INSTITUTIONALIZATION OF ECONOMIC NEOLIBERALISM IN THE INTERNATIONAL SYSTEM WITH EMPHASIS ON INTERNATIONAL AGREEMENTS ON TRADE AND FINANCE

by

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ABSTRACT

This thesis is a description and analysis of the inclusion of neoliberal norms in international rules and practices. Neoliberalism is a normative framework composed of norms for economic liberalization, privatization, and monetarism. Particular emphasis is made on the institutionalization of neoliberal norms in international agreements on trade and finance. The method of investigation is documentary research and analysis. The general conclusions are that (a) since 1971 neoliberalism has been institutionalized in the international system; (b) the norms of economic neoliberalism are prescribed in several international agreements on trade and finance; and (c) the institutionalization of economic neoliberalism in the international system has considerable implications for international politics.
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CHAPTER I
INTRODUCTION

In addition to power and interests, norms of conduct have been a major influence on behavior in international politics. This is particularly so when norms become institutions; i.e., when norms are established as organized sets of rules. Since the 1970s, norms pursuing economic freedom, private property rights, and a minimal state have gained renewed vitality in the international system, emerging as a particular type of economic liberalism known as neoliberalism.

Neoliberalism seeks to maximize private economic freedom, defend private property rights, and achieve a minimal state by implementing norms for economic liberalization, privatization, and monetarism. Economic liberalization removes constraints imposed by states on private actors' freedom to own property, to trade goods and services, to set up businesses, and to manage their own property. Privatization reduces the scope of goods and services offered and produced by the state and increases the scope for private economic activity. Monetarism constrains states' manipulation of macroeconomic variables by limiting their management of fiscal capabilities and by requiring that monetary policies pursue low levels of inflation and a sound, free-floating currency. The implementation of these policies ensures peoples' economic freedom and private property rights and averts state paternalism and expansion.

The institutionalization of neoliberal norms (what could be defined as neoliberalization) is an important phenomenon in international politics. Since the early 1970s, countries in every region and under all types of governments have adopted neoliberal policies to a certain extent, making neoliberalization an interesting instance of concurrent state behavior. By the mid-1990s there was a degree of consensus among most states on basic trade and investment policies unseen since the early 1900s. Neoliberalization has also been instrumental in the creation of several projects of international
economic association such as free trade areas and economic unions. After three decades of liberalization of trade and investment, today only a few states do not participate in at least one type of international agreement or association for freer trade or investment.

Neoliberalization has had a considerable effect on international law. It has facilitated a proliferation of international laws and regulations on trade, investment, and private property rights and the creation of international laws on previously unregulated areas such as subsidies or public procurement. Consequently, today there is a complex body of international rules for the liberalization of virtually all commercial and financial activities, from right of establishment to capital mobility. Neoliberalization has also propitiated important innovations to international law such as the establishment of rules that allow private firms to initiate disputes against states as plaintiffs in their own right.

The institutionalization and generalized implementation of neoliberalism at the domestic and international levels has led to important changes in international economics and finance. Widespread liberalization has not only facilitated the growth of international commerce and investment but has also modified its nature. The liberalization of financial transactions and the floating of important currencies, for example, have decisively transformed the international financial landscape. Likewise, the liberalization of services has been a crucial factor for the dramatic expansion of many service industries. Together, deregulation, privatization, and monetarism have raised the degrees of competitiveness, efficiency, and transnationalization of the international economy.

The main purpose of this thesis is to describe the institutionalization of neoliberalism in the international system in general and in international agreements on trade and finance in particular. A secondary purpose is to analyze some of the broader impacts of neoliberalization on international politics.
Chapter II describes the neoliberal normative framework and the process of its institutionalization in the international system. It describes the norms for liberalization, privatization, and monetarism and describes the stages through which such norms have been institutionalized in the international system since 1971. Chapter III describes the institutionalization of neoliberal norms in international agreements on trade and finance. It does so by demonstrating examples in which neoliberal norms are prescribed in such types of international agreements. Chapter IV provides an analysis of two main implications of neoliberalization for international politics. These are changes in international political culture and consequences for international order and governance. Chapter V contains some final observations on the political value of neoliberal norms in international politics.
CHAPTER II
NEOLIBERALIZATION

This chapter describes the normative framework of neoliberalism and the process of its institutionalization in the international system.

NEOLIBERALISM

Emergence and nature

Neoliberalism is a normative framework that can be described as "the revival and development of classical liberal ideas such as the importance of the individual, the limited role of the state, and the value of the free market."¹ Its broad and elaborate ethical, methodological, and philosophical basis has been developed by several schools of economic, sociopolitical, and philosophical thought that have emerged since the 18th century. Some of the most relevant include classical liberalism, the Austrian, Manchester, and Chicago schools of economic thought, and libertarianism.

Classical liberalism was based on the beliefs of moral individualism (the individual is the only valid source of moral values), the virtues of free trade (optimal allocation of resources, enhancement of efficiency, promotion of international peace), minimal state regulation ('laissez-faire'), the concept of the minimal state (the 'night-watchman state'), and the idea of the 'invisible hand.' This last idea states that individual economic actions produce collective benefits as long as such a dynamic is not significantly interfered with by governments. In order to have a system of economic human interaction that benefits all involved, it is necessary that states be limited to their minimal tasks.

The Austrian School of economics, which originated in the late 1800s through the work of Austrian economists Karl Menger, Friedrich von Wieser, and Eugen von Böhm-Bawerk and continued in the 20th century through the

work of Friedrick von Hayek and Ludwig von Mises among others, centered on the analysis of and innovation to classical economic thought. It was characterized by analyses of the role of private property, profits, and entrepreneurship in economic systems, a stress on the role of market-determined prices as a guiding mechanism for economies, and a criticism of public economic interventionism and high and unjust taxation.

The Manchester School of economic and political thought, founded in 1820 at the Manchester Chamber of Commerce, supported free trade, *laissez-faire* economics, freedom of contracts (the notion that there should be no legal restriction on agreements reached by consenting and mentally capable adults), and an ethical principle of personal (as opposed to social) responsibility. It stressed the distinction between the public sector and civil society, considering the state an artificial entity based on power and coercion and the private sector as natural and based on voluntary association. Personal responsibility implied self-reliance and an industrious work ethic that made people responsible for their own welfare, in contrast to state paternalism that damages this responsibility. Free trade was regarded not only as economically beneficial but also as a way to enhance democracy (through the elimination of protectionist policies that typically benefit a reduced group of people at the expense of the majority) and to achieve international peace (as nations would become more interdependent on each other's economies and thence less prone to mutual hostility).

The Chicago School of economic thought developed with the scholarly work performed at the University of Chicago since the 1930s with Milton Friedman, Gary Becker, and George Stigler among its most prominent representatives. Its main contributions are a defense of the virtues of free markets, monetarism, sophisticated criticisms of Keynesianism, and a general conclusion that economies work better when states intervene the least. The main contribution of the Chicago school to neoliberalism is monetarism. In fact, it is largely due to the Chicago School that neoliberalism emerged since monetarism is a fundamental element in the
neoliberal normative framework and its main distinguishing feature. As is better explained below, monetarism is an economic principle that seeks to constrain public fiscal and monetary capabilities, forcing states to keep a tight fiscal discipline and a prudent monetary policy based on a sound currency and price stability. Short of the adoption of private currencies, monetarism is the only suitable macroeconomic public policy congruent with a minimal state.

Libertarianism is an ethical school of thought based on the premise that human freedom is above all else. It considers individual rights as natural rights (in contrast to ethical justifications on utilitarian or consequentialist principles) which ought not to be reduced by the state in any possible manner. A crucial libertarian postulate is individualism: the normative notion that individuals “should be left, as far as possible, to determine their own futures in economic and moral matters. It puts a prohibition on the delivery of collective goods, except for those essential goods and services which cannot be priced by the market.”Accordingly, the sole legitimate purpose of government is the protection of private freedom and the performance of essential tasks of public governance such as security, enforcement of contracts, and judicial administration. Since “any more extensive state will violate persons’ rights not to be forced to do certain things, and is unjustified,” the state “may not use its coercive apparatus for the purpose of getting some citizens to aid others, or in order to prohibit activities to people for their own good or protection.” This means that policies such as welfare are improper since they require compulsory labor from some people on behalf of others.

The nature of neoliberalism, as that of its contributing schools of thought, is the defense and enhancement of private economic rights and freedoms and the pursuit of a minimal state. What makes neoliberalism a

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2 Norman Barry, 'Individualism,' in A Dictionary of Conservative and Libertarian Thought, ed. Ashford and Davies, p. 137.

particular type of liberalism is that it is the contemporary manifestation of these concerns. It is the renaissance of economic liberalism in the twentieth century, emerging in response to the expansion of statism and paternalism throughout the world since the 1930s. Communism, socialism, nationalism, fascism, moderate welfare states, and Keynesianism were all, in various degrees, schemes that curtailed private economic freedom, violated private property rights, and expanded the public sector. In all cases the economic effects of those projects were clearly pernicious: large fiscal deficits, overprotected industries, inflexible labor markets, high inflation, over-regulation, and discouragement of trade, investment, and production. The emergence of neoliberalism is partly a reaction to the negative effects of statism and paternalism. It provided a solution by recovering private economic rights and freedoms and reducing the size and scope of the state through the implementation of its normative framework.

