

The Multiple Selves of Economic Self-Determination

Odette Lienau

ABSTRACT. In this Essay, I argue that the contemporary world requires an explicitly plural and flexible conception of economic self-determination and especially a broader vision of the economic “self” at its center. I contend that older dyadic understandings of economic self-determination, formed largely in light of twentieth-century anticolonial struggles, are no longer sufficient. Individuals can be economically constrained across multiple vectors by newly powerful actors and innovative forms of control. They are thus potentially implicated in multiple political and economic selves – not just personal but also local, national, and transnational.

As such, those seeking to promote economic self-determination should more explicitly recognize and perhaps strategically enable and enhance this flexibility. At the same time, anyone working for change must remain aware of how each “self” can still be coopted and reshaped by those who would deliberately or inadvertently limit the economic potential of others in pursuit of their own benefit. We must avoid, for example, both an atomistic and counterproductive individualism and an uninterrogated support for elites shielded by the concept of the nation-state. At a deeper process level, we should also help build capacities and mechanisms that make the sources of economic unfreedom more visible and understandable and that enable the kinds of flexible economic self-definition and cross-cutting alliances that the contemporary moment requires.

INTRODUCTION: WHO ARE WE DETERMINING AGAINST?

It is telling and unsurprising that the recent backlash against globalization has coincided with a rise in populist authoritarianism. Both phenomena are grounded, in different ways and perhaps for different ends, in the apparent rejection of a one-size-fits-all political and economic model in the international realm. Indeed, the post-Cold War narrative suggesting that the globe would eventually be covered by free-trading, liberal-democracy-loving states now seems naïve. Rejecting this narrative, both phenomena also lay claim to discourses aligned with the broad concept of self-determination, including economic self-determination, and point to the modern complications and entanglements in this warren of ideas.

In this Essay, I argue that older dyadic conceptions of economic self-determination, built largely in light of twentieth-century anticolonial struggles, are no longer sufficient. I contend that the contemporary world instead requires an explicitly plural and flexible conception of economic self-determination and especially a broader conception of the economic “self” at its center. I focus here on *economic* self-determination in particular for two reasons. First, the call for economic self-determination seems to be recurrent and near universal. Even in polities with relatively stable and successful mechanisms for political self-determination, the vicissitudes of commodity and currency markets, trading partners, and numerous other factors mean that a sense of economic crisis, oppression, or helplessness returns over and over again.¹ Second, many calls for political self-determination seem to follow from prior discontent with a lack of economic power and control, which then spills over into more traditionally “political” forms and demands. As such, although these arenas are conceptually and practically deeply intertwined, I suggest that attending more closely to the economic dimension might deepen our understanding of these dynamics writ large.

I also should clarify that, in focusing on economic *self-determination*, I only look at one of (at least) two major facets of economic well-being. By economic self-determination I mean, very broadly, the capacity and space to determine the conditions of labor, production, acquisition, and distribution. This might apply to individuals who hope to determine both the type and conditions of their work and also how any resulting gains are distributed. Or it might apply to collectivities, such as nation-states, whose decisionmakers hope to set independent economic policies on how to produce goods, secure other necessary and desirable acquisitions, and redistribute material wealth. Central to understandings of self-determination along these lines is the idea of an absence of domination or subordination in decisionmaking; it is somewhat more focused on process than outcome.² Economic self-determination is, therefore, not necessarily synonymous with sustenance. Certainly, lacking the basics required for living would hinder efforts at economic self-determination, and such deprivation or extreme austerity is oppression worth fighting against. Still, one could be economically well cared for, and even live in the lap of luxury, while also lacking the capacity and

-
1. For a much-discussed book on the recurring nature of financial crises in particular, see CARMEN M. REINHART & KENNETH S. ROGOFF, *THIS TIME IS DIFFERENT: EIGHT CENTURIES OF FINANCIAL FOLLY* (2011).
 2. Without going too deeply into schools and discussions within political theory, this is akin to ideas of freedom as nondomination in the work of scholars such as Philip Pettit. See, e.g., PHILIP PETTIT, *REPUBLICANISM: A THEORY OF FREEDOM AND GOVERNMENT* (1999). For an interpretation of how this conception of freedom underlined certain facets of the American constitutional experience, see, for example, AZIZ RANA, *THE TWO FACES OF AMERICAN FREEDOM* 52-54 (2010).

space to make meaningful economic choices.³ As such, while the relationship between self-determination and sustenance should be acknowledged, these forms of economic well-being should not be confused.

