture. Compare *id.* (attributing anti-industrial hostility to "literary intellectuals" above all others) with *id.* at 70 (identifying the rise of "something like a third culture," a community of social scientists "concerned with how human beings are living or have lived"). See also SHEILA JASANOFF, SCIENCE AT THE BAR: LAW, SCIENCE, AND TECHNOLOGY IN AMERICA 7-11 (1995) (contrasting legal culture with scientific culture). Much of the globalization debate represents an intramural squabble within this third culture.

35. Cf. *Chaplinsky v. New Hampshire*, 315 U.S. 568, 573 (1942).

36. See generally NEIL HAMILTON, ZEALOTRY AND ACADEMIC FREEDOM: A LEGAL AND HISTORICAL PERSPECTIVE 55-106, 248-55, 328-38 (1995) (describing the "fundamentalism of the academic left" as the most recent wave of zealotry to sweep through American academia).

37. See General Agreement on Tariffs and Trade, 55 U.N.T.S. 194; Articles of Agreement of the International Monetary Fund, July 22, 1944, *entered into force* Dec. 27, 1945; Articles of Agreement of the International Bank for Reconstruction and Development, *opened for signature*, Dec. 27, 1945, 60 Stat. 1440, T.I.A.S. No. 1502, 2 U.N.T.S. 134. See generally KENNETH W. DAM, THE RULES OF THE GAME: REFORM AND EVOLUTION IN THE INTERNATIONAL MONETARY SYSTEM (1982); Gerald M. Meier, *The Bretton Woods Agreement — 25 Years Later*, 23 STAN. L. REV. 235 (1971); Andreas F. Lowenfeld, *Is There Law After Bretton Woods?*, 50 U. CHI. L. REV. 380 (1983) (reviewing DAM, *supra*).

38. See Chen, *supra* note 3, at 169.

corporation supposedly epitomizes globalization run amok,³⁹ government evidently still matters. Globalization's most vocal losers have trained the power of popular protest on the World Trade Organization (WTO) and its sister organizations.⁴⁰ As "power seeps upwards" to the WTO, IMF, and World Bank, "so does the attention of interest groups."⁴¹ Critics routinely accuse the Bretton Woods institutions of eroding not only national sovereignty but also the labor and environmental interests guarded by national legislation.⁴²

The so-called Battle in Seattle — the December 1999 riot that derailed the opening of the WTO's millennial round of trade talks — has now attained hallowed status in the localist canon. A common hatred of multilateral organizations, free trade, and global integration has united Ralph Nader with Pat Buchanan, the far left with the far right in group therapy for electoral college frustration. But "America's first post-modern riot" relied on the very phenomenon it condemned.⁴³ The protesters organized via the Internet and traveled in established channels of interstate and international commerce.⁴⁴ They amassed what

39. See Lasch-Quinn, *supra* note 10, at 593; Wolf, *supra* note 25, at 614 (condemning "megalithic" corporations for their assault on "our republican form of government . . . through their campaign contributions"). For a more sober assessment of the global economic impact of multinational corporations, see ORGANISATION FOR ECONOMIC CO-OPERATION & DEVELOPMENT, MEASURING GLOBALISATION: THE ROLE OF MULTINATIONALS IN OECD ECONOMIES (1999).

40. Under the treaty concluding the Uruguay Round of multilateral trade talks, see General Agreement on Tariffs and Trade: Multilateral Trade Negotiations Final Act Embodying the Results of the Uruguay Round of Trade Negotiations, Apr. 15, 1994, 33 I.L.M. 1125 (1994), the WTO assumed all responsibilities theretofore exercised by GATT. See generally Kevin C. Kennedy, *The GATT-WTO System at Fifty*, 16 WIS. INT'L L.J. 421 (1998).

41. Peter J. Spiro, *New Global Potentates, Nongovernmental Organizations and the "Unregulated" Market Place*, 18 CARDOZO L. REV. 957, 958 (1996).

42. See, e.g., Patti Goldman, *The Democratization of the Development of United States Trade Policy*, 27 CORNELL INT'L L.J. 631, 634-43 (1994); Robert F. Housman, *Democratizing International Trade Decision-Making*, 27 CORNELL INT'L L.J. 699, 734-37 (1994); Phillip R. Trimble, *Globalization, International Institutions, and the Erosion of National Sovereignty and Democracy*, 95 MICH. L. REV. 1944, 1945-47 (1997). See generally Mark L. Movsesian, *Sovereignty, Compliance, and the World Trade Organization: Lessons from the History of Supreme Court Review*, 20 MICH. J. INT'L L. 775, 793-94 (1999) (reviewing the relevant legal literature).

43. Gerard Baker, *Starbucks Wars*, FIN. TIMES, Dec. 4, 1999, at 10.

44. Cf. Frank H. Easterbrook, *The State of Madison's Vision of the State: A Public Choice Perspective*, 107 HARV. L. REV. 1328, 1335 (1994) (recognizing how advances in transportation and communications have enhanced the ability of interest groups to extract rents from government); John O. McGinnis, *The Original Constitution and Its Decline: A Public Choice Perspective*, 21 HARV. J.L. & PUB. POLY 195, 208 (1997) (same).

would be, under the circumstances, an embarrassing number of frequent flyer miles. Populist rage at international organizations now takes the form of hacker attacks on the WTO's Web site.⁴⁵ Like the most decadent of the Twelve Southerners who wrote the agrarian manifesto *I'll Take My Stand*,⁴⁶ the newest enemies of industry and trade prefer being "Agrarian[s] by remote control."⁴⁷

It is not unreasonable to view the quartet of responses to *Globalization and Its Losers* as an academic analogue of the Seattle protests. Both episodes are heavy on rhetoric and relatively light on law. This is neither surprising nor objectionable. Especially when the environment hangs in the balance, "[r]hetoric matters."⁴⁸ My critics have nary a law degree among them, and for my part, I have glossed over the technical details of specific trade law controversies. Especially in the hands of "lawyers (and other amateurs),"⁴⁹ economics is more of a persuasive art than a quantitative discipline.⁵⁰ My critics are neither lawyers nor economists, and I claim no more than passing familiarity with such economic concepts as comparative advantage and public choice. What we can competently debate is the ideology and political economy of globalization. Dogma, not doctrine, is the order of the day. With that concession, and with full knowledge that "joining issue is the sincerest form of flattery,"⁵¹ I now respond.

C. RIPOSTE AND RECONSIDERATION

I shall address three overarching themes. First, I shall defend my use of Darwinian metaphors and analysis. Part II of this essay addresses to a deep-seated academic hostility to the application of

45. See Kevin J. Delaney, *Walking the Line Online: Protestors Pick at Their Keyboards to Make Their Point*, WALL ST. J. EUR., June 30, 2000, at 25.

46. TWELVE SOUTHERNERS, *I'LL TAKE MY STAND: THE SOUTH AND THE AGRARIAN TRADITION* (1930).

47. W.J. CASH, *THE MIND OF THE SOUTH* 383 (1941) (observing that Stark Young, a contributor to *I'll Take My Stand* and author of the Confederate romance, *SO RED THE ROSE* (1934), "prefer[red] to live in New York" and "served the *New Republic* as drama critic").

48. Holly Doremus, *The Rhetoric and Reality of Nature Protection: Toward a New Discourse*, 57 WASH. & LEE L. REV. 11, 11 (2000).

49. George J. Stigler & Claire Friedland, *The Literature of Economics: The Case of Berle and Means*, 26 J.L. & ECON. 237, 241 (1983).

50. See generally D. N. McCLOSKEY, *THE RHETORIC OF ECONOMICS* 54-86 (1985).

51. Lynn A. Baker, *Interdisciplinary Due Diligence: The Case for Common Sense in the Search for the Swing Justice*, 70 S. CAL. L. REV. 187, 187 n.* (1996).

evolutionary outside biology. Since 1870 two global economies have risen; only one has fallen.⁵² A new, less rooted class of economic “epiphytes” has thrived in these vacated niches — not in spite of its rootlessness, but because of it.

Because so much of the criticism of *Globalization and Its Losers* consists of a defense of agrarian political theory, in its traditional and its “neo-agrarian” incarnations,⁵³ I shall more fully explain the place of agriculture in international economic law. To the extent that a law review article can meaningfully assess agrarianism, Part III engages this debate. The material and political advantages that my critics tout in defense of agrarianism cannot withstand closer scrutiny. A persistent source of inspiration for opponents of globalization, agrarianism may be the most thoroughly destructive philosophy in international economic relations.

Three of my four critics having implicitly accepted my argument that environmental protection should prevail whenever it conflicts with full employment,⁵⁴ Part IV will shift the focus squarely onto matters of human welfare. Even in their own preferred arena of combat, however, my critics have failed to address the severest and most pressing human issues facing globalized society. Billions continue to live in poverty; the real question is whether engagement in or withdrawal from the global

52. See generally ERIC HOBSBAWN, *THE AGE OF EMPIRE: 1875-1914* (1987) (describing this first wave of globalization as based on the conquest and colonization of non-European lands).

53. See Thompson, *supra* note 20, at 609 (defining neo-agrarianism and distinguishing it from more conventional variants of agrarianism).

54. See Lasch-Quinn, *supra* note 10, at 591 (approving of my “passionate defense of biodiversity” and my endorsement of legal “obligations to engage only in [sustainable] practices”); Miller, *supra* note 14, at 594 (acknowledging that “[s]mall-scale communities often are . . . more dangerous to the environment than are large-scale ones”); Thompson, *supra* note 20, at 602 (“I agree that a more globalized market generally allows more efficient use of natural capital”). Robert Wolf does direct justifiable rage at contemporary environmental travesties, but he assigns exclusive blame to multinational corporations, their customers, and international organizations such as the IMF and World Bank. See Wolf, *supra* note 25, at 613-14. He offers no response to the proposition that poverty and ignorance exacerbate environmental problems, see World Bank, *The Environment: A Global Challenge* at www.worldbank.org/html/extdr/gc/environment/environment.htm (last visited Oct. 23, 2000), much less a more comprehensive assessment of the environmental impact of free trade. See generally Robert E. Hudec, *Differences in National Environmental Standards: The Level-Playing-Field Dimension*, 5 MINN. J. GLOBAL TRADE 1 (1996); John H. Jackson, *World Trade Rules and Environmental Policies: Congruence or Conflict?*, 49 WASH. & LEE L. REV. 1227 (1992); Thomas J. Schoenbaum, *International Trade and Protection of the Environment: Irreconcilable Conflict?*, 86 AM. J. INT’L L. 700 (1992). See also *infra* text accompanying notes 358-366.

economy would better alleviate such suffering. Delivering material succor to the world's losers is a goal we all claim, and I am prepared to pit my prescriptive vision against that of my critics.

In economic terms, the backlash against globalization consists of a call for inefficiency, for "sand in the gears" of economic engines.⁵⁵ At a minimum, the opponents of globalization advocate *productive* inefficiency, so many technologically superseded workers can continue to command higher wages and by extension a bigger slice of the overall economic pie. There is a darker but quite distinct possibility that today's localists would affirmatively favor *allocative* inefficiency. If their preferred segments of society cannot benefit to the same extent as globalization's biggest winners, these critics would rather level downward and eliminate all social surpluses. They pursue a troubling sort of equality.

Localist in varying degrees, my critics indulge in what I call the politics of place. They defend the First World farmers and workers who no longer command lucrative returns on labor in a world increasingly detached from geographically contingent factors of production. The dislocations that capture most of the developed world's political attention are emphatically not famine, pestilence, warfare, and death throughout the developing world. Localism in an epiphytic economy would stifle wealth creation and constrict political freedom across the globe, all in order to shelter incumbent economic interests in Europe, Japan, and North America. To attain any genuine measure of social justice on a global scale, we must eliminate First World localism.

II. OF EVOLUTION AND EPIPHYTES

A. THE OLD ORDER

Like *Globalization and Its Losers* itself, this rejoinder will begin with a metaphoric application of natural history to contemporary law and policy.⁵⁶ A rather strange religious subtext permeates my critics' attack on my Darwinian metaphor. Even as Elisabeth Lasch-Quinn chides me for the "pretentious" allusion to the Pauline epistles,⁵⁷ Robert Wolf accuses me of contempt for the

55. Nicholas Lemann, *No Man's Town*, NEW YORKER, June 5, 2000, at 42, 48.

56. See Chen, *supra* note 3, at 158-60.

57. Lasch-Quinn, *supra* note 10, at 590 (imagining "Darwin rolling in his grave" in response to a passage in which I "cite[] [my] bible"). The offending passage read as follows: "Now abide labor, culture, and ecology, these three. And the least of these is

religious traditions represented by “Socrates, Jesus, the Buddha, Confucius, and St. Francis.”⁵⁸ Meanwhile, John Miller invokes the Hebrew Bible as he decries the normative vacuum at the heart of biological evolution.⁵⁹ Such incoherence and internal contradiction strongly suggest that I struck a raw nerve. Like Upton Sinclair, I aimed at my collective readership’s head and by accident hit my critics in the gut.⁶⁰ In yet another intellectual arena, I have become “the demon for all academic seasons, the villain with a thousand voices.”⁶¹

From this critical cacophony, one clear note does emerge. My critics accuse me of reviving social Darwinism, that hoary blend of sociology and evolutionary science that attained its greatest popularity in the late nineteenth and early twentieth century.⁶² According to Professor Lasch-Quinn, I use social Darwinism to “cast globalization as an unstoppable force whose progress is predestined.”⁶³ Despite acknowledging my advocacy of “wealth transfers” through law, Professor Miller equates my acceptance of many “market-driven social and economic change[s]” with the social Darwinists’ willingness “to sacrifice entire categories of people to the steamroller of economic growth and development.”⁶⁴

These accusations are baseless. I reject Herbert Spencer’s vulgarization of natural selection as “survival of the fittest.”⁶⁵ Nor do I endorse Julian Huxley’s characterization of evolutionary progress as “increased control over and independence of the environment.”⁶⁶ The Darwinian process — the actual biological phenomenon as opposed to any sociological projection of its significance — does not represent an inexorable march toward

labor.” Chen, *supra* note 3, at 217. I indeed intended the biblical allusion but did not cite 1 *Corinthians* 13:13.

58. Wolf, *supra* note 25, at 615.

59. See Miller, *supra* note 14, at 598 & n.11 (citing *Psalms* 8:5).

60. Cf. FLOYD DELL, UPTON SINCLAIR: A STUDY IN SOCIAL PROTEST 106 (1927) (reporting Upton Sinclair’s lament over the public reaction to *THE JUNGLE* (1906): “The author later remarked that he had aimed at the public’s heart and by accident had hit it in the stomach.”).

61. Jim Chen, *Untenured but Unrepentant*, 81 IOWA L. REV. 1609, 1610 (1996) (footnotes omitted).

62. Or, roughly speaking, during the first globalized era between 1870 and 1914. See generally RICHARD HOFSTADTER, *SOCIAL DARWINISM IN AMERICAN THOUGHT* (1992).

63. Lasch-Quinn, *supra* note 10, at 590.

64. Miller, *supra* note 14, at 596.

65. HERBERT SPENCER, 1 *THE PRINCIPLES OF BIOLOGY* 457 (1897); Herbert Spencer, *A Theory of Population, Deduced from the General Law of Animal Fertility*, 62 WESTMINSTER REV. 468, 499-500 (1852).

66. JULIAN S. HUXLEY, *EVOLUTION: THE MODERN SYNTHESIS* 564-65 (1942).

“progress.” Diversity in life forms, not complexity as such, is the true hallmark of evolutionary success.⁶⁷ By this natural standard, the “transient dominion” of the last surviving hominid species promises “[n]either intrinsic superiority [n]or prospects for extended survival.”⁶⁸ To the extent that Professor Lasch-Quinn is implicitly trying to engage me in the longstanding intellectual battle over the notion of progress,⁶⁹ she should observe that the evolutionary metaphor negates rather than affirms the possibility of progress.

I do stand guilty of a charge lodged by Professor Miller. Evolution as rhetorical framework “lack[s] . . . a standard of value.”⁷⁰ *Globalization and Its Losers* used the evolutionary metaphor merely to *describe* economic and social losses attributable to globalization, not to *prescribe* any policies or preferences in light of such losses. Darwinian evolution, properly understood, makes no ideological commitments. Observers more sympathetic to my critics’ social concerns have applied the same metaphor.⁷¹ At most I am rehearsing and sharpening my “skill in wielding metaphors and symbols,” my aptitude for “us[ing] . . . symbolic intuition to uncover general patterns of resemblance.”⁷²

I neither am the first nor will be the last nonbiologist to exploit this tool. A systematic influx of Darwinian ideas has touched off a miniature revolution in the social sciences.⁷³ Extinction, a natural phenomenon, “also threatens things that do not fit” strictly biological categories, such as “cultural behavior

67. See, e.g., STEPHEN JAY GOULD, *FULL HOUSE: THE SPREAD OF EXCELLENCE FROM PLATO TO DARWIN* 19-21 (1996).

68. *Id.* at 73.

69. See text accompanying note 63. See generally, e.g., LASCH, *supra* note 31; ROBERT A. NISBET, *THE HISTORY OF THE IDEA OF PROGRESS* (1993).

70. Miller, *supra* note 14, at 597.

71. See A. Dan Tarlock, *Can Cowboys Become Indians? Protecting Western Communities as Endangered Cultural Remnants*, 31 ARIZ. ST. L.J. 539, 539 (1999) (according “more legitima[cy] than many have assumed” to claims that rural communities in the western United States “represent endangered cultures that should be preserved”).

72. RICHARD DAWKINS, *UNWEAVING THE RAINBOW: SCIENCE, DELUSION AND THE APPETITE FOR WONDER* 186 (1998); accord William H. Rodgers, Jr., *The Most Creative Moments in the History of Environmental Law: The Who’s*, 39 WASHBURN L.J. 1, 9 (1999).

73. See generally *THE ADAPTED MIND: EVOLUTIONARY PSYCHOLOGY AND THE GENERATION OF CULTURE* (Jerome H. Barkow, Leda Cosmides & John Tooby eds. 1992); D.E. BROWN, *HUMAN UNIVERSALS* (1991); CARL N. DEGNER, *IN SEARCH OF HUMAN NATURE: THE DECLINE AND REVIVAL OF DARWINISM IN AMERICAN SOCIAL THOUGHT* (1991).

patterns” and “cultural artifacts.”⁷⁴ In stark contrast with the standard social science model, the integrated causal model of evolutionary psychology examines human behavior in the context of the larger natural world in which it evolved.⁷⁵ In legal academia, an intellectual community that imports its best ideas,⁷⁶ a growing body of scholarship heralds a neo-Darwinian *avant garde*.⁷⁷ The second global economy, made possible by the international order and industrial apparatus born of the world wars that destroyed its predecessor,⁷⁸ has inflicted catastrophic losses on less mobile forms of capital and labor.

Evolution is an especially apt metaphor for a world driven by technological change and social upheaval. John Miller⁷⁹ and Paul Thompson⁸⁰ acknowledge the debt that evolutionary economics owes to Darwinism.⁸¹ It is almost impossible to speak of technological change and the economic drivers of development without acknowledging this contribution. Economists already lament that “current discussions on regulatory reform do not give

74. Fred P. Bosselman, *Extinction and the Law: Protection of Religiously Motivated Behavior*, 68 CHI.-KENT L. REV. 15, 15 (1993).