**Normative framework**

The normative framework of neoliberalism consists of a set of norms on three issue areas: liberalization, privatization, and monetarism. The norms for liberalization seek to maximize private economic freedoms and to confine public economic intervention by extending and protecting freedoms of ownership, exchange, establishment, and management. Freedom of ownership is the liberty of acquiring and owning private property. It is enhanced by two norms: proscription of constraints to private property ownership and prescription of protection of private property. The former seeks to reduce or eliminate limitations on the types of property private individuals or organizations may possess or the extent of ownership of a specific asset they may enjoy. The latter seeks protection of private property rights through their recognition and enforcement. Freedom of exchange is enhanced with a norm proscribing the imposition of impediments to the exchange of goods and services among private persons or organizations. Freedom of establishment is enhanced with a norm prescribing allowance for
private actors to set up licit business enterprises and conduct commercial activities. Freedom of private property management is enhanced with a norm that proscribes state interference with the administration of private property.

Privatization seeks to minimize public economic governance and to maximize the scope of private economic activity through the implementation of three norms: minimal public provision, minimal public production, and maximum private production. Provision is the act of offering goods or services. Production is the act of creating goods or services. This distinction is important, for “if privatization means withdrawal from public to private provision and/or production of goods or services, the explicit determination to provide (or make available) must be distinguished from the decision to produce, whether in the public or private sector.”

The norm of minimal public provision proscribes states from offering goods or services other than those that are better provided by the public sector such as judicial and legislative administration or national security. The norm of minimal public production proscribes states to perform any productive activity that is inconsistent with the norm of minimal public provision. The norm of maximum private production prescribes the amplification of the scope of private economic activity and the reduction of areas of economic activity of exclusive public sector participation.

Monetarism seeks to minimize the degree of public control, intervention, and influence on the economy by placing several constraints on the management of public monetary and fiscal capabilities. As an economic theory, monetarism posits that public economic intervention in macroeconomic matters ought to be limited to the maintenance of a sound currency and the avoidance of inflation through market-based dynamics by only using monetary capabilities. This can be achieved with the application of

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norms that lead to a tight monetary policy and a tight fiscal policy. A tight monetary policy is achieved by following two main norms: currency competitiveness and currency convertibility. Currency competitiveness prescribes that monetary authorities must strive to achieve low rates of inflation and a currency's high value in relation to other currencies through the dynamics of supply and demand. This requires the adoption of a floating exchange rate and a short supply of currency in circulation. The norm of currency convertibility prescribes that a currency must be fully convertible and free from any type of exchange controls. Currency convertibility is not only a requisite for the proper determination of the real value of a currency by the market but is also an assertion of the freedom to legally exchange currency.

A tight fiscal policy can be achieved by following two norms: prescription of minimal public debt and fiscal deficit, and prescription of minimal public expenditure. Both norms are essential elements in the pursuit and maintenance of price stability, a sound currency, and minimal public intervention. Excessive public debt, fiscal deficit, and expenditure spur inflationary pressures and seriously damage the stability and value of a currency. Fiscal discipline also minimizes the influence that a state may have on an economy and the possible damages that imprudent fiscal policies may cause.

A last norm attached to monetarism, central bank independence, is not an integral part of the economic scheme in itself but is regarded as a very important factor for the effective implementation of monetarist policies. Since monetary policy is under the responsibility of a central monetary authority (usually a central bank), a maximum degree of independence for such institutions is required to guarantee long-term maintenance of monetary and fiscal discipline as it isolates them from political pressures that could damage a country's monetary situation. Independent central banks, "like the judiciary, are constitutional institutions since they are not accountable to the elected government or parliament. Their autonomy
comes from a general consensus about their long-term aims and from the fact that their instruments may be badly abused by the political majority of the day."

In sum, the set of neoliberal norms seeks three core objectives: maximization of private economic freedom, defense of private property rights, and diminution of public-sector influence in economic matters. Table 1 provides a schematic perspective of the normative framework of neoliberalism.

Table 1. Normative framework of neoliberalism.

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**NEOLIBERALIZATION**

Neoliberalization is the institutionalization of neoliberalism in the international system. Institutionalization of any given normative framework occurs when it is prescribed in codified rules, procedures, and instruments for the regulation of behavior. A process of institutionalization develops as principles ("beliefs of fact, causation, and rectitude") become norms ("standards of behavior defined in terms of rights and obligations") and these in turn are set as rules ("specific prescriptions or proscriptions for action"). Institutions are thus "coherent sets of principles that structure and organize ensembles of practices;" "persistent and connected set[s] of rules (formal and informal) that prescribe behavioral roles, constrain activity, and shape expectations." The term *neoliberalization* thus refers to the phenomenon of institutionalization of the neoliberal normative framework in the international system.

Neoliberalization has evolved in three stages: the first ranging from 1971 to 1982, the second from 1982 to 1989, and the third from 1989 to the present day. This process has been similar to that of the preceding 'Keynesian revolution': from its emergence and evolution in epistemic communities to incipient levels of implementation to widespread worldwide institutionalization.

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**First stage (1971-82)**

The year 1971 marks the end of the Keynesian 'Golden Age' (1950-71) and the beginning of a world-wide movement towards greater private economic freedom. The watershed event was the suspension of the fixed exchange rate mechanism in 1971 and the subsequent establishment of a market-driven floating exchange-rate system in 1973. This was an event of tremendous importance because it drastically reduced the degree of public control over the system of international currency exchange. That system is a core element of the international system of payments, which in turn is the basis of the supremely important international financial system. 1971 then marks the beginning of a period in which the nucleus of the international financial system was not under direct control of the public sector. The shift from fixed to floating exchange rates is in full accordance with neoliberal monetarist norms that proscribe public intervention in currency price determination. Surely, "the sudden liberalization...of the cornerstone of the [financial] system, the foreign exchange market..., did also have a wider political and economic rationale, that of deregulation," which was supported by "monetarist economists as well as some politicians, for the very reason that it was supposed to obviate state control of the foreign exchange rates."\(^{10}\)

In this first stage there was a significant advance in the intellectual development and diffusion of neoliberalism as neoliberal perspectives gained acceptance in academic and policy centers. In this period libertarian thought was significantly developed, particularly after the publication in 1974 of Robert Nozick's influential *Anarchy, State and Utopia*. Neoliberal economic thought gained increasing popularity and prestige as Nobel prizes in economics were awarded to leading representatives of neoliberal thought such as Friedrich von Hayek in 1974 and Milton Friedman in 1976. Epistemic

communities in academia and public bureaucracies involved in the planning and management of economies increasingly coalesced intellectually around neoliberal prescriptions. As the oil shocks of the 1970s, among other factors, led to widespread inflation that seemed to be uncontrollable with previously used mechanisms and antidotes, monetarism gained acceptance as a preferred way to solve inflation. The 1970s thus witnessed a major reversal of academic perceptions and political attitudes. In the 1960s, monetarism was still a somewhat esoteric cult among academic economists... The mid-1970s saw a vigorous public debate among economists, economic journalists, political pundits and politicians about the possibilities of macro-economic regulation by means of money supply control. Inflation gradually eclipsed unemployment in the ranking of economic problems, and reliance on variations of monetary manipulation came to be seen as superior to the attempt to fine-tune aggregate demand by fiscal means... Enclosed in the monetary versus fiscal policy debate was the idea that government should not attempt to do too much by way of economic management...in the end, the effect of the discrediting of neo-Keynesian ideas in the development debate was to open the way for the neo-liberals to establish their agenda and their policy preferences. These were eagerly picked up when the political mood decisively shifted to the right at the end of the 1970s.11

This change of political mood and the application of neoliberal prescriptions actually began in Chile in 1973. There, the government eliminated disastrous populist economic measures and began the application of neoliberal norms in what constituted "the first serious blow dealt to state-led industrial and redistributive policy" in the contemporary world.12 From 1979 Britain followed suit with widespread privatization of all sorts of services and manufacturing enterprises and the liberalization of various activities. In the United States neoliberalization commenced with the 'Volcker Shift' of 1979 (named after then Chairman of the Federal Reserve Paul


Volcker) that brought tighter monetary policies. It was expanded to liberalizing reforms throughout the Reagan administration. A similar situation evolved in the Federal Republic of Germany with the arrival of the Kohl administration in 1980. The People’s Republic of China initiated its historical movement towards market economics in 1978-79 as agriculture (the heart of the Chinese economy) was largely privatized through the elimination of public and collective farms and the abolition of regulations prohibiting private farming.

The 1970s also witnessed intense international financial liberalization as the shift to a floating exchange rate system “led to a crucial acceleration and expansion of the deregulation process by removing the main regulatory obstacle to market-induced international capital flows.”

Throughout the 1970s most developed countries deregulated their financial markets, removing controls on the movement of capital and interest rates, and allowing the operation of foreign banks and other financial services in their jurisdictions. This led to a chain reaction among most industrialized economies: the greater the degree of mobility that private capital acquired, the more intense the “competitive deregulation” of financial markets to attract private investment became. From 1974 to 1979, for example, the US, the Netherlands, the Federal Republic of Germany, and Britain abolished controls on capital movement while Japan deregulated its financial system (that had remained rigidly regulated and tightly isolated since the 1930s).

A considerable advance in the liberalization of trade was accomplished by the Tokyo Round of negotiations of the General Agreement on Tariffs and Trade (GATT) from 1973 to 1979. Involving 83 countries, the Tokyo Round achieved a significant reduction of tariffs and established rules on non-tariff barriers, subsidies, and public procurement. The Tokyo Round was considered the first ‘real’ instance of multilateral liberalization of trade.

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international trade and the beginning of a much more intense process of liberalization through the GATT framework.

