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Market Fundamentalism's New Fiasco: Globalization as Exhibit in the Case for a New Law and Economics

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MARKET FUNDAMENTALISM'S NEW FIASCO: GLOBALIZATION AS EXHIBIT B IN THE CASE FOR A NEW LAW AND ECONOMICS

JOSEPH E. STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS. New York: W. W. Norton & Co., 2002. xxii + 282.

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I. INTRODUCTION

There is no gentle way to put this: people all over the world are perishing upon the altar of the failed ideology of market fundamentalism. So says the 2001 Nobel laureate in Economics, Joseph E. Stiglitz, in *Globalization and Its Discontents*.[1] This brand of market fundamentalism,

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1. Stiglitz writes:

> Modern high-tech warfare is designed to remove physical contact: dropping bombs from 50,000 feet ensures that one does not "feel" what one does. Modern economic management is similar: from one's luxury hotel, one can callously impose policies about which one would think twice if one knew the people whose lives one was destroying.

JOSEPH E. STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS 24 (2002).

Stiglitz notes that "despite repeated promises of poverty reduction . . . poverty has actually increased by almost 100 million" persons over the last decade. *Id.* at 5. Global poverty is a compelling mortal sin of the current western economic order, as 2.8 billion world citizens struggle to live on less than two dollars a day. *Id.* at 25. Professor Stiglitz's book has been widely reviewed in the business press and other media, but this is the only review that applies the book's lessons to the field of law and economics. *See, e.g.*, Barry Eichengreen, *The Globalization Wars: An Economist Reports from the Frontlines*, FOREIGN AFF., July–Aug. 2002, at 157, 164 ("Stiglitz's book makes a compelling case that simple-minded economic doctrine, inadequately tailored to the realities of developing countries, can do more harm than good, and that the subtleties of economic theory are actually quite important for sound policy advice."); Benjamin M. Friedman, *Globalization: Stiglitz's Case*, N.Y. REV. BKS., Aug. 15, 2002, at 48 ("It is shocking to most citizens of the industrialized Western democracies to realize that in Uganda, or Ethiopia, or Malawi, neither men nor women can expect to live even to the age of forty-five. Or that in Sierra Leone 28 percent of all children die before reaching their fifth birthday."); Michael J. Mandel, *Where Global Markets Are Going Wrong*, BUS. WEEK, June emphasizing free markets, or market liberalization, and minimal government intervention in the economy, is the direct spawn of the efficiency obsession that dominates law and economics. Stiglitz contends that a broader, more comprehensive law and economics, one which focuses on organizing government intervention to support macroeconomic growth as well as market efficiency is what is needed to set globalization right.[2] Stiglitz challenges lawyers to create legal and institutional frameworks to facilitate a more successful globalization than that which has emerged under market fundamentalism.[3] Basically, the call is to restructure the legal and regulatory foundation of globalization to better reflect the teachings of economic science as opposed to free market ideology.[4]

Institutions need to be restructured to be more democratic and more resistant to special interest influences. Constituencies that have little power or voice in globalization need to be heard in order to assure a more nuanced, culturally sensitive and politically sustainable set of globalization policies. States that are exposed to full globalization must have adequate social, physical, and regulatory infrastructure in place to allow markets to thrive to the maximum extent possible. Most importantly, the world appears to be woefully undereducating its human resources, and the law must respond with institutions that support this key determinate of macroeconomic growth. Virtually all of Stiglitz's

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17, 2002, at 17 ("[J]ust as [Milton] Friedman's book [*Capitalism and Freedom*] helped to legitimize certain pro-market ideas before they became popular, so may *Globalization and Its Discontents* give additional weight to a new conception of globalization. That would be no small accomplishment.").

2. "The *analytic propositions* are clear: whenever there is imperfect information or markets (that is always), there are in principle interventions by the government—even a government that suffers from the same imperfections of information—which can increase the markets' efficiency." STIGLITZ, *supra* note 1, at 219.

3. Stiglitz asserts:

> I believe that globalization can be reshaped to realize its potential for good and I believe that the international economic institutions can be reshaped in ways that will help insure that this is accomplished. But to understand how these institutions should be reshaped, we need to understand better why they have failed, and failed so miserably.

Id. at 215.

Stiglitz refers to the International Monetary Fund (IMF), the World Bank and the World Trade Organization (WTO), as the "international economic institutions." *Id.* at 10–16. This Book Review utilizes the same terminology.

4. *Id.* at 250 ("The free market ideology should be replaced with analyses based on economic science, with a more balanced view of the role of government drawn from an understanding of both market and government failures."). Stiglitz particularly emphasizes the need for appropriate regulatory infrastructure to support global markets—including adequate financial sector regulation, strong corporate governance standards, fair bankruptcy procedures, substantial social safety nets, and even environmental regulation—all in the name of superior macroeconomic growth and stability. *Id.* at 81, 139, 220, 233, 226–40.

proposed economic reforms need legal structures to be fully realized. This Book Review concludes that in order to adequately respond to Stiglitz's recent book, legal scholars must expand their economic horizons beyond mere laissez-faire efficiency to include macroeconomic perspectives. Broadening the economic scope of this field would not only coherently address the concerns arising from globalization in particular, but also address the intersection of law and economics generally with respect to both global and domestic issues of economic structure.

Professor Stiglitz is a compelling expert witness on the shortcomings of the legal and regulatory framework supporting globalization. Of course his Nobel Prize grants him credentials beyond cavil. Stiglitz also served on the Council of Economic Advisers from 1993 to 1997, ultimately as its Chair, during the Clinton administration.[5] From there, Professor Stiglitz went on to serve as Chief Economist at the World Bank from 1997 to 2000.[6] At bottom, Stiglitz, as could be expected of anyone educated in economics, is generally a proponent of free markets as well as globalization.[7] Nevertheless, while at the World Bank, Stiglitz simply saw too much suffering on a first hand basis to ignore the shortcomings of the free market ideology that now dominates globalization. He was there during the East Asian financial crisis of 1997, a shock to the world economy that threatened even the United States.[8] He was there in 1998 when Russia imploded.[9] He was witness to the exercise of special interest influence and can speak authoritatively to its impact on policy.[10] With all of Stiglitz's experience, it would be difficult to find a better expert eyewitness to testify on why globalization has gone "horribly wrong."[11]

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5. *Id.* at ix, 25.

6. *Id.* at ix.

7. Stiglitz explains, "I believe that globalization—the removal of barriers to free trade and the closer integration of national economies—can be a force for good and that it has the *potential* to enrich everyone in the world, particularly the poor." *Id.*

8. *Id.* at 6, 89.

9. *Id.* at 133–65.

10. *Id.* at 173–76 (recounting the U.S. government's role in the creation of a worldwide aluminum cartel designed to restrict output and raise prices, despite the determination by the head of the Department of Justice, Antitrust Division, that the government may have broken U.S. antitrust laws by participating).