75. See generally EDWARD O. WILSON, *CONSENSUS: THE UNITY OF KNOWLEDGE* (1998).

76. See generally Richard A. Posner, *The Decline of Law as an Autonomous Discipline: 1962-1987*, 100 HARV. L. REV. 761 (1987).

77. See, e.g., Cheryl Hanna, *Can a Biological Inquiry Help Reduce Male Violence Against Females? Or What's a Nice "Gal" like Me Doing at a Conference like This?*, 22 VT. L. REV. 333 (1997); Cheryl Hanna, *Sometimes Sex Matters: Reflections on Biology, Sexual Aggression, and Its Implications for the Law*, 39 JURIMETRICS J. 261 (1999); John O. McGinnis, *The Human Constitution and Constitutive Law: A Prolegomenon*, 8 J. CONTEMP. LEGAL ISSUES 211 (1997); John O. McGinnis, *The Original Constitution and Our Origins*, HARV. J. L. & PUB. POL'Y 251 (1996).

78. See generally David A. Westbrook, *Law Through War*, 48 BUFF. L. REV. 299 (2000) (delineating a jurisprudence of war).

79. See Miller, *supra* note 14, at 595 (acknowledging some “similarity between what happens in the international marketplace and what happens in the biological realm”).

80. See Thompson, *supra* note 20, at 604 (acknowledging the economic advantages of large producers in a policy environment that reduces the “potential for losses from investments that expand production and increase yields than from limiting expenses or shifting to alternative crops and other value-added activities”).

81. See, e.g., RICHARD R. NELSON & SIDNEY G. WINTER, *AN EVOLUTIONARY THEORY OF ECONOMIC CHANGE* (1982); THE ELGAR COMPANION TO INSTITUTIONAL AND EVOLUTIONARY ECONOMICS (Geoffrey M. Hodgson *et al.* eds., 1994); Armen A. Alchian, *Uncertainty, Evolution, and Economic Theory*, 58 J. POL. ECON. 211 (1950); Giovanni Dosi & Richard R. Nelson, *An Introduction to Evolutionary Theories in Economics*, 4 J. EVOLUTIONARY ECON. 153 (1994); E. Donald Elliott, *The Evolutionary Tradition in Jurisprudence*, 85 COLUM. L. REV. 38 (1985); Mark J. Roe, *Chaos and Evolution in Law and Economics*, 109 HARV. L. REV. 641 (1996); Hal Varian, *The Law of Recombinant Growth*, THE INDUS. STD., Mar. 6, 2000, available at <http://www.thestandard.com/article/display/0,1151,11884,00.html>.

adequate attention to considerations of dynamic efficiency.”⁸² This is a gross oversight, for “[t]he static gains and losses from regulation are probably small compared to the historical gains in welfare resulting from innovation and productivity growth.”⁸³ The growing prominence of advanced biotechnology in international law and the global economy makes a practical necessity of evolutionary thinking.⁸⁴ We can no longer afford to ignore Darwinism simply because some intellectuals feel repulsed by its misapplication during a previous generation. “[R]ather than trying to conform” the scientific method to some set of “moral values,” perhaps we should apply “scientific theories” as if they were designed to “account for facts and inspire new research.”⁸⁵

There is perhaps an even darker explanation for my critics’ outrage. Today’s academic left harbors almost as much hostility to Darwinism as does the unschooled right.⁸⁶ This should not be especially surprising; postmodernists and religious fundamentalists alike reject the Enlightenment.⁸⁷ The left-wing variant of creationism merely replaces the intelligent designer of Genesis with the *tabula rasa*, the Skinner box, and other icons of social determinism. Whether it comes from the left or the right, ideological tyranny over science rarely serves “progressive, humanitarian” ends.⁸⁸ The “blank slate” of the standard social science model “is a dictator’s dream.”⁸⁹ Untouched by the neo-Darwinian revolution, today’s academic left can only repeat the tired postmodern mantra in which “[t]here is no good [or] evil,” in

82. Ha-Joon Chang, *The Economics and Politics of Regulation*, 21 *CAMB. J. ECON.* 703, 721 (1997).

83. Paul L. Joskow & Nancy L. Rose, *The Effects of Economic Regulation*, in 2 *HANDBOOK OF INDUSTRIAL ORGANIZATION* 1449, 1484 (Richard Schmalensee & Robert D. Willig eds., 1989) (“It is distressing that so little effort has been devoted to measuring the effects of regulation on innovation and productivity growth”).

84. See Ryan M.T. Iwasaka, Note, *Chakrabarty to Chimeras: The Growing Need for Evolutionary Biology in Patent Law*, 109 *YALE L.J.* 1505 (2000).

85. MILLER, *supra* note 7, at 137; see also STEVEN PINKER, *THE LANGUAGE INSTINCT: HOW THE MIND CREATES LANGUAGE* 427 (1994) (“Wishing for [science] to work in some way as a shortcut to justifying some ethical principle undermines both the science and ethics (for what happens to the principle if the scientific facts turn out to go the other way?).”).

86. Or, for that matter, the erudite right. Cf. *Tangipahoa Parish Bd. of Educ. v. Freiler*, 120 S. Ct. 2706, 2709 (2000) (Scalia, J., dissenting from denial of certiorari) (mocking “the much beloved secular legend of the Monkey Trial”).

87. See generally Suzanna Sherry, *The Sleep of Reason*, 84 *GEO. L.J.* 453, 457-64 (1996).

88. PINKER, *supra* note 85, at 427.

89. *Id.*

which "there is only power, and those too weak to seek it."⁹⁰

A phenomenon as complex and comprehensive as globalization demands all the tools in the kit. Evolutionary economics, evolutionary psychology, and even plain vanilla evolutionary biology all bear on the subject. Among other things, a dollop of Darwinian insight would expose the impossibility of any legal agenda premised on the supposed agrarian virtue of "voluntary simplicity."⁹¹ No tyrant, whether cloaked in governmental garb or ecclesiastical vestments, could banish "consumerism, leisure, and delirious pursuit of novelty"⁹² more readily than he or she could abolish sex, for the reproductive impulse is the source of all of these putative vices.⁹³ Or, to pick a more tangible example, the intractable nature of wetlands preservation arises from humans' biological preference for "tree-studded land on prominences overlooking water."⁹⁴ Thanks to "humans' love for proximity to water," wetlands tend to "be attractive sites for development."⁹⁵ Therein lies a more general truth: Much of what postmodernism regards as an arbitrary social construct⁹⁶ is actually the expression of "biophilia," or the "innate tendency" that leads human beings "to focus on life and lifelike processes," "to distinguish life from the inanimate," and to value "[n]ovelty and diversity."⁹⁷

Our understanding of the law and economics of development

90. J.K. ROWLING, *HARRY POTTER AND THE SORCERER'S STONE* 291 (1997); cf. Daniel A. Farber, *Missing the "Play of Intelligence,"* 36 WM. & MARY L. REV. 147, 159 (1994) (describing the academic debate over affirmative action, one profoundly touched by postmodern thought, as "hav[ing] worn deep grooves repeating the same basic arguments and counter arguments over and over").

91. Gene Logsdon, *The Importance of Traditional Farming Practices for a Sustainable Agriculture*, in MEETING THE EXPECTATIONS OF THE LAND: ESSAYS IN SUSTAINABLE AGRICULTURE AND STEWARDSHIP 3, 18 (Wes Jackson, Wendell Berry & Bruce Coleman eds., 1984).

92. *Id.*

93. See MILLER, *supra* note 7, at 258-91.

94. Edward O. Wilson, *Biophilia* 110 (1984); see generally Robert S. Ulrich, *Biophilia, Biophobia, and Natural Landscapes*, in *The Biophilia Hypothesis* 73 (Stephen R. Ekler & Edward O. Wilson eds., 1993); Judith H. Heerwager & Gordon H. Orians, *Humans, Habits, and Aesthetics*, in *supra*, at 138.

95. ROBERT V. PERCIVAL ET AL., *ENVIRONMENTAL REGULATION: LAW, SCIENCE, AND POLICY* 975 (2d ed. 1996). *But cf.* *Leovy v. United States*, 177 U.S. 621, 636 (1900) (describing the "remov[al]" of wetlands as "nuisances" as a "legitimate[] exercise[]" of "the police power"); JOHN A. KUSLER, *OUR NATIONAL WETLAND HERITAGE: A PROTECTION GUIDEBOOK* 1 (1983) (describing the long history of public subsidies for the draining and filling of wetlands as "wastelands, sources of mosquitos and impediments to development and travel").

96. See Lasch-Quinn, *supra* note 10, at 592-93.

97. WILSON, *supra* note 94, at 1.

would improve exponentially if we treated human history as a branch of natural history.⁹⁸ Among other things, a biologically informed perspective shows that differences in initial natural endowments account for much of the material inequality in today's world.⁹⁹ There is actually a perverse relationship between absolute biological diversity and contemporary socioeconomic welfare: the temperate, relatively nondiverse portions of the northern hemisphere had precisely the combination of plant and animal candidates for domestication that vaulted Eurasia to global domination. Meanwhile, the tropical islands that shelter much of the world's biodiversity pose formidable physical barriers to human habitation and development.¹⁰⁰ We finally have an answer to that bitter question, "How did a continent of berries become a global power?"¹⁰¹ Ironically, it isn't diversity per se, but rather the right combination of factor endowments that dictates the wealth of nations.

In short, refusing to consider evolutionary insights because social Darwinists co-opted the concept of natural selection for odious ideological purposes is akin to eschewing Goethe simply because Goebbels also spoke German. Ideologically committed to a categorical rejection of Darwinian reasoning, my critics cannot meaningfully assess the contributions of evolutionary economics and psychology to a legal analysis of globalization. "*Warum stehen Sie davor? / Ist nicht Türe da und Tor?*"¹⁰² With that invitation, I now extend the biological metaphor that I launched in *Globalization and Its Losers*.

98. See JARED DIAMOND, GUNS, GERMS, AND STEEL: THE FATES OF HUMAN SOCIETIES 405-25 (1997); HUGO HASSINGER, GEOGRAPHISCHE GRUNDLAGEN DER GESCHICHTE (2d ed. 1953). *Contra* Wolf, *supra* note 25, at 610 ("Relating a possibility in human history to a fact of natural history is a mistake.").

99. See DIAMOND, *supra* note 98, at 25, 409-17. *But cf.* DAVID S. LANDES, THE WEALTH AND POVERTY OF NATIONS: WHY SOME ARE SO RICH AND SOME SO POOR (1998) (attributing national differences in wealth to cultural differences).

100. See Barbara Crossette, *Small Islands, Big Trouble: Looking for Paradise? Keep Looking*, N.Y. TIMES, June 11, 2000, § 4, at 1.

101. CALESTOUS JUMA, THE GENE HUNTERS: BIOTECHNOLOGY AND THE SCRAMBLE FOR SEEDS 51-52 (1989) (attributing the United States' success to "plant introduction, technical change and institutional reform"); *accord* Neil D. Hamilton, *Who Owns Dinner: Evolving Legal Mechanisms for Ownership of Plant Genetic Resources*, 28 TULSA L.J. 587, 607-08 (1993).

102. GOETHE'S GEDICHTE IN ZEITLICHER FOLGE 1074 (Heinz Nicolai pub., 1997). Herewith an inelegant English translation of these lines, engraved by the entrance to Goethe's home in Weimar: "What are you standing there for? Open the gate and door."

B. AN ORCHID'S-EYE VIEW OF THE WORLD

My critics did not articulate one complaint that I had anticipated. The typical popular image of evolution as a slow, gradual process conflicts with the reality of globalization as *Blitzkrieg*. Natural history, we now understand, is not a steady progression. At the dawn of the modern era, the contrary point of view was firmly entrenched. A faith in incremental observations and orderly predictability characterized both social and natural science. *Natura non facit saltum*, said economist and ecologist alike.¹⁰³ No longer. Nature does indeed take fantastic leaps; evolution proceeds by fits and starts. Though more widely accepted than any other explanation,¹⁰⁴ the meteor impact theory of dinosaur extinction still carries a shockingly "apocalyptic flavour."¹⁰⁵ The human brain's great leap forward took place during a relatively brief phase in the evolution of *Homo sapiens*.¹⁰⁶ Lake Victoria's cichlids, after being decimated by the introduction of the Nile perch, are staging an impressive display of adaptive radiation.¹⁰⁷ Evolution among smaller organisms is blindingly fast, to the dismay of epidemiologists and entomologists.¹⁰⁸

Globalization, to extend the metaphor, is to human history as a meteor strike or some other comparably catastrophic disturbance is to geological history. Even before the Second World War, "creative destruction" of firms and institutions had already set the economic trajectory that would eventually propel the West

103. Compare 1 ALFRED MARSHALL, PRINCIPLES OF ECONOMICS, at xiii (9th ed. 1961) (1890) with LINNAEUS, PHILOSOPHIA BOTANICA § 77 (1750).

104. See generally Luis W. Alvarez et al., *Extraterrestrial Cause for the Cretaceous-Tertiary Extinction*, 208 SCIENCE 1095 (1980).

105. RICHARD FORTEY, LIFE: A NATURAL HISTORY OF THE FIRST FOUR BILLION YEARS OF LIFE ON EARTH 253 (1997); see also *id.* at 260 (describing the professional debate over the Cretaceous-Tertiary boundary as signaling the end of "the innocence of the world").

106. See MILLER, *supra* note 7, at 17-18 (noting that brain expansion distinguished genus *Homo* from its primate relatives between two million and 100,000 years before the present and that the achievements comprising human civilization occurred much later).

107. See Carol Kaesuk Yoon, *Lake Victoria's Lightning-Fast Origin of Species*, N.Y. TIMES, Aug. 27, 1996, at C1.

108. See, e.g., LAURIE GARRETT, THE COMING PLAGUE: NEWLY EMERGING DISEASES IN A WORLD OUT OF BALANCE 414 (1994) (describing the speed with which bacteria mutate, especially in response to antibiotics); MATT RIDLEY, THE RED QUEEN: SEX AND THE EVOLUTION OF HUMAN NATURE 66 (1993) (noting that because "parasites are usually smaller than their hosts," parasitic bacteria "pass through more generations in a given time than their hosts"). See generally David P. Fidler, *The Globalization of Public Health: Emerging Infectious Diseases and International Relations*, 5 IND. J. GLOBAL LEG. STUD. 11 (1997).

past its fascist and communist rivals.¹⁰⁹ The war itself merely accelerated the process. Roughly half a century after V-J Day, America realized its true victory. Economic integration and technological standardization, mostly on terms favorable to or even dictated by the United States, have minimized "geographical, religious, and political differences" to such an extent that "a Christian bank clerk in Chicago, a Buddhist bank clerk in Tokyo, and a . . . bank clerk in [formerly communist] Moscow" lead essentially identical lives.¹¹⁰ The sheer success of the American model of globalization explains much of the backlash against it. Economic and social niches of long standing have evaporated. Others have taken their place, but mostly for the benefit of new actors and at the expense of established businesses and institutions. The resulting "frustrat[ion]" and "sense of powerlessness" have inspired anarchic, sometimes violent reactions to globalization.¹¹¹

In other words, globalization's impact on civilization roughly resembles what happened to the natural world across the Cretaceous-Tertiary boundary. Social institutions and economic actors, old and new, are fiercely competing in a profoundly disturbed environment. Human institutions are undergoing the sort of adaptive radiation that characterized the Eocene explosion in mammalian diversity. Although professional economists are withholding their final judgment, there is broad recognition that a "new economy" may in fact be taking shape.¹¹²

The evidence of economic revolution is strongest in the United States, the epicenter of contemporary globalization.¹¹³ Although the United States "is already at the world productivity frontier in many industries," the thorough development and diffusion of information and communications technologies have sustained stronger non-inflationary growth for nearly two decades.¹¹⁴ Throughout this period, the United States has led

109. See generally JOSEPH A. SCHUMPETER, *CAPITALISM, SOCIALISM, AND DEMOCRACY* 81-86 (1942).

110. LYON SPRAGUE DE CAMP, *THE ANCIENT ENGINEERS* 17 (1988).

111. *Industrial Society and Its Future*, supp. to WASH. POST, Sept. 19, 1995, ¶ 67, at 2 (Unabomber manifesto).

112. See ORGANISATION FOR ECONOMIC CO-OPERATION & DEVELOPMENT, *IS THERE A NEW ECONOMY? FIRST REPORT ON THE OECD GROWTH PROJECT 3* (2000) [hereinafter *NEW ECONOMY*].

113. See THOMAS L. FRIEDMAN, *THE LEXUS AND THE OLIVE TREE: UNDERSTANDING GLOBALIZATION* 308 (1999) ("With the end of the Cold War, globalization is globalizing Anglo-American-style capitalism . . . It is globalizing American culture and cultural icons. It is globalizing the best of America and the worst of America.").

114. ANDREA BASSANINI ET AL., *KNOWLEDGE, TECHNOLOGY AND ECONOMIC*

the world in exports of information and information-based technologies.¹¹⁵

America has continued to stretch its technological lead. Technology industries in the United States grew more than 10 percent a year from 1990 to 1997 "and accounted for about 40 percent of" the country's "total manufacturing labor productivity growth" during that period.¹¹⁶ Because measurable growth tends to lag behind the introduction of new economies,¹¹⁷ the economic impact of the Internet and other technologies may not yet be fully realized.¹¹⁸ A long period of "sustained economic strength with low inflation," however, supports a tentative assumption that "the U.S. economy . . . [has] crossed into a new era of greater economic prosperity and possibility, much as it did after the development and spread of the electric dynamo and the internal combustion engine."¹¹⁹

Let us divide the socioeconomic terrain after globalization according to the three broad categories of orchids: epiphytes, lithophytes, and terrestrials.¹²⁰ In nature, terrestrial orchids live as most other flowering plants, with roots in soil. Epiphytes grow in trees; lithophytes, on rocks. By my parallel terminology, terrestrials are industries bound by natural resources and sedentary labor to a specific locale. Typically they make, grow, or extract tangible goods. Under globalization, terrestrial industries have ceded much economic *Lebensraum* to the epiphytic information-based economy and even to the lithophytic economy of

GROWTH: RECENT EVIDENCE FROM OECD COUNTRIES 3 (2000).

115. See generally ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, ECONOMIC ARGUMENTS FOR PROTECTING INTELLECTUAL PROPERTY RIGHTS EFFECTIVELY (1992) (reporting that such exports accounted for 67 percent of United States exports, compared to 51 percent of Japanese exports and 44 percent of German exports).

116. *Id.* at 14; see also Stephen D. Oliner & Daniel E. Sichel, *The Resurgence of Growth in the Late 1990s: Is Information Technology the Story?* 25, 27 (Federal Reserve Bank, May 2000) (reporting that information and communications technology accounted for 48 percent of overall labor productivity growth in the United States from 1991-95 and 56 percent from 1996-99). See generally Kevin Stiroh, *Computers, Productivity, and Input Substitution*, 36 ECON. INQ. 175 (1998).

117. See Paul A. David, *The Dynamo and the Computer: An Historical Perspective on the Productivity Paradox*, 80 AM. ECON. REV. 355, 356 (1990); Mehmet Yorukoglu, *The Information Technology Productivity Paradox*, 1 REV. ECON. DYNAMICS 551 (1998).

118. See BASSANINI ET AL., *supra* note 114, at 23.

119. U.S. DEPT OF COMMERCE, ECONOMICS & STATISTICS ADMIN., DIGITAL ECONOMY 2000, at v (2000) available at <http://www.esa.doc.gov/de2000.pdf>.

