IMAGINING ALTERNATIVES? LATIN AMERICAN SCHOLARSHIP ON INTERNATIONAL ECONOMIC LAW AND THE GLOBAL ECONOMIC ORDER[1]

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Abstract

This Article analyzes the role of Latin American international economic law scholarship within the global economic order. Many of the problems that Latin Americans face today relate to the global economy, such as labor conditions, access to medicine, and the use of natural resources, among others. The discussion of these problems, however, seldom recognizes the role of international economic law scholarship. Although the knowledge created by this scholarship may not completely explain why States actively behave in a certain way, it can serve to explain why they may refrain from certain actions. This Article argues that scholarship on international economic law plays a crucial role in the creation and reproduction of the current global economic order. If

[1] For the original Spanish version of this Article, see Nicolás M. Perrone, ¿Un espacio para pensar alternativas? La academia latinoamericana de derecho internacional económico frente al orden económico global, Revista Derecho del Estado N. 36, June 2016, at 199, 199–226, http://dx.doi.org/10.18601/01229893.n36.07.

this claim is correct, regional scholarship can do more for Latin America than serving the advisory and litigation needs of States. By recognizing its role in constituting the global economic order, international economic law scholarship can promote alternative theories and practices that may help Latin America and its people find their place in the global economy.

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INTRODUCTION

The global economy is an arena of many struggles that encompasses different regions and players, including Latin America and its people. In this arena, the interests of farmers and indigenous peoples are at stake, as well as those of workers, medical patients, and small-business entrepreneurs. Against this background, international economic law (IEL) is presented to Latin Americans and the rest of the world as the means to regulate trade and investment relations between States and foreign investors. This description, however, does not take into account many of the players, like the ones just mentioned. Nor does it take into account that IEL has become the principal law of globalization, and, as such,

determines the interests and rights of both large multinational companies and ordinary citizens.[2] This does not mean that IEL is preeminent to international human rights or environmental law. But, frequently, these other international legal systems play a secondary role when compared to international trade and investment law.

The growing importance of IEL justifies studying not only its legal rules, but also the creation of that knowledge and the role of academic scholarship in that creation. The role of scholarship may seem rather modest if we accept that its task is solely to analyze the set of rules, determined or determinable, that govern international economic relations. From this perspective, IEL would operate under relatively clear rules that delineate the interests of each State and how these interests can be maximized. These interests include, for example, expanding a State's markets while ceding the lowest domestic market share possible, and attracting foreign investment while ceding the lowest possible portion of sovereignty.[3]

What this dominant vision ignores is that IEL is not only the result of negotiations between States. Nor is it only the product of a cluster of international treaties. Knowledge created by scholarship also plays a central role in shaping IEL and the global economic order. This knowledge defines not only the interpretation of terms like 'fair and equitable treatment,' but also the sources of law that give meaning to these terms.[4] Rules of law, in other words, operate within the knowledge created by IEL scholarship.[5] This knowledge gives life to treaties signed by States and governs the negotiation of any IEL obligation.

But the creation of this knowledge, and the knowledge of public international law generally, is not the result of broad and equal participation. As Chimni explains, international law responds to the interests of a

[2] *See* Hans W. Baade, *Teaching International Economic Law*, 16 JOURNAL OF LEGAL EDUCATION 59, 61–63 (1963) (In 1963, Baade already emphasized the importance of IEL for labor law and the rights of workers.).

[3] This type of analysis responds to realist or neo-utilitarian visions of international relations. *See* John Gerard Ruggie, *What Makes the World Hang Together? Neo-utilitarianism and the Social Constructivist Challenge*, 52: 4 INTERNATIONAL ORGANIZATION 855 (1998).

[4] *See* MARTINS PAPARINSKIS, THE INTERNATIONAL MINIMUM STANDARD AND FAIR AND EQUITABLE TREATMENT (Oxford University Press) (2013).

[5] *See also* Gerry Simpson, *On the Magic Mountain: Teaching Public International Law*, 10:1 EUROPEAN JOURNAL OF INTERNATIONAL LAW 70, 85 (1999); Akbar Rasulov, *The Structure of the International Legal Discourse*, *in* EUROPEAN SOCIETY OF INTERNATIONAL LAW, Florence Founding Conference, 1 (2004), https://esil-sedi.eu/sites/default/files/Rasulov_0.PDF.

capitalist transnational class.[6] Although it is difficult to link these interests with concrete geographic spaces, much of university-taught IEL refers to scholarship created in the Global North, giving those academics great prominence in the creation of knowledge. Today, IEL is a global discipline in so far as it is studied throughout the world. However, regional scholars play a secondary role in the creation of knowledge within IEL; their main function is to disseminate and apply this knowledge to specific disputes.

This Article aims to study not the rules of IEL, but the creation of knowledge within this field, paying special attention to the role of Latin American scholarship. For this reason, I will refer to both rules and rationalities. The notion of rationality, which I will use in the Weberian sense of instrumental rationality, refers to knowledge that promotes certain ends, e.g. economic development, and defines the necessary means to achieve those ends.[7] Although Weber recognizes plural forms of a rationality, he also emphasizes that a rationality needs to be supported by technical knowledge to be considered objective.[8] When talking about IEL, this is knowledge linked to capitalist economics that facilitates, above all things, the possibility of individual rational calculation.[9]

According to Ruggie, these rationalities motivate and justify States' actions. They explain States' actions beyond the mandatory character of a rule or the possible gains derived from compliance.[10] Although rationalities cannot causally explain States' actions since they do not provide a deterministic vision of the world, they do help explain why States do not act differently.[11] Thus, the construction of rationalities is a central tool for maintaining order in international economic relations. They serve to define the interests of players, shaping their behavior through incentives that ultimately shape their subjectivity.[12] A central argument of this Article is that scholarship plays a central role as a generator of knowledge in IEL, especially of its rationalities. This means that Latin American

[6] Bhupinder Chimni, *International Institutions Today: An Imperial Global State in the Making*, 15: 1 European Journal of International Law 1 (2004).

[7] Max Weber, *El Sentido de la 'Neutralidad Valorativa' de las Ciencias Sociológicas y Económicas*, *in* Ensayos Sobre Metodología Sociológica 222 (1973).

[8] *Id.*

[9] Max Weber, Parliament and Government in Germany under a New Political Order, Weber: Political Writings 147–148 (Peter Lassman ed., 1994).

[10] Ruggie, *supra* note 3, at 859–860.

[11] *Id.* at 869.

[12] *Id.* at 862–864; Michel Foucault, Technologies of the Self , Ethics: Subjectivity and Truth 223–251 (Paul Rabinov ed., 1997).

academics who focus on IEL could serve a role beyond the reproduction and application of rules of law. They could also highlight and modify the rationalities of IEL, creating new opportunities for Latin America.