**Second stage (1982-89)**

The second stage of the process of neoliberalization was characterized by the progressive inclusion of a large number of countries into the process and the notable increase in the degree of liberalization, privatization, and monetarism in national economies. The beginning of the debt crisis in 1982 marks the start of this stage due to its importance as a major impulse for the institutionalization of neoliberalism worldwide. Affecting a large number of countries throughout the world, the debt crisis was caused, among other factors, by severe fiscal and current-account deficits and structural incapacity to produce sustained economic growth in highly protected and statist economies. After an initial period in which efforts towards the solution of the crisis concentrated on palliative measures, continued difficulties demonstrated the need for structural reforms to alleviate deteriorating conditions of public debt and deficit. Typical structural adjustment measures included currency competitiveness, reductions of public sector expenditure and subsidies, privatization, reductions in money supply, and liberalization of foreign exchange controls and trade and investment regulations. The application of structural adjustment programs amounted to

a reduction and transformation of state economic intervention (a reversal of a principal component of Keynesianism that took root in the postwar developing world), an increased reliance on market mechanisms, more frequent use of monetary policy instruments, and a shift in public-private relations in the direction of greater support for (and increased reliance upon) the private sector.

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15 Some of the countries most severely affected by the debt crisis included Côte d'Ivoire, Uruguay, Morocco, Brazil, the Philippines, Venezuela, Yugoslavia, Argentina, Jamaica, Bolivia, Costa Rica, Nigeria, Mexico, Colombia, Peru, Ecuador, and several other countries in Sub-Saharan Africa.

In the early 1980s the two main international public agencies dealing with financial assistance, the International Bank for Reconstruction and Development (IBRD) and the International Monetary Fund (IMF), modified their previous perceptions and prescriptions in view of the fact that many countries had an increasingly deteriorating financial situation and showed few signs of economic progress. For the IBRD, whose aim is to foster economic growth, its perception of the main problems associated with lack of economic growth changed from a generally benign view of statism and protectionism to a much more liberal and privatist perspective. Considering that the condition the IBRD had to deal with in every developing country with poor development was "excessive government intervention in particular markets, leading to an anti-trade bias and levels of output below those which could be achieved with a more efficient allocation of resources," the IBRD had come "to see liberalisation and the release of market forces as the key to unlocking the future development prospects of the developing countries."\(^{17}\) For the IBRD, domestic policy reform by then had become "essential and urgent if these countries [were] to be able to maintain a reasonable rate of growth of incomes and to achieve their other development objectives of human resources development and the provision of basic needs."\(^{18}\) The IBRD then commenced prescribing measures that sought to introduce and enhance market-based allocations of resources in its financial aid programs. Measures to achieve this end included

liberalization of foreign trade and exchange markets, the abolition of price controls and subsidies in product and factor markets, the ending of financial repression and the reduction or abolition of qualitative or selective credit controls, and the removal of restrictions on foreign and domestic investment...\(^{19}\)

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18 Mosley, Harrigan, and Toye, Aid and Power, pp. 4, 91.
With similar causes and effects the IMF changed its diagnosis of balance-of-payments deficits. Until the early 1980s the IMF had considered that the main causes of current-account deficits were external transitory factors (such as negative terms of exchange, recessions, or commodity price fluctuations), largely neglecting domestic structural factors such as lax fiscal and monetary policies. IMF-conditioned credit agreements thus contained few elements of domestic reform and were mostly aimed at alleviating a state's financial situation for the duration of the contingency. By the early 1980s, however, the IMF modified that diagnosis making a distinction between "deficits stemming from adverse transitory factors" and deficits that were "due to permanent factors" caused by "the adoption of inappropriate economic and financial policies by the debtor country" and for which "appropriate measures of adjustment must be taken to remove them."^{20}

Accordingly, in 1983 the IMF modified the nature and degree of conditionality of its conditioned credit programs aiming to achieve greater monetary and fiscal discipline within loan recipient states.^{21}

These changes of diagnostic analysis by the IBRD and the IMF translated into corresponding policy prescriptions that converged "on one point: the need to reduce, cut, or pare back the role of the state in the

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^{21} Until 1983 conditioned fund drawings only required a state's willingness to cooperate with the IMF in finding 'appropriate solutions' for its balance of payments problems. After the IMF's Executive Board passed Decision no. 7528(83/140) loan reception ('purchases') required a willingness to receive Fund missions and to discuss, in good faith, the appropriateness of the member's policies and whether changes in the member's policies are necessary to deal with its balance of payments difficulties. Where the Fund considers that the existing policies...are seriously deficient or where the country's record of cooperation in the recent past has been unsatisfactory, the Fund will expect the member to take action that gives, prior to submission of the request for the purchase, a reasonable assurance that policies corrective of the member's balance of payments problem will be adopted.

economy.\textsuperscript{22} Their credit and aid programs thus shared "a common programmatic thrust, the main features of which are the promotion of greater use of market forces, the reduction of state intervention in the economy, the encouragement of more open trade regimes and the creation of an environment which is more receptive to foreign private capital flows."\textsuperscript{23}

The importance of IMF programs augmented as more states solicited foreign loans and as various credit groups and organizations such as the Paris and London Clubs started requiring IMF-conditioned credit agreements as a condition for credit rescheduling or extension. Moreover, the IMF started using positive inducements to encourage neoliberal policies: in 1986 it created the Structural Adjustment Facility intended to provide financial assistance to those countries undertaking structural adjustment; and from 1989 debt rescheduling and possible debt-service reduction in support of adjustment programs were offered.

Although many cases of structural reformation were directly linked to credit and aid programs sponsored by the IMF or the IBRD, many states undertook such reforms unilaterally. In fact, "one of the most important and visible aspects" of the trend towards privatization was "the enthusiasm with which governments of all political persuasions...sold their state-owned enterprises...in hopes that the generally unsatisfactory economic performance of these firms could be improved by the discipline of private ownership."\textsuperscript{24} Eventually, "[w]hat initially began as a series of short- to medium-term measures for stabilization and economic adjustment turn[ed] out to have significant long-term implications for the choice of development


strategy." In the second stage there was a notable change concerning state regulations on foreign direct investment (FDI):

The period since the early 1980s has witnessed a widespread tendency towards liberalization of national laws and regulations relating to foreign investment, especially in developing and transition countries... The recent trend to more open investment policies has been particularly evident in the removal or relaxation of regulatory barriers to the entry of FDI. Screening procedures involving prior authorization have been eliminated or reduced in scope. Closely related is the liberalization of sectoral restrictions on the entry of foreign investment and of limitations regarding foreign shareholding in local companies. There has also been a shift away from the imposition of performance requirements and a liberalization of regulations concerning the transfer of funds. In addition, there has been increasing acceptance of standards of non-discriminatory treatment of foreign investors and of international standards on matters such as compensation in case of expropriation. Finally, international arbitration mechanisms for the settlement of disputes between foreign investors and host States have gained widespread acceptance.

Even the People’s Republic of China established permissive regulations on foreign investments during the 1980s. Relevantly, there was a worldwide reduction in expropriations from 336 in the first half of the 1970s to 15 in the first half of the 1980s. In developed countries financial liberalization

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26 World Trade Organization, Annual Report 1996, volume I, Special Topic: Trade and Foreign Direct Investment (Geneva: World Trade Organization, 1996), p. 61. A telling case that exemplifies the change of attitudes towards FDI is the Canadian experience with its Foreign Investment Review Agency (FIRA). Established in 1973, the FIRA's purpose was to screen FDI into Canada, allowing entrance only to investments with effects deemed as beneficial to Canada. Foreign investments were then accepted or rejected based on criteria such as terms of expanded exports, increased employment, take-over of existing Canadian firms, use of Canadian resources, and compatibility with Canadian economic policies. In its initial years FIRA's rejection rate was 20 percent (a high rate compared to the ones of similar screening agencies elsewhere, where the rate was around 1 percent). As the 1970s and 1980s progressed FIRA's rejection rate decreased. In 1984, along with renaming it Investment Canada, the Canadian government "transformed the FIRA from a nationalistic authority aimed at increasing Canadian ownership in domestic industry into an organization for the attraction of foreign investment... The fear of too much foreign capital had given way to the fear of too little." Jovanovic, International Economic Integration, p. 109; R.G. Lipsey and M. Smith, Taking the Initiative: Canada's Trade Options in a Turbulent World (Toronto: C.D. Howe Institute, 1986), p. 53.

was consolidated with the abolition of remaining regulations on capital movement and other financial transactions. In 1984-5, for instance, New Zealand, Australia, and Denmark abolished their capital controls. Britain deregulated most remaining restrictions on its securities markets in the so-called 'Big Bang' of 1986. The 1980s was also considered "the 'decade of tax reform'" when "governments on every continent initiated major revisions in their tax codes designed inter alia to reduce marginal tax rates on capital and to restrict the use of tax policy as an instrument of economic management."28

In sum, during the 1980s there were significant advances in the institutionalization of the neoliberal normative framework. The incipient levels of implementation of the 1970s evolved in the 1980s into a major trend involving developed and developing countries in all regions. In developing countries, for example, where during the 1960s and 1970s nationalist, protectionist, and distributive policies prevailed, "the 1980s, by contrast,...provided a nearly complete turnaround in economic policy. Virtually everywhere, developing countries began restructuring the nature of their intervention in the domestic economy, liberalizing their domestic trade and investment regimes, privatizing state-owned enterprises, and pursuing a variety of economic reforms more generally."29 In both developed and underdeveloped countries alike the change towards neoliberal prescriptions was quite notable in attitudes adopted in face of mounting inflation:

In a remarkable switch of world opinion, one country after another, some openly, some shamefacedly, turned away from employment and growth as their main aims of policy, to make containment of inflation their chief target instead. The adoption of that priority was inevitably linked, whether as cause or as effect, by adoption of monetarist notions in place of Keynesianism, for monetarists not only made the reduction of inflation their

main aim, but also claimed that it was Keynesian policies which had caused the inflationary crisis in the first place.\textsuperscript{30}

\textbf{Third stage (1989- )}

The third stage of neoliberalization was characterized by the consolidation of neoliberalism in countries already involved in the process and the inclusion of previously uninvolved countries, particularly ex-communist ones. It is because of this last crucial factor that 1989 is taken as a watershed year between stages. In different degrees and with some exceptions (notably North Korea), the end of the Cold War led to progressive neoliberalization in countries with communist economic systems. In the bastion of communism, the Soviet Union, neoliberal reforms were launched even before its dissolution. In 1990 the Soviet government abolished a fundamental norm of socialized economies by allowing private ownership of the means of production. The trend then spread to Hungary, Poland, Czechoslovakia, the Baltic states, Bulgaria, and Romania. By mid-1995, on average, more than one-half of the gross domestic product of ex-socialist eastern European states was produced by the private sector.\textsuperscript{31} Vietnam and Cuba removed restrictions to private investment and privatized some utilities. Although there have been some policy reversals and stagnation, in formerly communist countries “neo-liberalism has become the predominant ideology legitimating the privatization of the state-controlled economy and the substitution of the market for the social provision of basic welfare.”\textsuperscript{32}

A highly significant event in the process of neoliberalization was the conclusion of the Uruguay Round of GATT negotiations in 1994. Involving

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125 countries, the Uruguay Round achieved reductions of tariffs on an average of 35 percent and completely eliminated tariffs for many items. It also included measures that liberalized trade in services and protected intellectual property. Even traditionally protected industries such as agriculture and textiles were liberalized. Moreover, the establishment of the World Trade Organization in 1994 meant the existence of a permanent international organization for the surveillance and enforcement of free trade and other rules that (as explained in the following chapter) are supportive of neoliberal norms.

Also within this period there was widespread acceptance of international agreements for freer trade and investment. By the mid-1990s about one hundred free trade zones had been established. Two thirds of the nearly 1,160 bilateral investment agreements concluded up to 1996 were established during the 1990s. A similar situation evolved in other areas of finance, and by the early 1990s “the restrictive Bretton Woods financial order had been completely overturned, and an almost fully liberal pattern of financial relations had emerged among the advanced industrial states, giving market operators a degree of freedom unparalleled since the 1920s.”

A most relevant process concerning neoliberalization in this stage was the consolidation and enlargement of Western European integration. By 1992 all European Union member states had eliminated the more meaningful restrictions to the freedom of ownership, exchange, establishment, and private property management. This has been accompanied by a massive retreat from statism, including the traditional French dirigisme. Moreover, as the project of monetary union advances, monetarist policies become

increasingly institutionalized, as exemplified in the provisions of the Treaty of the European Union of 1992 (Maastricht agreement) that clearly draws on monetarist recommendations on monetary and fiscal policies as well as on establishing a highly independent European Central Bank.

This period also includes the definite institutionalization of neoliberalism in Latin America as governments intensified the application of neoliberal policies on a grand scale. As it happened, "the changes initiated by the Chicago boys in Chile have spurred an economic and political revolution in Latin America that is unlikely to be reversed."36 By 1996, for example, all Latin American states were members of the World Trade Organization. Similar development occurred elsewhere, and by the mid-1990s "economic liberalization had spread widely, and few developing countries remained untouched...even the last holdouts—Cuba, North Korea, and India—were forced to reconsider their statist orthodoxy."37 Indeed, in the early 1990s India started shedding some of its more onerous statist practices and protectionist regulations. Even the arcane norm of central bank independence had become a generalized practice and, since the late 1980s, "[i]n country after country monetary policy has been taken away from unreliable politicians and handed to upstanding central bankers."38 By the late 1990s neoliberalism had become a fully established institution in the international system.

**Overview**

The institutionalization of neoliberalism evolved from an incipient to an advanced stage that includes a wide range of activities and encompasses a

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37 Miles Kahler, 'Liberalization as Foreign Policy Determinant and Goal,' in *Liberalization and Foreign Policy*, ed. Kahler, p. 300.

major portion of the world’s countries. From 1971 to the present day there have been considerable changes in a way that is clearly congruent with norms for liberalization, privatization, and monetarism as the more pernicious instances of statism, nationalism, and economic egalitarianism have been reduced or eliminated in a large number of countries. Whereas in the period from 1945 to the 1970s world opinion “stood under the influence of Keynesian economic theory, the 1980s and 1990s were dominated by Monetarism...thus the first phase saw a tendency to planing and socialization of industry, as well as an extension of the welfare state, while the second moved in the opposite direction, towards laissez-faire and unfettered market economy.”

This has been reflected in changes in international law on trade and investment. For example,

The recent evolution of international rule-making in the field of foreign investment is marked by the growing prominence of bilateral, regional and plurilateral arrangements which aim at encouraging foreign investment by providing substantive standards relating to the admission and treatment of foreign investments by host States. This is in contrast to the greater emphasis in the past on host country rights to control foreign direct investment and on norms for corporate conduct.

States of all types drastically reduced public-owned assets, making privatization “one of the defining economic changes of the 1980s and 1990s.” Reasonably, “history books will undoubtedly describe the 1980s and 1990s as the era of privatization when phenomenal amounts of control were transferred from the public sector to private ownership.” For example, from 1984 to 1994 the total amount of public enterprises sold to private buyers world-wide amounted to US$468 billion, and long-term infrastructure concessions awarded to the private sector amounted to $83

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billion.\textsuperscript{43} From 1980 to 1992 more than 6,800 state-owned enterprises were privatized world-wide.\textsuperscript{44} Monetarism caused a radical change in the international financial system by establishing a market-driven floating exchange rate system among the most relevant currencies. An equally important change was caused by the liberalization of financial operations. Indeed, "one of the most spectacular developments in the global political economy in recent years has been the emergence of an extremely open and liberal international financial order."\textsuperscript{45}

The countries that implemented neoliberal policies most intensively within the period from 1975 to 1995 included Chile, Japan, Ireland, Pakistan, New Zealand, Iceland, Peru, Malaysia, Turkey, Egypt, Portugal, Singapore, Mauritius, Britain, Zambia, Thailand, the United States, Costa Rica, Indonesia, Argentina, Poland, Trinidad and Tobago, France, Jamaica, Bolivia, Denmark, El Salvador, Italy, Ghana, Bulgaria, the Dominican Republic, Malta, Greece, South Korea, and Tanzania. In general, the degree of economic freedom in the world increased modestly from 1975 to 1985 and significantly from 1985 to 1995. In descending order of intensity, neoliberalization by region was as follows: Asia, Europe, the Americas, Middle East, and Africa.\textsuperscript{46}


\textsuperscript{45} Eric Helleiner, 'When Finance was Servant: International Capital Movements in the Bretton Woods Order,' in Finance and World Politics, ed. Cerny, p. 20.

\textsuperscript{46} This assessment is made according to the data provided in the Index of Economic Freedom. It is composed of several items clustered in five sections: money and inflation (growth of money supply, inflation rate, freedom to own foreign currency bank accounts domestically, freedom to own foreign currency bank accounts abroad); public operations and regulation (public-sector expenses, role and presence of public sector enterprises, price controls, freedom of private competition); takings and discriminatory taxation (transfers and subsidies, top marginal tax rate); and restraints on international exchange (taxes on international trade, currency exchange controls, restrictions on capital transactions). Depending on the case, the absence or presence of allowance or prohibition for each item indicates the degree of economic freedom in a country. James Gwartney, Robert Lawson, and Walter Block, Economic Freedom of the World: 1975-1995 (Vancouver: The Fraser Institute, 1996), pp. 72, 79, 80, 85.
Judging on the basis of the number and variety of states involved and the importance of the changes that have taken place, it is evident that neoliberalization represents a notable event in contemporary history. This "transnational neo-liberal revolution" has been "dramatic' by virtue of the fact that so many countries have moved so far in the same policy direction in a relatively short period of time." Indeed, "for the nature of an individual state to change very radically is neither new or unusual. But that all—or nearly all— states should undergo substantial changes of roughly the same kind within the same short period of time is really a new phenomenon."  

47 Overbeek and van der Pijl, 'Restructuring Capital and Restructuring Hegemony: Neo-Liberalism and the Unmaking of the Post-War Order,' p. 2.  
CHAPTER III
PRESCRIPTION OF NEOLIBERAL NORMS IN
INTERNATIONAL AGREEMENTS ON TRADE AND FINANCE

The institutionalization of a normative framework occurs when it is established as codified rules in instruments that regulate behavior. An assessment of the institutionalization of a normative framework can then be based on the identification of codified rules that derive from or conform with the framework's norms. One of the clearest instances in which the institutionalization of the normative framework of economic neoliberalism in the international system can be observed is in the prescription of its set of norms in international agreements on trade and finance. This chapter is a description of the institutionalization of neoliberal norms in international agreements on trade and finance. It identifies examples of rules contained in such agreements that prescribe each norm for liberalization, privatization, and monetarism.

NORMS FOR LIBERALIZATION

Liberalization is promoted by five norms: freedom of ownership, private property protection, freedom of exchange, freedom of establishment, and freedom of management. Each norm is prescribed in a number of international agreements.