11. *Id.* at 4. Recent events, too, support Stiglitz's indictment of globalization. *Globalization and Its Discontents* went to press before the Brazilian economy slumped in late summer of 2002, resulting in the largest IMF bail-out in history. "For the IMF, Latin America's current plight is the latest disaster in a litany of emerging-market crises over the past decade [that have] deeply dented the organization's credibility as a font of good economic advice." *Doubts Inside the Barricades*, ECONOMIST, Sept. 28, 2002, at 63–64.

How horribly wrong has globalization gone? According to Stiglitz, the travails and tribulations of globalization amount to the greatest economic disturbances since the Great Depression.[12] It was during this era that the world learned that laissez-faire efficiency was an economic dead end.[13] The Great Depression was a compelling circumstance for policymakers to begin to experiment with how government can act to make a market economy work better.[14] It was exhibit A in the case against pure market efficiency. The failed free market ideology of globalization is exhibit B. It shows that merely allowing free markets to run amok is "bad economics" at best.[15] The question posed in the wake of yet another free market fiasco, is how lawyers can design institutions and regulatory authorities in a manner that facilitates market efficiency and macroeconomic growth. In many ways, it is 1933 all over again.[16] If there is one major difference, it is that today we know so much more. Today, we have Joseph Stiglitz and other economists to tell lawyers why the international economic system is so dysfunctional, and to challenge lawyers to design a more durable and productive international infrastructure for global capitalism.[17]

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12. STIGLITZ, *supra* note 1, at 89.

13. *Id.* at 74 (stating that globalization amounts to a "resuscitation of the laissez-faire policies that were popular ... in the nineteenth century" and that "in the aftermath of the Great Depression and the recognition of other failings of the market system, from massive inequality to unlivable cities marred by pollution and urban decay, these free market policies have been widely rejected in the more advanced industrialized countries").

14. *Id.* at 55.

15. *Id.* at xiii.

16. Stiglitz recalls:

> The current situation reminds me of the world some seventy years ago. As the world plunged into the Great Depression, advocates of the free market said, "not to worry; markets are self-regulating, and given time economic prosperity will resume." Never mind the misery of those whose lives were destroyed waiting for this so-called eventuality. [John Maynard] Keynes argued that markets are not self-correcting, or not at least in a relevant time frame. (As he famously put it, "In the long run we are all dead.") Unemployment could persist for years, and government intervention was required.... Today the system of capitalism is at a crossroads just as it was in the Great Depression.

Id. at 249 (quoting JOHN MAYNARD KEYNES, A TRACK ON MONETARY REFORM (1924)).

17. Thus far most legal scholarship addressing the world economic order has focused on how to encourage the world economic institutions to take account of other noneconomic considerations such as distributive justice, human rights, and social development. *See* Enrique Carrasco, *Critical Issues Facing the Bretton Woods System: Can the IMF, World Bank and GATT/WTO Promote an Enabling Environment for Social Development?*, 6 TRANSNAT'L L. & CONTEMP. PROBS., at i (1996). Even recent scholarship specifically addressing the structure and relationship of the world economic institutions has had little to say about how to create macroeconomically optimized institutions and structures. Deborah E. Siegel, *Legal Aspects of the IMF/WTO Relationship: The Fund's Articles of Agreement and the WTO Agreements*, 96 AM. J. INT'L L. 561 (2002). Obviously, these noneconomic considerations are very important

II. GLOBALIZATION AND THE FAILED IDEOLOGY OF MARKET FUNDAMENTALISM

A set of ideological policy proscriptions that Stiglitz terms the "Washington Consensus" dominates the economic globalization that has marked the last fifty years of world economic development.[18] According to Stiglitz, there is broad consensus among the U.S. Treasury, the World Bank and the International Monetary Fund that the right policies for developing countries can be derived from "the free market mantra" that gripped Washington in the 1980s.[19] This free market mantra means an extremely limited role for government intervention in the economy of developing nations. It also means that industry should always be privatized as rapidly as possible, with little exception. Finally, this extreme adherence to market fundamentalism means that free markets should reign supreme: trade barriers should always be eliminated immediately, and capital markets should be fully liberalized.[20] All of this may sound just fine, particularly to avid readers of American law reviews which are dominated by scholars espousing this same brand of market fundamentalism under the auspices of the law and economics movement. Stiglitz, however, shows how this philosophy led to disaster in the context of the globalization efforts of the past few decades.[21]

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issues separate and apart from their economic implications; however, this Book Review is limited to economic issues.

18. Other economists have also identified problems associated with what Professor Stiglitz refers to as the market fundamentalism of the Washington Consensus. For example, Professor Jagdish Bhagwati uses the term "The Wall Street-Treasury Complex" to refer to the free market ideology pushed by special interests on Wall Street and their agents that populate the U.S. Treasury as well as the IMF and the World Bank. JAGDISH BHAGWATI, THE WIND OF THE HUNDRED DAYS: HOW WASHINGTON MISMANAGED GLOBALIZATION 8–9 (2000).

19. STIGLITZ, *supra* note 1, at 16.

20. *Id.* at 59.

21. Law and economics is a varied and dynamic approach to legal issues. This Book Review only addresses the laissez-faire enthusiasts among law and economics scholars, who employ law and economics to seemingly always conclude that government intervention in the economy is unnecessary, without any consideration of macroeconomic analysis or how legal frameworks and institutions can support strong markets. *See, e.g.*, Frank H. Easterbrook & Daniel R. Fischel, *Mandatory Disclosure and the Protection of Investors*, 70 VA. L. REV. 669, 714 (1984) (arguing that markets provide incentives for disclosure and therefore there is no need for securities regulation); Richard A. Epstein, *A Common Law for Labor Relations: A Critique of the New Deal Labor Legislation*, 92 YALE L.J. 1357, 1358 (1983) (invoking law and economics in support of the conclusion that "New Deal labor legislation is in large measure a mistake"); Jonathan R. Macey & Elizabeth H. Garrett, *Market Discipline by Depositors: A Summary of the Theoretical and Empirical Arguments*, 5 YALE J. ON REG. 215, 239 (1988) ("[Micro]economic theory suggests that depositors exposed to risk of loss will discipline excessively risky banks . . . through contractual devices[,] . . . higher risk premiums and . . . withdrawals" and therefore there is little need for government-sponsored deposit insurance); *see also* RICHARD A. POSNER, ECONOMIC ANALYSIS OF LAW 3 (5th ed. 1998) (stating that

According to Stiglitz, the IMF—and to a lesser extent other international financial institutions—has imposed extreme fiscal austerity upon the developing world, resulting in severe limitations on the ability of governments to provide basic services and economic infrastructure. The "IMF/market fundamentalist model" essentially holds that "if government was not the root of all evil, it certainly was more part of the problem than the solution."[22] This approach is a throwback to the laissez-faire policies of a bygone era, one plagued by gross inequality, poverty, and macroeconomic instability. After the Great Depression, this brand of market fundamentalism was roundly rejected throughout the economically advanced nations of the world.[23] According to Stiglitz, the IMF, however, adheres to an ideological position that has little to do with modern economics; one that mandates extreme optimism in the functioning of markets, and extreme pessimism in the functioning of government.[24]

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economic analysis of law is about "rational choice" and not about "mysterious macroeconomic phenomena" like inflation, growth, output, or unemployment).