The first Part of this Article analyzes the view that scholars of international law, especially those within IEL, have of their work, and how academics in international law contribute to organizing global economic relations. The second Part examines the rationalities of IEL from a Latin American perspective, emphasizing the constitutive role of knowledge. The last Part takes these elements to explore the participation of Latin American scholarship in the diffusion and consolidation of the Latin American and global economic order. The conclusion highlights that the interests at stake in IEL are too important for Latin American scholars to take a passive role regarding the creation of knowledge. Whatever opinion we may hold about the global economy, whether for or against more state intervention, it is necessary to better understand how the current order has been consolidated, how much the margins can be maneuvered, and which possible strategies for change exist. Otherwise, as Aldo Ferrer warns, Latin America will not be able to "decide [its] own destiny within globalization."[13]

I. THE WORK OF INTERNATIONAL ECONOMIC LAW: "ORDERING" INTERNATIONAL ECONOMIC RELATIONS

A. *By Ordering the World, We Create a World*

Mainstream international law scholars usually see the purpose of international law, that which gives meaning to their profession, as the work of ordering international relations.[14] Inspired by Kant's ideal of perpetual peace, their mission is to regulate the imperfection of international relations in order to avoid war.

It is not much different in the case of IEL. Mainstream scholarship holds that it is necessary to regulate international economic relations. In the worst-case scenario, these relationships can lead to war. For example, protectionism in the 1930s is considered by many to have been one of the triggers of World War II.[15] Additionally, peace is fundamental for the

[13] Aldo Ferrer, *La importancia de las ideas propias sobre el desarrollo y la globalización*, 44 REV. PROB. DESARROLLO 163, 166 (2013).

[14] Rasulov, *supra* note 5, at 2.

[15] The tariff wars began with the *Smoot-Hawley Tariff Act* in the United States. MICHAEL J. TREBILCOCK & ROBERT HOWSE, THE REGULATION OF INTERNATIONAL TRADE 19 (2d ed. 1999).

efficient development of international economic activity. The peaceful settlement of disputes is an essential pillar of the international economic order, necessary to promote liberalization of trade, foreign investment and economic development.[16]

Mainstream international law scholarship also holds that international relations, both political and economic, already existed before international law. This idea dominates within neorealism and neoliberal institutionalism.

Ruggie criticizes these mainstream positions, however, because although there are rules that regulate preexisting relations, there are also rules that constitute those relationships.[17] IEL constitutes international relationships, giving them particular forms and certain dynamics. International relations can arise naturally, based on the premise that human beings are political by nature. However, it is indisputable that terms used within the context of international relations, for example the terms 'civilized' or 'uncivilized,' are created by international law and do not occur naturally. The same could be said of the terms, 'developed' and 'developing states.' These terms shape the object of regulation. There are States that must take certain action to 'develop;' others present themselves to the world as 'developed.' The critical currents of international law have emphasized the role of these terms, or rationalities, for decades.[18]

Nevertheless, mainstream IEL scholarship operates under the premise that the law does not play a fundamental role in the constitution of economic relations between States.[19] From this formalist perspective, IEL is presented as a series of rules that apply universally, based on the principles of equality, sovereignty and *pacta sunt servanda*.[20] These rules

[16] Ernst-Ulrich Petersmann, *Transformation of the World Trading System Through the 1994 Agreement Establishing the World Trade Organization*, 6 Eur. J. Int'l L. 161, 166–68 (1995).

[17] Ruggie, *supra* note 3, at 871. *See also* Andrew Lang, World Trade Law After Neoliberalism: Re-imagining the Global Economic Order 160 (2011).

[18] Among others, it is important to highlight the work of Anthony Anghie. *See* Anthony Anghie, Imperialism, Sovereignty and the Making of International Law (2004).

[19] The principal exception can likely be found in the literature of the period between 1950 to 1970, during the peak of the dependency theory and the right to development. *See also* Arnulf Becker Lorca, *International Law in Latin America or Latin American International Law-Rise, Fall, and Retrieval of a Tradition of Legal Thinking and Political Imagination*, 47 Harv. Int'l L.J. 283, 296–97 (2006).

[20] Martti Koskenniemi, *The Politics of International Law*, 1 Eur. J. Int'l L. 4, 14, 16, 21, 30 (1990).

are objective and independent of the particular interests of any State, giving the impression of equality among all actors in the international community. This equality is manifested, for example, in the principle of reciprocity in trade negotiations, which says that every commercial concession requires consideration. Thus, we systematically hear that economic treaties are acts of cooperation and coordination, between two or more States, that seek to achieve common objectives.[21]

Another example of the tension between regulation and constitution is found in international investment law. This regime seeks to protect foreign investors from State abuse after they have established investments in that State. However, what happens before establishment—including the bargaining that occurs in the shadow of the law—is largely ignored by investment law. In the period prior to foreign investment, parties are given unlimited autonomy as if each one were equally powerful. In reality, however, large multinational corporations almost always decide where and under what conditions to invest. Then, after establishment, when the State could become stronger due to its sovereign power, the intervention of investment law is deemed necessary to regulate the relationship between the "weak" foreign investor and the "strong" State.[22]

The problem with overvaluing the regulatory vision of IEL is that it inhibits the perception of the many consequences of IEL. Influenced by the right to development, Latin American authors criticized the formal vision of the principle of equality in the 1960s and 1970s.[23] IEL affects communities and people on an individual level. IEL has meddled in the lives of everyone, and yet few are concerned with the role of IEL in our daily lives.

B. *The Indeterminacy of Rules, the Rationalization of International Economic Law, and the Problem of Order*

The rules that make up IEL are as indeterminate as any legal rule; but, this does not mean each State can do what it wants when conducting its economic affairs. Consider the idea of economic development. Many

[21] *See* Kenneth W. Abbott & Duncan Snidal, *Why States Act Through Formal International Organizations*, 42 J. CONFLICT RESOL. 3, 6–8 (1998).

[22] See Nicolas M. Perrone, The International Investment Regime and Foreign Investors' Rights: Another View of a Popular Story 107–20 (2013) (unpublished Ph.D. thesis, London School of Economics and Political Science) (on file with author).

[23] Héctor Gross Espiell, *Derecho Internacional del Desarrollo*, *in* ESTUDIOS DE DERECHO ECONÓMICO II 236 (1980), http://ru.juridicas.unam.mx/xmlui/handle/123456789/16652.

dimensions of this goal remain unclear. What is development? How is it reached? The indeterminacy of the idea of development puts at risk the international economic order. If each State could do what it wanted in order to develop, a goal that may have different meanings in different places, the possibility of international conflict would be high. The global economy requires mechanisms capable of minimizing indeterminacy.[24] This is the role of IEL.