120. See ERIC HANSEN, ORCHID FEVER: A HORTICULTURAL TALE OF LOVE, LUST, AND LUNACY 59 (2000).

corrupt and illegal markets. Detached as they are from earthbound nutrients, tree-dwelling epiphytes are the perfect representation of an information-based economy severed from local markets and from conventional, place-based factors of production. Ideas, fashions, market share, and political dominance rise and fall with blinding speed in the epiphytic economy.¹²¹ Real epiphytes “aren’t parasites — they give nothing to” their hosts “and get nothing from [them] except a good place to sit.”¹²² Though the same could be said for real lithophytes, their preference for a niche disdained by virtually all other flowering plants makes them an apt embodiment of smugglers, thieves, and pirates. But the economic world, like its natural counterpart, has limited space and energy. At some point, success for one species comes at its competitors’ expense.

Globalization and Its Losers focused on the legitimate epiphytic economy to the nearly complete exclusion of its shadowy lithophytic counterpart. So do my critics’ responses and this defense. It is worth noting, however, that most protests against globalization focus on multinational corporations and multilateral international organizations, even though the recent expansion of the underground economy and of international terrorism is similarly attributable to globalization.¹²³ “Modern piracy” is “a troubling symptom of a new world order, one shaped by a fierce Darwinian struggle in the feral markets of modern international trade.”¹²⁴ Alone among my critics, Elisabeth Lasch-Quinn indirectly blames globalization for the rise of “[m]ilitary conflict . . . [as] a fact of daily life in vast quadrants of the world.”¹²⁵ In the larger community of globalization’s antagonists, hers is not the voice of critical consensus, but rather of lonely

121. See Eyal Benevenisti, *Exit and Voice in the Age of Globalization*, 98 MICH. L. REV. 167, 171-75 (1999); Dan L. Burk, *Virtual Exit in the Global Information Economy*, 73 CHI.-KENT L. REV. 943 (1999); Eugene Volokh, *Cheap Speech and What It Will Do*, 104 YALE L.J. 1805, 1808-33 (1995).

122. SUSAN ORLEAN, *THE ORCHID THIEF* 48 (1998).

123. See FRIEDMAN, *supra* note 113, at 267-83 (describing phenomena such as the rise of kleptocracy and robber baron capitalism in the former Soviet Union and the emboldening of terrorists such as Osama bin Laden); cf. Michael A. Heller, *The Tragedy of the Anticommons: Property in the Transition from Marx to Markets*, 111 HARV. L. REV. 621 (1998) (assigning blame for the stagnant Russian economy to the flowering of rights to exclude, many of them corruptly acquired, after the fall of the Soviet Union). See generally *THE ECONOMICS OF CORRUPTION AND ILLEGAL MARKETS* (Gianluca Fiorentini & Stefano Zamagni eds., 1999).

124. Jack Hitt, *Bandits in the Global Shipping Lanes*, N.Y. TIMES MAGAZINE, Aug. 20, 2000, at 36, 39.

125. Lasch-Quinn, *supra* note 10, at 592.

protest. By the strange moral code that drove the "Battle in Seattle," Nike, McDonald's, and Microsoft are more objectionable than the predators who ensnare eastern European women in the global sex trade or exploit desperate emigrés from China and Mexico. These victims, too, are "losers" in globalization's sweeping drama. Though I regret that I have devoted little attention to their fate, I must wonder how the usual critics of globalization would respond to the massive and sometimes involuntary movement of persons across borders.¹²⁶

But let us return to the task at hand. The epiphytic economy undermines the social compact of the terrestrial nation-state. In a 1996 essay called "Fugitives and Agrarians in a World Without Frontiers,"¹²⁷ I described how an increasingly dominant "fugitive" model of economic development would upset the regulatory and redistributive premises of the conventional "agrarian" state. At that time, I identified a few trends that would continue to favor fugitive capital and intellectual resources over labor and landlocked political power. Barriers to the movement of goods, services, and persons will continue to lose their effectiveness, for fugitive capital flees rapidly from excessive taxation and regulation and even more decisively from catastrophic failures to uphold the rule of law. Network effects, among other phenomena, enhance the economic utility derived from large clumps of consumers.¹²⁸ Efforts to preserve the global commons will collapse in the absence of multilateral cooperation, for no one nation, much less a single region, can comprehend even a single significant sector of the economy within its regulatory embrace.¹²⁹ Four additional years of globalization have solidified these observations. From fugitives and agrarians to epiphytes and terrestrials, nothing has changed but the metaphor. Whether expressed in the lore of the literary South or the taxonomy of the world's sexiest plants,¹³⁰ the message remains the same: No

126. See generally, e.g., *ETHNICITY, CRIME, AND IMMIGRATION: COMPARATIVE AND CROSS-NATIONAL PERSPECTIVES* (Michael Tonry ed., 1997); Margaret E. Montoya, *Border Crossings in an Age of Border Patrols: Cruzando Fronteras Metafóricas*, 26 N.M. L. REV. 1 (1996).

127. Jim Chen, *Fugitives and Agrarians in a World Without Frontiers*, 18 CARDOZO L. REV. 1031 (1996).

128. See generally Mark A. Lemley & David McGowan, *Legal Implications of Network Economic Effects*, 86 CAL. L. REV. 479 (1998).

129. Cf. John H. Jackson, *Reflections on International Economic Law*, 17 U. PA. J. INT'L ECON. L. 17, 24-25 (1996) ("[Given] the difficulty of government regulation of international economic behavior . . . there is today hardly any subject that can be said to be effectively controlled by a single national sovereign.").

130. The Fugitives and Agrarians were overlapping literary circles based in

nation is an island.

More shocking than the scale of globalization is the pallor of its opponents' response. Their counterattack so far consists of a pair of potentially contradictory strategies: anarchy and autarky. One branch of the antiglobalization movement evidently favors vandalism and violent protest. Self-reliance and localism do not necessarily follow from anarchy; the Unabomber affirmatively favored "[f]ree trade agreements like NAFTA and GATT" because "measures that tend to bind the world economy into a unified whole" might make it "easier to destroy the industrial system on a worldwide basis."¹³¹ Perhaps we should defer a comprehensive assessment of antiglobalist anarchy until its profit-seeking counterpart, the lithophytic economy, commands our full attention.

What concerns us, rather, is the solution that my critics apparently prefer: a return to autarky. No one seriously defends the cradle-to-grave welfare state anymore; capital flight and transnational economic integration have all but eliminated that strategy from the arsenal of the rational nation-state.¹³² In its place a chastened left has adopted a new strategy centered on opposition to free trade. Effective trade barriers enable otherwise uncompetitive local industries to mulct consumers for the benefit of incumbent laborers. "If patriotism is . . . the last refuge of the scoundrel, wrapping outdated industry in the mantle of national interest is the last refuge of the economically dispossessed."¹³³ No other industry wears that mantle as thickly as agriculture. Mindful of that dubious distinction, I now turn to the special question of agriculture and agrarianism under globalization.

III. AFFLUENCE AND INFLUENCE IN THE POST- AGRARIAN SOCIETY

My critics unanimously endorse agriculture as a bulwark against globalization's economic, environmental, and social ills.

Nashville during the early twentieth century. John Crowe Ransom, Donald Davidson, Allen Tate, and Robert Penn Warren were prominent members of both groups. See JOHN L. STEWART, *THE BURDEN OF TIME: THE FUGITIVES AND AGRARIANS* (1965); Chen, *supra* note 127, at 1037-40.

131. *Industrial Society and Its Future*, *supra* note 111, ¶ 196.

132. See FRIEDMAN, *supra* note 113, at 86-87 (describing a "Golden Straitjacket" that commits governments to privatization, low inflation, price stability, free trade, and elimination of barriers to direct foreign ownership and investment).

133. KENICHI OHMAE, *THE END OF THE NATION STATE: THE RISE OF REGIONAL ECONOMIES* 62 (1995).

Each critic articulates a distinct agrarian rationale. Drawing inspiration from the celebrated "environmentalist-farmer Wendell Berry,"¹³⁴ Elisabeth Lasch-Quinn embraces both environmental protection and full employment under the common aegis of "sustainability."¹³⁵ John Miller justifies protection of "a certain minimum level of production" of foodstuffs and other "basic goods" in the name of national "safety and security."¹³⁶ Paul Thompson expounds an elegant "neo-agrarian" political theory that acknowledges and accommodates the "special" . . . way in which environmental impact and sense of community are so intimately related to the means of [agricultural] production."¹³⁷ Finally, Robert Wolf enshrines agricultural self-sufficiency as the foundation of his localist utopia.¹³⁸

This veneration of agriculture as antidote to industrial maladies is deeply ironic. Historically speaking, agricultural ascendancy has spawned inequality, even despotism.¹³⁹ Agriculture's more recent decline in economic and social significance bears far less responsibility for contemporary injustice. "[N]o single tool in human history [has] wreaked [as much] havoc between women and men or stimulated so many changes in human patterns of sex and love as the plow."¹⁴⁰ This revolutionary invention sparked a social preference for men as plowbearers and for sons as farm heirs that persists even in today's post-agrarian societies.¹⁴¹ It is but a short ecofeminist step thence to recognizing "men's mistreatment and subordination of women" as agents of "environmental despoliation."¹⁴² Thousands

134. See Lasch-Quinn, *supra* note 10, at 591 & n.3 (invoking the anti-agribusiness critique of "environmentalist-farmer Wendell Berry").

135. *Id.* at 593.

136. Miller, *supra* note 14, at 597.

137. Thompson, *supra* note 20, at 609.

138. See Wolf, *supra* note 25, at 620.

139. See JARED M. DIAMOND, *THE THIRD CHIMPANZEE: THE EVOLUTION AND FUTURE OF THE HUMAN ANIMAL* 187-89 (1992). On the origins of Eurasian agriculture, see generally ALBERT J. AMMERMAN & LUIGI L. CAVALLI-SFORZA, *THE NEOLITHIC TRANSITION AND THE GENETICS OF POPULATIONS IN EUROPE* 9-33 (1984); SUSAN A. GREGG, *FORAGERS AND FARMERS: POPULATION INTERACTION AND AGRICULTURAL EXPANSION IN PREHISTORIC EUROPE* (1988); COLIN RENFREW, *ARCHAEOLOGY AND LANGUAGE: THE PUZZLE OF INDO-EUROPEAN ORIGINS* 145-77 (1987).

140. See HELEN E. FISHER, *ANATOMY OF LOVE: THE NATURAL HISTORY OF MONOGAMY, ADULTERY, AND DIVORCE* 278-79 (1992).

141. See DIAMOND, *supra* note 139, at 189-91.

142. Richard Delgado, *Our Better Natures: A Revisionist View of Joseph Sax's Public Trust Theory of Environmental Protection, and Some Dark Thoughts on the Possibility of Law Reform*, 44 VAND. L. REV. 1209, 1222 (1991). See generally JANET BIEHL, *RETHINKING ECOFEMINIST POLITICS* (1991); *ECOFEMINISM AND THE SACRED*

of years later, a lethally improved plow combined with the cotton gin to whet early America's destructive appetite for slavery and conquest.¹⁴³ Today's bourgeois masses — the sedentary populations that allegedly plunder rural regions for "the resources that urbanites need to survive"¹⁴⁴ — would never have arisen but for the efficiency of Neolithic agriculture.¹⁴⁵

But I come to praise the bourgeoisie, not to bury it.¹⁴⁶ In mentioning bourgeois society, I intend merely to remind my humanities-trained critics that the rise of the urban middle class is the direct and inevitable historical consequence of the adoption of agriculture.¹⁴⁷ The foot "soldiers in capitalist democracies" today are "shufflers of paper," not tillers of the soil.¹⁴⁸ To recognize such bourgeois virtue not only undermines the agrarian critique of globalization, but also rehabilitates economic integration across borders as a safeguard of intangible freedoms. I shall now examine the countervailing agrarian values promoted by my critics — full employment, environmental protection, civic virtue — and shall dismiss each of them in turn.

(Carol J. Adams ed., 1993); ECOFEMINISM: WOMEN, ANIMALS, NATURE (Greta Gaard ed., 1993); MARIA MIES, ECOFEMINISM (1993); REWEAVING THE WORLD: THE EMERGENCE OF ECOFEMINISM (Irene Diamond & Gloria Feman Orenstein eds., 1990).

143. See WILLARD W. COCHRANE, *THE DEVELOPMENT OF AMERICAN AGRICULTURE: A HISTORICAL ANALYSIS* 189-95 (1979).

144. Wolf, *supra* note 25, at 618.

145. See DIAMOND, *supra* note 98, at 104-13.

146. Cf. Jim Chen, *The American Ideology*, 48 VAND. L. REV. 809, 875 (1995) ("We need a bourgeois populism, a populism that reflects the values of the middle-class masses whose consumer expenditures and tax payments have financed the American Dream for farmers and factory workers alike.").

147. See *Communist Manifesto*, *supra* note 2, at 474-75.

148. D.N. McCloskey, *Bourgeois Virtue*, 63 AM. SCHOLAR 177, 177 (1994).

A. HELP WANTED¹⁴⁹

The least overtly agrarian of my critics, Professor Lasch-Quinn is nevertheless the most honest herald of the economic anxiety that fuels opposition to globalization. Jobs, she asserts, are essential to "the sustainability of human beings themselves."¹⁵⁰ For her, as for so many others who value gains for the disadvantaged over more than gains for the relatively prosperous, "unemployment is *the* economic problem."¹⁵¹

But sustainability has nothing to do with full employment, a distinct and often contradictory objective. Sustainability, properly understood, is a strictly environmental concept.¹⁵² "Sustainable agriculture consists" solely of "processes involving biological activities of growth or reproduction intended to produce crops, which do not undermine our future capacity to successfully practice agriculture" or "exhaust any irreplaceable resources."¹⁵³ The Convention on Biological Diversity likewise defines "sustainable development" strictly as the "use of [natural resources] in a way and at a rate that does not lead to the long-term decline" of such resources, so that they will retain their "potential to meet the needs and aspirations of present and future generations."¹⁵⁴ These definitions satisfy what Paul Thompson has

149. Unless otherwise specified, employment statistics in this section are derived from a memorandum by Nicole A. Saharsky (August 21, 2000) (on file with the MINNESOTA JOURNAL OF GLOBAL TRADE). See also U.S. DEPT OF COMMERCE, U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES (104th-119th eds., 1984-99) (detailing United States employment statistics) [hereinafter STATISTICAL ABSTRACT]; EUROPEAN COMM'N, THE AGRICULTURAL SITUATION IN THE EUROPEAN UNION: 1998 REPORT, at T/116 (1999) (detailing European Union agricultural employment statistics) [hereinafter AGRICULTURAL SITUATION IN EUROPE]; EUROPEAN COMM'N, SITUATION AND OUTLOOK: RURAL DEVELOPMENTS 15 (1997) (same) [hereinafter SITUATION AND OUTLOOK]; STATISTICAL OFFICE OF THE EUROPEAN COMMUNITIES, BASIC STRATEGIES OF THE COMMUNITY: COMPARISON WITH SOME EUROPEAN COUNTRIES, CANADA, THE U.S.A., JAPAN, AND THE U.S.S.R. (21st-28th eds., 1983-91) (detailing European Union non-agricultural employment statistics) [hereinafter COMMSTAT]; STATISTICAL OFFICE OF THE EUROPEAN COMMUNITIES, BASIC STATISTICS OF THE EUROPEAN UNION: COMPARISON WITH THE PRINCIPAL PARTNERS OF THE EUROPEAN UNION (31st-33d eds., 1994-96) (same) [hereinafter EUROSTAT].

150. Lasch-Quinn, *supra* note 10, at 593.

151. Mark Kelman, *Could Lawyers Stop Recessions? Speculations on Law and Macroeconomics*, 45 STAN. L. REV. 1215, 1224-25 (1993) (footnote omitted).

152. See Chen, *supra* note 3, at 197-98.

153. Hugh Lehman, E. Ann Clark & Stephan F. Weise, *Clarifying the Definition of Sustainable Agriculture*, 6 J. AGRIC. & ENVTL. ETHICS 127, 139 (1993).

154. 1992 United Nations Conference on Environment and Development: Convention on Biological Diversity, *concluded at* Rio de Janeiro, June 5, 1992, art. 2, 31 I.L.M. 818, 824 (1992).

called “ecological sustainability,” the use of “practice[s] . . . that do[] not violate or disrupt natural biological processes, especially when biological processes are essential to renewal of the organic materials necessary for life.”¹⁵⁵ As Professor Thompson has acknowledged elsewhere, environmental sustainability is conceptually distinct from “fairness, equity, justice and the other central normative concepts for evaluating a given civilization.”¹⁵⁶ To include human employment dilutes sustainability and exposes it to the sort of interest-group capture that is the bane of true environmental protection.¹⁵⁷

By contrast, the agrarian variant of sustainability makes a fetish of work. It draws from a broader, left-of-center belief that “work [is] the primary means by which ordinary people are attached to civil society.”¹⁵⁸ Wendell Berry says it most succinctly: “The use only of our bodies” is what makes agriculture environmentally sound and morally desirable.¹⁵⁹ One who does not work the farm day to day is hardly a “real” farmer.¹⁶⁰ In endorsing the agrarian work fetish, Professor Lasch-Quinn revives the old Soviet distinction between the failure Western “bourgeois constitution[alism]” which fails to “confirm any important socioeconomic rights,” and the Soviet legal system’s protection of

155. THOMPSON, *supra* note 19, at 189-90.

156. *Id.* at 196; *cf. id.* At 195-96 (rejecting a right-leaning variant of social sustainability because of its naive “faith that markets will continuously regenerate profit incentives to ensure the production of food”). See generally PAUL B. THOMPSON, *THE SPIRIT OF THE SOIL: AGRICULTURE AND ENVIRONMENTAL ETHICS* (1995) (examining and ultimately rejecting theories of sustainability that incorporate a social dimension).

157. See Jim Chen, *Get Green or Get Out: Decoupling Environmental from Economic Objectives in Agricultural Regulation*, 48 OKLA. L. REV. 333, 338 (1995); Jim Chen, *The Agroecological Opium of the Masses*, 10:4 CHOICES 16, 16 (Winter 1995); *cf.* Doremus, *supra* note 48, at 64 (“The problem with the sustainable development concept is that it is subject to a variety of interpretations . . . [especially by] [e]conomists and ecologists.”).

158. Joel F. Chandler, *Questions About Social Europe by an American Observer*, 18 WIS. INT’L L.J. 437, 439-40 (2000).

159. WENDELL BERRY, *THE HIDDEN WOUND* 8 (2d ed. 1989); WENDELL BERRY, *WHAT ARE PEOPLE FOR?* 72 (1990).

160. See *Hall v. Progress Pig, Inc.*, 610 N.W.2d 420, 428 (Neb. 2000) (requiring that at least one shareholder of a family farm or ranch corporation “be involved on a daily or routine basis in all aspects of the farm or ranch activities,” either in “the physical chores attendant to the farm” or in “the mental and business activities of the operation”); see also *Pig Pro Nonstock Co-op. v. Moore*, 568 N.W.2d 217, 228 (Neb. 1997) (rationalizing the requirement of daily involvement in farm labor or management as a way of preventing “absentee ownership and operation of farm and ranch land by a corporate entity”).