In focusing on economic self-determination and arguing that we now need an explicitly plural and flexible conception of the “self” at its center, I highlight a series of questions that seem especially pressing for the contemporary moment in global law, policy-making, and even on-the-ground activism. To begin with, what is the nature of today’s fights to maximize economic capacity, agency, and independence? Or, in other words, is it clear who or what we should be economically determining *against*? Relatedly, what are the possible “selves” at the center of economic self-determination today, particularly given the shifting landscape of political affiliations and economic power centers? Is it a state entity facing the edifice of transnational rules and institutions that constrain its economic policy options? The people living within a country who are collectively struggling under the corruption and self-dealing of an economic elite? An individual constrained by a set of economic deprivations or limitations over which they have little control? Or a transnational group, such as a socioeconomic class, facing a constellation of norms, market forces, and technological developments that render it marginalized and disempowered? What does the selection of one “self” as opposed to another mean at this historical juncture, and might it make more sense to think of individuals as potentially embedded in multiple economic selves simultaneously?

There are no easy answers. Any effort to address such questions, particularly in such a short space, necessarily involves significant oversimplification. But I argue that workable understandings of self-determination – those capable of attracting adherents and enabling change – depend in part on a conception of whom the self is determining *against*.⁴ In other words, the struggle against economic domination or unfreedom itself helps to define the historically and politically relevant economic “self,” and there is no clear or coherent self in the absence of such a project.⁵ This means that any effort to conceive of economic self-

3. A classic example is a person – more commonly a woman – whose material needs and wants are met but who has no control over her own labor or property. In the United States, historically such a status was enabled by the common law of coverture, by which a married woman’s labor and property were controlled by her husband. For a foundational discussion of the afterlife of coverture, see Reva B. Siegel, *The Modernization of Marital Status Law: Adjudicating Wives’ Rights to Earnings, 1860-1930*, 82 GEO. L.J. 2127 (1995).

4. Although I focus on economic self-determination here, I consider this dynamic relevant across all forms of self-determination.

5. This, of course, connects to longstanding approaches in social and political theory that posit the construction of identity, including the political, social, or cultural identity of a group, against a real or imagined “other.” For variations on this theme, see, for example, SIMONE DE BEAUVOIR, *THE SECOND SEX* (H.M. Parshley ed. & trans., Alfred A. Knopf 1952) (1949);

determination today requires a clearer view of the target of self-determination efforts. And, of course, it requires a comprehension of the fact that there may be many targets, of many sorts, requiring a potential multiplicity of selves – possibly all in play at the same time, even for a single individual – to effectively counter the economic unfreedom still felt by so many.

I start this Essay by highlighting the mostly dyadic anticolonial context in which early global discussions of self-determination, including economic self-determination, took place – a background that has been crystallized in international legal documents and continues to frame our practices and controversies today. I then note the degree to which the context has shifted significantly in recent decades and suggest that we should therefore expand our conception of economic self-determination, and particularly its struggles and key protagonists. In other words, we should reconsider who the “self” might be and whether the answer is necessarily unitary. Finally, I briefly lay out some of the implications of this expanded view, pointing out how individuals can be economically constrained across numerous vectors and are thus potentially implicated in multiple political and economic selves – not just personal but also local, national, and transnational. As such, those seeking to shape global law and policy should more explicitly recognize and perhaps strategically enable and enhance this flexibility, while remaining aware of how each “self” can still be coopted and reshaped by those who would deliberately or inadvertently constrain the economic potential of others in pursuit of their own benefit.

I. THE DYADIC CONTEXT OF EARLY ECONOMIC SELF-DETERMINATION

To begin with, how has the contemporary landscape for thinking about economic self-determination changed? The earliest discussions of self-determination at the international level imagined a fairly dyadic relationship. Early proponents conceived of self-determination as a way to address and alter the link between an external power and the people living within a given territory.⁶ Often, the dyadic relationship was very obvious, with a clear colonial state and a colonized population. Although the ideal-type understanding of colonial domination involves a direct military occupation of a foreign geographic area, the term and

ALEXANDRE KOJÈVE, INTRODUCTION TO THE READING OF HEGEL: LECTURES ON THE *PHENOMENOLOGY OF SPIRIT* (Allan Bloom ed., James H. Nichols, Jr. trans., Basic Books 1969) (1947); and CHARLES TAYLOR, *SOURCES OF THE SELF: THE MAKING OF THE MODERN IDENTITY* (1989).

6. Of course, these early proponents often were unsuccessful. For a consideration of this early context, see, for example, EREZ MANELA, *THE WILSONIAN MOMENT: SELF-DETERMINATION AND THE INTERNATIONAL ORIGINS OF ANTICOLONIAL NATIONALISM* (2007).

the practice itself is of course flexible.⁷ Colonial control has occurred, and can occur, not only through military but also political, economic, social, and cultural means. And economic control and the extraction of economic wealth was without a doubt a primary driver for, and instrument in, colonial projects as a whole.⁸

As a result of this relatively dyadic relationship, the colonial state itself emerged as a clear target of anger and pressure for those interested in ending relationships of economic oppression and control—for those interested in economic self-determination.⁹ Even when economic interests and entities constituted the driving force behind such unfreedom, this domination eventually tended to take a political state-centered form, and as such the colonial state functionally and symbolically became intertwined with such oppression.¹⁰ Thus, even though the forms of colonial rule varied considerably, spanning multiple permutations of direct and indirect rule and varying degrees of reliance on and collusion with economic interests, an external state actor remained a clear and valid target for reform and revolution.