During the apogee of dependency theory, scholars, including Latin American scholars, used the Global South's demand for economic development as an emancipatory tool to reinterpret or change the rules of IEL.[25] Today, however, economic development is presented mainly as a discipline that the so-called 'developed' countries impose on those who are something less than 'developed.'[26] Not coincidentally, while the development project created some opportunity for economic experimentation in the 1960s and 1970s, the global economic order was more porous and indeterminate. The current investment regime, with its more than three thousand treaties, is justified precisely because of the uncertainty that prevailed in those years. These treaties, along with the development of certain knowledge within the field, make up the dominant interpretation of international investment law. A significant step toward this dominant interpretation, for example, was Paulsson's work on arbitration without privity.[27]

Those in charge of reducing the scope of indeterminacy of IEL rules are academics, experts and people who apply these rules to specific cases. These actors' interpretation of the fair and equitable treatment doctrine, for example, has been consistent among treaties although the wording of each of their clauses is different.[28] Something similar occurs in WTO law. The term 'subsidy' may have different interpretations according to economic doctrine, but the WTO has reached a consensus about its

[24] Rasulov, *supra* note 5, at 4.

[25] *See* Mohammed Bedjaoui, Towards a New International Economic Order (1979). For Latin America, *see* Gross Espiell, *supra* note 23.

[26] Anghie, *supra* note 18; Sundhya Pahuja, Decolonising International Law: Development, Economic Growth, and the Politics of Universality, 132–35, 160–69 (2011).

[27] *See* Jan Paulsson, *Arbitration Without Privity*, 10 Foreign Inv. L.J. 232 (1995). The Article illustrates the role of scholarship and practice in defining the field. Paulsson says, '[b]ut explorers have set to discover a new territory for international arbitration. They have already landed on a few islands, and they have prepared maps showing a vast continent beyond.'

[28] *See* Paparinskis, *supra* note 4.

meaning.[29] A key to understanding the dominant interpretation of the rules of international investment and trade law lies in the purpose that academics and other actors think these regimes are facilitating: either to protect foreign investment, or to promote the progressive liberalization of trade. Knowledge is created to serve these purposes.

Consensus is necessary to maintain the global economic order. However, consensus is not just a result of negotiations between States nor the exercise of power by the most powerful States. It is here where IEL scholarship plays an important role in creating and articulating knowledge. It is true that some issues, like the meaning of the term 'subsidy,' are defined by the jurisdictional bodies of IEL. But the scope of these decisions is delimited by academic work. IEL scholarship plays an important role in the acceptance or rejection of the interpretation of terms like 'fair and equitable treatment' or 'subsidy.'

The maintenance of the global economic order requires more than resolving indeterminate concepts, however. An economic order between equals can be unstable and, therefore, the rationalities created by IEL scholarship tend to promote hierarchies—and not necessarily equality—between States. These hierarchies are necessary to maintain order in international economic relations. As long as there are winners and losers, both within States and between States, the winner will work to reproduce the order. Protecting foreign investment and promoting trade liberalization, then, are adequate rationalities since, as Chang and Wade point out, they result in winners and losers.[30] A regime that promotes equality, in contrast, empowers those who consider themselves losers to change the current order. As Stiglitz and Rodrik explain, developing States need space to experiment.[31] But a world in constant experimentation would also necessarily mean a less orderly world.

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[29] *See* Andrew Lang, *Governing 'As If': Global Subsidies Regulation and the Benchmark Problem*, 67 CURRENT LEGAL PROBS 135, 140 (2014).

[30] HA-JOON CHANG, KICKING AWAY THE LADDER: DEVELOPMENT STRATEGY IN HISTORICAL PERSPECTIVE 2 (2002); Robert Hunter Wade, *What Strategies are Viable for Developing Countries Today? The World Trade Organization and the Shrinking of 'Development Space,'* 10 REV. OF INT'L POL. ECON. 621, 623 (Nov. 2003).

[31] Dani Rodrik, *The Global Governance of Trade—As If Development Really Mattered*, U.N. DEV. PROGRAM BACKGROUND PAPER (2001); Narcis Serra, Shari Spiegel, & Joseph E. Stiglitz, *Introduction: From the Washington Consensus Towards a New Global Governance*, *in* THE WASHINGTON CONSENSUS RECONSIDERED: TOWARDS A NEW GLOBAL GOVERNANCE 3–13 (Narcis Serra & Joseph E. Stiglitz eds., 2008).

Dominant knowledge, then, not only establishes rationalities that delimit the space of indeterminacy, but also grants legitimacy to economic hierarchies by hiding inequalities.[32] As such, mainstream IEL scholarship serves to make the parties to a free trade agreement behave as if they are equals, even if they are not.

II. International Law and its Principal Rationalities: Latin America's Political and Economic Recognition

In the early nineteenth century, Latin American countries entered into international relations as independent States. They did not do so in a vacuum. There was already a legal order shaping these relations. There were specific rules that regulated membership to the international community of States. There were also general principles that governed the relations between members of the international community, including membership itself. The most important general principles were—and possibly still are—the equality and sovereignty of States.

The equality of States is a key ordering principle of international relations. But only an analysis of the way equality works in practice can tell us how this principle shapes these relations. Importantly, this principle operates as equality between equals, and not as equality between sovereign States. States are only sovereign so as long as they respect certain economic and institutional rationalities. It is the pursuit of those rationalities, precisely, that makes them equal to the rest of the 'civilized' States, validating their membership to the international community. This distinction in international law, between 'civilized' equals and 'uncivilized' others, was critical to maintaining the international order of the nineteenth and early twentieth centuries.[33]

The rationality behind the principle of equality, i.e. the pursuit of western civilization, does not causally explain the attitude of Latin American governments at the beginning of the nineteenth century. However, it does help us understand why these governments sought recognition from States perceived as sovereign and equal. As we shall see, in the nineteenth century, the principle of equality was interpreted and implemented through the rationality of civilization. In the second half of

[32] Michel Foucault, Society Must be Defended: Lectures at the Collège de France, 1975–1976 98–126 (David Macey trans., Penguin 2004).

[33] Anghie, *supra* note 18, at 4.

the twentieth century, this rationality evolved into two standards closely linked: neoliberal economic development and the rule of law.