Prescription of freedom of ownership

Freedom to own property is prescribed in rules reducing limitations on property acquisitions. Investments are property acquisitions, usually defined in international agreements as "assets, including movable and immovable property, ownership rights in companies, claims to money and intellectual..."

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1 Direct investments are property acquisitions that are large enough to grant managing control of an asset. Indirect investments (also known as 'portfolio' investments) are less-than-controlling acquisitions. The distinction lies in the ability and intent to control an asset.
property rights.” Limitations on investments include limitations on the acquisition and ownership of property; allowance of ‘entry to investments’ is to allow foreigners to acquire and own assets in a country. Reductions on restrictions to invest thus increase the degree of freedom of ownership. Reductions on restrictions of foreign investment are accorded in international agreements by giving preferential treatment in screenings of investments to the nationals of signatory states or by eliminating restrictions to investments made by the nationals of signatory states. This is normally done with treaty provisions mandating non-discriminatory treatment for the admission and/or treatment of foreign investments. Elimination of discriminatory treatment between foreigners and nationals automatically eliminates all restrictions that are specifically designed to affect foreign citizens or firms. By according national treatment in terms of investment states reduce restrictions on property ownership for each other’s citizens to a degree similar to that enjoyed by their nationals. Since the restrictions on property acquisition by nationals are negligible or non-existent, national treatment on investment significantly increases the degree of freedom of ownership for foreigners. Regulations such as foreigner exclusion clauses (provisions prohibiting foreigners from becoming partners or shareholders of a firm) or limitations

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3 Non-discriminatory treatment measures eliminate discrimination based on nationality by equalizing the better treatment given to the nationals of a state or to favored foreigners with the one given to the citizens of a state to which the measures are extended. The equalization of treatment with that given to nationals is achieved by the measure of national treatment, which grants foreigners terms and conditions no less favorable than those enjoyed by nationals. The equalization of treatment with that given to other favored foreigners is achieved by the measure of most favored nation, which extends the benefits a state may have conveyed on any of the better treated foreigners. Both principles guarantee that conditions be no less favorable than those affecting nationals or favored foreigners on any given policy area.

4 Non-discriminatory treatment measures on investment can be granted at the pre-establishment (or pre-admission) stage and/or the post-establishment (or post-admission) stage of investments. The pre-establishment stage is the admission of investments to a national jurisdiction, that is, the permission to make initial property acquisitions. Post-establishment measures affect subsequent treatment of already admitted investments, including subsequent property acquisitions.
on the maximum proportion of shares owned by foreigners (typically set at 45 percent) would also then be outlawed in most circumstances.

Freedom of ownership is prescribed in international agreements that mandate national treatment for investments. The North American Free Trade Agreement (NAFTA) and the Colonia Protocol on the Promotion and Reciprocal Protection of Investments within Mercosur provide national treatment and most favored nation treatment to investments by citizens and firms from signatory states before and after their admission. The European Energy Charter Treaty\(^5\) accords the same degree of permission on investments but only in areas related to energy. The Agreement Establishing the European Economic Community (Treaty of Rome) gives national treatment to firms with legal recognition in the European Economic Community (now European Union) even when they are owned or controlled by nationals of extra-community states. As article 58 states, "firms formed in accordance with the law of a member State and having their registered office, central administration, or principal place of business within the Community shall be treated in the same way as natural persons who are nationals of member States." A similar rule is included in the Code of Liberalization of Current Invisible Operations of the Organization for Economic Cooperation and Development (OECD). It states that

> The authorities of members shall not maintain or introduce: regulations or practices applying to the granting of licenses, concessions, or similar authorizations, including conditions or requirements attaching to such authorizations and affecting the operations of enterprises, that raise special barriers or limitations with respect to non-resident (as compared to resident) investors, and that have the intent or the effect of preventing or significantly impeding inward direct investment by non-residents.\(^6\)

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\(^6\) Other international agreements in which some degree of freedom of ownership through investment liberalization is prescribed include the Unified Agreement for the Investment of Arab Capital in the Arab States; the Treaty Establishing the Caribbean Community; the Agreement Among the Governments of Brunei Darussalam, the Republic of
Prescription of private property protection

International agreements prescribe protection for private property with rules for its legal recognition, prohibition of its unauthorized use or seizure, and measures to remedy its damage or seizure. Private property is protected in most international agreements stipulating measures for 'general standards of treatment' for foreign investments which include full protection and security in accordance with national and international law, stipulations concerning expropriation and compensation, and protection from losses due to extraordinary circumstances such as wars or sociopolitical unrest.

Three international agreements within the structure of the World Bank Group set rules for the protection of private property. In the Convention Establishing the Multilateral Investment Guarantee Facility (MIGA Convention) signatory states agree to abide by the recommendations of the MIGA in terms of their investment conditions "including the availability of fair and equitable treatment and protection" for investments (article 12[d]).\(^7\) The Guidelines on the Treatment of Foreign Direct Investment establish substantive multilateral rules for the treatment of foreign direct investments such as provisions for standards of treatment of foreign investments, expropriation, unilateral alterations or termination of contracts, and dispute

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Indonesia, Malaysia, the Republic of the Philippines, the Republic of Singapore, and the Kingdom of Thailand for the Promotion and Protection of Investments; the Treaty Establishing the Economic Community of Central African States; the Common Convention on Investments in the States of the Customs and Economic Union of Central Africa; the Asia Pacific Economic Cooperation (APEC) Investment Principles; the Convention Establishing the Inter-Arab Investment Guarantee Corporation; the Community Investment Code of the Economic Community of the Great Lakes Countries; the Agreement on Promotion, Protection, and Guarantee of Investment among the Member States of the Organization of the Islamic Conference; the Agreement among the Association of Southeast Asian Nations (ASEAN) for the Promotion and Protection of Investments; and the Convention Establishing the Multilateral Investment Guarantee Agency.

\(^7\) The Multilateral Investment Guarantee Agency was established to encourage investment in developing countries through the mitigation of restrictive regulations. Its main objective is to provide a multilateral investment insurance mechanism to complement other national, regional, and private investment insurance schemes. It offers protective measures for private investment and guarantees against non-commercial risks including restrictions on currency transfer, expropriation and equivalent measures, breach of contract, war, and civil disturbances.
settlement procedures. The Convention on the Settlement of Investment Disputes Between States and Nationals of Other States facilitates dispute resolution between private investors and states through conciliation and arbitration in the International Center for Settlement of Investment Disputes (ICSID). Dispute settlement rules and procedures provide protection to private property owners by giving them recourse to pre-established and more transparent and reliable processes than those available in most underdeveloped states. Likewise, the settlement of disputes through international agencies increases the degree of property protection since damaged investors are not forced to resort to the disputing state’s judiciary system, which can likely be manipulated to their detriment.

An important example of a plurilateral international agreement with a strong prescription of private property protection is the NAFTA. It sets clear rules for the treatment of private investments in accordance with international law and specific standards for compensation in cases of expropriation or as a result of armed conflicts or civil strife. Article 11-10, for instance, prohibits expropriations or any other measure having similar effects “except for a public purpose, on a non-discriminatory basis, after due process, and upon prompt payment of fair compensation.” Concerning dispute settlement between states and private firms, the NAFTA allows private investors recourse to binding arbitrage rulings directly in an international panel following the rules established by the ICSID or the United Nations Commission in International Trade Law (UNCITRAL). This means that private firms are empowered to stand as plaintiffs on their own right without need of representation by their state of incorporation acting as proxy. The

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8 The Guidelines on the Treatment of Foreign Direct Investment were created in 1991 by the World Bank Group upon a request by a joint IMF-World Bank Development Committee intending to establish a general legal framework of international standards for the treatment of FDI.

9 The ICSID provides procedures for settling investment disputes between states and private firms. The ICSID Convention is widely referred to as the selected framework for dispute settlement in as many as 350 bilateral investment agreements and in significant plurilateral ones.
NAFTA thus "provides new rights for private investors to obtain relief directly against governments for NAFTA violations."\(^{10}\) Provisions to the same effect are set in the European Energy Charter Treaty. Besides a set of substantive rules for the protection of foreign investments it gives private firms the right to address complaints against states and to seek recovery directly, making it "the first major multilateral treaty imposing extensive obligations on governments with respect to the protection and treatment of foreign investment which are directly enforceable by private companies."\(^{11}\)

Prescription of protection for private property is also contained in international agreements covering intellectual property rights (IPRs). Protection of IPRs can be pursued through their recognition and enforcement. Recognition is the official acknowledgment by states of IPRs themselves and of the intellectual products to be recognized as private property. This is usually done through patent registry and copyright systems. Enforcement of IPRs encompasses the establishment and application of laws that proscribe seizure or unauthorized use of intellectual property. Several international agreements prescribe private property protection by establishing norms for the recognition and enforcement of IPRs. The Paris Convention for the Protection of Industrial Property, for example, accords proprietary protection by signatory states to patents, trade and service marks, and industrial designs and also accords national treatment to patents and trademarks. This means that the inventor of a device patented in Surinam, for example, can obtain the same level of protection for his private


\(^{11}\) T.W. Waelde, 'International Investment under the 1994 Energy Charter Treaty — Legal, Negotiating and Policy Implications for International Investors within Western and Commonwealth of Independent States/Eastern European Countries,' \textit{Journal of World Trade} 73 (no. 5, October 1995), pp. 5-6. Other international agreements prescribing protective measures for investments include the APEC Investment Principles, the Agreement among the ASEAN Members for the Promotion and Protection of Investments, the Fourth European Economic Community-Africa Caribbean Pacific Convention (the Lomé Convention), the Colonia Protocol on the Promotion and Reciprocal Protection of Investments within Mercosur, the Protocol on Promotion and Protection of Investments Coming from States non-Parties to Mercosur, and most bilateral investment agreements.
intellectual property as that obtained by national citizens in 129 signatory states.\textsuperscript{12}