"the right to work."¹⁶¹ By declaring that "[a]nyone who wants to farm should be free to do so," American agrarianism has incorporated a less overtly socialist version of this creed.¹⁶² American agricultural policy historically "has treated agricultural entrepreneurship — as the economic refuge of the scoundrel."¹⁶³ Agrarians routinely defend agriculture as a bastion against unemployment, especially toward the lower end of the skill spectrum. Jim Hightower has reputedly touted farming as one of the few high-wage professions in the United States still open to someone without a college degree. As the former agriculture commissioner of Texas might say, "You don't need a P-h-D to do the j-o-b."

Pity that none of this is true. We need not even disturb the dubious assumption that unskilled workers can succeed as owner-managers in an industry as technologically intense as First World agriculture.¹⁶⁴ In an epiphytic economy, agriculture's impact on

161. I.S. STEPNOVA, TIME, EVENTS, PEOPLE 103 (1983) (an "English teacher's book" designed for use in Soviet schools). See generally HAROLD J. BERMAN, JUSTICE IN THE U.S.S.R.: AN INTERPRETATION OF THE SOVIET LAW (rev. ed. 1963).

162. DON PAARLBERG, FARM AND FOOD POLICY: ISSUES OF THE 1980S, at 7 (1980); DON PAARLBERG, AMERICAN FARM POLICY 3 (1964); see also Neil D. Hamilton, *Agriculture Without Farmers: Is Industrialization Restructuring American Food Production and Threatening the Future of Sustainable Agriculture?*, 14 N. ILL. U. L. REV. 613, 639 (1994) (restating the agrarian creed as a declaration of financial and managerial independence for farmers). The following statement of the farmers' "catechism" proved worthy of a Pulitzer Prize:

What is a farmer?

A farmer is a man who feeds the world.

What is a farmer's first duty?

To grow more food.

What is a farmer's second duty?

To buy more land.

What are the signs of a good farm?

Clean fields, neatly painted buildings, breakfast at six, no debts, no standing water.

How will you know a good farmer when you meet him?

He will not ask you for any favors.

JANE SMILEY, A THOUSAND ACRES 45 (1991).

163. Jim Chen & Edward S. Adams, *Feudalism Unmodified: Discourses on Farms and Firms*, 45 DRAKE L. REV. 361, 390 (1997).

164. In point of fact, they can't. See, e.g., Hank Becker & Dennis Senft, *Satellites Key to New Farming Aids*, AGRIC. RESEARCH, Feb. 1992, at 4; Grant Mangold, *Yield Monitors and Precision Farming System Integrators*, SUCCESSFUL FARMING, May-June 1996, at 37; Matthew McManus, *Satellite Mapping Reaps Higher Crop Yields*, MACH. DESIGN, Mar. 21, 1996, at 54; Kathryn Barry Stelljes, *IPM Targets Grasshoppers*, AGRIC. RESEARCH, Jan. 1996, at 4 (describing the "sophisticated technologies" used to track "the number and life cycles" of insect pests); *Survival Kits: How Farming Is Reinventing Itself*, ECONOMIST, Mar. 25, 2000, at 6; *Poor Relations: Are Third-World Commodity Producers Condemned to Eternal Poverty?*, ECONOMIST, Apr. 16, 1994, at

overall employment is negligible. In my relatively brief lifetime, agricultural employment in the United States has declined below total unemployment.¹⁶⁵ This demographic crossover point rivals the famed 1920 census, the first to count more urban than rural residents.¹⁶⁶ Indeed, even in the 1990s, a period of historically low unemployment in the United States,¹⁶⁷ agricultural employment (2.7 percent) has been roughly *half* the total level of unemployment (5.9 percent).¹⁶⁸ All of this “extraordinary prosperity” has occurred despite the United States’ “constant trade deficits,” a “paradox” that globalization’s critics have yet to explain.¹⁶⁹

The European situation reinforces rather than negates agriculture’s economic irrelevance in a post-agrarian society. Despite higher population density and less acreage under cultivation,¹⁷⁰ the European Union has famously propped up

76 (considering the use of future contracts, options, and hedging to decrease market risk). For an overview of the global impact of information technologies on agriculture, see UNITED NATIONS, FOOD & AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, *THE STATE OF FOOD AND AGRICULTURE 1996*, at 57-70 (1996) [hereinafter *FAO 1996 REPORT*].

165. See Vernon W. Ruttan, *Agricultural Policy in an Affluent Society*, 48 J. FARM ECON. 1100, 1101 (1966). Professor Ruttan’s watershed article was published in the year of my birth. The employment data he used are obsolete, of course, but contemporary market conditions reinforce rather than undermine his insights. His core technique of comparing agricultural employment to total unemployment retains its vigor. Suffice it to say that an “entire generation” and a half have “come of age” since his wisdom became available to anyone who would heed it. *Planned Parenthood v. Casey*, 505 U.S. 833, 860 (1992).

166. U.S. BUREAU OF THE CENSUS, 1 FOURTEENTH CENSUS OF THE UNITED STATES 43 (1921) (reporting that urban residents outnumbered rural residents 51.4 percent to 48.6 percent).

167. See Steven Greenhouse, *Foreign Workers at Highest Level in Seven Decades*, N.Y. TIMES, Sept. 4, 2000, at A1 (reporting that the current 4 percent unemployment rate is nearly the lowest in four decades).

168. From 1990 to 1998, agricultural employment in the United States held constant between 2.6 and 2.8 percent of the workforce. Total unemployment in the same period averaged 5.9 percent, with a high of 7.5 percent in 1992, a low of 4.5 percent in 1998, and a standard deviation of .93 percent over the nine-year period. For the derivation of these employment statistics and others reported in this article, see *supra* note 149.

169. Robert J. Samuelson, *Trade Free or Die: Pat Buchanan and the Illusions of Protectionism*, 218 NEW REPUB., June 22, 1998, at 27; see also Bruce Stokes, *Anybody Notice the Trade Deficit?*, 31 NAT’L J. 2383 (Aug. 14, 1999).

170. Based on population figures for 1997, the population density of the European Union was 115 inhabitants per square kilometer, almost four times the United States’ population density of 29 inhabitants per square kilometer. At the same time, 134 million hectares were under cultivation in European Union, less than a third of the 425 million hectares cultivated in the United States. See AGRICULTURAL SITUATION IN EUROPE, *supra* note 149, at T/23-T/24.

agricultural employment to double the American rate.¹⁷¹ With an average farm size of 17.4 hectares, Europe comes far closer to the "family farm" ideal than the United States, where the average farm contains 206.7 hectares.¹⁷² But overall employment prospects are rosier by far in the United States. From 1983 to 1995, European unemployment averaged 10.1 percent, one and a half times the 6.7 percent rate in the United States over the same period.¹⁷³ Even more remarkably, the United States has beaten Europe not only in achieving a higher level of employment, but also in maintaining a lower level of inflation. Every year from 1986 to 1995, the consumer price index based on the same market basket of goods was lower in the United States than in Europe.¹⁷⁴

Numbers alone, however, vastly understate the depth of

171. From 1990 to 1997, agricultural employment in the European Union averaged 5.6 percent. *See supra* note 149. Figures for 1998 were not available. For an explanation of the economic, social, and environmental rationales underlying European agricultural policy, see EUROPEAN COMMISSION, AGRICULTURE, ENVIRONMENT, RURAL DEVELOPMENT: FACTS AND FIGURES: A CHALLENGE FOR AGRICULTURE 39-49 (1999) [hereinafter EUROPEAN RURAL DEVELOPMENT].

172. *See* AGRICULTURAL SITUATION IN EUROPE, *supra* note 149, at T/24. On the other hand, sharecropping and tenant farming, those twin incidents of feudal agriculture, are much more common in Europe than in the United States. *Compare* MINISTÈRE DE L'AGRICULTURE ET DE LA PÊCHE, GRAPH AGRI FRANCE 94, at 13 (1994) (reporting that tenants and sharecroppers outnumbered freehold farmers in France by a margin of 54 to 46 percent) *with* STATISTICAL ABSTRACT (119th ed. 1999), *supra* note 149, at 675 (reporting tenancy rates no higher than 11.5 percent in American agriculture from 1987 to 1997 and full-ownership rates as high as 60.0 percent over the same period). *See generally* Chen & Adams, *supra* note 163, at 377-85 (describing the symbolic significance of farm tenancy in Europe and the United States).

173. *See supra* note 149.

174. *See* COMSTAT (28th ed. 1991), *supra* note 149, at 90-91; EUROSTAT (33d ed. 1996), *supra* note 149, at 110. The statistics for Europe from 1986 through 1990 are based on a Union of twelve member-states; only the later figures include Austria, Finland, and Sweden. As of 1995, the last year for which comparative statistics are readily available, the European consumer price index stood at 148 on a scale in which 1985 prices represent 100. The corresponding U.S. consumer price index for 1995 stood at 142. Over the ten-year period that bridged 1985 to 1995, the European index rose an average of 4.00 percent each year, while the American index rose an average of 3.57 percent each year.

Two technical notes are in order. First, one should note that rates of inflation over time — or anything else purporting to measure inflation — cannot be computed arithmetically (*i.e.*, via simple division of the change in the consumer price index by the number of years elapsed). It is necessary to apply a formula reflecting the geometric compounding of prices. In this instance, I subtracted 1 from the 10th root of each price index in 1995 divided by the 1985 base of 100. Second, consumer price indexes, being based on a fixed market basket and incapable of reflecting changes in consumer behavior over time, systematically overstate inflation. *See* U.S. DEPT OF LABOR, UNDERSTANDING THE CONSUMER PRICE INDEX: ANSWERS TO SOME QUESTIONS (1997).

European unemployment.¹⁷⁵ In 1989, forty percent of Europe's unemployed, as opposed to 5.7 percent of the unemployed in America, stayed jobless for more than a year.¹⁷⁶ Most of the chronically unemployed are workers in their prime working years.¹⁷⁷ Unemployment in Europe devastates the young, even the university-educated.¹⁷⁸ Today's Europeans are unfamiliar with the sinecures that their forebears enjoyed in the middle of the twentieth century. Nearly a fifth of Europeans who are between the ages of 15 and 24 and not enrolled in school hold "insecure jobs."¹⁷⁹ In Sweden and Finland, that figure is a one-third; in Spain, nearly two-thirds.¹⁸⁰ Jim Hightower articulates widespread discontent over the job prospects of young Americans: "Already, America has millions of people who are overeducated for the jobs they have. Chances are [the] waitress who has three of Bill Clinton's new jobs also has a college degree."¹⁸¹ Thanks to European labor policy, however, the American waitress mom's French or German counterpart could readily have three college degrees and no job.

In Europe or America, the crucial ratio remains that of agricultural employment to overall unemployment. Once "the level of farm employment" falls below "unemployment in the rest

175. See generally ROBERT SOLOW, IS ALL THAT EUROPEAN UNEMPLOYMENT NECESSARY? (MIT World Economy Laboratory, Working Paper No. 94-06, 1994).

176. See Katherine McFate, *Introduction: Western States in the New World Order, in POVERTY, INEQUALITY, AND THE FUTURE OF SOCIAL POLICY* 1, 5-6 (Katherine McFate et al. eds., 1995).

177. See *id.*; Joel Handler, *The "Third Way" or the Old Way?*, 48 KAN. L. REV. 765, 766-67 (2000).

178. See EUROPEAN COMM'N, THE EUROPEAN UNION: KEY FIGURES 21 (1997) (reporting an unemployment rate of 20.8 percent among persons younger than 25, compared with 12.5 percent in the United States); EUROPEAN COMMISSION, EUROSTAT YEARBOOK: A STATISTICAL EYE ON EUROPE: DATA 1987-1997, at 121 (1999) (reporting that high school and university graduates aged 25-29 suffered roughly equal rates of unemployment, between 11 and 12 percent). See generally Katherine McFate, *Trampolines, Safety Nets, or Free Fall? Labor Market Policies and Social Assistance in the 1980s*, in *POVERTY, INEQUALITY, AND THE FUTURE OF SOCIAL POLICY*, *supra* note 176, at 631 (describing the impact of European unemployment on the young). I can offer a tangentially relevant anecdote. During recent academic visits in France and Germany, I readily acquired the words *chômage* and *Arbeitslosigkeit* and used them regularly. My European counterparts, by contrast, rarely if ever deployed the word *unemployment* in English-language discussions of the United States, except to note its relative rarity. On the legal significance of foreign language learning, see generally Jim Chen, *Law as a Species of Language Acquisition*, 73 WASH. U. L.Q. 1263 (1995).

179. EUROPEAN COMMISSION, KEY DATA ON EDUCATION IN EUROPE 9 (2000).

180. See *id.* (reporting that 35 percent rate of young Swedes, 37 percent of young Finns, and 65 percent of young Spaniards hold insecure jobs).

181. Jim Hightower, *From the Bank to the Cleaners*, TEX. OBSERVER, Dec. 10, 1999, available at <http://www.texasobserver.org/archives>.

of the economy even during periods of high-level economic activity, there is no longer any question of the capacity of the nonfarm sector to absorb displaced farm workers."¹⁸² On both sides of the north Atlantic alliance, on-farm employment has remained half of total unemployment. In the developed world, rural prosperity no longer depends on agriculture.¹⁸³ Farm advocates are alarmed because many farmers have taken off-farm jobs in order "to obtain health insurance benefits . . . or to supplement . . . family income."¹⁸⁴ From a broader perspective, a shift to multiple earners and multiple sources of income hardly constitutes a crisis. So thoroughly have we decoupled the rural economy and the overall economy from agriculture that the primary significance of on-farm employment is political. Romance, not reason, explains why "each new agricultural census" spurs "frantic efforts . . . to prove that regardless of whatever else we still have a 'family' farm economy."¹⁸⁵

The ramifications for trade policy are profound. Protecting First World agriculture from international competition cannot be justified as a relief valve for unemployed and underemployed workers. Its primary effect is to sever the developing world from the developed North's lucrative markets. Of all places, Europe should understand the material and political perils of autarky. The twentieth century witnessed mass death across Europe, first from famine after the Soviet Union's disastrous experiment with forced collectivization,¹⁸⁶ then from war and genocide traceable in no small part to the simultaneous erection of trade barriers across the industrialized world.¹⁸⁷ With dramatically lower stakes,

182. Ruttan, *supra* note 165, at 1115.

183. See EUROPEAN COMM'N, *supra* note 149, at 15 (1997) ("Agriculture and forestry no longer form the backbone of rural economies throughout the [European Union]."); Ruttan, *supra* note 165, at 1116 ("A prosperous agriculture no longer implies a prosperous rural community."). See generally Bruce Gardner, *Demythologizing Farm Income*, CHOICES, 1st Q. 1993, at 22 (demonstrating that farmers are relying less on agricultural income).

184. Terence P. Stewart, *Trade and Cattle: How the System Is Failing an Industry in Crisis*, 9 MINN. J. GLOBAL TRADE 449, 476 (2000).

185. Ruttan, *supra* note 165, at 1115; see also WILLARD W. COCHRANE & C. FORD RUNGE, *REFORMING FARM POLICY: TOWARD A NATIONAL AGENDA* 21 (1992) (arguing that much of what passes for agricultural policy in the United States rests on an unrealistic "soft-focus view of rural life").

186. Cf. R.G. Tugwell, *The Principle of Planning and the Institution of Laissez Faire*, 22 (supp.) AM. ECON. REV. 75, 76, 91 (1932) (envisioning a "future [that was] becoming visible in Russia" during the 1930s: a planned paradise based on "the abandonment . . . of laissez faire" and "the abolition of 'business'").

187. See Jim Chen, *Filburn's Forgotten Footnote — Of Farm Team Federalism and Its Fate*, 82 MINN. L. REV. 249, 289, 294-95 (1997).

Europe today keeps tinkering with agricultural markets. The European Union's most notorious import preference, fashioned for bananas from former colonies in Africa,¹⁸⁸ gouges consumers and encourages growers to harvest bananas without regard to the actual balance between market price and resource cost.

Other excuses for agricultural autarky also fail. National food security, the rationale that John Miller proffers, provides no cover for the United States and the other food-exporting powerhouses of the developed world. The United States emerged from World War II with so much surplus agricultural capacity that it has been feeding the rest of the world ever since. Congressional "findings" that understate "the ability of the United States to produce food and fiber in sufficient quantities" defy credibility.¹⁸⁹ Rather, perennial agricultural surpluses give the United States a regulatory challenge at home and political opportunities abroad.¹⁹⁰ Public Law 480, America's premier food aid statute,¹⁹¹ was intended not only to relieve pressure on federal price and income support programs, but also to export prosperity and capitalism.¹⁹² Though this aid scarcely benefited its foreign recipients,¹⁹³ Public

188. See World Trade Organization, *European Communities – Regime for the Importation, Sale & Distribution of Bananas*, WT/DS227/R/USA (May 22, 1997). See generally, e.g., Zsolt K. Bessko, *Going Bananas over EEC Preferences?: A Look at the Banana Trade War and the WTO's Understanding on Rules and Procedures Governing the Settlement of Disputes*, 28 CASE W. RES. J. INT'L L. 265 (1996); Chi Carmody, *Of Substantial Interest: Third Parties Under GATT*, 18 MICH. J. INT'L L. 615 (1997); Richard Lyons, *European Union Banana Controversy*, 9 FLA. J. INT'L L. 165 (1994); Inger Österdahl, *Bananas and Treaty-Making Powers: Current Issues in the External Trade Law of the European Union*, 6 MINN. J. GLOBAL TRADE 473 (1997); Rodrigo Bustamante, Note, *The Need for a GATT Doctrine of Locus Standi: Why the United States Cannot Stand the European Community's Banana Import Regime*, 6 MINN. J. GLOBAL TRADE 533 (1997); Jack J. Chen, Note, *Going Bananas: How the WTO Can Heal the Split in the Global Banana Trade Dispute*, 63 FORDHAM L. REV. 1283 (1995); cf. Michelle Williams, Comment, *Caribbean Shiprider Agreements: Sunk by Banana Trade War?*, 31 U. MIAMI INTER-AM. L. REV. 163 (2000) (alleging that Europe's failure to accede in hostile WTO decisions over the banana controversy has enhanced the Caribbean drug trade).

189. Farmland Protection Policy Act, § 1(a)(3), 7 U.S.C. § 4201(a)(3) (1994).

190. See generally Vernon W. Ruttan, *The Politics of U.S. Food Aid Policy: A Historical Review*, in *WHY FOOD AID?* 2 (Vernon W. Ruttan ed. 1993).

191. Agricultural Trade Development and Assistance Act of 1954, Pub. L. No. 480, 68 Stat. 454 (codified as amended in scattered sections of 7 U.S.C.).

192. See Willard W. Cochrane, *Farm Technology, Foreign Surplus Disposal, and Domestic Supply Control*, 41 J. FARM ECON. 885 (1959), reprinted in *WHY FOOD AID?*, supra note 190, at 39; Mordecai Ezekiel, *Apparent Results in Using Surplus Food for Financing Economic Development*, 40 J. FARM ECON. 915 (1958).

193. See Theodore W. Schultz, *Value of U.S. Farm Surpluses to Underdeveloped Countries*, 42 J. FARM ECON. 1019 (1960), reprinted in *WHY FOOD AID?*, supra note 190, at 53.