Understood within the context of these rationalities, the principle of equality seems as important as the principle of sovereignty and, in fact, gives the latter its distinct meaning. It turns the principle of sovereignty into a letter of membership to the international community. Political and economic recognition from the international community has a high cost within the international order: it makes any State's aspiration to be different unobtainable.[34]

A. *Being a 'Civilized' Country: Equality and Sovereignty*

At the beginning of the nineteenth century, joining the international community was a central objective for Latin American governments.[35] Recognition would only come from States that were already members of the international community: namely, European countries and the United States. To gain recognition, the principle of equality required that Latin American States adopt European institutions that were deemed 'civilized.' According to scholarship of the time, the defining elements of a sovereign State were existence of civilized institutions. For newer States, it was also important to show that those institutions were naturally suitable for Latin America. Lacking these institutions meant that those lands were condemned to 'barbarism' and 'incivility.'[36]

International treaties and legal scholarship defined the principle of equality through the rationality of civilization. The rationality of civilization had a clear constitutive role in the international order of the nineteenth century. This rationality required the implementation of Western principles, such as private property, as well as the imposition of certain conditions for international recognition of newly independent States.

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[34] Jorge L. Esquirol, *Can International Law Help: An Analysis of the Colombian Peace Process*, 16 CONN. J. OF INT'L L. 23, 79–80 (2000) (explaining that orthodox Latin American international law calls for sovereignty based on racial superiority connected to European civilization).

[35] Felix Becker, *Los Tratados de Amistad, Comercio y Navegación y la Integración de los Estados Independientes Americanos en el Sistema Internacional*, *in* PROBLEMAS DE LA FORMACIÓN DEL ESTADO Y DE LA NACIÓN EN HISPANOAMÉRICA 247 (1984).

[36] Liliana Obregón, *¿Para qué un derecho internacional latinoamericano?*, *in* DERECHO INTERNACIONAL: PODER Y LÍMITES DEL DERECHO EN LA SOCIEDAD GLOBAL 27, 37 (René Urueña ed., 2015).

Sovereignty never came free of costs. In the economic arena, this can be seen in the peace, friendship, and trade treaties that Latin American countries signed with European States as a way to obtain recognition as members of the international community. These treaties shaped the newly born Latin American States. They defined the content required for a civilized society. They also bilaterally and reciprocally created certain rules that responded only to the interests of European countries. An example is the free navigation of rivers. Although all parties to the treaty benefited from this clause, the new Latin American States did not have a merchant fleet at the time. Many European countries, on the other hand, were leaders in maritime and river transportation. As some authors emphasize, this rule—which is the result of the principle of equality and reciprocity—limited the creation of a successful Latin American merchant fleet.[37]

When there were greater divergences from 'civilized' European institutions, Western countries required additional concessions before granting international recognition. For example, in 1825, Haiti became indebted to Western governments to compensate their loss of private property rights over the people who created and populated Haiti. Thus, Haiti had to contract a loan to compensate slave owners, all according to the laws of the metropolis.[38]

The recognition of Latin American States as sovereign nations was also conditioned on their governments acting in accordance with the rationalities created and reproduced by international law. Latin American States had to implement and abide by Western standards of civilization. If they did not comply with these standards, which were fundamental to the international order, the international community reserved the right to intervene to enforce them. If there existed violations of the right to private property, for instance, Western states were allowed to demand for compliance of this right, ignoring the sovereignty of Latin American States. The principle of no intervention, a key corollary to the recognition of sovereignty, only applied if States behaved in a 'civilized' way. This premise justified diplomatic protection in Latin America, and consular institutions in countries like China and Japan.[39]

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[37] *See* Becker, *supra* note 35.

[38] Obregón, *supra* note 36, at 32–35.

[39] Arnulf Becker Lorca, Mestizo International Law: A Global Intellectual History 1842–1933 3–8 (2014).

The principle of sovereignty, in this way, operates to define membership to a club, rather than to describe the ability for a people to self-govern. The practice of States and the work of their academics confirm this. In most past cases of intervention, representatives of newer States did not challenge the standard of civilization, but instead affirmed that they either complied with the standard or were in a rapid process of implementing Western institutions.[40] These reactions can be explained as in accordance with the dominant knowledge of international law, and they demonstrate the power of the rationality of equality in international relations. Latin American States did not intend to be recognized in the international order as different, that is, as autonomous enough to implement their own institutions. As a result of the rationality of equality and civilization, the principle of sovereignty is almost antagonistic to the idea of autonomy. To be part of the club of sovereign States, a community had to renounce its autonomy.

B. *Joining the Developed World: Equality, Development and the Rule of Law*

The decolonization process transformed the international order, as most of the world's territory became recognized as belonging to equal and sovereign States. However, the international community maintains control over the subjectivity of statehood. Government, territory and population are nothing more than material factors that, in practice, do not automatically create sovereignty, as can be seen in the case of Palestine. Recognition by the international community is still fundamental. But after recognition is granted, equality and sovereignty can no longer be conditioned on acting in accordance with standards of Western civilization. This shift affects the rationality of equality, making it more difficult to discipline States' behavior through the civilized-uncivilized dichotomy. But the international community's influence on the internal affairs of States did not completely disappear, as it is still vital to maintaining the global economic order. IEL scholarship performs this task through other means and ends, through other rationalities.

Decolonization coincides with the emergence of a new rationality for ordering international relations, one which has given IEL its current prominence. Since the second half of the twentieth century, international law rationalizes much of the relations between States, both at

[40] *Id.*

the regional and global level, based on the economy. More specifically, this rationality is about economic development and growth.[41] All States are formally equal, but they are not economically equal. States that previously were the masters of civilization are now the masters of development, and IEL has recognized this difference since the end of World War II and the Bretton Woods Conference. Two of the key institutions of global economic order, the International Monetary Fund (IMF) and the World Bank, have voting mechanisms that reflect this hierarchy.

As with the rationality of civilization, there are two key social facts that do not require further verification in the case of development. One is the widespread recognition of some States as 'developed,' and the other is the desire of the rest to achieve that level of development. The status of 'developed' does not depend on the level of inequality within the country nor whether its financial institutions were protagonists in the most serious financial crises of the past century. No one questions the developed status of the United Kingdom or the United States. On the contrary, these States produce knowledge about development in order to shape the behavior of countries still in the development process. This knowledge takes the form of rationalities that determine the means and ends of development, and is produced by the work of academics and experts in international economic organizations, such as the World Bank, the IMF and the Organization for Economic Cooperation and Development (OECD).