Judge Posner recognizes that laissez-faire is associated with those who seek efficiency outcomes in the law. *Id.* at 27 ("It would not be surprising to find that many legal doctrines rest on inarticulate gropings toward efficiency, especially since so many legal doctrines date back to the nineteenth century when a laissez-faire ideology based on classical economics was the dominant ideology of the educated classes."). Ironically, Stiglitz considers many of these government interventions to be central elements of the institutional infrastructure needed to facilitate the growth and stability of a market-based economy. STIGLITZ, *supra* note 1, at 81, 139.

22. STIGLITZ, *supra* note 1, at 85. Recently, there has been a growing recognition that the Great Depression was triggered by policies relating to the gold standard that acted to create a global contractionary bias. *See generally* PETER TEMIN, LESSONS FROM THE GREAT DEPRESSION 38 (1989). Ultimately, the IMF may assume this same role, as chief propagator of contractionary policies, when the global economy needs just the opposite. *How To Rescue It*, ECONOMIST, Sept. 28, 2002, at 11–12 (stating that the world is desperately in need of economic stimulus).

23. STIGLITZ, *supra* note 1, at 74, 249 (noting that laissez-faire policies do not work, and that the onset of government management of macroeconomic performance has resulted in fewer and shorter downturns and longer expansions). Even though Nobel-prize winning economists such as Stiglitz recognize the folly of laissez-faire law and economics, Judge Posner mentions laissez-faire only once, as associated with efficiency, and makes no mention of the hazards of laissez-faire policies to macroeconomic performance. POSNER, *supra* note 21, at 27, 785.

24. STIGLITZ, *supra* note 1, at 85. Judge Posner asserts that most all statutory and administrative law is inefficient. POSNER, *supra* note 21, at 569 ("The list of inefficient rules discussed in this book could be extended enormously, to cover much of the nation's statute law and administrative regulation."). One reason for this skepticism is because law and economics generally views regulation and legislation as products purchased by special interests. *Id.* at 572–75. This view ignores the fact that important economic regulation, such as the Federal Reserve Board's administration of monetary policy, has been secured from the pernicious influence of special interests. Steven A. Ramirez, *Depoliticizing Financial Regulation*, 41 WM. & MARY L. REV. 503, 504–05 (2000).

Here, Stiglitz speaks with particular authority. He shared the 2001 Nobel Prize with George Akerlof and Michael Spence, specifically for his work regarding the inability of markets to function according to conventional theory under conditions of information asymmetry.[25] As Stiglitz states: "markets do not work perfectly, in the way that simplistic models which assume perfect competition and perfect information claim they do."[26] "One of the great achievements of modern economics is to show" that markets operate efficiently only under "highly restrictive" conditions.[27] Recent learning has "shown that whenever information is imperfect . . . which is to say always . . . then the invisible hand works most imperfectly."[28] Thus, government intervention is frequently needed to help markets operate more efficiently and to assist in creating conditions conducive to economic growth.[29] Nevertheless, the teaching of modern economics had little effect upon the IMF, which was, according to Stiglitz, motivated by a "curious blend of ideology and bad economics, dogma that sometimes seemed to be thinly veiling special interests."[30]

The absurdity of the IMF's policies would be comedic if not accompanied by immense human suffering and the massive destruction of human capital. For example, the IMF refused to bail out Thailand in the late 1990s unless the government slashed social spending. The resulting cuts in health care expenditures and education investments caused prostitution and AIDS to soar.[31] In other developing countries the IMF insisted that food and fuel subsidies be cut, or that nations eliminate free schooling and instead impose fees to recover the costs of education.[32] Such a "trickle down" approach to growth, where it is hoped that efficient markets alone will ultimately raise all boats, has been specifically rejected in developed countries like the United States.[33] More importantly, such policies do not create conditions conducive to economic growth, as social instability and an ill-educated workforce can make economic progress impossible.[34] Such policies, therefore, not only fail to secure a

25. The best summary of the related work of the 2001 Nobel laureates is on the Nobel Prize website, http://www.nobel.se/economics/laureates/2001/public.html.

26. STIGLITZ, *supra* note 1, at xi.

27. *Id.* at 73.

28. *Id.*

29. *Id.* at 73–74, 82–83.

30. *Id.* at xiii.

31. *Id.* at 80.

32. *Id.* at 20.

33. *Id.* at 79–80.

34. *Id.* at 218, 219 (stating that East Asian growth was in part attributable to universal and high quality educational investments and that "[s]ocial cohesion is important if an economy is to function: urban violence in Latin America and civil strife in Africa create environments that are hostile to investment and growth").

globalized economy that functions to create additional demand for American exports, but are morally wrong and hypocritical.

The next pillar of the Washington Consensus is rapid privatization of industries.[35] "The rhetoric of market fundamentalism asserts that privatization will reduce what economists call the 'rent-seeking' activity of government officials who either skim off the profits of government enterprises or award contracts and jobs to their friends."[36] Stiglitz rightfully points out that government generally has no business running what ought to be private enterprises.[37] Indeed, the central lesson of the collapse of the communist bloc is that centralized economic planning, where government makes decisions that are best made by markets, is doomed to failure.[38] Governments cannot possibly process all of the information that is impounded into market decisions, and therefore economic distortions are inevitable anytime markets are supplanted by government decision makers. Without profit motives and private property, economic performance is compromised.[39] All of this is uncontested by Stiglitz and other economists. The IMF, however, was not just theoretically in support of privatization; it extended its market fundamentalist theory behind privatization to ideological extremes. Thus, the IMF pushed rapid privatization, known as shock therapy, requiring premature privatization and maintaining scorecards tallying the number of industries that a nation had privatized, as if privatization was an end in itself.[40]

Again, market fundamentalism alone proved to be an incomplete basis for policy. For example, while privatization could well oust rent-seeking officials from positions of power, if those same officials are put in charge of privatization, unencumbered by appropriate legal and regulatory frameworks, then the process could devolve into "briberization."[41] Basically, privatization can transform rent-seeking

The compelling economic logic of creating a social infrastructure conducive to investment and growth has been specifically rejected by law and economics theorists. For example, Judge Posner specifically recognizes that poverty reduction would lead to decreases in criminal activity, as the opportunity costs of crime increased. Nevertheless, rather than propose real improvements in social infrastructure, Posner theorizes that a more egalitarian society may have higher crime, because it would be easier to fence goods in more common use and would cost more to protect unconcentrated wealth. POSNER, *supra* note 21, at 242–43. Such facile speculation avoids the need to confront the reality that the macroeconomic growth that Stiglitz associates with social infrastructure could greatly outweigh these *de minimus* costs.