Given this relatively obvious source of oppressive control and the ways in which political and economic domination were so deeply intertwined, early international calls for self-determination took as their primary target the colonial state and the colonial-imperial system.¹¹ It is therefore unsurprising that the primary political-economic “self” that emerged, or self-defined, against this colonial system was itself the abstract idea of a nation-state—a rough mirror image

7. I use “ideal-type” in the sense formulated by sociologist Max Weber, who noted that, in studying and comparing social and historical phenomena, it is analytically helpful to have a shared conceptual construct or heuristic that draws from and captures elements of reality but does not necessarily mirror any given instance of reality. See MAX WEBER, “OBJECTIVITY” IN SOCIAL SCIENCE AND SOCIAL POLICY (1904), reprinted in THE METHODOLOGY OF THE SOCIAL SCIENCES 90 (Edward A. Shils & Henry A. Finch eds. & trans., 1949).

8. There are many histories of particular colonial projects, but for a very broad overview, see, for example, MARC FERRO, COLONIZATION: A GLOBAL HISTORY (1997). For a recent take on the timing and possible reasons for colonial ventures, see Arhan Ertan et al., *Who Was Colonized and When? A Cross-Country Analysis of Determinants*, 83 EUR. ECON. REV. 171-181 (2016).

9. See generally, e.g., MANELA, *supra* note 6, at 12 (suggesting that “campaigns to advance demands for self-determination and international equality and the subsequent failure and disillusionment helped launch major anticolonial protest movements and mobilize widespread popular support behind them” and that “political and economic factors” significantly contributed to these movements).

10. The British and Dutch East India Companies perhaps provide the classic examples here. The companies themselves exerted certain forms of political-military rule and, in both cases, their activities provided the foundation for, and were ultimately absorbed into, their home states’ explicit colonial projects. There is a massive literature on these companies, but for a recent sampling see, for example, THE DUTCH AND ENGLISH EAST INDIA COMPANIES: DIPLOMACY, TRADE, AND VIOLENCE IN EARLY MODERN ASIA (Adam Clulow & Tristan Mostert eds., 2018).

11. See generally, e.g., MANELA, *supra* note 6.

of the colonial states – now presented by those seeking to cast off this major oppressive force as the proper locus for all decisionmaking. Of course, we can imagine other selves that might have emerged as dominant against the colonial system. The key “self” could have been defined against the idea of nation-states altogether, for example in favor of a transnational class-based conception of the relevant agent fighting unfreedom, urged most famously by Vladimir Lenin.¹² But, particularly in a world in which states were already powerful and broadly legitimate actors – and in which class-based revolution was difficult, to say the least – the most comprehensible and effective “self” in the international system resided (or was taken to reside) in the state form.

The foundational international legal documents and norms that speak to self-determination bear the marks of this historical context. In particular, they enshrine latent nation-states – called “peoples” – as the key entities in determining political and economic processes and outcomes in the territories that they cover and, collectively, in the world at large.¹³ The initial post-World War I vision imagined in the Treaty of Versailles and associated documents only extended to European peoples under foreign domination, in line with the concerns and geostrategic interests of that war’s victors.¹⁴ But the idea resonated with the goals of anticolonial movements throughout the world, and calls for independent sovereignty and self-determination for a plurality of inchoate nation-states became especially central to geopolitics and to international law in the decades immediately following World War II.¹⁵

In line with this conceptual movement, Article 1 of the 1945 United Nations Charter refers to the principles of “equal rights and self-determination of peoples,”¹⁶ and other key international legal documents of the post-war order echo this language. In particular, the shared Article 1(1) of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (jointly adopted by the U.N. General Assembly on

12. VLADIMIR LENIN, *IMPERIALISM: THE HIGHEST STAGE OF CAPITALISM* (1917).

13. See in particular Article 1 of the 1945 U.N. Charter and shared Article 1(1) of the of the International Covenant on Civil and Political Rights, Dec. 16, 1966, 6 I.L.M. 368, 999 U.N.T.S. 171 [hereinafter ICCPR], and the International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 6 I.L.M. 360, 993 U.N.T.S. 3 [hereinafter ICESCR], as I discuss shortly.

14. Indeed, in 1919 President Wilson himself admitted, “When I gave utterance to those words ‘concerning self-determination’ I said them without the knowledge that nationalities existed, which are coming to us day after day You do not know and cannot appreciate the anxieties that I have experienced as a result of many millions of people having their hopes raised by what I have said.” ANTONIO CASSESE, *SELF-DETERMINATION: A LEGAL REAPPRAISAL* 22 (1995).