The so-called 'developed' States approve of the rest of the world's desire to develop. It could even be said that they celebrate it. Since the end of the Second World War, 'developed' States have offered financial, technical and political assistance for development, which is also functional to other interests: from fighting communism to influencing the internal affairs of other countries.[42] Although the rest of the States are not obliged to accept this help (or to comply with the development rationality), few are willing to be 'underdeveloped,' in the same way that few were willing to be 'uncivilized' in the nineteenth century. There is

[41] The importance of the rationality of economic development and growth in liberal and neoliberal States was set forth by Weber and Foucault. *See* Richard Swedberg, *Max Weber's Contribution to the Economic Sociology of Law*, 2 Ann. Rev. L. & Soc. Sci. 61 (2006); Michel Foucault, Security, Territory and Population: Lectures at the Collège de France 1977–1978 95–99, 341–58 (Arnold I. Davidson ed., Graham Burchell trans.) (2009); Michel Foucault, The Birth of Biopolitics: Lectures at the Collège de France 1978–1979 144, 252 (Arnold I. Davidson ed., Graham Burchell trans.) (2010).

[42] *See* Anghie, *supra* note 18.

external pressure to follow this path, such as the loan conditions imposed by the IMF, but there is also a global acceptance of certain means as necessary to achieve economic development.

Unlike the principle of equality and the rationality of civilization, the development rationality has taken two historically different forms. The States of the Global South, at least during the first decades of the post-war period, questioned the rationality of development put forward by the United States and Western Europe. Part of their distrust was due to the belief that these States achieved their material prosperity from asymmetric colonial relations or informal domination,[43] eliminating, for instance, the possibility of a merchant fleet in Latin America. Between the 1950s and 1970s, Latin American States sought to achieve economic development through their own rationality, inspired by the dependency theory.

This alternative development rationality was presented as a demand to the United States and Western Europe for the reorganization of international economic relations.[44] This demand insisted upon implementing rules that would allow States to manage their national economies, mainly their natural resources, and to rely on these resources to achieve industrial development. This emancipatory dimension was present in the discourse on the dependency theory concerning trade and investment, which distrusts free trade and capital coming from former colonial powers.[45] Scholars of the alternative development rationality believed that the creation of national capital was necessary to achieve both economic development and a healthy democracy.[46] The aim of this demand was, according to Prebisch, to give the population of the Global South the same economic and democratic conditions afforded to the United States and Western Europe.[47]

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[43] ROBERT GILPIN, GLOBAL POLITICAL ECONOMY: UNDERSTANDING THE INTERNATIONAL ECONOMIC ORDER 286–288 (2001).

[44] This demand is articulated through the right to development. *See* Gross Espell, *supra* note 23.

[45] In Latin America, the most important examples of this school of thought are Raul Prebrisch, Celso Furtado, Ferando H. Cardozo and Enzo Faletto. *See* Ricardo Bielschowsky, *Cincuenta Años del Pensamiento de la Cepal: Una Reseña*, *in* CINCUENTA AÑOS DEL PENSAMIENTO DE LA CEPAL: TEXTOS SELECCIONADOS 9–61 (Vol. 1, 1998).

[46] M. Cuaderno Sr., *The Anti-Capitalist Attitude*, in PRIVATE INVESTMENT: THE KEY TO INTERNATIONAL INDUSTRIAL DEVELOPMENT; A REPORT OF THE SAN FRANCISCO CONFERENCE 52 (1958); Raul Prebisch, *El Desarrollo Económico de la América Latina y Algunos de sus Principales Problemas*, 26 DESARROLLO ECONÓMICO 479, 1950 (1986).

[47] Prebish, *supra* note 46, at 479.

During this period, scholarship in Latin America, and in all of the Global South, stressed the importance of an international right to development as a basis for a new global economic order.[48] It was an alternative vision of economic relations between States that demanded different systems and rationalities. This vision was reflected in several resolutions of the General Assembly of the United Nations. The most important ones refer to the permanent sovereignty over natural resources[49] and the economic rights and duties of States.[50] Some of these ideas were consolidated, though only for a brief period, in the creation of the Economic Commission for Latin America and Caribbean (ECLAC) and the United Nations Conference on Trade and Development (UNCTAD).[51]

This emancipatory vision of development was defeated at end of the 1970s by the development rationality promoted by the United States and Western Europe. The key to development in this Western vision was not state-led economic planning but rather attracting private foreign investment to promote the most competitive sectors of the economy.[52] This development rationality is based on neoliberalism, and its circulation runs from the North to the South.[53] According to the neoliberal paradigm of the 1990s, to achieve economic development, States must behave in accordance with a new fiscal and institutional discipline. These policies have been designed and implemented by the World Bank, the IMF, the OECD, and the new UNCTAD foreign investment division.[54]

These international economic organizations financed the implementation of institutions deemed necessary for neoliberal development. Many universities in the Global North supported this project. This is how the rationalities of equality and the rule of law came to be, both of which urged underdeveloped countries to incorporate the institutions of the United States and Western Europe. Essentially, these institutions

[48] Gross Espiell, *supra* note 23, at 230–33.

[49] G.A. Res. 1803 (XVII), (Dec. 14, 1962).

[50] G.A. Res. 3281 (XXIX), (Dec. 12, 1974).

[51] Gross Espiell, *supra* note 23, at 230–33.

[52] Vanessa Ogle, *State Rights Against Private Capital: The "New International Economic Order" and the Struggle over Aid, Trade, and Foreign Investment*, 1962–1981, 5 Humanity 211, 225 (2014).

[53] The World Bank, for example, was key in the implementation of agricultural reforms suggested by experts such as Hernando de Soto. *See* Jorge L. Esquirol, *Legal Latin Americanism*, 16 Yale Hum. Rts. & Dev. L.J. 145, 153–54 (2013).

[54] In the case of UNCTAD, *see* Tagi Sagafi-Nejad & John H. Dunning, The UN and Transnational Corporations: From Code of Conduct to Global Compact 124–26 (2008).

recognized strong property and contract rights, encouraged reform aimed at prioritizing the role of the market as guarantor of economic development, and emphasized the need to maintain macroeconomic and fiscal stability.[55] These measures aimed to plug countries of the Global South into the global economy and to promote private foreign investment.

Concerning foreign investment, the neoliberal rationality of development was consolidated through asymmetric treaties that promote and protect those investments. These bilateral treaties formally protect investors of both States, but in practice the great majority of investors come from countries of the Global North. These treaties have resulted in unequal benefits, similar to the treaties of friendship, navigation and commerce mentioned earlier. For example, in the case of maritime and river transportation, the industry was present in Latin America, but it was owned and controlled by foreigners. Similarly, in the case of foreign investment today, there will be economic growth in Latin America, but it will depend on, and be primarily directed by, global capital.[56] The implications of foreign control are often overlooked and downplayed by much of the current literature on international investment arbitration. This scheme has given rise to an emerging transnational capitalist class, which acts as an outsider ignoring the needs and values of each community it impacts.[57]

The World Trade Organization (WTO) played a vital role in the implementation of this neoliberal economic order. During the 1990s, the WTO was the beacon of neoliberal trade reforms. Its function, according to Chang, was to prevent countries from reimplementing policies that promoted national industry.[58] By considerably limiting support for domestic industries, incorporating a strong scheme for protection of intellectual property rights, and facilitating the mobility of goods and services, the WTO created global value chains. Joining these chains of production became vital in the current configuration of international economic relationships.[59]

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[55] *See* ALASDAIR ROBERTS, THE LOGIC OF DISCIPLINE: GLOBAL CAPITALISM AND THE ARCHITECTURE OF GOVERNMENT (2010).