35. STIGLITZ, *supra* note 1, at 53.
36. *Id.* at 58.
37. *Id.* at 54.
38. *Id.* at 141.
39. *Id.*
40. *See id.* at 180–81.
41. *Id.* at 58 (stating that the free marketeers "failed to realize that without the appropriate legal structures and market institutions, the new owners might have an incentive to strip assets").

officials into wholesale agents of corruption. With privatization they are not limited to an annual skim. Rather, they are empowered to realize the value of the entire future flow of skim, and to appropriate those benefits from subsequent office holders.[42] The experience in the mass privatization of the Russian economy is instructive on this point. Russia, succumbing to the advocacy of the IMF and the U.S. Treasury, opted for shock therapy.[43] Thus, privatization proceeded rapidly, before any legal framework existed to assure that assets were not merely stripped away by the cronies of the ruling elite.[44] Predictably enough, friends of Russian President Boris Yeltsin were able to use their influence to strip assets from Russian industry and secrete them abroad.[45] As Stiglitz reports: "An oligarch who has just been able to use political influence to garner assets worth billions, after paying only a pittance, would naturally want to get his money out of the country" or face potential political pressure for the reversal of ill-gotten gains.[46] Billions in capital flowed out of Russia as a result.[47]

"Briberization" is not the only malady implicit in rapid privatization. Frequently, nations create enterprises specifically because the private sector has failed to create viable markets.[48] Developed nations know this well, as it is a fundamental tenet of capitalism that government must step into gaps in a market economy, which will naturally fail to exploit cost-effective opportunities if no single actor can capture the benefits of a given initiative or investment.[49] Predictably, the ideological market fundamentalism of the IMF failed to account for this basic economic reality.[50] Many times when the IMF insisted upon privatization, government provided services simply disappeared, whether involving phone

42. *Id.*

43. *Id.* at 140–43.

44. This underappreciation for regulatory infrastructure to protect investors is mirrored in the law and economics literature. For example, Judge Posner has asserted that securities regulation may be a "waste of time." POSNER, *supra* note 21, at 30.

45. STIGLITZ, *supra* note 1, at 159–60 (stating, "Yeltsin's friends and associates became billionaires" and that Russia's new "oligarchs stole assets, [and] stripped them, leaving . . . enterprises . . . on the verge of bankruptcy, while they were enriched.").

46. *Id.* at 144.

47. *Id.* at 144–52 (citing CHRYSTIA FREELAND, THE SALE OF THE CENTURY: RUSSIA'S WILD RIDE FROM COMMUNISM TO CAPITALISM (2000), stating that the Russian business elite was corrupt and stole much of Russia's wealth).

48. STIGLITZ, *supra* note 1, at 55 (citing market failures to provide annuities and reasonable home mortgages as leading to reforms in the United States for Social Security and federally backed mortgage issuers).

49. *E.g.*, ADAM SMITH, WEALTH OF NATIONS 473 (Great Minds ed., 1991) (1776) (government is duty bound to provide "public institutions" and "public works" which may be in the highest degree advantageous to a "great society" but which are not profitable to any individual economic actor because benefits may be widely diffused).

50. STIGLITZ, *supra* note 1, at 55.

service, transportation, or newborn chicks for farmers.[51] When governments exited these businesses, the services provided were simply destroyed, along with the jobs that were created by the government enterprise.[52] According to Stiglitz, privatization has thus failed to lead to the growth expected, and has even contributed to economic decline.[53]

The final element of market fundamentalism is market liberalization—meaning the removal of government interference in financial markets and the removal of trade barriers.[54] The theory behind financial market liberalization is simple enough. Stripping away regulations designed to impede the flow of capital would enhance the efficiency of capital markets and allow markets to allocate capital in a way that enhances economic growth.[55] Capital controls would invariably make it harder for developing countries to attract foreign capital and investment.[56] Thus, the IMF has pushed for more rapid financial market liberalization as a condition for giving troubled developing nations assistance everywhere and always.[57] Indeed, the U.S. Treasury has even insisted, against the wishes of the U.S. Trade Representative, upon more rapid financial market liberalization as a condition to entering into trade liberalization agreements with trading heavyweights like China. Stiglitz contends that the Treasury pursued market fundamentalism in financial markets with a vengeance in order to mollify the special interests it is beholden to on Wall Street.[58] The promise of billions or even trillions of dollars whizzing around the globe, from free capital market to free capital market, China included, was simply too much for Wall Street (and indirectly the U.S. Treasury) to resist. The free marketeers ignored the extraordinary risks of financial market deregulation.[59]

For example, there was no evidence showing that free capital markets would lead to greater investment in developing markets or to more economic growth. The IMF's own studies showed that countries which rejected financial market liberalization received the largest amounts of foreign investment. Other studies showed that liberalization did not lead to higher growth or higher investment. China demonstrated that capital

51. *Id.* at 54–56.
52. *Id.* at 59–60.
53. *Id.* at 58–59.
54. *Id.* at 59.
55. *Id.* at 66.
56. *Id.*
57. *Id.* at 62.
58. *Id.* at 63–64.
59. The skepticism of the law and economics movement toward virtually all government intervention inspired the deregulation movement of the 1980s and the 1990s. This is the identical ideological approach to government regulation that led globalization astray. *See supra* text accompanying notes 21, 24.

market liberalization did not impair a country's ability to attract capital, and the East Asian countries showed that rapid growth could be fueled through internal capital, if savings was sufficiently high.[60] Thus, any benefits of freeing up capital markets are theoretical at best.

On the other hand it is now widely accepted that financial market liberalization entails a significant risk of amplifying global instability.[61] The problem is that free capital flows, unlike flows in goods and services, have historically been characterized by "panics" and "manias."[62] According to Stiglitz there is now a wealth of data showing that financial market liberalization leads to financial crises, like the one that afflicted East Asia in 1997.[63] Stiglitz believes that freeing up capital markets was the single greatest factor giving rise to that fiasco.[64] The East Asian crisis illustrates the pitfalls of capital market liberalization. The East Asian nations had achieved an unprecedented level of growth and poverty reduction during the three decades preceding the crisis.[65] Investors, seeking high returns, flocked to these economies, increasing capital flows to this region by sevenfold over seven years.[66] However, in 1997, investor sentiment shifted precipitously, as it is apt to do, in the face of attacks by currency speculators on the Thai currency.[67] As Thailand was crushed under these pressures, investors began to flee liberalized capital markets, first in Thailand and ultimately throughout the developing world, causing the contagion to spread from Thailand to Korea to Russia.[68] Stiglitz characterizes the resulting wreckage as the "greatest economic crisis since the Great Depression."[69] In short, freeing up financial markets means that "hot money" can flow rapidly into high growth areas, and then flow rapidly out of economies that suffer any number of setbacks,

60. STIGLITZ, *supra* note 1, at 66–67.

61. Even the former deputy managing director of the IMF, Stanley Fischer, recently disclosed in public that the IMF had underestimated the risks of financial crises in a world with liberalized financial markets. BHAGWATI, *supra* note 18, at 8.

62. *Id.* at 4 (citing CHARLES KINDLEBERGER, MANIAS, PANICS AND CRASHES 220–21 (4th ed. 2000), stating that panics and crashes are realities that simplistic economic theories like the efficient capital markets theory fail to explain).

63. STIGLITZ, *supra* note 1, at 99. "It is becoming conventional wisdom (and indeed IMF policy) that countries that have not opened their financial systems . . . such as China and India, should do so slowly and cautiously." *Doubts Inside the Barricades*, *supra* note 11, at 65.