Law 480 converted domestic agricultural surpluses into one of the leading foreign policy instruments of the Cold War.¹⁹⁴ The superficially charitable slogan “food for peace” obscured fiscal waste and collateral damage to agricultural self-sufficiency in recipient countries.¹⁹⁵ (Those problems, of course, are the very albatrosses that globalization’s most vocal critics have tried to hang from the necks of the IMF and the World Bank.)¹⁹⁶

Further elaboration of American food aid policy would obscure the essential point.¹⁹⁷ Only a nation that is obscenely rich by the West’s historical standards and the larger world’s contemporary standards can indulge in food aid either as a means of suppressing domestic supplies or as a tool for shaping foreign relations, much less both. From the perspective of the First World, where nuclear war is a more salient threat than mass starvation, food security contributes less to trade policy than to military strategy.¹⁹⁸ By contrast, in those corners of the globe where the ghost of Malthus still walks,¹⁹⁹ protectionist undercurrents in the agricultural policies of food-exporting nations destabilize the already precarious state of food security.

Nor does any succor lie in recharacterizing agriculture as a “multifunctional” activity, as Paul Thompson and the European Union would prefer.²⁰⁰ It is simply not true, as Professor Thompson claims, that “[c]omparative figures” contrasting the environmental performance of American and European agriculture “are not readily available.”²⁰¹ Greater pollution and

194. See Food for Peace Act of 1966, Pub. L. No. 89-808, § 2(A), (B), 80 Stat. 1526, 1526-28 (declaring a policy of “us[ing] the abundant agricultural productivity of the United States . . . to promote the foreign policy of the United States,” including a condition that countries receiving American food aid be “friendly” and “independent of domination or control by any world Communist movement”) (codified as amended at 7 U.S.C. §§ 1691, 1701, 1703). See generally Ruttan, *supra* note 190, at 9-26.

195. See Emma Rothschild, *Is It Time to End Food for Peace?*, N.Y. TIMES MAG., Mar. 13, 1977, at 15, reprinted in WHY FOOD AID?, *supra* note 190, at 84.

196. See, e.g., Michael H. Shuman, *GATTzilla v. Communities*, 27 CORNELL INT’L L.J. 527, 537-39 (1994); Wolf, *supra* note 25, at 613-14 & n.7.

197. For a summary of the United States’ current food aid policy, see Federal Agriculture Improvement and Reform Act of 1996, Pub. L. No. 104-127, §§ 201, 203, 110 Stat. 888, 951-953 (amending 7 U.S.C. §§ 1691a, 1702). See generally Vernon W. Ruttan, *Does Food Aid Have a Future?*, 80 AM. J. AGRIC. ECON. 572 (1998).

198. See generally PAUL B. THOMPSON, *THE ETHICS OF AID AND TRADE: U.S. FOOD POLICY, FOREIGN COMPETITION, AND THE SOCIAL CONTRACT* 20-40 (1992) (analyzing the United States’ geopolitical use of the “food weapon” during the Cold War).

199. See *infra* text accompanying notes 232-236.

200. See Thompson, *supra* note 20, at 605-06, 609.

201. *Id.* at 606 n.9; see, e.g., C. FORD RUNGE, *FREER TRADE, PROTECTED ENVIRONMENT: BALANCING TRADE LIBERALIZATION AND ENVIRONMENTAL INTERESTS* 46-47 (1994) (attributing Europe’s higher levels of excess soil nitrogen to the European

soil erosion are part of “the price paid for the [food that Europeans] eat.”²⁰² Even the “mad cow” scare of the mid-1990s was partly attributable to the traditional practices of British cattle producers, those supposedly superior stewards whose protection has motivated Europe to exclude hormone-fed beef from the United States.²⁰³ The much vaunted 1992 reform of Europe’s Common Agricultural Policy²⁰⁴ authorized agricultural subsidies on the dubious rationale that continued cultivation “promote[s] . . . the upkeep of abandoned farmland,” reduces “natural hazards and fire risks, and . . . avert[s] the dangers associated with the depopulation of rural areas.”²⁰⁵ On occasion the European Commission comes closer to admitting the real rationale behind its agroecological policy: subsidizing continued cultivation in the name of preserving “cultural landscapes” whose primary value lies in the aesthetic pleasure of their “semi-natural habitats” and “scenic features.”²⁰⁶ On meatier matters such as pollution control, the fragmentation and inconsistent application of European environmental law suggests that European federalism has not yet matured.²⁰⁷ The European Union’s pathetic environmental performance demonstrates the pernicious “agroecological fallacy” of equating agriculture with environmental protection.²⁰⁸

Union’s agricultural subsidies); cf. Gordon C. Rausser & David Nielson, *Looking Ahead: Agricultural Policy in the 1990s*, 23 U.C. DAVIS L. REV. 415, 420-21 (1990) (noting that agricultural subsidies encourage farmers to consume natural resources at unsustainable rates). See generally EUROPEAN ENVIRONMENTAL AGENCY, EUROPE’S ENVIRONMENT: THE DOB_ÍŠ ASSESSMENT 447-63 (David Stanners & Philippe Bourdeau eds., 1995) (describing the environmental profile of European agriculture); EUROPEAN ENVIRONMENTAL AGENCY, EUROPE’S ENVIRONMENT: THE SECOND ASSESSMENT 164-67, 184, 198-200, 241, 281-82 (documenting the impact of European agriculture on biodiversity, water use, phosphorous and nitrogen pollution of the soil, and soil erosion).

202. VOLTAIRE, *Candide, or Optimism*, in CANDIDE AND OTHER WRITINGS 110, 152 (Haskett M. Block ed., 1956).

203. See Report of the Appellate Body, World Trade Org., European Community Measures Concerning Meat & Meat Prods. (Hormones), AB-1997-4, WT/DS26/AB/R, WT/DS48/AB/R (Jan. 16, 1998) available at <http://www.wto.org>; Dale E. McNeil, *The First Case Under the WTO’s Sanitary and Phytosanitary Agreement: The European Union’s Hormone Ban*, 39 VA. J. INT’L L. 89 (1998); Michele D. Carter, Note, *Selling Science Under the SPS Agreement: Accommodating Consumer Preferences in the Growth Hormones Controversy*, 6 MINN. J. GLOBAL TRADE 625 (1997).

204. See Council Reg. 92/2078/EEC, O.J. L 215 (July 30, 1992) available at www.wto.org.

205. EUROPEAN RURAL DEVELOPMENT, *supra* note 171, at 47.

206. SITUATION AND OUTLOOK, *supra* note 183, at 18-19.

207. See Damian Chalmers, *Inhabitants in the Field of European Community Environmental Law*, 5 COLUM. J. EUR. L. 39 (1999).

208. See generally Chen, *Get Green or Get Out*, *supra* note 157, at 343-50.

B. UP FROM AGRICULTURE

Multifunctional agriculture, however, transcends mere economic and environmental significance for Professor Thompson. It lies at the heart of his philosophical case for agrarianism as a political palladium against “actions that concentrate land holdings, or that skew economic development toward wealth that is vulnerable to capital flight.”²⁰⁹ The “agrarian meme,” he argues, might be worth preserving wherever the dream of democratic statecraft remains unfulfilled.²¹⁰ The logical extension of this argument deifies agrarianism as a core freedom, a political commitment worthy of being enshrined in fundamental law so that other freedoms dependent upon it may be protected.²¹¹ In the European political parlance Professor Thompson evidently favors, agrarianism belongs in the metaclass of “social rights” that facilitate the exercise of “civil rights” (such as property ownership and contract formation) and of “political rights” (such as the franchise).²¹²

But Professor Thompson wisely limits his claim to “the early stages of state formation.”²¹³ He concedes that “[c]lassical agrarian claims are less plausible in states where democratic institutions have taken root and where relatively few people participate in food production.”²¹⁴ Those are precisely the characteristics of agriculture in Europe and the United States, the First World arenas where much of the agrarian outrage at globalization has been directed. In developed economies, the primary expression of the agrarian meme is rent-seeking on behalf of well organized farm entrepreneurs.²¹⁵ The severing of most voters and consumers

209. Thompson, *supra* note 20, at 608.

210. *Id.*

211. See *New York Times Co. v. United States*, 403 U.S. 713, 728 (1971) (“[w]ithout an informed and free press there cannot be an enlightened people”) (Stewart, J., concurring); *Cohen v. California*, 403 U.S. 15, 24 (1971) (“[t]he constitutional right of free expression is powerful in a society as diverse and populous as ours”); cf. *Printz v. United States*, 521 U.S. 898, 937-38 (1997) (Thomas, J., dissenting) (speculating whether the *second* amendment to the United States Constitution, source of the infamous right to “keep and bear arms,” U.S. CONST. amdt. II, should be vigorously enforced “as the palladium of liberties of a republic” (citing 3 JOSEPH STORY, COMMENTARIES § 1890, at 746 (1833))).

212. See T.H. MARSHALL, CITIZENSHIP AND SOCIAL CLASS 10-27 (1950).

213. Thompson, *supra* note 20, at 608.

214. *Id.*

215. See, e.g., Geoffrey P. Miller, *Public Choice at the Dawn of the Special Interest State: The Story of Butter and Margarine*, 77 CAL. L. REV. 83 (1989); Geoffrey P. Miller, *The True Story of Carolene Products*, 1987 SUP. CT. REV. 397 (1987); Katherine E. Monahan, *U.S. Sugar Policy: Domestic and International Repercussions of Sour*

from the daily demands of food production cripples the usual modes of political self-defense, for an agriculturally illiterate society hardly stands a chance against lobbyists who have cultivated the congressional contacts and mastered all the rhetorical moves.²¹⁶

By Professor Thompson's implicit admission, the agrarian meme has lingered well past its expiration date. And because founding ideologies can embed themselves in political markets, much as early technologies can block the adoption of later, improved technologies,²¹⁷ the United States and other mature democracies now pay for agrarianism in the form of ideological lock-in. A quintessentially "terrestrial" industry, agriculture is extremely vulnerable to the changes that accompany the emergence of an epiphytic, information-driven economy.²¹⁸ In any industry as "mature" as First World agriculture, "most of the technical aspects of production have been standardized, . . . the nature of demand is well known," and the cost of doing business "over geographic space becomes trivial."²¹⁹ As "[t]he production of *things* has become steadily cheaper," as industrialization and globalization accelerate the substitution of other inputs for labor, "the farmer's share in employment" necessarily falls "towards nil."²²⁰ As a result, agriculture is perhaps the only industry whose technology policy consists of knee-jerk rejection.²²¹

Virtually every other industry defines success according to profit and technological advance. By contrast, even though defining agriculture according to the "ownership of land has no economic or legal validity,"²²² agrarianism still measures success

Law, 15 HASTINGS INT'L & COMP. L. REV. 325 (1992).

216. See generally NATIONAL RESEARCH COUNCIL, UNDERSTANDING AGRICULTURE: NEW DIRECTIONS FOR EDUCATION (1988) (documenting how little most Americans know about agriculture, its social and economic significance, and its links to human health and environmental quality); Neil D. Hamilton, *Feeding Our Future: Six Philosophical Issues Shaping Agricultural Law*, 72 NEB. L. REV. 210, 211 (1993) (identifying and lamenting agricultural illiteracy).

217. See generally Lemley & McGowan, *supra* note 128, at 495-500 (reviewing the economic literature).

218. See PETER H. LINDERT, INTERNATIONAL ECONOMICS 70-71 (9th ed. 1991) (observing that trade liberalization and deregulation will inflict short-run losses on immobile sectors lacking a comparative advantage in global markets).

219. David B. Audretsch & Maryann P. Feldman, *Innovating Clusters and the Industry Life Cycle*, 11 REV. INDUS. OR. 253, 259 (1996); accord Ronald J. Gilson, *The Legal Infrastructure of High Tech Industrial Districts: Silicon Valley, Route 128, and Covenants Not to Compete*, 74 N.Y.U. L. REV. 575, 585 (1999).

220. McCloskey, *supra* note 148, at 178.

221. See Chen, *Agroecological Opium*, *supra* note 157, at 20.

222. National Broiler Marketing Ass'n v. United States, 436 U.S. 816, 847 (1978)

according to stability in land ownership and entrepreneurial employment.²²³ As long ago as 1926, Bertrand Russell condemned agriculture's reliance on the "social and hereditary principle" of occupational selection as "a deplorable waste of talent."²²⁴ Economic rationality alone cannot explain agrarianism's deep and enduring Luddite streak, for economies of scale in farming are actually quite low.²²⁵ The explanation lies in ideological lockjaw. Driven by agrarian preferences in favor of "wide distribut[ion]" of "land holdings" and against "wealth that is vulnerable to capital flight,"²²⁶ agriculture exudes open hostility to "newcomers": "New capital, new farmers, new ideas — nothing alien to the farming tradition as incumbent landowners know it need apply . . ."²²⁷

Notorious static in its orientation, agrarianism can neither accommodate nor facilitate dynamic efficiency, whether stated in of economic or environmental. Agrarianism's stifling prominence in the prevailing critique of globalization obscures the nature and developmental significance of technological change. Firms typically innovate through "continuous interactive learning," "both from their own experience of design, development, production and marketing . . . and from a wide variety of external sources."²²⁸ In an information-driven economy, "efficient creation of new works" and "dynamic market efficiency over different generations" hinge on "access to and use of old works."²²⁹ The pursuit of "temporary monopoly profits" based on "technological innovation" has arguably served as the primary spur for "the tremendous growth of the Western economies."²³⁰ Globalization of its own force

(White, J., dissenting). *Contra*, e.g., MARTY STRANGE, *FAMILY FARMING: A NEW ECONOMIC VISION* 43-55 (1988) (treating "land" as "the central issue" in the economic struggle between family farming and industrialized agribusiness).

223. See SMILEY, *supra* note 162, at 5.

224. BERTRAND RUSSELL, *EDUCATION AND THE GOOD LIFE* 306 (1926).

225. See Nancy L. Johnson & Vernon W. Ruttan, *Why Are Farms So Small?*, 22 *WORLD DEV.* 691, 702 (1994).

226. Thompson, *supra* note 20, at 608.

227. Chen, *supra* note 146, at 827.

228. Christopher Freeman, *The Economics of Technical Change*, 18 *CAMB. J. ECON.* 463, 470 (1994) (emphasis in original); see also NELSON & WINTER, *supra* note 81, at 351 (noting that innovative opportunities within some industries tend to stem from outside sources).

229. Mark A. Lemley, *The Economics of Improvement in Intellectual Property Law*, 75 *TEX. L. REV.* 989, 997 (1997); cf. BASSANINI ET AL., *supra* note 114, at 26 (describing information and communications technologies not only as "the result of a continuous innovative process, but also [as] . . . a tool for further innovation in the productive processes of other sectors").

230. Robert P. Merges, *Commercial Success and Patent Standards: Economic Perspectives on Innovation*, 76 *CAL. L. REV.* 805, 843 (1988). The precise impact of

induces even more innovation insofar as the lifting of trade restraints "may increase the size of the market considered by inventors" and thereby stimulate inventiveness "in economies with small domestic markets."²³¹ The *failure* to engage the global economy casts its own shadow on the future, for losses in dynamic efficiency are as cumulative as gains.

Reflexive resistance to agricultural technology, especially advanced transgenic techniques, poses a special threat to the developing nations where Professor Thompson would preserve the agrarian meme. Before imposing the romantic and thoroughly Western ideology "that technology alienates man from both the natural world and from the natural community," perhaps we should ask "the Taiwanese farmer [who] harvests" rice at three times the yield realized by the previous generation whether he "feels a greater alienation than his father."²³² Annual increases in agricultural productivity of less than one percent will hardly keep pace with one to two percent annual increases in global demand, much less the three to five percent annual increases that the least developed countries will experience.²³³ Though many antitrade activists at the Battle in Seattle advocated a return to "locally produced goods, including food, the hard truth is that developing countries need freer trade to feed themselves."²³⁴ "Despite a ten percent increase in per capita food availability in most developing countries" from 1995 to 2020, "135 million children under the age

market structure on innovation is an extraordinarily complex and hotly contested subject. Compare SCHUMPETER, *supra* note 109, at 87-106 (arguing that monopoly spurs greater inventiveness) with Kenneth J. Arrow, *Economic Welfare and the Allocation of Resources to Invention*, in THE RATE AND DIRECTION OF INVENTIVE ACTIVITY 609 (National Bureau of Economic Research ed., 1962) (according this distinction to a competitive rather than monopolistic market), reprinted in 5 COLLECTED PAPERS OF KENNETH J. ARROW: PRODUCTION AND CAPITAL 104 (Belknap ed., 1985). Needless to say, it lies beyond the scope of this essay.

231. NEW ECONOMY, *supra* note 112, at 17.

232. Vernon W. Ruttan, *Agricultural Scientists as Reluctant Revolutionaries*, 7 INTERDISC. SCI. REVS. 170, 175 (1982).

233. See Vernon W. Ruttan, *Sustainability Is Not Enough*, 3 AM. J. ALTERNATIVE AGRIC. 128, 129 (1988); cf. UNITED NATIONS, FOOD & AGRICULTURE ORGANIZATION, WORLD AGRICULTURE: TOWARDS 2010, at 78-82 (1995) (predicting that global growth in gross agricultural production will barely meet growth in demand, with both projected to increase 1.8 percent annually from 1988/90 through 2010). See generally FAO 1996 REPORT, *supra* note 164, at 261-321 (examining macroeconomic factors affecting global food security); Luther Tweeten, *Dodging a Malthusian Bullet in the 21st Century*, 14 AGRIBUSINESS 15 (1998) (assessing the prospects for global food security in the next 100 years).

234. C. Ford Runge & Benjamin Senauer, *A Removable Feast*, FOREIGN AFF., May/June 2000, at 39, 41.

of 5 are projected to remain hungry in 2020.”²³⁵ The naive slogan, “We must cultivate our garden,” alleviates none of these grim prospects.²³⁶

Meanwhile, First World agrarianism steadfastly “opposes the vertical integration of industries.”²³⁷ Even at home, where the human consequences of their ideological indulgences are less severe, agrarians are waging a losing battle. No amount of ideological posturing can exempt agriculture from “[e]conomic progress,” or any other term for the “progressive division of labor and separation of function.”²³⁸ Power supplied in one era “by the farmer’s mules” will be “derived from electricity and gasoline” in another.²³⁹ “It does not require very sophisticated economic logic” to show how improved technology accelerates concentration in agricultural markets and “reduce[s] farm incomes and the demand for farm labor.”²⁴⁰

Professor Thompson has conceded elsewhere that “[t]echnological impact on the size and distribution of farms is not morally significant unless we have some reason to think that the continued existence of family-type farms is valuable in the first place.”²⁴¹ No valid justifications exist. As I have already noted, agriculture has a negligible impact on overall employment. Its contribution to the security of the industrialized state is likewise minimal. Agriculture’s abysmal environmental performance merely confirms two larger truths: “farming is not an environmentally benign activity,”²⁴² and small is not beautiful.²⁴³

In short, nothing distinguishes agriculture from any other mature industry²⁴⁴ except that this industry inflicts intense environment damage while remaining politically impervious to legal reform. “One would be hard pressed to identify another

235. *Id.*

236. VOLTAIRE, *supra* note 202, at 189.

237. Wolf, *supra* note 25, at 617. See generally Jon Lauck, *Toward an Agrarian Antitrust: A New Direction for Agricultural Law*, 75 N.D. L. REV. 449 (1999).

238. *Farmers Reservoir & Irrig. Co. v. McComb*, 337 U.S. 755, 761 (1949).