A prominent international agreement prescribing the protection of private intellectual property is the World Trade Organization’s Agreement on Trade-Related Intellectual Property Rights (TRIPs). Covering copyrights, patents, trademarks, layout-designs of integrated circuits, industrial designs, and other related rights, the TRIPs agreement establishes two main sets of obligations for signatory states: minimum standards of protection for private intellectual property and procedures and measures for the enforcement of IPRs. The agreement specifies the subject matter that is to be protected, the minimum rights that derive from the ownership of intellectual products, the permissible exceptions to those rights, and the minimum duration of protection. Minimum standards of protection require compliance with the obligations of the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, plus additional measures. On the issue of enforcement it mandates application of the principles of transparency, most favored nation treatment, and national treatment for the protection of private intellectual property; criminalization of piracy; and establishment of procedures and remedies for enforcement of IPRs, making the WTO’s dispute resolution mechanism available to deal with TRIPs. The TRIPs agreement is the first international agreement that specifies the procedures and remedies that each Member must provide within its national law so that the nationals of other members can effectively enforce their intellectual property rights — whether through the normal civil judicial process, through customs action against imports of counterfeit and pirated goods or through criminal procedures in respect of willful counterfeiting and piracy on a commercial scale.\textsuperscript{13}

\textsuperscript{12} National treatment on patents is also provided for in the Pan-American Copyright Convention, the Berne Convention for the Protection of Literary and Artistic Works, and the Patent Cooperation Treaty.

\textsuperscript{13} World Trade Organization, \textit{Annual Report 1996}, p. 72.
Prescription of freedom of exchange

Freedom of exchange of goods and services among private individuals and organizations is prescribed in international agreements that reduce or eliminate tariffs, non-tariff barriers (NTBs), and restrictions on market access. In terms of tariffs, an extreme degree of freedom of exchange among the citizens of signatory states is established in the Treaty of Rome. It specifies that the European Economic Community (now European Union) “shall be based upon a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect” (article 9). Moreover, article 110 commits members to “the progressive abolition of restrictions on international trade and the lowering of customs barriers” in relation to non-member states.

Prescription of freer exchange among private citizens through the reduction of tariffs has been the main objective of the General Agreement on Tariffs and Trade. The Multilateral Agreements on Trade in Goods resulting from the Final Act of the GATT-1994 limit tariff increases and assure tariff decreases by ‘binding’ tariffs, thereby committing states not to impose tariffs higher than the bound rate on specific goods. It also mandates freedom of transit of goods and provides for national treatment in terms of tariffs to ensure that agreed tariff reductions are not offset with other taxes or similar measures:

Under GATT rules, any measure taken or supported by a government that has the effect of ‘nullifying or impairing’ the ‘concession’ implied by its tariff bindings gives cause for complaint by trading partners. There is no need to show an impact on trade. Thus, the binding not only restricts the possibility of raising tariffs, but also limits the possibility of using measures that have an equivalent effect.\footnote{Bernard M. Hoekman and Michel M. Kostecki, \textit{The Political Economy of the World Trading System: from GATT to WTO} (Oxford: Oxford University Press, 1995), p. 89.}
Also, within the WTO framework, the General Agreement on Trade in Services (GATS) prescribes freedom of exchange of commercial services across borders. It sets rules on market access, national treatment and most-favored-nation treatment for trade in services covered in each country's list, and makes all commitments of a standstill nature (a commitment not to make regulations stricter than they were at the time of negotiation).

Proscription of NTBs is specifically provided for in various instruments within the WTO framework. The more important one among them is the GATT, which mandates the 'tariffication' of NTBs, that is, the conversion of NTBs into tariffs, which in turn makes them subject to scheduled reductions and restricts their increase without prior negotiation or subsequent retaliation. Other WTO agreements focus on the proscription of NTBs in specific industries and areas of international trade typically prone to the use of NTBs. These include the agreements on Agriculture, on Textiles and Clothing, on Rules of Origin, on Safeguards, on Preshipment Inspection, on Sanitary and Phytosanitary Measures, on Technical Barriers to Trade, on Import Licensing Procedures, and on Implementation of Article VII of the GATT (customs valuation). All of them set rules that reduce or eliminate NTBs in each particular industry or trade activity covered, thereby intensifying the degree of discipline and reducing the scope states may have for the implementation of NTBs.15

15 Other examples of international agreements prescribing a great degree of freedom of exchange among the private citizens of participant states include the agreements establishing the African and Mauritian Common Organization, the Central American Common Market, the Common Market for Eastern and Central Africa, the European Economic Area, the Economic Community of Central African States, the Economic Community of West African States, the Common Market of the South (Mercosur), the West African Economic and Monetary Union, the NAFTA, and the Australia-New Zealand Closer Economic Relations and Trade Agreement. In addition there are thousands of bilateral agreements and hundreds of plurilateral international agreements prescribing a somewhat moderate degree of freedom of exchange such as the Agreement on Andean Subregional Integration, the First Agreement on Trade Negotiation among Developing Member Countries of the Economic and Social Commission for Asia and Pacific, and the agreements establishing the Arab Maghreb Union, the Caribbean Community, the Economic Community of the Great Lakes Countries, the Economic Cooperation Organization, the Preferential Trade Area for Eastern and Southern Africa, the Gulf Cooperation Council, the Latin American Integration Association, the Mano River Union, the Organization of Eastern Caribbean States, the South Asian Association for Regional
Prescription of freedom of establishment

Prescription of right of establishment (freedom to set up and operate a business) is found in international agreements covering trade in services and investment. An example of a bilateral agreement prescribing freedom of establishment is the US-Canada Free Trade Agreement. It accorded right of establishment to most service industries and included a stand-still provision on service-related regulations, therefore banning new regulations restrictive of trade in services and pre-empting future reductions to the achieved degree of freedom of establishment. That agreement was superseded by the NAFTA, which accords a greater degree of freedom for establishment by according national treatment and most-favored-nation treatment on establishment of service industries. The Treaty of Rome accords the maximum level of permissibility in terms of establishment. It mandates not only an “end to restrictions on the freedom to provide services within the Community” (article 59); but also the removal of all restrictions to the establishment of natural and legal persons of EU nationality in an EU state regardless of business activity, thus giving absolute freedom of establishment to citizens and organizations of the European Union.

The main multilateral agreement prescribing freedom of establishment is the WTO’s General Agreement on Trade in Services (GATS). GATS article 1.2 defines one type of trade in services as the supply of services “by a service supplier of one member, through commercial presence in the territory of any other member.” The term “commercial presence” is defined in article 28(d) as “any type of business or professional establishment, including through (i) the constitution, acquisition or maintenance of a juridical person, or (ii) the creation or maintenance of a branch or a representative office, within the territory of a member for the purpose of supplying a service.” According free trade in this type of provision amounts to allowing right of establishment.16

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16 Other international agreements according right of establishment include the Stockholm...
**Prescription of freedom of management**

Freedom of management stems from people’s right to do what they please with their own private property as long as their actions do not damage other people. States can constrain people’s freedom of management by constraining their freedom to operate their own private enterprises through performance requirements. States can also constrain people’s freedom to transfer their own private property out of a country through capital controls. A greater degree of freedom of management can therefore be achieved by reducing or eliminating performance requirements and capital controls. Elimination of performance requirements is achieved by rules that ban specific performance requirements, accord national treatment in terms of conditions of operation, or accord national treatment to investments after establishment. These last two measures give foreign firms the same rights and obligations as domestic ones in similar situations, thus precluding the imposition of performance requirements on foreign firms besides the ones that affect national ones, which in most cases are negligible or non-existent. Capital controls are eliminated by establishing rules allowing capital mobility.

Performance requirements are extensively proscribed in the NAFTA, whose “scope of the prohibition of performance requirements is unprecedented in international investment or trade agreements.” Prohibition of performance requirements to established investments is also included in the OECD’s Declaration on International Investment and Multinational Enterprises. Within it, the National Treatment Instrument (part of the Declaration, section II.1) states that

> Member Countries should, consistent with their needs to maintain public order, to protect their essential security interests and to fulfill commitments relating to international peace and security, accord to

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enterprises operating in their territories and owned or controlled directly or indirectly by nationals of another member country...treatment under their laws, regulations and administrative practices, consistent with international law and no less favorable than that accorded in like situations to domestic enterprises...

Other international agreements prohibiting performance requirements include the APEC Investment Principles, the WTO's Agreement on Trade-Related Investment Measures (TRIMs), and many bilateral agreements. Also, one of the 'general standards of treatment' stipulated in most agreements covering investment is the commitment by signatory states of abstinence from impairing the management, maintenance, use, enjoyment or disposal of investments by unreasonable or discriminatory measures.

Capital mobility is prescribed in the OECD's Code of Liberalization of Capital Movements and its Code of Liberalization of Current Invisible Operations. Both instruments contain measures for the liberalization of regulations on virtually all types of inward and outward capital transfers. Article 1 of the Code of Liberalization of Capital Movements states that OECD members “shall progressively abolish between one another...restrictions on movements of capital...[and] shall endeavor to avoid introducing any new exchange restrictions on the movements of capital or the use of non-resident owned funds and shall endeavor to avoid making regulations more restrictive.” With similar effects the Code of Liberalization of Current Invisible Operations\textsuperscript{18} specifies that OECD members agree to “eliminate between one another...restrictions on current invisible transactions and transfers...” It also establishes various measures to prevent the frustration of capital movements.