64. STIGLITZ, *supra* note 1, at 89.

65. *Id.* at 91.

66. *Id.* at 98; *see also Doubts Inside the Barricades*, *supra* note 11, at 64 (stating that one of the "lessons" from capital market liberalization is that capital has a "tendency to pour in when investors are confident, and flee just as suddenly").

67. STIGLITZ, *supra* note 1, at 94–95, 100 (citing JOHN MAYNARD KEYNES, THE GENERAL THEORY OF EMPLOYMENT, INTEREST AND MONEY 161–162 (Great Minds ed., 1991) (1936), stating that investor sentiment is governed by "animal spirits").

68. STIGLITZ, *supra* note 1, at 94, 108.

69. *Id.* at 89.

with either internal or external sources, leaving financial devastation in its wake.[70]

Perhaps the Washington Consensus stood on its strongest ground, in terms of economics, in insisting that developing nations liberalize trade restrictions—meaning lifting all barriers to trade. The theory of comparative advantage holds that trading countries can each benefit by producing goods where each enjoys a comparative productivity advantage. Thus, trade allows a nation to move workers to their most productive uses.[71] Stiglitz, as is the case with most all economists, fully accepts the benefits of free trade.[72] He only contends that the benefits of free trade have been greatly diminished by the way the Washington Consensus has implemented trade liberalization.

For instance, Stiglitz maintains that the developed world—particularly the United States—has pursued trade liberalization in a hypocritical fashion. "The Western countries have pushed poor countries to eliminate trade barriers, but kept up their own barriers, preventing countries from exporting their agricultural products and so depriving them of export income."[73] The United States subsidizes its agriculture, even though this is an industry where developing nations may well enjoy a comparative advantage; yet, the United States insists upon market liberalization for industrial products.[74] Consequently, countries that remove trade barriers expose their native industries to competition with the likes of Coca-Cola, Pepsi, Unilever, and Citibank. Meanwhile in the United States, developing countries must compete with U.S. agriculture backed by massive government subsidies.[75] Similar hypocrisy is evident from the course of trade negotiations. In the most recent Uruguay Round of trade negotiations, the United States was able to bargain for the elimination of trade barriers in financial services and information technology, while maintaining trade barriers for maritime and construction services. In short, the United States seeks free trade in industries where it enjoys a comparative advantage, and protectionism where the developing world

70. *Id.* at 7; *see also* Eichengreen, *supra* note 1, at 159 ("[M]ost economists now agree that Stiglitz's warnings about the dangers of precipitous financial deregulation were on the mark.").

71. STIGLITZ, *supra* note 1, at 59.

72. *Id.* at ix.

73. *Id.* at 6; *see also* Edmund L. Andrews, *Rich Nations Are Criticized for Enforcing Trade Barriers*, N.Y. TIMES, Sept. 30, 2002, at A8 (quoting World Bank president James D. Wolfensohn as chastising developed nations for "squandering" $1 billion a day on farm subsidies to the detriment of the undeveloped world).

74. STIGLITZ, *supra* note 1, at 7; *see also* Andrews, *supra* note 73, at A8 (quoting former IMF deputy managing director as terming continued protectionism in the developed world "scandalous").

75. STIGLITZ, *supra* note 1, at 68–69.

may be able to compete. This explains why the World Bank has calculated that the poorest region in the world (Sub-Saharan Africa) actually saw its income decline 2 percent as a result of the Uruguay Round of trade negotiations.[76] In sum, this final pillar of market fundamentalism seems more designed to further enrich the United States at the expense of the developing world.

How has the market fundamentalism pursued by the Washington Consensus fared? The consensus is that it has not done well. Russia is an example of how poorly the Washington Consensus has managed globalization. From the fall of communism in 1990 through 1999, industrial production plunged 60 percent, and GDP plummeted 54 percent.[77] Poverty rose from 2 percent to over 23 percent. In East Asia, the former economic powerhouses have been similarly humbled. Incomes in the region are 20 percent lower than if growth had proceeded apace.[78] In the Ukraine and in Russia, life expectancy is decreasing.[79] Throughout the eastern bloc, output has stagnated where it has not fallen precipitously.[80] In Latin America, most economies are mired in stagnation, and Argentina has endured double-digit unemployment since 1995.[81] China, on the other hand, averted the Asian contagion and has enjoyed remarkable economic performance since embracing a market-based economy, specifically by adopting a program that was "directly opposite" to that advocated by the Washington Consensus.[82]

The failure of market fundamentalism comes as no surprise to economists. At least since the Great Depression, the developed nations have rejected the very laissez-faire policies foisted upon the developing world under the auspices of market fundamentalism.[83] Japan and the United States both achieved rapid industrialization under the umbrella of the very protectionism that the market fundamentalists denied to developing nations.[84] More recently, economists studying the so-called Asian Miracle, which was the moniker for East Asian economic performance before the IMF and its peculiar market fundamentalism took root there, found that government action can create the legal infrastructure to support growth.[85] "While the Washington Consensus

76. *Id.* at 61.
77. *Id.* at 143.
78. *Id.* at 121.
79. *Id.* at 152.
80. *Id.* at 151–52.
81. *Id.* at 18.
82. *Id.* at 126.
83. *Id.* at 74.
84. *Id.* at 16–17.
85. *Id.* at 91 ("Though the experts' findings were toned down in the final published report, the World Bank's Asian Miracle study laid out the important roles that the government

policies emphasized a minimalist role for government, in East Asia, governments helped shape and direct markets."[86] This raises the question of what drove the Washington Consensus to pursue its agenda with such zeal.

Stiglitz suggests that the dogmatic adherence to market fundamentalism has much to do with the sway special interests have had over the process of globalization. Whether termed the "Washington Consensus" or the "Wall Street-Treasury Complex" economists increasingly see the role of special interests behind market fundamentalism.[87] The legal structure of the international economic institutions seem to be tailor-made for the exercise of special interest influence.[88] The public, particularly in the developed world that runs globalization, seems ill-equipped to fully comprehend the issues raised by economic globalization. In the wake of minimal public influence over the globalization process, powerful economic interests with large stakes in the regulatory environment—here Wall Street financial institutions and multinational corporations—can appropriate inordinate sway over globalization issues through campaign contributions, job prospects for top officials and lack of transparency in decision making.[89] Stiglitz shows that each of these factors is at play in globalization. Robert Rubin, former U.S. Treasury Secretary, and Stanley Fischer, former managing director of the IMF, both landed lucrative positions at Citibank after their stint in governing the process of globalization.[90] Campaign contributions seemed to influence who accompanied Commerce Secretary Ron Brown on his trade missions to open markets for U.S. firms.[91] The U.S. Treasury has certainly represented vigorously the interests of Wall Street firms and there is little doubt that the globalization policies pursued by the United States reflect the short-term interests of those firms. One example of this is the role the IMF plays in bailing out nations close to default on Wall Street loans. Another example is the issue of capital market liberalization.[92] "Looking at the IMF *as if* it were pursuing the interests of the financial community

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had played [in creating an environment conducive to growth]. These were far from the minimalist roles beloved of the Washington Consensus."); *see also* BHAGWATI, *supra* note 18, at 357–58 (noting that growth in India in the 1950s was accompanied by government policies relating to education, land reform, health care, and community development).