15. The independence struggles of various states are captured in myriad books and scholarly articles, but for a recent and very brief overview of these trends as a whole, see JAN C. JANSEN & JÜRGEN OSTERHAMMEL, *DECOLONIZATION: A SHORT HISTORY* (Jeremiah Riemer trans., 2017).

16. U.N. Charter art. 1, ¶ 2.

December 16, 1966) emphasizes that “[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.”¹⁷

Although this emerging conception of the self ultimately took on the nation-state template – simultaneously countering and mirroring colonial powers – the question of how to name an inchoate entity not yet actually politically constructed or internationally legally recognized is hardly straightforward. “Peoples” – the term ultimately settled upon for a nascent polity – is far from clear and has been subject to different interpretations and heavy contestation.¹⁸ One key question that arose from this geopolitical and textual landscape – a question that bedevils us still – is whether the self-determination of peoples is purely “external” or whether it deals with “internal” self-determination as well.¹⁹ External self-determination is understood to deal primarily with foreign relations and the right to be free of external political control – the paradigmatic form of which was, of course, colonial control. Internal self-determination, by contrast, addresses the ways in which the people of a territory should have control over its political, economic, and social structures and policies, including the degree to which a governmental form should be democratic, constitutionalist, authoritarian or any other variation. It may also deal with the degree to which minority groups within a polity should be accorded some degree of autonomy. The “external” interpretation seems to have attracted more adherents, at least in terms of the number of states, particularly among postcolonial countries wary of any legal imprimatur for meddling in their internal workings. They point to the U.N. Charter’s related principles of “sovereign equality” and nonintervention in internal affairs, which have been taken to hold regardless of internal differences, including, presumably, differences in the degree of personal or collective freedom

17. ICCPR, *supra* note 13, art. 1(1); ICESCR, *supra* note 13, art. 1(1).

18. For various scholarly takes related to this topic, see, among many others, CASSESE, *supra* note 14; Patrick Thornberry, *The Democratic or Internal Aspect of Self-Determination with Some Remarks on Federalism*, in 16 DEVELOPMENTS IN INTERNATIONAL LAW, MODERN LAW OF SELF-DETERMINATION (Christian Tomuschat ed., 1992); and Kalana Senaratne, *Internal Self-Determination in International Law: A Critical Third-World Perspective*, 3 ASIAN J. INT’L L. 305 (2015). Courts have also worked to interpret this difficult language. See, e.g., *Supreme Court of Canada, Reference re: Secession of Quebec* (File No. 25506, Aug. 20, 1998, [1998] S.C.R. 217); *Case Concerning East Timor* (Port. v. Austl.), 1995 I.C.J. 90 (June 30); *Case Concerning the Frontier Dispute* (Burk. Faso v. Mali), 1986 I.C.J. 554 (Dec. 22);.

19. This is, of course, only one of the many complications and disagreements surrounding the concept. As James Summers points out, “[e]ngaging with the extensive literature on self-determination can be a monumental task.” James Summers, *Self-Determination in International Law*, OXFORD BIBLIOGRAPHIES (June 27, 2017), <https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0033.xml> [https://perma.cc/NM4X-L6TT]. For a classic take on the internal/external dimension and a defense of the internal position, see CASSESE, *supra* note 14.

granted to the individuals or minority groups living in those states.²⁰ But the “internal” legal interpretation has had broad appeal, particularly with the rise of human-rights law and associated doctrines and the related willingness to recognize and call out abuses in other states’ domestic spheres.²¹

Still, my goal in this Essay is not to wade into the very deep waters of proper international legal interpretation. Rather, I aim to highlight that there is already a discussion of which “self” stands at the center of self-determination, be it political or economic, and that there is already a certain dissatisfaction with overly narrow interpretations. Indeed, scholars have pointed out that the legal forms and languages adopted for the post-World War II era closed off possibilities. For example, Sundhya Pahuja has pointed out that, while “international law did provide a language in which claims for decolonization could gain a certain audibility, . . . it locked in nation statehood as the only way to claim legal personality. The price of audibility was thus the nation state form.”²² And in calling for a “New International Economic Order,” which never came to fruition, Mohammed Bedjaoui highlighted that the existing form of self-determination ultimately proved insufficient to actually ensure freedom: “Traditional international law has helped to make independence a completely superficial phenomenon, beneath the surface of which the old forms of domination survive and the economic empires of the multinational corporations, and the powers that protect them, prosper.”²³ In short, although traditional nation-state-based forms of economic self-determination arguably delivered a degree of independence, they failed to seriously address economic domination.