239. *Id.*

240. Robert E. Evenson, *Intellectual Property Rights and Agribusiness Research and Development: Implications for the Public Agricultural Research System*, 656 AM. J. AGRIC. ECON. 967, 975 (1983).

241. THOMPSON, *supra* note 19, at 21; see also John Brewster, *Technological Advance and the Future of the Family Farm*, 40 J. FARM ECON. 1596 (1958).

242. Chen, *supra* note 146, at 872; Chen, *Agroecological Opium*, *supra* note 157, at 19.

243. Richard J. Pierce, Jr., *Small Is Not Beautiful: The Case Against Special Regulatory Treatment of Small Firms*, 50 ADMIN. L. REV. 537 (1998).

244. See Ruttan, *supra* note 165, at 1102.

industry with as poor an environmental record and as light a regulatory burden."²⁴⁵ It is high time to subject agriculture to the same rules that govern "any other consumer industry churning out . . . toilet seats or pimple cream to meet the fickle fluctuations of consumer demand."²⁴⁶

C. WHAT A WONDERFUL WORLD IT WOULD BE

Finally, Robert Wolf's agrarian utopia merits separate discussion, if only because it supplies the most concrete set of policies in response to *Globalization and Its Losers*. Agricultural self-sufficiency and agrarian virtue inspire his vision of an "organic, decentralized, and democratic" patchwork of "relatively self-sustaining regional economies."²⁴⁷ Mr. Wolf is demanding nothing less than the mores and misery of the Middle Ages, a return to the road to serfdom.²⁴⁸ And even if Mr. Wolf's program of regional self-sufficiency were plausible and beneficial, it stops so abruptly at the Iowa border that his notion of social justice has little if any relevance beyond the United States. Too limited in his historical and geographic reach, Mr. Wolf fails to articulate a convincing case for an agrarian antidote to globalization.

Mr. Wolf's utopia is a nostalgic one; he openly yearns for a return to the time when rural Americans "had . . . the choice of either milling their own lumber and grain or going without."²⁴⁹ Assiduously avoiding the usual "slogans" associated with "the Middle Ages [and] the Old South," he nevertheless advocates a resurrection of those feudalistic societies in the name of populist resistance to globalization.²⁵⁰ Indeed, Mr. Wolf betrays a thinly veiled longing for the Middle Ages, when any individual European's life "was a nearly unified whole," sheltered by

245. J.B. Ruhl, *Farms, Their Environmental Harms, and Environmental Law*, 27 *ECOLOGY L.Q.* 263, 269 (2000).

246. *Contra* William Aiken, *The Goals of Agriculture*, in *AGRICULTURE, CHANGE, AND HUMAN VALUES: PROCEEDINGS OF A MULTIDISCIPLINARY CONFERENCE* 29, 51-52 (Richard Haynes & Ray Lanier eds., 1982) (complaining that such shabby treatment of "the very basis for civilization" is "demeaning").

247. Wolf, *supra* note 25, at 617. *See generally* AMERICAN MOSAIC, *supra* note 24, at 313-28 (tracing the origins of Mr. Wolf's regionalist vision from traditional agrarianism).

248. *Cf. generally* F.A. HAYEK, *THE ROAD TO SERFDOM* (Milton Friedman intro., 1994).

249. Wolf, *supra* note 25, at 617-18.

250. RICHARD M. WEAVER, *THE SOUTHERN TRADITION AT BAY: A HISTORY OF POST-BELLUM THOUGHTS* 394-95 (1968) (urging advocates of the conservative morality of those societies to disguise their arguments so "that mankind will feel the march is forward").

"[m]embership in a guild, manorial estate, or village," when "individuality and . . . ambitions were fulfilled within the customary law that ruled the community."²⁵¹ Mr. Wolf evidently regrets how "[t]he Industrial Revolution destroyed the solid moorings of an older way of life" and condemns "the great moral tragedy of the industrial system."²⁵² Quite ironically, this is precisely the desire for order and predictability that promoted corporate and suburban conformity in postwar America.²⁵³

Medieval sentimentality has sustained many a critic of modernity. Nineteenth-century globalization wreaked havoc on plebeians as well as "the patricians and planters": "Crafts were destroyed, ancient patterns of living broken up and the urbanisation of the countryside and the industrialisation of agriculture galloped ahead."²⁵⁴ As industrializing societies stressed trade and manufacturing, "[t]he ethic of particularized loyalty" that grew out of the Middle Ages' manorial system of agriculture "became dysfunctional."²⁵⁵ The Industrial Revolution shoved agriculture into a "long run" pattern of "drastic[] decline[]" from which it has never recovered.²⁵⁶ The Industrial Revolution cut so deeply that "revulsion from industrialism has been one of the great stimulants of twentieth-century" western intellectualism.²⁵⁷ Mr. Wolf's variation on this tired theme hints at what Miniver Cheevy, Emma Bovary, or Scarlett O'Hara might propose in response to globalization:

Don't know much about the Middle Ages
Look at the pictures and turn the pages
Don't know much about no rise and fall
Don't know much about nothing at all²⁵⁸

The only trouble with medieval romance is that no one could live with it. In the global north and west, industrialization and

251. FRANK TANNENBAUM, A PHILOSOPHY OF LABOR 30 (1951).

252. *Id.*

253. See WILLIAM H. WHYTE, JR., THE ORGANIZATION MAN 45-46 (1957).

254. J.H. PLUMB, *The Historian's Dilemma*, in THE MAKING OF AN HISTORIAN: THE COLLECTED ESSAYS OF J.H. PLUMB 166, 176-77 (1988).

255. THOMPSON, *supra* note 19, at 9.

256. ALFRED D. CHANDLER, JR., SCALE AND SCOPE: THE DYNAMICS OF INDUSTRIAL CAPITALISM 3 (1990). See generally SIMON KUZNETS, ECONOMIC GROWTH OF NATIONS: TOTAL OUTPUT AND PRODUCTION STRUCTURE (1971) (tracing the fortunes of agriculture, industry, and services since the Industrial Revolution).

257. PLUMB, *supra* note 254, at 177.

258. SAM COOKE, *Wonderful World*, on GREATEST HITS (BMG/RCA 1998); accord Stanley Fish, *Don't Know Much About the Middle Ages: Posner on Law and Literature*, 97 YALE L.J. 777, 793 (1988).

globalization have eliminated or at least softened many of the pathologies that saddled preindustrial societies: chattel slavery, systematic suppression of women, drastically diminished living conditions for all. To speak credibly of "a pre-industrial Eden, from which our ancestors were, by the wicked machinations of applied science, brutally expelled," a social critic must be prepared to specify exactly "where . . . it was located, not in terms of wishful fancy, but in time and place, in historical and geographical fact."²⁵⁹ The sorry anthropological record presents no such evidence. There never was a "golden age," a moment and place when humans did not systematically destroy the environment regardless of their social, political, and economic situation.²⁶⁰ We have no choice but to live in the present. And what a fortuitous, propitious choice it is:

No one in his senses would choose to have been born in a previous age unless he could be certain that he would have been born into a prosperous family, that he could have enjoyed extremely good health, and that he could have accepted stoically the death of the majority of his children.²⁶¹

This is the sense in which the international legal order and the globalization it fosters are morally superior to agrarianism.²⁶²

Speaking of morals, Mr. Wolf accuses me of the dreaded "belief that one's own point in history is the high mark of human development and the peak of morality, enlightenment, wisdom, prosperity and knowledge."²⁶³ Fair enough. I freely profess that "progress in a scientific discipline can be measured by how quickly its founders are forgotten."²⁶⁴ I revel in the present. Bliss it is in *this* very heaven to be alive.²⁶⁵

Having raised the issue of morality, Mr. Wolf cannot object to a moral examination of his proposal. His call for inculcating "the value of cooperation" through the integration of "local and regional stories . . . into school curriculums" seems benign enough, if a bit quaint.²⁶⁶ Surely some good comes of teaching values to

259. SNOW, *supra* note 34, at 83.

260. See DIAMOND, *supra* note 139, at 317-28.

261. SNOW, *supra* note 34, at 82 (quoting J.H. Plumb).

262. See generally JOHN RAWLS, A THEORY OF JUSTICE (1989); Daniel J. Gifford, *Interpersonal Distrust in the Modified Rawlsian Society*, 48 S.M.U. L. REV. 217 (1994).

263. Wolf, *supra* note 25, at 615.

264. WILSON, *supra* note 75, at 182-83.

265. See William Wordsworth, *The French Revolution As It Appeared to Enthusiasts At Its Commencement*, in THE POETICAL WORKS OF WORDSWORTH, 340, at ll. 4-5 (Paul D. Sheats ed., Houghton Mifflin Co., 1982) (1809).

266. Wolf, *supra* note 25, at 618.

children.²⁶⁷ On the other hand, when he demands that "[i]ndividualism . . . be addressed and countered" as part of "the preliminary process" of building a regional culture and economy, he veers toward totalitarianism.²⁶⁸ He steers astray from the lone "fixed star in [America's] constitutional constellation," the axiom "that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion."²⁶⁹ His cry to halt "the outmigration of the young" defies American social reality²⁷⁰ and squarely contradicts another cherished privilege of American citizenship, the right to travel.²⁷¹ He is blind to Paul Thompson's admonition that trade restraints and other instances of "arbitrary interference in an individual's right to exchange property with willing traders [are] contrary to the most basic principles of liberty."²⁷² Mr. Wolf's self-sufficient regionalism evidently requires the suppression of civil liberties. Under the circumstances, I would rather take my chances with the global corporate elite and the "Whig view of history"²⁷³ than Mr. Wolf's Tory view of morality.

Sadly typical of so many critics of globalization, Mr. Wolf cannot see social injustice beyond his doorstep. His agenda stops at the water's edge — not just the shores of the Atlantic and Pacific Oceans, but the banks of the Mississippi River.²⁷⁴ Even those elements of his proposal that do not require social coercion — namely, the establishment of "a regional currency"²⁷⁵ and greater reliance on farm-level and retail cooperatives²⁷⁶ —

267. See generally Suzanna Sherry, *Responsible Republicanism: Educating for Citizenship*, 62 U. CHI. L. REV. 131 (1995).

268. Wolf, *supra* note 25, at 618.

269. West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 642 (1943).

270. See STATISTICAL ABSTRACT OF THE UNITED STATES (119th ed. 1999), *supra* note 149, at 31 (reporting that 30 to 33 percent of persons aged 20-29 in the United States changed residences over a one-year period, twice the rate of 16 percent for all persons).

271. Compare Wolf, *supra* note 25, at 619 (justifying such restraint of freedom in the name of developing "regional consciousness") with Saenz v. Roe, 526 U.S. 489, 498-502 (1999) ("the constitutional right to travel from one State to another is firmly embedded in our jurisprudence . . . , the right is so important that it is . . . a virtually unconditional personal right, guaranteed by the Constitution to us all") (quotations and citation omitted).

272. Thompson, *supra* note 20, at 602.

273. Wolf, *supra* note 25, at 615 (quoting RICHARD WEAVER, IDEAS HAVE CONSEQUENCES 1 (1948)).

274. See AMERICAN MOSAIC, *supra* note 24, at 314 (identifying Mr. Wolf as a resident of "Iowa, not far from the Mississippi River").

275. Wolf, *supra* note 25, at 619.

276. *Id.* at 620.

presume the existence of a mature, effective system of law.²⁷⁷ Openly hostile to solutions based on “lawyers” and “panel[s] of Solons,”²⁷⁸ Mr. Wolf offers nothing to those parts of the world where the rule of law has not yet taken root.²⁷⁹ Without assurances “that the basic rules of the game . . . are predictable,” the “social capital” needed for “a stable and predictable legal, administrative and regulatory framework” will not coalesce.²⁸⁰

The most charitable explanation for Mr. Wolf’s evident oversight is that he envisions order without law.²⁸¹ Fair enough: with few of the formal trappings of government, private communities can fashion property rules,²⁸² which public authorities can later ratify and codify as positive law.²⁸³ But property rights created in such informal settings tend to preserve preexisting distributions of wealth. Any redistributive agenda requires the taxing power and regulatory apparatus of the positive state.²⁸⁴ What Elisabeth Lasch-Quinn says of me more aptly applies to Robert Wolf: “The implications of [his] thinking for American democracy — to say nothing of social justice throughout the world — are disastrous.”²⁸⁵

The upshot is that Mr. Wolf’s regional self-sufficiency is ineffectual, repressive, and chauvinistic. Like the contributors to

277. It is worth noting, if only in passing, the folly of Mr. Wolf’s support for subnational currencies. Compressing the geographic scope of a money-issuing authority contradicts not only the primary function of money (to lower the costs of transacting business), but also undermines the unspoken, trust that an issuing government will honor its financial obligations. Most of the European Union’s member-states are moving in the opposite direction, and with good reason. Ecuador recently abandoned its currency, the sucre, in favor of the United States dollar. See Matt Moffett, *Ecuador Switch to the Dollar Succeeds Amid Signs of Growth*, WALL ST. J., Sept 12, 2000, at A21. That money becomes more efficient as it expands its geographic reach is merely one manifestation of network effects. See generally Lemley & McGowan, *supra* note 128.

278. Wolf, *supra* note 25 at 617.

279. See Viet D. Dinh, *What Is the Law in Law & Development?*, 3 GREEN BAG 2D 19 (1999).

280. NEW ECONOMY, *supra* note 112, at 19-20; see also *id.* at 18 (“[M]any of the social benefits which flow from human capital accumulation, such as better health, greater civic engagement, lower crime and enhanced social cohesion, may feed back into economic growth in the longer term.”).

281. See generally ROBERT C. ELLICKSON, *ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES* (1991).

282. See ANTHONY DE JASAY, *SOCIAL CONTRACT, FREE RIDE: A STUDY OF THE PUBLIC GOODS PROBLEM* (1989); R.H. Coase, *The Lighthouse in Economics*, 17 J.L. & ECON. 357 (1974).

283. See Ejan MacKaay, *Economic Incentives in Markets for Information and Innovation*, 13 HARV. J.L. & PUB. POL’Y 867, 902-03 (1988).

284. See Chen, *supra* note 127, at 1040-41.

285. Lasch-Quinn, *supra* note 10, at 590.

Corporations Are Gonna Get Your Mama,²⁸⁶ a collection of essays from which Mr. Wolf draws many of his ideas, Mr. Wolf has only one real complaint: "the downsizing of the *American dream*." In a journal that has already urged, "Mama, don't let your babies grow up to be cowboys,"²⁸⁷ it is not too cheeky to reply, "That don't impress me much."²⁸⁸ Of all of globalization's losers, the least impressive are temporarily displaced workers in the world's richest, most powerful country.

IV. THE POLITICS OF PLACE

A. DEMOCRACY DOES HAVE LOSERS

Systematic resistance to agrarianism should be a goal of in international economic law. The case for free trade began as a rejection of agricultural protectionism. David Ricardo derived his theory of comparative advantage from a critique of Great Britain's Corn Laws.²⁸⁹ After the collapse of communism, agrarianism remains the lone expression of autarky and centralized planning that commands widespread respect among Western politicians and intellectuals. Yet no other popular political philosophy is as inimical to trade law and as destructive of human welfare. On virtually every question of distributive justice among nations, distributive justice within nations, and personal liberty, agrarianism supplies the wrong answer.

Domestic agricultural support, especially through disguised and overt barriers to trade, has become the quintessential model of special interest rent-seeking.²⁹⁰ True to the insights of modern

286. *CORPORATIONS ARE GONNA GET YOUR MAMA: GLOBALIZATION AND THE DOWNSIZING OF THE AMERICAN DREAM* (Kevin Danaher ed., 1996).

287. Robin L. Van Harpen, Note, *Mamas, Don't Let Your Babies Grow Up to Be Cowboys: Reconciling Trade and Cultural Independence*, 4 MINN. J. GLOBAL TRADE 165 (1995). "Cowboys," after all, "ain't easy to love, and they're harder to hold. They'd rather give you a song than diamonds or gold." WAYLON JENNINGS & WILLIE NELSON, *Mamas Don't Let Your Babies Grow Up to Be Cowboys*, on WAYLON AND WILLIE (RCA 1978); accord *United States v. Garth*, 773 F.2d 1469, 1476 n.11 (5th Cir. 1985), cert. denied, 476 U.S. 1140 (1986).

288. SHANIA TWAIN, *That Don't Impress Me Much*, on COME ON OVER (UNI/Mercury Nashville 1997).

289. See MICHAEL J. GOOTZEIT, DAVID RICARDO 27 (1975).

290. See MICHAEL T. HAYES, LOBBYISTS AND LEGISLATORS: A THEORY OF POLITICAL MARKETS 101-02 (1981); DENNIS C. MUELLER, PUBLIC CHOICE II, at 239-41 (1989); MANCUR OLSON, THE LOGIC OF COLLECTIVE ACTION 144-45 (1965).

public choice theory,²⁹¹ agricultural legislation routinely benefits concentrated, well-organized groups of farmers at the expense of food and fiber consumers, who are too broadly dispersed to offer effective political resistance. The industry as a whole has won so many regulatory exemptions that agriculture is aptly described as a “favorite child” of the federal government.²⁹²

On the global stage, perhaps *enfant terrible* would be a better sobriquet. The yawning gap between domestic legal protection for agriculture and any plausible defense for such largess explains why agriculture remains “the problem child of world trade.”²⁹³ The rocky road to Marrakesh was littered with failed attempts to reconcile agriculture with global trade.²⁹⁴ Recasting agriculture as a “multifunctional” activity, the solution favored by Paul Thompson and the European Union, merely invites nations to abuse “environmental standards” as “especially attractive candidates for disguised protectionism.”²⁹⁵ Standards as vague as multifunctionality or even sustainability are “far more susceptible to political capture” than specific and transparent environmental measures.²⁹⁶ In light of contemporary society’s rampant agricultural illiteracy,²⁹⁷ the solution lies in subjecting domestic

291. See generally Daniel A. Farber, *Positive Theory as Normative Critique*, 68 S. CAL. L. REV. 1565 (1995).

292. Fairdale Farms, Inc. v. Yankee Milk, Inc., 635 F.2d 1037, 1043 (2d Cir. 1980) (quotations omitted), cert. denied, 454 U.S. 818 (1981).

293. Jeffrey J. Steinle, Note, *The Problem Child of World Trade: Reform School for Agriculture*, 4 MINN. J. GLOBAL TRADE 333 (1995).

294. See generally TIMOTHY E. JOSLING, STEFAN TANGERMANN & T.K. WARLEY, *AGRICULTURE IN THE GATT* (1996); Al J. Daniel Jr., *Agricultural Reform: The European Community, the Uruguay Round, and International Dispute Resolution*, 46 ARK. L. REV. 873 (1994); Jon G. Filipek, *Agriculture in a World of Comparative Advantage: The Prospects for Farm Trade Liberalization in the Uruguay Round of GATT Negotiations*, 30 HARV. INT’L L.J. 123 (1989); Jimmye S. Hillman, *Agriculture in the Uruguay Round: A United States Perspective*, 38 TULSA L.J. 761 (1993); Liane L. Heggy, *Free Trade Meets U.S. Farm Policy: Life After the Uruguay Round*, 25 LAW & POL’Y INT’L BUS. 1367 (1994).