86. STIGLITZ, *supra* note 1, at 92.

87. *Id.* at 91–92; *see also supra* text accompanying notes 18, 30, 58.

88. This reviewer has previously outlined both the factors that allow an agency to resist special interest influence, as well as the factors that militate in favor of greater depoliticization of financial regulation. *See* Ramirez, *supra* note 24, at 553 ("[I]mportant economic regulation can be secured against the pernicious influences of special interests.").

89. *Id.* at 521–22, 591–93.

90. STIGLITZ, *supra* note 1, at 19.

91. *Id.* at 70.

92. *Id.* at 64, 207.

provides a way of making sense of what might otherwise seem to be contradictory and intellectually incoherent behaviors."[93]

Essentially, when the IMF releases funds to a distressed nation, the funds are ultimately paid over to Wall Street investors who took advantage of international lending opportunities, but who demand government protection to safeguard them from the risks of those international investments.[94] Additionally, the IMF imposes conditions upon the release of funds that require contractionary economic policies that effectively ensure that the Wall Street investors who took advantage of market liberalization can be repaid in currency that is not devalued.[95] Stiglitz suggests that the focus of globalization should be rationally recast from protecting Western investors to stimulating real economic growth and development.[96] Thus recast, Stiglitz maintains that globalization can achieve its macroeconomic promise once governments work in tandem with free markets to regulate, manage, and supervise the evolution of the macroeconomy.[97] It is time for the law to respond to the teachings of economic science in a way that recognizes the limitations of markets, as well as the power of markets.[98]

III. THE LAW AND MACROECONOMICS OF JOSEPH STIGLITZ

Stiglitz asserts that the "most fundamental change that is required to make globalization work" is to restructure the IMF and the World Bank.[99] The obstacles to such change are deep-seated. Stiglitz gives the example of so-called cost-recovery programs for education expenditures, whereby users of schools in developing countries absorb the costs of education. The United States passed legislation requiring it to oppose such measures. The U.S. executive director of the IMF simply ignored

93. *Id.* at 207. Other economists concur with Stiglitz's assessment of the need to insulate the global financial regulatory institutions from special interest influence. *See* Eichengreen, *supra* note 1, at 164 ("The real problem is the politicization . . . of the IMF's economic advice" and the solution is a "depoliticize[d]" structure, akin to "the model of an independent central bank.").

94. STIGLITZ, *supra* note 1, at 201.

95. *Id.* at 198–99 (stating that billions paid to troubled nations ultimately served to enrich speculators).

96. *Id.* at 206–13 (stating that IMF policies make sense only if the aim of the policies was to serve interests of the financial community, as opposed to fostering economic growth and stability).

97. *Id.* at 21 (stating that in the United States "markets were not left to develop willy-nilly" and that government "played a vital role in shaping the evolution of the economy").

98. *Id.* at xii-xiii (stating that market fundamentalism precludes the possibility of government interventions that spur economic growth and make everyone better off).

99. *Id.* at 226.

the law and Congress did not even notice this behavior.[100] Stiglitz argues that such secrecy undermines democracy and empowers special interests.[101] Articulating a solution to the issues of transparency and openness of the IMF, the WTO, and the World Bank is beyond the scope of this Book Review, but the central point is that Stiglitz has presented a compelling economic argument that lawyers must think about how to create a global legal infrastructure to support a more open and transparent international financial architecture. In other words, law and economics needs to transcend mere free market ideology and offer real solutions to the real problems facing economic globalization.

Similarly, the law must recognize that the transcendent importance of the IMF and the World Bank, in terms of the power they wield and the geographic expanse they rule, means that such institutions must answer to far broader constituencies. First, consider the power of these institutions. Over the past twenty-five years almost one hundred countries have faced financial crises.[102] When a nation faces economic disruptions there is really only one place to turn for financial assistance: the IMF.[103] In order to get IMF funds countries must accept market fundamentalism's proscriptions.[104] Moreover, even if a nation does not seek IMF funds, they still must submit to annual "consultations" that are thoroughgoing evaluations of how well a nation is adhering to the tenets of market fundamentalism.[105] A large country, like the United States, can afford to ignore the IMF's assessments. A small nation, even a relatively developed one like South Korea, cannot afford to ignore the IMF. Globalized markets would take such an act as a sign of economic risks, leading to a higher cost of capital.[106] Developing countries, therefore, have little choice but to follow the free market dictates of the IMF.

The reach of these dictates places the Washington Consensus in a position of assuming the role of global economic dictator. The IMF has mandated cuts in food and fuel subsidies from Morocco to Indonesia.[107] It has also pushed to have countries around the globe impose user fees for public education.[108] In Russia, President Boris Yeltsin was encouraged

100. *Id.* at 51–52.
101. *Id.* at 227–29.
102. *Id.* at 15.
103. In fact, in the midst of the East Asian Crisis of 1997, Japan offered to fund the creation of an Asian Monetary Fund with a contribution of $100 billion. The United States, not wanting any competition to its market fundamentalist policies essentially killed the idea. *Id.* at 112.
104. *Id.* at 12–16.
105. *Id.* at 48.
106. *Id.* at 42–43.
107. *Id.* at 20.
108. *Id.* at 51–52.

to impose market reforms by decree, without going to the Duma for approval.[109] After the Uruguay Round of trade negotiations, generic drug manufacturing in India and Brazil was prohibited, causing critical drugs to soar in price and effectively condemning thousands to death.[110] All of this power over virtually every aspect of life in developing nations is in addition to the control imposed over fiscal and monetary policy in developing countries, as discussed above.[111] "[T]he IMF typically provides funds only if countries engage in policies like cutting deficits, raising taxes, or raising interest rates that lead to a contraction of the economy."[112] There is seemingly no end to the power of the international economic institutions and the Washington Consensus.

Such vast power is the result of mission creep, and was not originally within the contemplation of the creators of the world's international financial architecture. The origins of the international economic institutions lie in the economic ruin facing the world after World War II. The United Nations convened an international economic conference in Bretton Woods, New Hampshire in 1944. This conference was dominated by John Maynard Keynes and his particular economic view known as Keynesianism. Conceptually, the central tenet of Keynesianism, that government should act to counter economic downturns, remains valid today.[113] This was reflected in the mission contemplated for the international economic institutions: they were to act to stem economic downturns from transforming into world downturns by assuring that funds were available to stimulate economies before economic disruptions spread globally.[114] Stiglitz highlights how the IMF mission has transmogrified over the decades since Bretton Woods:

> [T]he IMF has changed markedly. Founded on the belief that markets often worked badly, it now champions market supremacy with ideological fervor. Founded on the belief that there is a need for international pressure on countries to have more expansionary economic policies ... today the IMF typically provides funds only if countries engage in policies ... that lead to a contraction of the economy. Keynes would be rolling over in his grave were he to see what has happened to his child.[115]

109. *Id.* at 136.
110. *Id.* at 8.
111. *See supra* text accompanying note 22.
112. STIGLITZ, *supra* note 1, at 12–13.
113. *Id.* at 11.
114. *Id.* at 12.
115. *Id.* at 12–13.