II. RETHINKING THE CONTEMPORARY “SELF” FOR ECONOMIC SELF-DETERMINATION

The debate over the proper legal meaning of self-determination, and the dissatisfaction with how the formal self-determination of nation-states has nonetheless proven entirely compatible with economic subordination, highlight several points worth emphasizing. First, the entities to which the concept of self-determination might plausibly attach internationally—peoples, states,

20. U.N. Charter art. 2.

21. Scholars have gone so far as to argue that the “principle of non-interference” is not relevant if intervention is in support of the key principle of self-determination, with self-determination here taking a more internal flavor. See, e.g., CASSESSE, *supra* note 14, at 176.

22. SUNDHYA PAHUJA, *DECOLONISING INTERNATIONAL LAW: DEVELOPMENT, ECONOMIC GROWTH AND THE POLITICS OF UNIVERSALITY* 45 (2011). Pahuja further argues that this effectively meant buying into a “universal historical narrative” associated with the nation-state form and its vision of development. *Id.* For Pahuja’s discussion of this bargain, see *id.* at 54–59.

23. MOHAMMED BEDJAOU, *TOWARDS A NEW INTERNATIONAL ECONOMIC ORDER* 81 (1979).

territories, even social classes — are not natural beings. There is no unambiguous and single “self” in these discussions, and individuals are all plausibly part of multiple “selves,” perhaps even simultaneously. Relatedly, in thinking strategically about these issues, the selection or emphasis of one or another potential self may be more or less appropriate at different times and places, depending on the key source of economic oppression. During the colonial era, it may well have made sense to emphasize a nascent nation-state as the most likely entity to successfully struggle against colonial forms of oppression. But discussions of self-determination that fail to grasp its historically contingent effectiveness can feel outdated in an economic world constructed by newly powerful actors and innovative forms of control.²⁴

How do these insights map onto the contemporary landscape of global economic power relations? What are the current sources of economic oppression against which we might define an economically determining “self”? If the earliest discussions of self-determination imagined a fairly dyadic or bipolar colonial relationship, almost the opposite holds true today. The still-emerging new world order is a complex one in which individuals, localities, states, and other associations are enmeshed in a web of multiple public and private entities that may be key trading partners, investors, aid donors, or partners in other endeavors. And these actors, each of which can be understood as a center of power and thus potentially of oppression, are of different sorts and sizes. For example, although the dominant actors in international relations and political science are historically taken to be nation-states with large spheres of influence, the power of multinational corporations and often-autonomous international economic organizations can dwarf that of many nation-states.²⁵ Nor is it clear that there is a center or a periphery that falls neatly along an imagined geography of a global North and South (or of the West and the Rest), particularly with the rise of “South-South” economic relations.²⁶ In addition, discussions of and attempted coalitions across transnational class lines have become more widespread, even at the heart of the old “Center.” These trends have been well documented elsewhere but the

24. I do not want to overstate the shift from an earlier era. Colonial entities like the British or Dutch East India Companies were multinational, politico-economic, and embedded in networks of local elites as well. But I nonetheless contend that the multipronged transnational scale and the rapidity and fluidity of changes in today’s world is hard to match.

25. This is much commented on, but for a recent popular take, see generally Parag Khanna & David Francis, *Rise of the Titans*, FOREIGN POL’Y (2016), <https://foreignpolicy.com/2016/03/15/these-25-companies-are-more-powerful-than-many-countries-multinational-corporate-wealth-power> [<https://perma.cc/BUP6-F9QG>].

26. The World Bank identified this trend in its 2006 Global Development Finance report, and the trend has only intensified since then. 1 WORLD BANK GRP., REPORT NO. 36280, GLOBAL DEVELOPMENT FINANCE: THE DEVELOPMENT POTENTIAL OF SURGING CAPITAL FLOWS 107-38 (2006).

outcome bears repeating: when it comes to the realization of particular political and economic projects, neither the nation-state nor the classic global dividing lines seem as conceptually relevant as they once were, even if they remain central to international legal texts and many global practices. This is hardly to suggest that we are moving toward a form of cosmopolitanism in which all people are part of the same globe-spanning community. Indeed, it would perhaps be more accurate to say that the possible divisions have multiplied and become more cross-cutting. Whereas in the anticolonial moment someone committed to economic self-determination might have challenged the relevant colonial power, today challenges would have to be issued to many more entities.

The increasingly complicated political geographies of economic constraint are made even more complex by the different institutional sources and legal forms of those constraints, not to mention the substantive issue areas in which economic actors of all types are embedded. The panoply of international economic organizations and practices—the International Monetary Fund (IMF), World Bank, World Trade Organization, and practices of investment and commercial arbitration (notably but hardly exclusively)—shapes and constrains the economic policy choices and capacities of states, intra-state actors, and even individuals in ways that can be oppressive.²⁷ Although engagement with these organizations and practices is technically voluntary (at least for states, not so much for individuals within them), it has become increasingly difficult to opt out of the system as a whole.²⁸ In addition to formal organizations, private-entity and sovereign-state transactions and agreements in the substantive issue areas of trade, intellectual property, foreign investment, financing and sovereign debt, international tax, and the like can expand or limit economic choices.²⁹ And across each of these areas, there can be multiple types of constraints and rules, including not only hard and soft law but also non-state practices, norms, and market principles that may act in ways that curtail autonomy.³⁰

27. The relationship of these types of institutions to states is much commented upon, but for one excellent take, see NGAIRE WOODS, *THE GLOBALIZERS: THE IMF, THE WORLD BANK, AND THEIR BORROWERS* (2006).