The Treaty of Rome also contains several provisions on capital mobility. Article 67 commits signatories to abolish all restrictions on the movement of capital belonging to EC residents; article 106 mandates the removal of all capital controls for any transaction in goods, services, and

\textsuperscript{18} In OECD terminology the term 'invisible' is applied to all commercial exchanges in which no merchandise is involved such as capital transfers and some services.
finance; and article 71 specifies that any new restrictions to capital mobility are to be avoided. Prescription of capital mobility is also found in many conditioned credit agreements between the IMF and IMF-member states. These agreements “almost always restrain borrowing countries from imposing additional restrictions on trade and payments.” They thus contain provisions for the “avoidance of restrictions on current international payments and transfers” and “the removal of financial repression in the form of controls on interest rates and capital markets.”

NORMS FOR PRIVATIZATION

Privatization is promoted by three norms: minimum public provision, minimum public production, and maximum private production.

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19 The International Monetary Fund extends loans to solve serious deficits in a country's balance of payments. Conditioned loans require the implementation of policies that aim to achieve a current account situation that can be sustained without need of restrictions on trade or debt defaults. Most large credit programs include conditions that seek “to ensure that the member's policies are adequate to achieve a viable balance of payments position and sustainable economic growth over a reasonable period; that steps are taken toward structural adjustment, as necessary; and that, in addressing balance of payments and structural problems, financing and adjustment work in tandem.” Policy commitments by loan-recipient states and IMF conditions are reflected in three instances: preconditions (actions taken before the approval of the loan), performance criteria (conditions that must be met during the loan if further installments are to be made), and policy understandings (commitments by the recipient state without specific sanctions). Performance criteria and policy understandings are set out in a Letter of Intent written by the country's finance minister and is the product of negotiation and agreement between a government and the IMF. IMF, Financial Organization and Operations of the IMF, Pamphlet Series No. 45, Fourth edition (Washington, DC: IMF, 1995), pp. 64, 65.


21 International Monetary Fund, Financial Organization and Operations of the IMF, p. 73.

22 Raymond F. Mikesell, 'Appraising IMF Conditionality: too loose, too tight, or just right?', in IMF Conditionality, ed. Williamson, p. 50. Other international agreements prescribing capital mobility include the Agreement on Investment and Free Movement of Arab Capital among Arab Countries; Decision No. 24 of the Commission of the Cartagena Agreement on Common Regulations Governing Foreign Capital Movement, Trademarks, Patents, Licenses, and Royalties; Decision No. 291 of the Commission of the Cartagena Agreement on a Common Code for the Treatment of Foreign Capital and on Trademarks, Patents, and Royalties; the APEC Investment Principles; and the NAFTA.
Prescription of minimum public provision

Prescription of a minimal degree of public provision mandates that any instance of public provision that falls outside the scope of the bare essentials of public administration is to be eliminated. Subsidies and similar transfers provide certain social groups or firms with additional (and thus unnecessary) public goods in the form of money. Preferential, or 'closed,' public procurement (the practice in which a state favors national firms in the award of public contracts) is also an instance of unnecessary public provision because it provides an additional public service to those who benefit in the selection of bidders for public procurement contracts. By using subsidies and closed procurement practices states provide goods and services that are illegitimate within a minimalist conception of the state due to their inessential nature. Subsidies are the goods embodying undue public provision, which can then only be eliminated by eliminating subsidies themselves. In contrast, the element of undue public provision, contained in closed public procurement, is in the service embodied in the preferential treatment given to those the state intends to benefit. By eliminating a preferential treatment, target firms cease to receive an additional public service, thereby removing the instance of improper public provision. Open public procurement eliminates the preferential treatment that closed procurement offers and thus eliminates the provision of an unnecessary public service.

Specific rules prohibiting the provision of subsidies are set out in several international agreements within the WTO framework. The Agreement

23 Some of the more common examples of preferential procurement are outright prohibitions of foreign sourcing (such as the exclusive use of national air carriers by state employees) and selective or single tendering procedures without any competitive bidding. In contrast, open public procurement gives equal opportunity to all parties competing in selling a good or service solicited by a state. Specific measures for open procurement include compulsory announcement of public tenders, open tender (procedures under which all interested suppliers may submit a tender), open bid evaluation procedures (sometimes under the supervision of private accounting firms), disclosure of conditions on bid acceptance, and instances for challenging allegedly unfair bid awards.
on Subsidies and Countervailing Measures establishes rules that reduce the use of subsidies that nullify or impair the tariff concessions agreed to in the GATT-1994. It prohibits the use of investment incentives that may take the form of (a) fiscal subsidies whereby “government revenue...otherwise due is foregone or not collected (e.g., fiscal incentives such as tax credits)”; (b) financial subsidies involving “a direct transfer of funds (e.g., grants, loans and equity infusion...)” by a state; and (c) other types of subsidies in which “a government provides goods or services other than general infrastructure, or purchases goods” (article 1.1). The agreement makes all export-oriented subsidies ‘actionable’ (regulated and subject to countermeasures). It also prohibits subsidies contingent on the export of goods produced or to be produced by an investment and those contingent upon the use of national goods. Moreover, states commit themselves to reduce their subsidies for exports 21 percent in volume and 36 percent in budget outlays below the 1986-90 base by the year 2005.

The Agreement on Agriculture mandates that subsidies for agriculture be reduced to a maximum subsidized support of 20 percent by the year 2000 (in terms of the WTO’s Aggregate Measure of Support). It also binds all export subsidy levels for all agricultural products, a measure that impedes their increase without incurring in violation of the agreement and the application of retaliatory measures by affected states. The Agreement on Trade-Related Investment Measures (TRIMs) sets quantitative restrictions on subsidies to investment in manufacturing industries. It mandates the elimination of all TRIMs that are inconsistent with the GATT’s article III (national treatment on internal taxation and regulation) or article XI (general elimination of quantitative restrictions). It also prohibits subsidies to investments that are granted contingent upon the use of national over foreign products.

24 The only subsidies allowed are conditioned grants for research and development, aid to disadvantaged regions, and support for the adaptation of firms to new environmental regulations.
Proscription of subsidies is also contained in most conditioned credit agreements between states and the IMF and between states and the IBRD.\textsuperscript{25} For the IBRD, concerned with fostering economic growth, the rationale for the reduction or elimination of subsidies stems from the fact that subsidies create price distortion, which is considered to be a main cause for low output levels. For these reasons, a constant condition included in conditioned credit agreements between the IBRD and loan recipient states is the reduction or elimination of subsidies that are perceived to have a pernicious impact on the local economy.\textsuperscript{26} A 1985 credit agreement between the IBRD and Malawi, for example, included provisions for the elimination of subsidies to fertilizers within a period of five years.\textsuperscript{27}

For the IMF the reduction or elimination of subsidies has the purpose of reducing public expenditure, which in turn diminishes the outflow of public funds that may be required to finance efforts towards improving a balance of payments. However, such measures are not explicitly stated in agreements between states and the IMF due to the IMF's main concern with macroeconomic factors and variables (such as the overall level of public expenditure). In IMF-sponsored credit programs it is thus implicit that "major contributions to the adjustment effort frequently have to be made by means of a reduction in subsidies of various types" since "there is little question that in many economies in difficulty, existing subsidies...are a

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\textsuperscript{25} The International Bank for Reconstruction and Development (one of the 5 organizations that constitute the World Bank Group) extends loans in support of development policies, sectoral and project investments, and structural adjustment programs intending to serve as general support for economic growth. The set of policies agreed by loan recipient states and the IBRD are contained in a Letter of Development Policy.

\textsuperscript{26} Please, \textit{The Hobbled Giant}, p. 29. A major exception to the general prescription of subsidy elimination in conditioned credit agreements by the IBRD is public support for specific export promoting measures in least developed states since export expansion of such countries' more competitive products is seen by the IBRD as a crucial source for growth impulse.

\textsuperscript{27} Mosley, Harrigan, and Toye, \textit{Aid and Power}, p. 110.
critical element contributing to the weakness of the economic performance in
general, and of the public sector finances in particular."

Concerning the proscription of public procurement, the most prominent
example is the WTO’s Agreement on Government Procurement. It contains
several rules that open the procurement of goods and services by central
and sub-central levels of government and parastatal companies of signatory
states to competition among firms in signatory parties. It does so by
according national treatment for purchases of specified public entities,
thereby giving foreign firms a treatment equal to the one given to national
ones in public bids. Moreover, it mandates that all public tendering must be
open and competitive, for which it sets detailed rules to enhance the
transparency and fairness of tendering processes such as time limits,
publication requirements, or the content of required documentation from
interested suppliers. It also provides for supplier-initiated bid-challenging
procedures that can suspend procurement processes in case of complaint
and that give private suppliers the power to call public procuring entities to
account for and to allow full scrutiny of their actions and decisions
concerning the award of contracts.