Certainly, the international economic institutions were never intended to be the high priests of the failed laissez-faire ideology.[116] As previously shown, laissez-faire policies have been widely discredited, particularly at the time of the Bretton Woods conference. The economists who designed the world's financial architecture at that conference did so in the shadow of the Great Depression.[117] "Not since Herbert Hoover have responsible economists argued" in favor of the IMF's market fundamentalism programs.[118]

The reason why the international economic institutions pursue this curious blend of "bad economics" that no developed nation would ever follow seems to be best explained by the role of special interests.[119] Stiglitz believes that otherwise incoherent policies make sense if one assumes that the Washington Consensus acts to further special interests.[120] This is patent in the hypocrisy with which the Washington Consensus pursues market fundamentalism. The developed countries effectively deny developing countries the ability to use government intervention to facilitate the operation of their market-based economies; this despite the fact that virtually every country that has achieved economic development has used government to enhance the operation of their macroeconomy.[121] Wall Street too, pursues policies of market fundamentalism for all but itself; it frequently seeks government intervention on its behalf.[122] It wants the enhanced returns of international lending, but demands that government shield it from the enhanced risks of such lending.[123] Stiglitz makes a compelling case that special interest influence has bollixed up globalization.

The law must respond by designing international economic institutions that are resistant to special interest influence. In the domestic arena more learning is emerging on the limitations of public choice theory, which holds that regulation will be subverted from its public interest goals to the service of special interests.[124] For example, the ability of the

116. *Id.* at 74.
117. *Id.* at 11.
118. *Id.* at 105–06.
119. *Id.* at xiii.
120. *Id.* at 216.
121. *See supra* text accompanying notes 23, 33, 62.
122. STIGLITZ, *supra* note 1, at 102.
123. *Id.* at 200–01. The IMF and the World Bank have finally indicated that it is inappropriate for the funds that they lend to be used to bail out Wall Street lenders. Consequently, they are poised to propose a new sovereign bankruptcy regime that would relieve countries of the full debt burden owed to Western banks, and would require lenders to renegotiate more lenient repayment terms. Harry Dunphy, *Financial Leaders Promise Action*, AP ONLINE, Sept. 30, 2002, *available at* 2002 WL 101071637. This proposal tracks the recommendations that Stiglitz makes on this point. STIGLITZ, *supra* note 1, at 237.
124. Ramirez, *supra* note 24, at 553–54; *see also supra* text accompanying note 88.

Federal Reserve Board to manage monetary policy free from special interest influence provides important lessons on how regulatory agencies can be structured to resist such influence.[125] These lessons now need to be extended to the international arena, and this role must involve lawyers with an understanding of both the economic objectives of these agencies and how the law can structure such agencies to best achieve that mission. Quelling special interest influence is just one piece of the puzzle facing lawyers that seek to implement the lessons learned from economists like Stiglitz.

Stiglitz also posits that any economic program for growth, no matter how sound, must also be socially and politically sustainable. As illustrated by Russia in 1917, and France in 1789, severe economic hardship cannot be imposed upon a society without risking riot, revolution, or widespread social disruption. Stiglitz shows that all too often the Washington Consensus pursues policies that lead to these very afflictions.[126] According to Stiglitz "social capital" and the "social contract"—each of which reflect the degree to which citizens stand behind an economic system—matter to macroeconomic growth and stability.[127] Stiglitz suggests that democratizing the international economic institutions can have positive effects on global economic development. Thus, any proposals for reforming the international financial architecture must respond to the need for broadening the governing base of these powerful and critical international economic institutions. Right now, the international financial architecture can only be termed a dictatorship of the rich and powerful. Specifically, these organizations must be governed by more than just trade and finance ministers of the developed world generally, and the United States in particular.[128]

Stiglitz also highlights the failure of legal and regulatory "infrastructure" as a key culprit underlying the failure of globalization.[129] As he sees it:

> Old-fashioned economics textbooks often talk about market economics as if it had three essential ingredients: prices, private property, and profits. Together with competition these provide

125. Ramirez, *supra* note 24, at 591–93.

126. STIGLITZ, *supra* note 1, at 77, 119 (showing how strife and riots in Africa and East Asia have set back economic development). According to at least one economist, the IMF now understands that "reforms that do not produce growth will not be politically sustainable." Eichengreen, *supra* note 1, at 161.

127. STIGLITZ, *supra* note 1, at 160–62, 209.

128. *Id.* at 12, 20.

129. *Id.* at 139. Economists use the term infrastructure to mean any public facility that lowers the cost of capital or increases the return to private capital. *See* ROBERT J. GORDON, MACROECONOMICS 331 (8th ed. 2001).

incentives, coordinate economic decision making, ensuring firms produce what individuals want at the lowest possible cost. But, there has also long been a recognition of the importance of *institutions*. Most important are legal and regulatory frameworks, to ensure that contracts are enforced, that there is an orderly way of resolving commercial disputes, that when borrowers cannot repay what is owed, there are orderly bankruptcy procedures, that competition is maintained, and that banks that take depositors are in a position to give the money back to depositors when they ask. This framework of laws and agencies helps ensure that securities markets operate in a fair manner, that managers do not take advantage of shareholders nor majority shareholders of minority shareholders. In the nations with mature market economies, the legal and regulatory frameworks have been built up over a century and a half, in response to problems encountered in unfettered market capitalism.[130]

For example, Stiglitz indicts the lack of a regulatory infrastructure for permitting privatization to devolve into "briberization" because of a lack of regulation and corporate governance standards.[131] He identifies banking regulation and securities regulation as critical regulatory infrastructure needed to support a developed market-based economy.[132] According to Stiglitz, inadequate financial regulation, as pushed by the deregulation mantra of the IMF, was a key factor leading to the East Asia crisis.[133] In fact, financial sector deregulation has a miserable record in the United States; commentators have linked both the savings and loan debacle of the 1990s and the stock market debacle of 2000–2002 to precipitous deregulation in the financial sector.[134] Thus, any restructuring of the world financial architecture must ensure that appropriate treaties and

130. STIGLITZ, *supra* note 1, at 139.

131. *Id.* at 220.

132. *Id.* at 183; *see also* Steven A. Ramirez, *Fear and Social Capitalism: The Law and Macroeconomics of Investor Confidence*, 42 WASHBURN L.J. 31 (2002) (demonstrating that optimized regulatory infrastructure designed to strengthen investor confidence stabilizes and enhances macroeconomic performance).