28. See, e.g., *id.*

29. For an overview of the myriad transactions and public and private agreements that can constrain and expand a state's economic capacity, one could look at any number of treatises or casebooks dealing with transnational economic law. See, e.g., JOHN H. JACKSON ET AL., *LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS: CASES, MATERIALS AND TEXT ON THE NATIONAL AND INTERNATIONAL REGULATION OF TRANSNATIONAL ECONOMIC RELATIONS* (6th ed., 2013); ANDREAS LOWENFELD, *INTERNATIONAL ECONOMIC LAW* (2d ed., 2008); DETLEV F. VAGTS ET AL., *TRANSNATIONAL BUSINESS PROBLEMS* (6th ed., 2019).

30. For a discussion of how these rule forms interact to constrain choice, see Odette Lienau, *Law in Hiding: Market Principles in the Global Legal Order*, 68 *HASTINGS L.J.* 541-608 (2017).

But even categorizing the different *sources* of domination provides an insufficient understanding, as a static typology fails to capture the dynamism that exists across those sources. Today's mechanisms for potential domination seem to be distinctly fluid, perhaps uniquely in human history, taking different legal forms across multiple jurisdictional levels. A nationally based business can become a multinational corporation, establishing subsidiaries in multiple jurisdictions that then compete with each other. A subsidiary may enter into a joint venture with a state-owned entity, with the joint venture then becoming powerful enough and embedded enough with a state's elites to shift national policy in its favor. Maybe the joint venture, along with other companies in what has become a key national industry, borrows significantly from local and international banks to fund operational expansions. And perhaps, in order to help these key companies access international markets and secure further foreign investment, the state enters into a series of trade and investment treaties that eventually push a portion of the population in less competitive sectors into unemployment. But then imagine that this key industry, due to climate-change-induced weather disasters and the unexpected emergence of overseas competitors, suffers a simultaneous destruction of half of its export capacity and a drop in the global market price of the surviving exportable products. The industry's subsequent defaults on its debts threaten the over-invested local banking sector, prompting the sovereign government to take over those private-sector loans beyond its budgetary capacity. The resulting sovereign debt crisis then leads to an IMF package involving overzealous austerity measures, undermining the economic prospects of the nation-state and of individual people – the most educated and entrepreneurial of whom have already emigrated.³¹ And, perhaps, through each of these decisions and crises, corrupt elites – aided by international banking practices – make choices guided more by their interest in securing and stowing away side-payments than by the needs of the underlying population. One could go on with variations on these themes.³²

31. The IMF has gone through various phases in the strictness of the austerity measures it requires in order to extend financial assistance. Perhaps one of the most striking admissions of uncertainty came in the first days of 2013, when IMF chief economist Olivier Blanchard copublished a working paper – interpreted by many as a *mea culpa* – suggesting that the organization's models had misjudged and underestimated the negative effect of austerity measures on growth in European countries during a debt crisis. See Olivier Blanchard & Daniel Leigh, *Growth Forecast Errors and Fiscal Multipliers* (IMF, Working Paper No. 13/1, 2013); Howard Schneider, *An Amazing Mea Culpa from the IMF's Chief Economist on Austerity*, WASH. POST (Jan. 3, 2013), <https://www.washingtonpost.com/news/wonk/wp/2013/01/03/an-amazing-mea-culpa-from-the-imfs-chief-economist-on-austerity> [<https://perma.cc/55VY-YHBP>].

32. This sad tale is a composite or amalgam, but those familiar with the history of financial crises will recognize elements from many real-world cases.

So, the hard question is: what, or who, is responsible for the economic domination in this tangle? There are multiple potential starting points for these overlapping and shifting circles of constraint. Is it the IMF? Corrupt elites and the banking structures that enable them? Foreign investment? Is it climate change, under-addressed at the national and international levels, resulting in destructive weather patterns? The deregulation of local and international banks? Free trade or globalization more generally? Capitalism as a whole? Fields such as political science or economics can develop hypotheses and test which of these vectors is likely to emerge and constrain the action of others at a particular time and place. But, as a general matter, it is very difficult to establish once and for all what might be the primary oppressive power center. And it is also entirely possible that—even if efforts were made and were initially successful in pinpointing the power center—the primary source of the problem would shift.³³ For those interested in economic self-determination, this means that it is far from clear what counts as the dominant mode of constraint and thus which “self” we should be seeking to defend in this historical moment.