295. C. Ford Runge, *Trade Protectionism and Environmental Regulations: The New Nontariff Barriers*, 11 NW. J. INT’L L. & BUS. 47, 47 (1990); see also DANIEL C. ESTY, *GREENING THE GATT* 45 (1994); cf. Frieder Roessler, *Domestic Policy Objectives and the Multilateral Trade Order: Lessons from the Past*, 19 U. PA. J. INT’L ECON. L. 513, 514 (1998) (observing that regulatory burdens on foreign competitors are routinely rationalized as being in the “public interest”). See generally ACHIM KÖRBER, *THE POLITICAL ECONOMY OF ENVIRONMENTAL PROTECTIONISM* (2000); Alan O. Sykes, *Regulatory Protectionism and the Law of International Trade*, 66 U. CHI. L. REV. 1 (1999).

296. Pamela Isela Hansen, *Transparency, Standards of Review, and the Use of Trade Measures to Protect the Global Environment*, 39 VA. J. INT’L L. 1017, 1063 (1999).

297. See *supra* text accompanying note 216.

agricultural legislation to exceeding skeptical scrutiny by international tribunals such as the WTO.²⁹⁸

Democracy should not have losers,²⁹⁹ but it does. Organized interests hold an overwhelming political advantage over "anonymous and diffuse" majorities.³⁰⁰ That marginal difference in power becomes magnified when an entrenched group moves to quash a competitive threat through lobbying. Such political leverage reaches its apex when competition hails from abroad.³⁰¹ By empowering otherwise captive consumers and employers to buy from abroad, globalization shifts the political balance of power from incumbent industry and labor. Those who decry the lack of representation and accountability in the WTO, the IMF, and the World Bank have not identified substantial democratic defects in those institutions. Rather, their real complaint is that globalization and the concomitant transfer of legal responsibility to multilateral organizations have diminished the political leverage to which incumbent domestic interests have become accustomed.³⁰²

Globalization as political upheaval is giving rise to cooperative "transnational epistemic communities" of businesses, governments, and nongovernmental organizations.³⁰³ The most striking exception to this cooperative approach is advocacy on behalf of First World farmers and other economic interests threatened by global competition.³⁰⁴ The twin-barreled blasts of economic autarky and political anarchy constitute the politics of place, a call for the restoration of the old order that preceded globalization. Self-sufficiency and national sovereignty are code words for protectionism and withdrawal from international cooperation.

298. See Daniel A. Farber & Robert E. Hudec, *Free Trade and the Regulatory State: A GATT's-Eye View of the Dormant Commerce Clause*, 47 VAND. L. REV. 1401, 1416-18 (1994).

299. See Lasch-Quinn, *supra* note 10, at 589.

300. Bruce Ackerman, *Beyond Carolene Products*, 98 HARV. L. REV. 713, 723-24 (1985).

301. See ROBERT Z. LAWRENCE & ROBERT E. LITAN, SAVING FREE TRADE 23-24 (1986).

302. Cf. Judith Hippler Bello, *The WTO Dispute Settlement Understanding: Less Is More*, 90 AM. J. INT'L L. 416, 417 (1996) (noting that interest groups object to the WTO because transparency through international law exposes the inefficiency of these groups' preferred policies).

303. See generally Peter M. Haas, *Introduction: Epistemic Communities and International Policy Coordination*, 46 INT'L ORG. 1 (1992).

304. See Isaiah Frank, *Toward Freer Trade Among Nations: A U.S. Perspective*, in TOWARDS FREER TRADE BETWEEN NATIONS 44, 55 (John Nieuwenhuysen ed., 1989).

Most attacks on globalization, in fact, have little to do with international institutions or law. What the Battle in Seattle really decried was “the direction of national government policies.”³⁰⁵ At worst, the rhetoric borders on the offensive. Robert Wolf, for instance, has the gall to compare the depopulation of “[n]umerous rural regions within the United States” with the “coloniz[ation]” of “Third World countries.”³⁰⁶ When Iowans line up to trade places with their counterparts in Bangladesh, Bolivia, and Burkina Faso, we can begin to think of rural America as the Third World. As matters stand, an Iowa long on civilized comforts but short on productive population now proposes to reinvent itself as the “Ellis Island of the Midwest.”³⁰⁷ Contrary to the dire predictions of globalization’s shrillest critics, Iowa as immigration magnet will realize economic renewal and population gain because of, not in spite of, high wages and stringent environmental standards. As New York did during the nineteenth century’s experience with globalization, Iowa bestrides the world like a New Colossus:

Give me your tired, your poor,
Your huddled masses yearning to breathe free,
The wretched refuse of your teeming shore.³⁰⁸

The real Third World is in fact the most important battleground in international economic law. Globalization’s impact on developing nations having been called into question, I now address economic and social issues I left unresolved in *Globalization and Its Losers*.

B. THE FORGOTTEN WINNERS

Globalization and Its Losers was too quick to assume that globalization “widen[s] existing disparities in the distribution of

305. Barbara Crossette, *Globalization Tops 3-Day U.N. Agenda for World Leaders*, N.Y. TIMES, Sept. 3, 2000, § 1, at 1, 4 (quoting Malloch Brown of the United Nations Development Program); see also Robert E. Baldwin, *The Changing Nature of U.S. Trade Policy Since World War II*, in *THE STRUCTURE AND EVOLUTION OF RECENT U.S. TRADE POLICY* 5 (Robert E. Baldwin & Anne O. Krueger eds., 1984) (observing that the public perception that a government has too strongly favored foreign interests can generate a severe political backlash against free trade).

306. Wolf, *supra* note 25, at 618; see also AMERICAN MOSAIC, *supra* note 24, at 314 (calling “most of rural America,” including Iowa, “part of the Third World”).

307. See Pam Belluck, *Short of People, Iowa Seeks to Be Ellis Island of Midwest*, N.Y. TIMES, Aug. 28, 2000, at A1.

308. Emma Lazarus, *The New Colossus* (1883), reprinted in EMMA LAZARUS: SELECTIONS FROM HER POETRY AND PROSE 48 (Morris Schappes ed., 1967).

wealth.”³⁰⁹ There are actually two variants of this common complaint. According to “some of the NGOs that disrupted the [1999] WTO meetings in Seattle,” the poor “in general . . . do not benefit from global growth.”³¹⁰ A second, “slightly different” line of criticism contends that “the poor . . . benefit proportionately less than the average household, so that inequality within countries is on the rise.”³¹¹ Economic data undermine both claims. “[T]he income of the poor [almost always] rises during periods of significant growth,” so that “growth in the overall economy is reflected one-for-one in growth in income of the poor.”³¹² The benefit to the poor is immediate; across-the-board growth through globalization “is not some process of trickle-down . . . in which the rich get richer first”³¹³ There is no empirical support for the old hypothesis “that inequality tends to increase during the early stages of development and then decrease later on.”³¹⁴

Of its own strength, growth offsets much of the inequality attributable to globalization. In economies experiencing rapid, globalization-fueled growth, “the positive effects of growth have outpaced the negative impact of inequitable income distribution” to such a degree that globalization can be credited for having “substantially improved living conditions for the world’s most poor.”³¹⁵ Globalization’s positive economic impact is most dramatic along the frontiers of extreme and absolute poverty, which the World Bank defines according to “reference lines set at \$1 and \$2 per day” in 1993 terms, adjusted for “the relative purchasing power of currencies across countries.”³¹⁶ By the World Bank’s

309. Chen, *supra* note 3, at 166.

310. DAVID DOLLAR & AART KRAAY, *GROWTH IS GOOD FOR THE POOR* 1 (2000) (preliminary draft available at <http://www.worldbank.org/research>).

311. *Id.*

312. *Id.* at 3; see also Shaohua Chen & Martin Ravallion, *What Can New Survey Data Tell Us About Recent Changes in Distribution and Poverty?*, 11 *WORLD BANK ECON. REV.* 357 (1997); Klaus Deininger & Lyn Squire, *A New Data Set Measuring Income Inequality*, 10 *WORLD BANK ECON. REV.* 565 (1996); William Easterly, *Life During Growth*, 4 *J. ECON. GROWTH* 239 (1999).

313. DOLLAR & KRAAY, *supra* note 310, at 6.

314. *Id.* at 4. *Contra* Simon Kuznets, *Economic Growth and Income Inequality*, 45 *AM. ECON. REV.* 1, 7-8 (1955).

315. A.T. KEARNEY, INC., GLOBAL BUSINESS POLICY COUNCIL, *GLOBALIZATION LEDGER* 7 (April 2000) [hereinafter *KEARNEY GLOBALIZATION LEDGER*] available at <http://www.atkearney.com>.

316. World Bank, *Measuring Poverty*, at <http://www.worldbank.org/poverty/mission/up2.htm> [hereinafter *Measuring Poverty*]. See generally Amartya K. Sen, *Poverty: An Ordinal Approach to Measurement*, 44 *ECONOMETRICA* 219 (1976) (defining poverty, inequality, and welfare and distinguishing these three concepts from each other).

conservative estimate, the percentage of the world's population living in extreme poverty — on less than \$1 a day — fell from 28.3 to 24.0 percent between 1987 and 1998.³¹⁷ A more optimistic study has concluded that “the share of the world's population earning less than US\$2 per day shrank by more than half” between 1980 and 1990, “from 34 to 16.6 percent.”³¹⁸ In concrete terms, over the course of that decade “economic growth associated with globalization” lifted 1.4 billion people out of absolute poverty.³¹⁹

Much work nevertheless remains. Let us return to the World Bank's more sober assessment of global poverty. As of 1998, 2.8 billion people worldwide subsisted on less than \$2 a day; almost 1.2 billion of those people lived on less than \$1 a day.³²⁰ Despite recent economic gains, the absolute number of extremely poor persons remained steady at 1.2 billion³²¹ due to an increase of 815 million in the global population between 1987 and 1998. In confronting “the central challenge . . . to ensure that globalization becomes a positive force for all the world's people,” the United Nations' Millennium Declaration resolves to halve three separate measures of misery by 2015: “the proportion of the world's people whose income is less than \$1 a day,” the proportion who “suffer from hunger,” and the proportion “who are unable to reach, or to afford, safe drinking water.”³²²

How then should the nations of the world address the twin economic challenges of spurring growth and curbing inequality? The answer lies in more economic integration, not less. Openness to trade unequivocally increases per capita income.³²³ Trade liberalization helps alleviate poverty by “allow[ing] people to exploit their productive potential, assist[ing] economic growth, curtail[ing] arbitrary policy interventions and help[ing] to insulate

317. See WORLD BANK, GLOBAL ECONOMIC PROSPECTS AND THE DEVELOPING COUNTRIES 29 (2000) [hereinafter GLOBAL ECONOMIC PROSPECTS].

318. KEARNEY GLOBALIZATION LEDGER, *supra* note 315, at 8.

319. *Id.* at 1.

320. See GLOBAL ECONOMIC PROSPECTS, *supra* note 317, at 29; *Measuring Poverty*, *supra* note 316.

321. See GLOBAL ECONOMIC PROSPECTS, *supra* note 317, at 28.

322. In *Statement by the U.N.: The Need for Balance*, N.Y. TIMES, Sept. 9, 2000, at A4. The text of the U.N. Millennium Declaration is available at <http://www.un.org>.

323. See DAN BEN-DAVID, HÅKAN NORDSTRÖM & L. ALAN WINTERS, TRADE, INCOME DISPARITY AND POVERTY 4 (WTO 1999) (“[C]ountries that expand bilateral trade are likely to find their incomes converging more rapidly than otherwise”); DOLLAR & KRAAY, *supra* note 310, at 5; Jeffrey A. Frankel & David Romer, *Does Trade Cause Growth?*, 89 AM. ECON. REV. 379, 380-81 (1999); see also David Dollar, *Outward-Oriented Developing Countries Really Do Grow More Rapidly: Evidence from 95 LDCs, 1976-1985*, 40 ECON. DEV. & CULT. CHANGE 523 (1992).

against shocks.”³²⁴ “Reducing government consumption and stabilizing inflation” achieve “super-pro-poor” results insofar as these policies “raise overall incomes” and “have an additional positive effect on the distribution of income.”³²⁵ Ensuring the rule of law, a rhetorically modest but pragmatically monumental achievement in some corners of the world, promises much of the same.³²⁶ Not surprisingly, “the basic policy package of private property rights, fiscal discipline, and openness to trade”³²⁷ coincides with the formula that the Organisation for Economic Co-operation and Development has prescribed for job growth in developed nations.³²⁸ How has the United States, more than any other country in the world, tapped the power of the epiphytic economy? “Deregulation,” “the largest and most creative financial markets in the world,” low “barriers to bankruptcy,” and labor markets that are “much more fluid . . . than most other countries[],” and a cultural affinity “for entrepreneurship and risktaking.”³²⁹ In other words, it is not the embrace of globalization but rather its rejection that demonstrates “genuine lack of heart.”³³⁰

In short, “anyone who cares about the poor should favor the growth-enhancing policies of good rule of law, fiscal discipline, and openness to international trade.”³³¹ Nevertheless, I do not abandon from my earlier endorsement of direct wealth transfers for some of globalization’s real losers.³³² Trade reforms do “create some losers” and may even “temporarily” exacerbate poverty.³³³

324. BEN-DAVID ET AL., *supra* note 323, at 6.

325. DOLLAR & KRAAY, *supra* note 310, at 5-6.

326. *See id.* at 5.

327. *Id.* at 6; *see also* Frank H. Easterbrook, *Cyberspace and the Law of the Horse*, 1996 U. CHI. LEGAL F. 207, 209-213 (recommending three goals for law in the post-agrarian “new economy”: “make rules clearer, to promote bargains”; “create property rights, where there are none”; and “create bargaining institutions”).

328. *See generally* ORGANISATION FOR ECONOMIC CO-OPERATION & DEVELOPMENT, THE OECD JOBS STRATEGY: ASSESSING PERFORMANCE AND POLICY (1999); ORGANISATION FOR ECONOMIC CO-OPERATION & DEVELOPMENT, IMPLEMENTING THE OECD JOBS STRATEGY: LESSONS FROM MEMBER COUNTRIES’ EXPERIENCE (2000).

329. DIGITAL ECONOMY, *supra* note 119, at 66; *see also* Robert C. Holland, *The Committee for Economic Development Report on United States Technology Policy*, in TECHNOLOGY, INTERNATIONAL ECONOMICS, AND PUBLIC POLICY 79, 88-89 (Hugh H. Miller & Rolf R. Piekarz eds., 1982) (recommending regulatory changes, governmental support for basic research, and tax changes favoring research and development as part of a macroeconomic tonic for innovation).

330. Lasch-Quinn, *supra* note 10, at 591.

331. DOLLAR & KRAAY, *supra* note 310, at 27.

332. Chen, *supra* note 3, at 212 (“To put it bluntly, we need to bribe the losers.”).

333. BEN-DAVID, *supra* note 323, at 6.

The “appropriate policy response,” however, is not to “abandon the reform process” but to adopt the most politically accountable, economically efficient means of “alleviat[ing] the hardships and facilitat[ing] adjustments.”³³⁴ Because “public expenditure on social services” in many countries “often is not well-targeted towards the poor,” direct social spending “shows little effect on either growth or distribution.”³³⁵ To the extent that globalization has an indirect but positive impact on political freedom,³³⁶ it can improve the effectiveness of social spending programs by combating official corruption and mismanagement at or below the national level.³³⁷

Though globalization’s most vocal critics often claim the legacy of the New Deal and the Great Society, they routinely reject tax-financed solutions in favor of trade restraints. On a panel of putatively progressive critics, John Miller alone acknowledges my endorsement “of large, governmentally-mandated wealth transfers.”³³⁸ If civilized society genuinely wishes undertake to alleviate the suffering of the poorest among us, a commitment I readily accept, the choice lies between free trade coupled with public assistance on one hand and differently targeted wealth redistribution through local monopolies on the other.

The only explanation I can imagine for this hostility toward free trade, progressive taxation, and transparent welfare is the work fetish that marks agrarianism and cognate political philosophies. Why this must be so defies my understanding. Agrarian Wes Jackson demonstrates that making a fetish of labor, much as the *laissez faire* capitalism of the Industrial Revolution made a fetish of commodities,³³⁹ has no secure place in agrarian thought.³⁴⁰ The preference for sweat equity, merely implied by my critics but expressed outright by Wendell Berry, represents the modern left’s abandonment of Karl Marx for Max Weber. I had thought, admittedly before the New Property transmogrified into the New Left, that welfare was as dignified as any other form of

334. *Id.*

335. DOLLAR & KRAAY, *supra* note 310, at 6.

336. KEARNEY GLOBALIZATION LEDGER, *supra* note 315, at 9-10.

337. See generally JONATHAN TEMPLE, GROWTH EFFECTS OF EDUCATION AND SOCIAL CAPITAL IN THE OECD (2000); COMMITTEE ON SCIENCE, ENGINEERING, AND PUBLIC POLICY, CAPITALIZING ON INVESTMENTS IN SCIENCE AND TECHNOLOGY (1999).

338. Miller, *supra* note 14, at 595.

339. See Duncan Kennedy, *The Role of Law in Economic Thought: Essays on the Fetishism of Commodities*, 34 AM. U. L. REV. 939, 945-51 (1985).

340. See WES JACKSON, NEW ROOTS FOR AGRICULTURE 112 (1980) (identifying the alleviation of drudgery as a legitimate agrarian goal).

property.³⁴¹

"In every measure . . . [of] standard of living, such as real income, homelessness, life expectancy, and height, the gains of the lower classes have been far greater than those experienced by the population as a whole, whose overall standard of living . . . also improved" during the twentieth century.³⁴² The most self-consciously anthropocentric critics of globalization have failed to acknowledge its positive impact on the humblest members of the human family. With so much to gain from further economic integration, those who have risen from the abject poverty of the developing world are globalization's forgotten winners.³⁴³

In most of the world, life is still "solitary, poore, nasty, brutish, and short."³⁴⁴ Two generations ago C.P. Snow identified the real stakes in the intellectual struggle between the industrialism of the scientific community and the Luddite romanticism of the humanistic community:

Most of our fellow human beings . . . are underfed and die before their time. In the crudest terms, *that* is the social condition. There is a moral trap which comes through th[is] insight into man's loneliness: it tempts one to sit back, complacent in one's unique tragedy, and let the others go without a meal.³⁴⁵

That struggle continues today. Heirs of the West's anti-industrial tradition, globalization's critics still urge "voluntary simplicity."³⁴⁶ It is one thing for those whose idiosyncratic "aesthetic revulsion[s]" lead them to forgo "food, see most of [their] children die in infancy, despise the comforts of literacy, [and] accept twenty years off [their] own li[ves]."³⁴⁷ To "impose the same choice on others who are not free to choose," however, deserves condemnation, even contempt.³⁴⁸ To "despise the elemental needs," especially "when one has been granted them and others have not . . . is simply to be inhuman, or more exactly anti-human."³⁴⁹

341. See Charles Reich, *The New Property*, 73 YALE L.J. 733, 733 (1964).

342. Virginia Postrel, *Economic Scene*, N.Y. TIMES, Aug. 10, 2000, at C2. See generally ROBERT W. FOGEL, THE FOURTH GREAT AWAKENING AND THE FUTURE OF EGALITARIANISM 137-75 (2000) (documenting the impressive scale of economic and biomedical gains realized by ordinary people during the twentieth century)

343. Cf. Suzanna Sherry, *The Forgotten Victims*, 63 U. COLO. L. REV. 375 (1992).

344. THOMAS HOBBS, LEVIATHAN 89 (Richard Tuck ed., 1996) (1st ed. 1651).

345. SNOW, *supra* note 34, at 6-7 (emphasis in original).

346. See *supra* text accompanying note 91.

347. SNOW, *supra* note 34, at 25-26.

348. *Id.* at 26.