133. STIGLITZ, *supra* note 1, at 81.

134. *Id.* at 64–65, 114; Carl M. Cannon, *Suits vs. Suits: Learning to Love Those Legal Leeches*, FORBES, Oct. 7, 2002, at 18 (stating that in enacting broad securities law deregulation "government wasn't doing its job."); Emily Thornton et al., *The Breakdown in Banking*, BUS. WEEK, Oct. 7, 2002, at 40–42 (stating that deregulation of the financial services industry left the industry riddled with conflicts and on a shaky financial foundation). Professor Stiglitz is among the economists who blame excessive financial deregulation for the meltdown in investor confidence that struck American financial markets in the summer of 2002. *See* Joseph Stiglitz, *The Roaring Nineties*, ATL. MONTHLY, Oct. 2002, at 75, 79–82 ("It is no coincidence that three of the sectors involved in today's economic problems—finance, telecommunications and electricity trading—were all subject to deregulation.").

institutions are in place to assure that developing nations adopt appropriate regulatory infrastructure to complement the regulatory infrastructure already in place in the developed nations.[135] Amazingly, the IMF used its influence to achieve the precise opposite result.[136]

Globalization has also suffered from a dearth of initiatives to secure appropriate investments in human infrastructure. Stiglitz associates growth with government policies that provide a high-quality education to its citizens.[137] In countries that have been most successful in achieving economic growth, governments "provided high-quality education to all."[138] Consequently, educational investments are "win-win" policies because they enhance both growth and equality.[139] Powerful empirical evidence supports this conclusion.[140] Markets cannot provide adequate funds for education because the full benefits of an educated citizenry are so diffused throughout society.[141] To address this problem, developed countries provide generous subsidies for education.[142] Given all of this, one would think the international economic institutions would support educational investments. Instead, the IMF has actively worked to cut investments in education.[143]

Accordingly, the international economic institutions have consistently shredded the world's economic infrastructure.[144] Investments in human capital were discouraged.[145] Regulatory infrastructure was an afterthought at best.[146] Social infrastructure was given little or no weight in policy deliberations.[147] On the other hand, capital markets were opened to exploitation by Wall Street interests. When loans went bad, the IMF provided both funds for repayment to money center banks as well as props to assure that repayment was made in currency that was not subject to devaluation. Billions flowed to Wall Street, while third world citizens were charged for the cost of education and left unemployed and

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135. STIGLITZ, *supra* note 1, at 139.
136. *Id.* at 102–03.
137. *Id.* at 218.
138. *Id.*
139. *Id.* at 82.
140. *Id.* at 76.
141. *See id.* at 218.
142. *Id.* at 222.
143. *Id.* at 20.
144. Stiglitz's view that growth is associated with active government intervention in the form of providing broad economic infrastructure is increasingly mainstream economic science. *E.g.*, WILLIAM EASTERLY, THE ELUSIVE QUEST FOR GROWTH 289 (2001) (surveying empirical evidence regarding growth issues in the tropics and concluding that growth occurs when government policies foster growth by creating incentives to invest, providing education, supporting the rule of law, and subsidizing the poor).
145. STIGLITZ, *supra* note 1, at 80.
146. *Id.* at 58.
147. Ramirez, *supra* note 24, at 503–05.

destitute.[148] Drug companies harvested billions in sales of patented drugs while the IMF insisted that developing nations slash spending on health care.[149] In the end, free market ideology failed to deliver again.[150]

Issues of sovereignty cloud issues of legal structure for the international financial architecture. Nevertheless, certain elements seem clear. The IMF exercises too much power with too little accountability. Perhaps the international economic institutions should be governed under the auspices of the United Nations. The world economic institutions are too prone to special interest influence. Perhaps limitations should be imposed upon post-employment activities and senior officials should serve longer terms of office. The IMF should exclusively pursue stimulatory policies to stem local and regional downturns, and be forbidden from imposing conditions that interfere with basic human rights of economic actualization and autonomy.[151] The World Bank should be required to invest in growth and human capital in a depoliticized fashion. Countries without adequate financial sector regulation should be barred from participating in international finance. Are these suggestions sound? Can they be implemented through treaties or under existing international law? It is hard to say because there is a dearth of legal scholarship addressing such concerns.[152] This is the problem with the current law and economics movement. Its focus is too narrow. It is bounded by efficiency and does not generally address how to create legal frameworks conducive to macroeconomic stability and growth.[153] Stiglitz convincingly shows that it is time for a new law and economics approach.[154]

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148. STIGLITZ, *supra* note 1, at 80.

149. *Id.*

150. STIGLITZ, *supra* note 1, at 18, 121, 126, 143, 151–52.

151. Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., arts. 22, 23, 24, 25, 26, U.N. Doc. A/810 (1948).

152. For example, Posner's law and economics text does not even mention the IMF, the World Bank, or globalization. *See* POSNER, *supra* note 21, at 765–802.

153. As of late 2002, it is clear that there is little time to waste; indeed, the strong economic conditions that prevailed in at least parts of the developed world during the 1990s may some day be viewed as the last clear chance for global capitalism to set itself right. Now, the world economic order is faced with plunging world equity markets and serious financial crises in Brazil, Argentina, and Japan. Dunphy, *supra* note 123. In fact, one commentator has raised the prospect that world financial leaders appear to be "asleep at the switch." *Id.*

154. Although Stiglitz's book has aroused controversy, little of that controversy applies to his central economic message that laissez-faire, free market ideology is best left on the ash heap of history. The great weight of Stiglitz's suggestions and analysis is well within traditional and mainstream economic science. Indeed, even the IMF now agrees with many of his central points. *See* Thomas C. Dawson, Director, External Relations Department, International Monetary Fund, *Stiglitz, the IMF and Globalization: A Speech to the MIT Club of Washington*, Speech at the MIT Club of Washington (June 13, 2002), *available at* http://www.imf.org/external/np/speeches/2002/061302.htm (last visited Apr. 1, 2003) (stating that many of

IV. CONCLUSION: TOWARD A NEW LAW AND ECONOMICS

In the end, Stiglitz (and his fellow economists) have issued a challenge to lawyers to rethink the role of government in a modern industrialized economy, and to provide legal structures to institutionalize and rationalize government's role in managing the economy, both domestically and internationally. The problem is that there is precious little learning on how to create legal structures to support macroeconomic performance. The vacuum left by the narrow focus on free market efficiency is being filled, increasingly, by economists like Joseph Stiglitz, who are extending the learning of which structures support the strongest macroeconomic performance the furthest. Stiglitz's proposals show how critical the law is to enhancing macroeconomic growth. He proposes sound financial market regulation such as deposit insurance, securities regulation, and banking regulation. He proposes that corporate governance standards be imposed to protect minority shareholders and passive investors. He proposes that international economic institutions be redesigned to allow more democratic control and less special interest influence. He proposes that governments be empowered to take measures to help markets work better and to provide productive infrastructure. He proposes a new kind of bankruptcy law to supplant IMF bailouts of money center banks. Finally, he proposes that government always maintain the basic social contract that assures that social infrastructure is in place to stem riots, unrest and political disruptions to investment expectations. In short, he proposes many legal innovations to support economic growth.

Meanwhile, the legal academy languishes in an obsessive and narrow focus on free market efficiency. The conventional learning on law and economics results in essentially the very market fundamentalism that Stiglitz and other economists hold is "bad economics" and ideologically driven. Until the law and economics movement recognizes the limits of free market doctrine, it will continue to lose touch with economic science and will ultimately be best termed law and pseudo-economics.

Stiglitiz's central points are "broadly correct," "mainstream," and sometimes "read like passages from speeches by the IMF's Managing Director").