But perhaps we are thinking at an overly broad and abstract level here, and we should focus instead on narrower problems, such as corruption, bank deregulation, more rationalized sovereign-debt restructuring, fine-tuning trade agreements, or strengthening the emergency powers in investment treaties, among endless others. Such projects are certainly essential, and probably deserve most of our focus. But part of the difficulty is precisely that the problems are so deeply interconnected. And an even more important part of the difficulty lies precisely with the fact that the solution to one problem—perhaps reasserting the emergency regulatory power of state elites vis-à-vis international investors—could exacerbate another problem, for example the tendency of elites to put in place arbitrary regulations that worsen the country’s economic prospects but allow them to accept side money by selectively enforcing the regulations. Protecting the sovereignty and enhancing the economic self-determination of the nation-state—without further interrogation of how the nation-state form, controlled by elites, may itself be economically constraining—fails to grasp the extent of the problem.

Maybe we should alternatively say that, first and foremost, the individual human is and should be at the center of any discussion of economic self-determination. In one way, this makes intuitive sense, as the human is the one living, breathing entity who truly “feels” economic oppression and constraint. This is in line with classical liberal conceptions of economic freedom and arguably with

33. Perhaps the true culprit is simply human avarice, but that is so obviously true and also such a universal as to be virtually meaningless. (And, with a tip of the hat to Adam Smith, it is not always easy to find or draw the line between potentially virtuous self-interest and the vice of avarice.)

certain moves in human-rights law and in the emergence of the “Responsibility to Protect” doctrine and movement.³⁴ But putting the individual too unthinkingly at the center of economic self-determination risks slipping into a kind of political atomism and missing the impact of the many and very real power imbalances at the collective level. If individuals are granted legal and/or strategic primacy, and are then faced with significantly stronger collective entities such as multinational corporations or international financial institutions, they are virtually certain to fail in any effort to claim power absent the intermediate and potentially stronger entity of the state. This can also inadvertently invite intervention by (ostensibly) well-meaning others who purport to have all the answers for maximizing individual freedom—flat taxes, knee-jerk deregulation, indiscriminately securing private property against public action, even treating foreign settings as opportunities for economic experimentation along these lines—and risk reproducing certain colonial hierarchies.³⁵ Such an approach could, perhaps unintentionally, ultimately limit the real economic capacities of individuals on the ground.

In short, in given moments or places, different entities might emerge as the most appropriate “self” for economic self-determination. And the enhancement of economic self-determination through one entity or mechanism may have constraining effects through another. As such, to the extent that advocates propose any particular policy or legal change in order to promote economic well-being and choice more generally, they must at least be *aware* of this larger picture and the potentially hydraulic relationship between its parts.

CONCLUSION: EMBRACING MULTIPLICITY

While emphasizing the importance of asking about the proper “self” in economic self-determination, I have very deliberately avoided presenting a single answer for who (or what) this “self” might be. I have also avoided narrowly

34. Unanimously endorsed at the U.N. World Summit in 2005, the responsibility to protect (R2P) requires states to intervene (by force as a last measure, with Security Council approval) to protect against genocide or crimes of mass atrocity. The U.N. Security Council reaffirmed R2P in 2006, 2009, and 2014, and the U.N. Secretary-General has issued annual reports on R2P and its implementation since 2009. For an overview of R2P from various perspectives, see *THE OXFORD HANDBOOK OF THE RESPONSIBILITY TO PROTECT* (Alex J. Bellamy & Tim Dunne eds., 2016).

35. Certain policies debated after the United States’s 2003 invasion of Iraq come to mind, perhaps most strikingly the idea of a flat tax for the new regime. The decision not to engage in a significant program of economic redistribution and land reform in post-apartheid South Africa was similarly linked to language of economic freedom and private property and has significantly shaped experiences of economic oppression for formally politically free black South Africans.

defining an entity or even a type of oppression or economic control that economic self-determination might work against, although colonialism, extreme austerity, and prolonged unemployment or underemployment might be examples. This demurrer relates to my contention that the “self” in this area is historically contingent and should be conceived of in response to concrete experiences of economic domination. And domination itself can be a subjectively and individually felt phenomenon, even if it often filters through a collective entity and experience. It is possible that one individual or group finds oppressive a set of conditions relating to work or wealth distribution that others do not. As such, the constraints and oppressions deemed acceptable in one time or place may be recognized as deeply problematic in another.³⁶

If economic domination means many things and can work through multiple vectors, with the concomitant economic “self” being similarly multiple and transient, what are the next steps for those committed to economic self-determination, writ large? Of course, there are specific policy projects that can be pursued in given issue areas. But, in addition, part of the goal would presumably be to expand the ways that people, acting both individually and collectively through local, national, and transnational entities, might be able to make a decision as to *which* “self” is relevant at any given moment. In order to do this, they should ideally be able to answer: What are the sources of economic oppression that I face? Who else wrestles with the same oppression and from the same sources? How do I connect with them to form coalitions and act in solidarity to forestall further control (and, perhaps, to fashion economic processes or outcomes more in keeping with my own interests and values)? Being able to answer these questions is hardly a sufficient condition for economic self-determination – there remain problems of power imbalances and collective action, among many others. But, assuming that economic freedom requires a clear-eyed identification of sources of unfreedom and of potential allies in any social movement, it is likely a necessary condition.