349. *Id.* at 79.

C. CAN'T BUY ME LAW

In all fairness, globalization's most vocal critics are simply behaving according to their genetic heritage as humans. Even amid fantastic wealth beyond the dreams of their ancestors and the reach of their contemporaries, children of privilege will complain. Any evolutionary psychologist knows that it is relative and not absolute well-being that satisfies the human beast.³⁵⁰

[A]s soon as . . . basic problems of survival are solved, merely having enough food and a comfortable shelter is no longer to make people content. New needs are felt, new desires arise. With affluence and power come escalating expectations, and as our level of wealth and comforts keeps increasing, the sense of well-being we hoped to achieve keeps receding into the distance.³⁵¹

Mindful that I ought not hold my critics to a standard that exceeds their capacity as humans, I will now respond to John Miller's complaint that the standard defense of globalization tends to "focus . . . on economic matters to the exclusion of moral and social considerations."³⁵² Globalization does in fact have salutary social effects. I shall briefly mention globalization's positive impact on matters of social, environmental, and political concern.

First, aggressive globalization has "demonstrated an unmatched ability to transform economic growth into gains in social development."³⁵³ Although "government social spending, formal democratic institutions, and primary school enrollment"

350. See, e.g., Mark Epstein, *Opening Up To Happiness*, PSYCHOL. TODAY, July 1995, at 42.

351. MIHALY CSIKSZENTMIHALYI, *FLOW: THE PSYCHOLOGY OF OPTIMAL EXPERIENCE* 10 (1990); see also WALKER PERCY, *The Delta Factor*, in *THE MESSAGE IN THE BOTTLE: HOW QUEER MAN IS, HOW QUEER LANGUAGE IS, AND WHAT ONE HAS TO DO WITH THE OTHER* 3, 3 (1986) ("Why does man feel so bad in the very age when, more than in any other age, he has succeeded in satisfying his needs and making over the world for his own use?"); Mark Kelman, *Choice and Utility*, 1979 WIS. L. REV. 769, 772 n.10 (arguing that wealth, like heroin, is addictive and that increased wealth simply breeds greater aversion to loss without delivering greater actual satisfaction); cf. F. SCOTT FITZGERALD, *THE GREAT GATSBY* 141 (Matthew J. Bruccoli ed., 1991) (1st ed. 1925) ("He had come a long way to this blue lawn and his dream must have seemed so close that he could hardly fail to grasp it. He did not know that it was already behind him, somewhere back in that vast obscurity beyond the city, where the dark fields of the republic rolled on under the night.").

352. Miller, *supra* note 14, at 600; cf. Lasch-Quinn, *supra* note 10, at 593 (demanding "profound deliberation of" and a sharp distinction between "what properly belongs in the market — and what does not").

353. KEARNEY GLOBALIZATION LEDGER, *supra* note 315, at 14 (measuring social progress by the United Nations Development Program's Human Development Index of lifespan, literacy, and quality of life). See generally UNITED NATIONS DEVELOPMENT PROGRAMME, *HUMAN DEVELOPMENT REPORT* (Bruce Ross-Larson ed., 2000).

have a "less robust" impact on growth and income distribution,³⁵⁴ it is nevertheless worth noting that nations committed to globalization undertake greater social spending³⁵⁵ and enjoy greater enrollment levels at every educational level.³⁵⁶ This socioeconomic virtuous circle flourishes in the long run: "many of the social benefits which flow from human capital accumulation such as better health, greater civic engagement, lower crime and enhanced social cohesion may feed back into economic growth in the longer term."³⁵⁷

Second, increased worldwide wealth pays a green dividend. Rising income spurs a taste for environmental protection and the means with which to pay for it.³⁵⁸ As matters stand, the developing world not only lacks the resources needed to redress environmental problems, but also has come to regard environmental protection as a concern of the rich.³⁵⁹ Developing nations often feel burdened by the high cost of complying with the environmental standards of the United States and other First World nations.³⁶⁰ At an extreme, the developing world regards the environmental imperatives of the global north and west as imperialism in green drag.³⁶¹ There is an urgent need to coordinate free trade and environmental protection as "complementary" policies.³⁶² Strictly local solutions will not suffice; only strong centralized regulation, not "haphazard local encouragement," can adequately address "diffuse, cross-jurisdictional" problems such as mobile source emissions and nonpoint-source runoff.³⁶³ "[E]nvironmental interconnection has become too real to ignore"; the "existence of transboundary

354. DOLLAR & KRAAY, *supra* note 310, at 6.

355. See KEARNEY GLOBALIZATION LEDGER, *supra* note 315, at 11.

356. See *id.* at 12-14.

357. NEW ECONOMY, *supra* note 112, at 18. See generally JONATHAN TEMPLE, GROWTH EFFECTS OF EDUCATION AND SOCIAL CAPITAL IN THE OECD (2000).

358. See, e.g., GENE M. GROSSMAN & ALAN D. KRUEGER, ENVIRONMENTAL IMPACTS OF A NORTH AMERICAN FREE TRADE AGREEMENT 5 (1991); PETER HUBER, HARD GREEN 151 (2000); OFFICE OF TECHNOLOGY ASSESSMENT, U.S. CONGRESS, TRADE AND ENVIRONMENT: CONFLICTS AND OPPORTUNITIES 4-6, 22-24 (1992).

359. See Runge, *supra* note 295, at 52.

360. See Raj Bhala, Mrs. WATU and International Trade Sanctions, 33 INT'L LAW. 1, 21 (1999).

361. See Bartram S. Brown, *Developing Countries in the International Trade Order*, 14 N. ILL. U. L. REV. 347, 376-77 (1994).

362. Jackson, *supra* note 54, at 1228 ("[I]ncreasing world welfare can lead to citizen demands and governmental actions to improve protection for the environment.").

363. Stephen M. Nickelsburg, Note, *Mere Volunteers? The Promise and Limits of Community-Based Environmental Protection*, 84 VA. L. REV. 1371, 1409 (1998).

communities inevitably creates a drive away from localism in all spheres."³⁶⁴ Of the environmental problems that plague this mutually dependent world, "persistent poverty may turn out to be the most aggravating and destructive."³⁶⁵ We must remember "above all else, that human degradation and deprivation . . . constitute the greatest threat not only to national, regional, and world security, but to essential, life-supporting ecological systems."³⁶⁶

Finally, free trade outperforms agrarianism as a core political right. The political apology for agrarianism found its perfect expression in the writings of Thomas Jefferson: "Those who labor in the earth are the chosen people of God, . . . whose breasts he has made his peculiar deposit for substantial and genuine virtue."³⁶⁷ Jeffersonian agrarianism, perhaps the most frequently invoked political philosophy in agricultural scholarship,³⁶⁸ has inspired both Paul Thompson³⁶⁹ and Robert Wolf.³⁷⁰ The very farmers whom Jefferson called "the chosen people of God," a flawless "mass of cultivators" immune from "[c]orruption of morals,"³⁷¹ eventually waged fratricidal war in defense of the ultimate agrarian crime against humanity.³⁷² Let it never be forgotten that Jeffersonian agrarianism reached its apogee at Gettysburg, that at least one American polity dedicated to localism mercifully "*Died of [that] Theory.*"³⁷³

364. Daniel A. Farber, *Stretching the Margins: The Geographic Nexus in Environmental Law*, 48 STAN. L. REV. 1247, 1271 (1996).

365. Patrick Low, *Trade and the Environment: What Worries the Developing Countries?*, 23 ENVTL. L. 705, 706 (1993).

366. James A. Lee, *Conservation in a World in Search of a Future*, in CONSERVATION FOR THE 21ST CENTURY 284, 287 (David Western & Mary C. Pearl eds., 1989).

367. THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA 164-65 (William Peden ed., 1955).

368. See, e.g., Linda A. Malone, *Reflections on the Jeffersonian Ideal of an Agrarian Democracy and the Emergence of an Agricultural and Environmental Ethic in the 1990 Farm Bill*, 12 STAN. ENVTL. L.J. 3, 4-7 (1993); Joseph P. Viteritti & Gerald J. Russello, *Community and American Federalism: Images Romantic and Real*, 4 VA. J. SOC. POL'Y & L. 683, 687-88 (1997).

369. See Thompson, *supra* note 20, at 608 (defending agrarianism as a boost for all nascent states and as a boon for "democracy when land holdings are widely distributed," as in "Jefferson's America").

370. See AMERICAN MOSAIC, *supra* note 24, at 321 (reporting how Mr. Wolf found "smatterings of Jefferson" to be "confirmation for [his agrarian] thoughts").

371. JEFFERSON, *supra* note 367, at 174-75.

372. See Jim Chen, *Of Agriculture's First Disobedience and Its Fruit*, 48 VAND. L. REV. 1261 (1995).

373. 3 SHELBY FOOTE, THE CIVIL WAR: A NARRATIVE: RED RIVER TO APPOMATTOX 766 (1974) (quoting Jefferson Davis).

Of its own force, condemning the ritual worship of Jefferson could serve as this essay's service to legal scholarship. Jefferson's "rules of construction for the authorities vested in the Government of the Union would arrest all its essential movements and bring it back in practice to the same state of imbecility which rendered the old confederation contemptible."³⁷⁴ Professor Thompson comes much closer to the heart of the matter when he admits that "[a]grarian political theory . . . has been asserted in defense of some unsavory political movements."³⁷⁵ My critics' fixation with small-scale enterprise and self-sufficiency marks merely one sense in which "the twentieth-century statesman whom . . . Thomas Jefferson . . . would have admired most is Pol Pot."³⁷⁶

Historically speaking, more freedom has arisen from the economic erosion of agrarian influence than from a calculated preservation of agrarian values. For all his flaws, even Karl Marx understood how industrialization and the gradual migration of labor out of agriculture "rescued a considerable part of the population from the idiocy of rural life."³⁷⁷ "Slave of the wheel of labor, what to him / Are Plato and the swing of Pleiades?"³⁷⁸ The few women and slaves who enjoyed the franchise at the time of the American founding supported economic and political union among the states — the closest thing to globalization in the late eighteenth century — because the complex social structures arising from economic integration tend to liberate groups who remain disempowered in simpler, more traditional settings.³⁷⁹ Globalization and the mass diffusion of information promise "to neutralize inequities based on gender and race and to make such factors irrelevant in the calculation of opportunities available for economic advantage."³⁸⁰

In this spirit, our own age of mass transport of goods, persons,

374. ALEXANDER HAMILTON, 12 THE PAPERS OF ALEXANDER HAMILTON 249 (Harold C. Syrett ed., 1967) (criticizing the government in an August 18, 1792 letter to George Washington); see also FORREST McDONALD, ALEXANDER HAMILTON: A BIOGRAPHY 253 (1979) (explaining that the criticism was directed entirely at Jefferson).

375. Thompson, *supra* note 20, at 608.

376. CONOR CRUISE O'BRIEN, THE LONG AFFAIR: THOMAS JEFFERSON AND THE FRENCH REVOLUTION, 1785-1800, at 150 (1996).

377. *Communist Manifesto*, *supra* note 2, at 477.

378. Edwin Markham, *The Man with the Hoe*, in AMERICAN LYRIC POEMS: FROM COLONIAL TIMES TO THE PRESENT 75, 76 (Elder Olson ed., 1964).

379. See Rosmarie Zagari, *Gender and the First Party System*, in FEDERALISTS RECONSIDERED 118, 131-34 (Doron Ben-Atar & Barbara B. Oberg eds., 1999).

380. Ruth Gana Okediji, *Copyright and Public Welfare in Global Perspective*, 7 IND. J. GLOBAL LEG. STUD. 117, 183 (1999).

and ideas can draw inspiration from the six and a half million Americans of African descent, many a mere generation removed from slavery and sharecropping, who over the course of six decades completed "one of the largest and most rapid mass internal movements of people in history."³⁸¹ This story, which consists principally of "country people" who "[f]ell in love with [the] city" upon escaping the farm, contains a transformative power without parallel in the American pageant.³⁸² Its lessons respect no temporal, geographic, or cultural boundaries.

The localist outcry has obscured globalization's very concrete contribution to personal and political freedom. A more geographically circumscribed world was vulnerable to what James Madison called "faction," the machinations of corrupt insiders, "united and actuated by some common impulse of passion . . . adverse to . . . the permanent and aggregate interests of the community" at large.³⁸³ (Quite preciently, Madison identified international trade as the sort of issue that would foment faction.)³⁸⁴ Madison understood that the proper cure for faction lies in expanding government's geographic reach so that no single, locally entrenched ideology or interest would attain a harmful political dominance.³⁸⁵ What the United States achieved by expanding its borders from "the St. Croix to the Gulph of Mexico, from the Atlantic to the Pacific" and beyond,³⁸⁶ international economic law after Bretton Woods and Marrakesh is slowly creating on a worldwide scale. Political freedom is all the healthier because of the WTO, World Bank, and IMF, especially in portions of the world that have hitherto tasted too little of it.

D. FROM SEA TO SEA TO SHINING SEA

Globalization is a class struggle, as all life is a class struggle.³⁸⁷ Neither globalization nor any of its proffered

381. NICHOLAS LEMANN, *THE PROMISED LAND: THE GREAT BLACK MIGRATION AND HOW IT CHANGED AMERICA* 6 (1991).

382. TONI MORRISON, *JAZZ* 33 (1992).

383. *THE FEDERALIST* NO. 10, at 46 (James Madison) (Clinton Rossiter ed., 1999).

384. *See id.* at 48.

385. *See id.* at 51-52.

386. *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 408 (1819).

387. *Compare Communist Manifesto*, *supra* note 2, at 473 ("The history of all hitherto existing society is the history of class struggle") with *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting) ("That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment."). *See also* FRIEDMAN, *supra* note 113, at 274 ("Like all revolutions, globalization involves a shift in power from one group to another.").

alternatives can eliminate "class antagonisms"; all that social change can do is "establish[] new classes, new conditions of oppression, new forms of struggle in place of the old ones."³⁸⁸ Threatened incumbents seek refuge in the localist yearning for "homecoming" — for a life mission based on a purposeful return to the place of one's birth.³⁸⁹ For good or for ill, the emergence of an epiphytic economy and the commensurate expansion of the political arena have accorded irrevocably greater value to "portable skills that a person can use without ever sinking roots in a place."³⁹⁰

Globalization does inflict emotional trauma on persons in economic and cultural transit. To wander through life "without any one spot of earth being dearer . . . than another" is admittedly to feel "the clutch of solitude at [one's] heart, the sense of being swept like a stray uprooted growth down the heedless current of the years."³⁹¹ But the human pageant has long since passed the "weather-beaten sunburnt village[s] of the hills, abandoned of men [and women], left apart by railway, trolley, telegraph, and all the forces that link life to life in modern communities."³⁹² Globalization has delivered its most dramatic gains to its forgotten winners, the impoverished folk who have lived "in Starkfield too many winters"³⁹³ in rotten boroughs. Localism's sole contribution to the debate is to identify the innate human longing for a sense of community and place. That challenge numbers among the many facing transient populations in a globalized, interconnected world.

Slowing or even stopping world trade will not accomplish this goal. "[P]rotectionism raises prices, entrenches inefficiency and destroys more jobs than it saves."³⁹⁴ Trade liberalization, in addition to countering these baneful economic effects, does pay a peace dividend — in terms of stability abroad and greater political participation at home.³⁹⁵ All this and more has been known for years;³⁹⁶ it is simply incredible "that all [these] facts should speak

388. *Communist Manifesto*, *supra* note 2, at 474.

389. See WES JACKSON, *BECOMING NATIVE TO THIS PLACE* 3 (1994).

390. Eric T. Freyfogle, *The Particulars of Owning*, 25 *ECOL. L.Q.* 574, 589 (1999).

391. EDITH WHARTON, *THE HOUSE OF MIRTH* 307, 306 (R.W.B. Lewis intro. 1984) (1st ed. 1905).

392. EDITH WHARTON, *SUMMER* 3 (Candace Wald intro., 1993) (1st ed. 1916).

393. EDITH WHARTON, *ETHAN FROME* 6 (Doris Grumbach ed. 1987) (1st ed. 1922).

394. Robert W. McGee, *An Economic Analysis of Protectionism in the United States with Implications for International Trade in Europe*, 26 *GEO. WASH. J. INT'L L. & ECON.* 539, 550 (1993).

395. See *id.* at 552.

396. See generally, e.g., JAGDISH BHAGWATI, *PROTECTIONISM* 7-9 (1988); ANNE

falsely.”³⁹⁷ Stating these truths, I freely admit, does nothing more than reap that traditional “reward[] of high academic rank,” “the right to enunciate . . . conventional wisdom.”³⁹⁸ I hope merely that I have at least fulfilled the minimal responsibility of “expounding the conventional wisdom at a properly sophisticated level.”³⁹⁹

Thanks to a rapidly maturing body of experience with international arrangements such as the North American Free Trade Agreement, the European Union, and the WTO, we now understand that globalization fosters rather than hampers multilateral efforts at environmental protection.⁴⁰⁰ We are witnessing the development of a federalism of federalisms, an ever tighter web of economic and legal linkages across national borders:

That humankind, in the aftermath of two world wars, has reached a turning point in its history, that the world has entered a new era of global interdependence, that all inhabitants of Planet Earth share a common destiny, is a historical fact, a political fact, an economic fact, a sociological fact, that has finally penetrated the consciousness of most of the earth's inhabitants.⁴⁰¹

“[M]ost of the earth's inhabitants,” that is, except globalization's most ardent antagonists. Their struggle, properly viewed, is naked self-dealing on behalf of First World workers and industries whose competitive strategy consists of mulcting at home, exporting poverty, and claiming the mantle of economic patriotism. How disgraceful. A postcolonial world dedicated to development as a human right must combat the self-indulgent politics of place.⁴⁰² Consumers, voters, citizens — unite. You have a world to win.⁴⁰³

KRUEGER, PERSPECTIVES ON TRADE AND DEVELOPMENT 206-12 (1990).

397. CHARLES DARWIN, *THE DESCENT OF MAN AND SELECTION IN RELATION TO SEX* 630 (2d ed. 1874).

398. JOHN KENNETH GALBRAITH, *THE AFFLUENT SOCIETY* 12 (1958); *see also* Paul A. Samuelson, *Economists and the History of Ideas*, 52 AM. ECON. REV. 1, 18 (1962) (noting that “[i]n the long run, the . . . scholar works for the only coin worth having,” the “applause” of his or her academic peers).

399. GALBRAITH, *supra* note 398, at 12.

400. *See* Richard H. Steinberg, *Trade-Environment Negotiations in the EU, NAFTA, and WTO: Regional Trajectories of Rule Development*, 91 AM. J. INT'L L. 231 (1997).

401. Harold J. Berman, *World Law*, 18 FORDHAM INT'L L.J. 1617, 1621 (1995).

402. *See, e.g.*, Vienna Declaration and Programme of Action, U.N. Doc. A/CONF.157/24, adopted at Vienna, June 14-25, 1993, reprinted in 32 I.L.M. 1661 (1993).

403. *See Communist Manifesto*, *supra* note 2, at 480.