[56] *See* Sanjaya Lall, *Reinventing Industrial Strategy: The Role of Government Policy in Building Industrial Competitiveness*, UNITED NATIONS PUBLICATION (Apr. 2004); *see also* Ha-Joon Chang, *Regulation of Foreign Investment in Historical Perspective*, 16 THE EUR. J. OF DEV. RES. 687, 712 (2004).

[57] Chimni, *supra* note 6.

[58] CHANG, *supra* note 30.

[59] *G20 Leaders' Communiqué*, Antalya Summit (2015), http://www.gpfi.org/publications/g20-leaders-communiqu-antalya-summit-2015.

During the shift of the 1990s, a large part of Latin American IEL scholarship simply followed and reported on these changes and institutional reforms. While there were criticisms, such as those of Correa in the area of intellectual property,[60] most Latin American literature focused only on systematizing the new legal instruments, and thus reproducing, explicitly or implicitly, the neoliberal rationality for development.[61]

III. Latin American IEL Scholarship and its Contribution to the Global Economic Order

IEL scholarship today presents itself to the world as a global discipline despite the increasing number of regional and bilateral trade agreements, the high degree of fragmentation in the international investment regime, and the distinct political, economic, and social contexts of each country and region. IEL scholarship does not view these distinct contexts as a serious problem, however, because these divergences are counterbalanced by global rationalities that serve to minimize differences and create order in international economic relations. What is truly global and universal about IEL, then, is knowledge. The regional academic community does not exhibit a normative or social discontinuity with the global community; instead, with only a few exceptions, it is a subgroup within that same epistemic community.[62] It is not by chance that the Latin American IEL network has been created within, and as part of, the international network.[63]

Given the importance of Latin America in international economic relations, its academics have some weight in the creation of knowledge within IEL. Despite the diversity of treaty texts and the indeterminacy of the law, the existence of IEL indicates some consensus in the creation and reproduction of this knowledge. Much of the scholarship of Latin America forms part of that consensus today. Latin American scholarship criticized this consensus between the 1950s and 1970s, but today, this scholarship receives and reproduces IEL dominant knowledge. The contributions made by many Latin American experts of IEL tend to rely on

[60] Carlos M. Correa, Intellectual Property Rights, The WTO and Developing Countries: The TRIPS Agreement and Policy Options (2000).

[61] Jose D. Enríquez Rosas, *Derecho Internacional Económico. Instituciones y Críticas Contemporáneas*, 8 Anuario Mexicano de Derecho Internacional 791 (2008).

[62] These exceptions are limited almost exclusively to the area of intellectual property. *See* Correa, *supra* note 60. *See also* the work of Rafael Pérez Miranda in the area of biotech and seeds.

[63] *See* http://iellatina.blogspot.com. The author is a member of this network.

dominant rationalities and, thus, work to consolidate the current global economic order. These experts represent the region in an indirect manner, and many acquiesce to the current order. The participation of Latin American judges and arbitrators, many of them also academics, is used to argue in favor of the legitimacy of the international regime, regardless of the content of judicial decisions.

A. *Contributing by Teaching*

Like most legal education in Latin America, IEL is geared towards the professional market and taught as a practice that must be learned and applied to concrete cases.[64] This approach ignores the constitutive role of the law and its socioeconomic context. While this approach is common to all areas of law, it is easier for students to realize that domestic law, whether it is property or contract law, is the result of a struggle between different political interests. This is because students experience or witness these struggles in everyday life. In the context of IEL, however, this realization is more difficult given the apparent distance between students and international economic relations. These international struggles mostly interest elites and have little to do with the everyday life of workers and students.[65]

International moot court competitions illustrate how legal education is taught as a practice to a professional market.[66] Moot court competitions encourage students to resolve disputes by repairing the lost order in concrete international economic relations. Students travel across the world to plead before many of the experts who execute the development rationality, whether through foreign investment or international trade law. These competitions teach and train students to operate within the dominant rationalities of the current global economic order.

[64] See Carlos Lista, *La Construcción de la Conciencia Juridical: Los Objetivos Educativos y la Formación del Abogado*, 5 ANUARIO 381, 394–95 (2000); Rogelio Pérez Perdomo, *Desafíos de la Eduación Juridical Latinoamericana en Tiempos de Globalización*, 38 EL OTRO DERECHO 11, 19–20 (2008). The formalization of the teaching of law as strictly a practice obscures the constitutive side of the learning process. As Lista explains, teaching law not only imparts legal knowledge, but also permits the formation of a legal conscience. Lista, *supra*, at 386–87.

[65] Gerry Simpson recognizes that one of the problems with international law scholarship is the omission of such context. Simpson, *supra* note 5, at 88.

[66] *See* Karen Bravo, *International Economic Law in US Law Schools: Evaluating its Pedagogy and Identifying Future Challenges*, *in* INTERNATIONAL ECONOMIC LAW: THE STATE AND FUTURE OF THE DISCIPLINE 135, 155 (Colin Picker et al. eds., 2008). The most important international competitions are the Jessup, the Vis, the FDI Moot, and the ELSA-WTO. The author has direct knowledge of the Vis and the FDI Moot, and indirect knowledge of the other two.

The problem is that mooting only focuses on the dispute-resolution role of IEL, downplaying the constitutive character of knowledge in this field. These competitions, in other words, prepare the next generation of experts to support the existing order. Some of these students are later recruited by international law firms, where they are employed to continue this support.