Concretely, this could implicate a series of specific policy projects that do not immediately appear to be linked to economic issues but that indirectly support economic self-determination as I have conceived of it. In particular, such projects might include enhancing the transparency (and quality) of available information; working toward secure energy, food, and water sources less dependent upon large corporations, states, or other major centers of economic control; and ensuring the education and communication capacity of individuals and groups within and across nation-state lines. Improving this “infrastructure” for

36. One could think about changing working conditions, the perceived appropriateness of child labor, or the acceptance of extreme inequality, among others. I leave aside for now the question and possibility of “false consciousness,” though my own view is that it can exist, for example, along gender, class, or other lines.

economic self-determination would help individuals answer the above questions and thus identify the key sources of subordination and connect with potential allies to establish the most effective and appropriate “self” for a particular context. Providing this infrastructure could also, of course, be done in conjunction with taking steps to ensure the widespread provision of basic material welfare – thus moving forward both forms of economic well-being in tandem.

Although at least some of this infrastructure will inevitably work through traditional nation-state channels, the idea of multiple selves may also eventually help to undermine the tight grip that the nation-state has on our collective political imagination. Anger at corrupt state elites and calls for greater popular control over economic outcomes have accompanied the recent backlash against globalization mentioned in the opening of this Essay. A number of recent major protests against government officials have been launched by relatively minor triggers – a hike in transit fare in Chile, a tax on the popular WhatsApp messaging platform in Lebanon – with the protests continuing and escalating even when the initial triggers have been removed.³⁷ The underlying anger seems to result, at least in part, from larger structural resentments and a sense of powerlessness in the face of need. But to the extent that this resentment and desire for control are channeled exclusively into the nation-state, the result can be authoritarianism cloaked in the banner of economic populism. Although these movements have generally risen up against national elites, often triggered by a moment of economic anger, they can therefore paradoxically risk reinscribing an alternative form of elite power. Embracing, constructing, and providing outlets and mechanisms for the emergence of a more plural and flexible economic “self” thus could decouple the desire for economic self-determination from these more problematic manifestations of the nation-state.

If this seems like a highly political project – one unlikely to be welcomed by certain powerful political and economic actors – it is. Economic self-determination (like self-determination more generally, however it is conceived) is hardly apolitical or neutral; it rests on the idea that domination and oppression are problematic – an idea that has not been uniformly accepted across human history. Thus, those interested in minimizing the lived experiences of economic subordination today may well face resistance in accomplishing a difficult task. Economic domination exists through multiple sources and processes and thus

37. See, e.g., Anthony Faiola & Rachele Krygier, *How to Make Sense of the Many Protests Raging Across South America*, WASH. POST (Nov. 14, 2019, 9:57 AM), https://www.washingtonpost.com/world/the_americas/a-government-chased-from-its-capital-a-president-forced-into-exile-a-storm-of-protest-rages-in-south-america/2019/11/14/897f85ba-0651-11ea-9118-25d6bd37dfb1_story.html [https://perma.cc/MUL6-U8RH]; *Lebanon Protests: How WhatsApp Tax Anger Revealed a Much Deeper Crisis*, BBC NEWS (Nov. 7, 2019), <https://www.bbc.com/news/world-middle-east-50293636> [https://perma.cc/M8CR-Y4GA].

may implicate multiple potential economic selves—individual, local, national, and transnational. And the emergence (or strategic selection) of the relevant self can be highly historically contingent. At times, a project of economic self-determination might involve supporting the power of nation-states working individually or together, while at others it may involve building anti-state coalitions and networks across a transnational collectivity. As such, those seeking to shape global law and policy need to recognize both the potential and the pitfalls of various approaches, avoiding, for example, both an atomistic and counterproductive individualism and an uninterrogated support for elites shielded by the concept of the nation-state. At a deeper process level, they should also help build capacities and mechanisms that make the sources of economic unfreedom more visible and understandable and that enable the kinds of flexible economic self-definition and cross-cutting alliances that the contemporary moment requires.

Professor of Law and Associate Dean for Faculty Research and Intellectual Life at Cornell Law School, and author of RETHINKING SOVEREIGN DEBT: POLITICS, REPUTATION, AND LEGITIMACY IN MODERN FINANCE (2014). Many thanks to Abigail Pershing and the editors of the Yale Law Journal for the invitation to join this Collection and for their excellent editorial assistance.