B. *Contributing by Defending States' Interests*

Defending States' interests can be another way of contributing to the consolidation of the existing order, a task in which Latin American academics and experts routinely participate. In the nineteenth century, for instance, Carlos Calvo did not criticize the distinction between civilized and noncivilized nations. Instead, he defended Latin American States, arguing that they complied with Western standards on the ground that they, like European States and the United States, respected private property.[67] Japanese and Chinese academics did the same, seeking to demonstrate that their countries behaved according to the prevailing rationalities by having incorporated Western private and public law institutions.[68]

By participating in these debates, Latin American academics—like academics from other periphery countries—influenced international law. Becker Lorca affirms that there existed a circulation of thoughts and ideas amongst experts around the world.[69] However, in my opinion this circulation of ideas has to be framed within the rationalities of equality and sovereignty, and the civilized-uncivilized dichotomy. Becker Lorca describes an act of resistance in which actors strategically use the dominant knowledge of international law to their advantage. This strategy may prevail in a specific or doctrinal controversy, but it is difficult to think of a scenario where this strategy would successfully modify the dominant rationalities. The participation of Latin American and Asian academics described by Becker Lorca can, I believe, be described as a tragedy in the sense that little or nothing has changed in the dominant knowledge within international law.

Two recent examples illustrate this tragic situation. First, Argentina's defense in investment arbitration proceedings after the 2001

[67] Becker Lorca, *supra* note 19, at 302.
[68] Becker Lorca, *supra* note 39, at 4–5.
[69] *Id.* at 7.

economic crisis was highly ineffective when it relied on arguments based entirely on domestic constitutional law not reflected in international investment law.[70] When Argentina changed its strategy and used international law arguments, the country obtained some victories in arbitration proceedings. In doing so, Argentina helped clarify the interpretation of the 'state of necessity' exception present in many treaties. At the same time, however, Argentina also helped consolidate present-day investment arbitration. Despite the long list of cases and awards against Argentina, this country neither terminated its bilateral investment treaties nor initiated an internal review process.

Second, a similar argument can be made of Brazil's role in WTO litigation, which academics often regard as successful.[71] This success lies in victories achieved in the area of agricultural subsidies. These victories illustrate that a country like Brazil can and, in fact, did prevail over the United States and the European Union under the current legal and institutional arrangements. Literature highlighting Brazil's success aims to do two things. First, it portrays the possibilities available to countries of the Global South within the framework of the WTO. Second, it legitimatizes the rules of the WTO, responding to critics in the Global South.

Those who defend Latin American states before the WTO or investment tribunals also contribute to the existing global economic order when, after their success, they are hired by global law firms that perpetuate the current order. This is true of prominent lawyers from the Global South in the field of investment arbitration. The flow of lawyers from State defense teams to global private law firms ultimately strengthens the dominant rationalities of IEL.

C. *Contributing Through Research*

Latin American research also contributes to the consolidation of the global economic order. This is largely due to academic and professional motivations. Many regional academics are educated abroad, the dominant language of IEL is English, and many renowned Latin Americans take positions outside of the region.[72] Additionally, scholars face

[70] The Argentine position was known as the "Rosatti doctrine." *See* Horacio D. Rosatti, *Los Tratados Bilaterales de Inversion, el Arbitraje Internacional Obligatorio y el Sistema Constitucional Argentino*, REVISTA JURIDICA LA LEY, 67–198 (October 15, 2003).

[71] Gregory Shaffer et al., *The Trials of Winning at the WTO: What Lies Behind Brazil's Success*, 41 CORNELL INT'L L.J. 383, 456 (2008).

[72] Esquirol, *supra* note 53, at 148–154.

pressure from university rankings and the increasing need to publish in internationally recognized journals. Furthermore, there are close relationships between Latin American academics and practitioners in both the private and public sector. These relationships are understandable given that the idea of an exclusively academic career in the legal sector is something still quite new to the region.

These circumstances do not break the link between scholarship and scholars' Latin American roots, but they do shape the way this link is constructed. Academics often focus on the particular situation of their country or region. Latin American academic research, however, tends to address issues from the epistemological perspectives developed in academic centers in the Global North. It is not that Latin American academics have forgotten their roots, but rather that they work through theoretical and methodological lenses produced in other latitudes, implicitly incorporating the rationalities that dominate their research.[73]

In a world where international recognition is of fundamental importance to universities and their academics, this orientation is reasonable. For those who are in Latin America, international recognition is especially valuable if it comes from researchers and universities of the Global North.[74] The most relevant form of recognition is citation in specialized journals of prominent academic centers—journals that are usually situated outside of the Latin America. Being recognized by these centers is difficult to start with, and it is likely more difficult if the author's position defies dominant rationalities.

Thus, IEL knowledge not only dictates the actions of States, but also the actions of academics. This is not surprising given that deep criticisms of IEL would put the global economic order at risk. Those who want to promote change through scholarship, then, face the difficult and nearly impossible task of disrupting current IEL paradigms.[75]

International investment law, which is likely one of the most controversial areas of IEL today, illustrates the role played by regional scholarship. Latin America is the region most often sued by foreign investors, and Latin American governments have strongly criticized investment arbitration. Nonetheless, the most important critiques have

[73] *Id.*

[74] Obregón, *supra* note 36, at 51.

[75] Thomas S. Kuhn, The Essential Tension: Selected Studies in Scientific Tradition and Change (1977).

not come from the region. If we look at the global context, the strongest criticism of this area of law comes from Canadian and European academics. Canadian academics articulated a sophisticated critique after their country was condemned several times within the context of NAFTA.[76] More recently, a group of European academics have spoken publicly against investment arbitration within the framework of transatlantic negotiations.[77] In Latin America, on the other hand, criticism by governments has not been supported by the majority of Latin American scholars. Latin American critique has only been moderate.[78] This attitude is linked to the dominant rationalities, that is to say the need to become developed, and to the academic and professional dynamics that dominate Latin America.

CONCLUSION

This Article has aimed to stimulate a debate about the role of Latin American IEL scholarship. From a doctrinal perspective, the role of scholarship is to analyze rules and to support sometimes frenetic international negotiations. The main objective is to offer Latin American States the best possible results within the current global economic order. Those who support this position will tell us that Latin American States and corporations need lawyers who will defend their interests, and that scholarship can play an important educational and supportive role for these lawyers.

This vision explains why many Latin American States began negotiating free trade agreements, and why States who were not yet in the negotiation stage—and perceived themselves as lagging behind—began

[76] *See* GUS VAN HARTEN, INVESTMENT TREATY ARBITRATION AND PUBLIC LAW (Vaughan Lowe ed., 2007). *See also* DAVID SCHNEIDERMAN, CONSTITUTIONALIZING ECONOMIC GLOBALIZATION: INVESTMENT RULES AND DEMOCRACY'S PROMISE (Chris Arup et al. eds., 2008). *See also* Gus Van Harten & David Schneiderman, Public Statement on the International Investment Regime (Aug. 31, 2010) (available at http://www.osgoode.yorku.ca/public-statement-international-investment-regime-31-august-2010) (last visited Mar. 8, 2016) (only two of those who subscribed have academic or research positions in Latin America).

[77] Harm Schepel, Statement of Concern about Planned Provisions on Investment Protection and Investor-State Dispute Settlement (ISDS) in the Transatlantic Trade and Investment Partnership (TTIP) (August 2014) (available at https://aepf.info/single-post/2014/08/17/Statement-of-Concern-about-Planned-Provisions-on-Investment-Protection-and-Investor-State-Dispute-Settlement-ISDS-in-the-Transatlantic-Trade-and-Investment-Partnership-TTIP) (last visited Jan. 23, 2020).

[78] *See* Lorca, *supra* note 19, at 288 (contending that Latin American scholarship of international law became more moderate after the 1970s).

working to remove existing institutional barriers.[79] These actions are reasonable if we assume that the treaty regime is the new norm, and that the longer a country waits to join, the more costly the negotiation process will be in the future.[80] The problem is that, whatever opinion one may have about free trade agreements, there is no reason to assume that these treaties are inevitable. Latin American scholarship can do much more than produce the best treaty-negotiation strategies; it can work to highlight unexplored options and transform the current global economic order.

The interests at stake are too important for academics to be passive. Academics should, of course, defend States' concrete interests, many of which are settled in various dispute settlement mechanisms. However, they should also work to reorder IEL to create a system that allows Latin American countries to implement policies that respond to their needs. Academics should seek to educate responsible citizens in the local and global context, and not simply serve as private and public consultants.[81] Latin America needs academics to be conscious of the constitutive role that scholarship plays in the global economic order. Otherwise, policy alternatives will be limited to either joining the global coalition of open markets or being economically ostracized.[82]

Undoubtedly, coming up with alternatives is not an easy task. Latin American IEL scholars should be more self-conscious of their constitutive role in the global economic order. But authors who take on this role, a position sometimes perceived as critical, often encounter either doctrinal objections or demands for concrete solutions. It is not surprising that those who support IEL's dominant knowledge reject alternative visions for the global economic order under the pretext that the alternatives are political and partial. As this Article has shown, however, the same can be said of IEL's dominant knowledge. As for those who demand

[79] *See* Frederico Pinedo, *Hacia un Nuevo Mercosur*, La Nacion (July 31, 2015), http://www.lanacion.com.ar/1814925-hacia-un-nuevo-mercosur (discussing the current situation of Brazil and Uruguay, in which they cannot negotiate free trade agreements due to the limitations imposed by Mercosur); *see also Uruguai Está de Acordo com Brasil Sobre Tratado Entre Mercosul e UE*, Globo (May 8, 2015), http://g1.globo.com/economia/noticia/2015/05/uruguai-esta-de-acordo-com-brasil-sobre-tratado-entre-mercosul-e-ue.html.

[80] Meredith Kolsky Lewis, *The Trans-pacific Partnership Agreement and Development*, *in* Trade Liberalisation and International Co-operation: A Legal Analysis of the Trans-Pacific Partnership Agreement 28–49 (Tania Voon ed., 2013).

[81] Simpson, *supra* note 5, at 84.

[82] Robert Zoellick, *Unleashing the Trade Winds*, The Economist, Dec. 5, 2002.

concrete solutions, their requests are rooted in an implicit acceptance of the current order. They reject solutions that may require reconsidering the terms of the debate or thinking about issues through a new perspective. The production of alternative options, in other words, requires an active attitude towards the production of new knowledge.

The articulation of concrete alternatives also faces an epistemological obstacle. Today, IEL can only be understood according to certain neoclassical, neoliberal, and post-neoliberal premises that shape the global economic order. The relationship between foreign investment, free trade, and development illustrates this obstacle. Dependency theory and the goal of regional economic integration provided the epistemological support for an alternative vision in the 1960s and 1970s. At present, however, the lack of an alternative economic vision makes it more difficult for IEL scholars to articulate options to the current global economic order that take into account material and normative inequalities.

We should also keep in mind certain epistemological limitations that are internal to IEL itself. This field is inescapably linked to economic globalization. For those who believe any kind of globalization is a problem, a satisfactory answer may require more radical approaches than those that can be articulated through IEL. Contributions from sociology and anthropology may be useful for reimagining IEL, but they must be used strategically and with caution if the intent is to reorder international economic relations. There is a risk that some IEL academics label these efforts as exotic ideas too removed from IEL.[83] Private foreign investors, for example, seek economic returns and do not act for charity. Any foreign investment regulation cannot ignore this fact unless the goal is to restrict foreign investment and unwind globalization. This Article has not addressed these more radical approaches. It only seeks to point out that IEL can open up opportunities for those who believe that each country and region should be able to choose its policies and destiny within the broad process of economic globalization.

[83] *See* BOAVENTURA DE SOUSA SANTOS, REFUNDACION DEL ESTADO EN AMERICA LATINA: PERSPECTIVAS DESDE UNA EPISTEMOLOGIA DEL SUR (2010) (discussing the importance of global south epistemologies for reimagining IEL). *But see* Esquirol, *supra* note 53, at 166, (describing how a reimagination of IEL could risk transforming an alternative discourse into an exotic one).

Postscript

The original Spanish version of this Article was written in 2015. The global economic order has, since then, suffered a significant backlash. Most importantly for Latin America, the United States changed its position on international trade and foreign investment markedly. The Trump administration has embraced a more nationalistic and mercantilist approach, wherein international trade is regarded as a zero-sum game. This attitude emphasizes the existence of winners and losers, destabilizing the existing global economic order. The United States successfully pursued the renegotiation of NAFTA, and has engaged in a trade war with China. The latter has attracted most of the academic and political attention.

At the same time, there is not much IEL scholarly debate about the implications of this policy shift for the rest of the world and, particularly, for Latin America. International trade discussions in the United States increasingly reflect the demands of those suffering the consequences of rising inequality in that country, linking this problem with the global economy and the rules of IEL. Focusing on inequality can imply a positive change for IEL, opening up spaces to reconsider dominant knowledge in this field, particularly, the premise that international trade and foreign investment are the only, or the most efficient, means to economic wellbeing. Negatively, however, the debate in the United States has remained somewhat disconnected from the consequences that nationalism and mercantilism may impose on other countries, such as its Latin American neighbors. The discussion so far has been U.S.-centric, focused on inequality within the United States rather than global inequality or global economic structures. The discussions of a Green New Deal, arguably a progressive proposal, do not consider the role of other countries or the needs of those countries' populations.[84] For Latin America, this can be problematic. IEL scholarship needs to raise awareness about the perils of a policy that puts the needs of people in the United States—or other Global North countries—before those of their neighbors living in Latin America and the rest of the world.

[84] *See* Todd Tucker, Industrial Policy and Planning: What It Is and How to Do It Better (2019).