**Prescription of minimum public production**

Prescription of a minimal degree of public production of goods or services
means that the state should not carry out any productive activity beyond its
essential tasks. This implies the reduction or elimination of state-owned
enterprises (SOEs). Stipulations for this purpose are contained in
conditioned credit agreements between the IBRD, the IMF, and loan recipient
states. Either explicitly stated in IBRD agreements or implicitly stated in IMF

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29 State-owned enterprises are firms that generate most of their revenue through the sale
of goods or services and that are either directly operated by a state, owned by a state,
indirectly controlled by a state through another SOE, or under a state’s effective control.
agreements, measures to diminish the number of SOEs are common. In the case of the IBRD, requirements for divestment or delegation of public production are based on the premise that SOEs tend to be major impediments to economic growth. In countries where the main export commodity is produced and sold by state enterprises, for example, the potential gains that could be obtained from such activity are usually forgone due to the inefficiency and corruption that pervade most SOEs. In these cases it is normal for the IBRD to require the privatization of relevant SOEs. Economic growth is also hampered by the deterrent effect of excessive public presence on potential investors and the over-regulation that tends to exist in areas of economic activity monopolized or heavily dominated by SOEs. In states where the national financial system is heavily regulated and monopolized by the state, for example, an essential IBRD condition for loans is the privatization of public banks and insurance firms.

As in the case of subsidies, prescription of measures to diminish the number of SOEs is implicitly stated in IMF loan agreements. The rationale is that a crucial element in the solution of current-account deficits is the reduction of public expenditures, and in many cases a considerable portion of it is devoted to the operating costs of SOEs. Since measures for the reduction of public expenditure are essential in all IMF conditioned credit agreements (as explained below), privatization or elimination of the more onerous SOEs is an implied measure of compliance and performance expected from loan recipient states.

**Prescription of maximum private production**

The maximization of private production is achieved by amplifying the scope of possible economic activity performed by private actors. This can be done by eliminating instances of economic activity in which the private sector is

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excluded from participation: the less economic areas exclusive to public production, the greater the possibilities for private production. Prescription of greater private production is found in international agreements that increase the scope of private participation by opening industries that had been monopolized by SOEs. Examples of these include many of the agreements on investment previously mentioned. The NAFTA, for example, includes several measures that increase the scope of private production in industries that had been monopolized by the Mexican state such as petrochemicals and train transportation.

Prescription of maximization of private production is also contained in IMF and IBRD conditioned credit agreements with loan recipient states. Due to its focus on macroeconomic matters, the IMF prescribes so indirectly by incorporating stipulations for "the elimination of constraints on domestic and foreign investment."\(^{32}\) The IBRD overtly prescribes increasing the scope of private economic activity based on the view that public monopolization is a major impediment to efficiency, production, and investment. Enhancement of economic growth is thus pursued through the reduction or elimination of economic areas restricted to the public sector and through greater participation by and competition among private agents.\(^{33}\) For these reasons loan agreements between the IBRD and recipient states include measures for the abolition of regulations that impede private participation in specific economic activities. For example, based upon the IBRD’s conclusion that public monopolization of Kenya’s maize market was a major impediment to its economic growth, a 1982 loan agreement between the IBRD and the government of Kenya included provisions specifying that the Kenyan government would end its exclusive participation in that market and allow private traders to operate in it.\(^{34}\)

\(^{32}\) Mikesell, 'Appraising IMF Conditionality,' p. 50.

\(^{33}\) Please, The Hobbled Giant, p. 29.

\(^{34}\) Mosley, Harrigan, and Toye, Aid and Power, p. 110.
NORMS FOR MONETARISM

Monetarism is promoted by five norms: currency competitiveness, currency convertibility, minimal public debt and deficit, minimal public expenditure, and central bank independence.

Prescription of currency competitiveness

Among other things, currency competitiveness means that the value of a currency should be set by the free interplay of supply and demand in international markets. Currency competitiveness is widely prescribed in conditioned credit agreements between states and the IBRD and the IMF due to a "widespread consensus within the Bank and the Fund on the need to 'get the prices right,' or correct according to the terms set by the international market."35 Considering that in most countries exports are a key factor for economic growth and that in most cases export volumes are less than optimum due to overvalued currencies, the IBRD seeks to enhance economic growth by stimulating export competitiveness through the establishment of a "real exchange rate."36 Although the IBRD does not include exchange rate adjustment as a specific condition for its loans, "governments are usually expected to establish and maintain exchange rates that are competitive internationally."37

For the IMF currency competitiveness is of extreme importance, particularly because it is considered "to provide a relatively neutral and comprehensive way to stabilize or adjust the economies of countries with significant short-term problems with balance of payments."38 The devaluation of artificially overvalued currencies, for example, automatically increases the price of imports and decreases that of exports, which

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36 Mosley, Harrigan, and Toye, Aid and Power, p. 56.
38 Biersteker, 'Reducing the Role of the State in the Economy,' p. 484.
stimulates the growth of exports and discourages imports, thereby helping to solve the deficit in the balance of payments. The IMF therefore seeks “to promote an appropriate level of competitiveness through a realistic exchange rate policy” in its aid programs. Consequently, the vast majority of credit agreements between the IMF and fund recipient states include measures for currency competitiveness through the devaluation of artificially overvalued currencies or the adoption of floating exchange rates. Realistic rates of exchange, for example, has been “a basic objective of all stand-by agreements” (the most common type of IMF credit arrangements).

Another measure normally included in conditioned credit agreements between states and the IMF to the effect of currency competitiveness is a reduction in the rate of money supply. Such reduction is used as a way of managing public-sector demand, “assuming that a tighter money supply will force the state to confront the sources of its payments difficulties rather than inflate its way out of them.” The IMF indeed “adopts a doctrinaire monetarist approach.”

**Prescription of currency convertibility**

Currency convertibility means that a currency be fully convertible to other currencies and free of exchange controls. Prescription of currency convertibility is included in the APEC Investment Principles and in most IMF loan agreements as clauses concerning currency exchange that are “always

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42 Biersteker, ‘Reducing the Role of the State in the Economy,’ p. 484.


directed at liberalization." Until 1989 the IBRD included the prescription of currency convertibility in its conditioned credit agreements indirectly by requiring that all states obtain an IMF conditioned credit agreement. This condition was substituted by a Policy Framework Paper (a joint document by the IMF, the IBRD, and the loan recipient state on policy reforms and objectives) that normally includes measures for currency convertibility. In both cases the conditions required by the IBRD concerning currency convertibility "consist essentially of measures to remove what it sees as harmful state interventions in particular markets, in particular the markets for agricultural produce, energy, credit and foreign exchange."46

**Prescription of minimal public debt and deficit**

Reduction of public debt and deficit is the central objective of all conditioned credit agreements between the IMF and member states since large amounts of public debt and deficit are "a principal source of many balance of payments problems and a barrier to long-term adjustment due to its effect on the private sector."47 IMF agreements therefore include measures such as budgetary and credit ceilings, limits on the amount of new public external debt, and schedules for reducing of existing external credit payment arrears. Moreover, as a measure to prevent further public debt and deficits, in many cases loan recipient governments were subject to limitations on their borrowing from their own central banks. In some cases central bank financing of public debt and deficit "was entirely barred."48

Rules for the maintenance of prudent budget balances are also prescribed in the Treaty of the European Union (the Maastricht agreement). These are found in the conditions required to participate in the Economic and Monetary Union (EMU). In addition to requirements on currency value

46 Mosley, Harrigan, and Toye, Aid and Power, p. 69.
47 Biersteker, 'Reducing the Role of the State in the Economy,' p. 484.
stability, inflation, and interest rates, the Maastricht agreement specifies that states must abide by rules that limit their public debt and fiscal deficit as part of the conditions (or ‘convergence criteria’) required to join Stage Three of the EMU (definite monetary union). Based on the principle that EMU-participating states “shall avoid excessive government deficits,” article 104c(1) of the agreement specifies that the maximum limit for a state’s fiscal deficit is to be 3 percent of its GDP. Concerning public debt, the ‘reference value’ sets the limit to a maximum public debt of 60 percent of GDP. The agreement also sets rules for continuous maintenance of fiscal discipline by EMU-participating states. Any state that incurs in debt and deficit situations beyond the specified limits commits ‘gross errors’ that “can lead to strictures being made by the Commission and Council about the economic policies and performance of a member government, leading in extreme circumstances to the imposition of a fine.”\footnote{Andrew Duff, ‘The Main Reforms,’ in \textit{Maastricht and Beyond: Building the European Union}, ed. Andrew Duff, John Pinder, and Roy Price (London: Routledge, 1994), p. 23.} Proscription of excessive public fiscal deficit is also contained in the Stability and Growth Pact agreed upon by the European Council in 1996.\footnote{Age F. P. Bakker and Guido F. T. Wolswijk, ‘Some Thoughts on the Monetary Framework in EMU,’ in \textit{European Monetary Union: the Way Forward}, ed. H. M. Scobie (London and New York: Routledge, 1998), p. 82.}

\textbf{Prescription of minimal public expenditure}

Specific measures to reduce levels of public expenditure is a \textit{sine qua non} condition in all conditioned credit agreements reached by states and the IMF. The obvious reason for requiring reductions on public expenditure is that an expansionary fiscal policy diminishes public funds that may be needed to alleviate a country’s current-account deficit. Another reason is that constraints on public expenditure are necessary measures to subdue inflation likely to be created by currency devaluations (that normally accompany IMF loans). IMF conditioned credit agreements therefore typically establish limits on commercial credit extended to the public sector as “a convenient
technical shorthand for the sum total of a government's commitments toward limiting expenditure."\(^{51}\) Likewise, all IMF-state agreements for conditioned loans include assurances by the government that it will adopt the necessary measures to reduce its levels of expenditure. For example, the Letter of Intent submitted to the IMF by the Italian government in 1977 states that the government of Italy commits to the implementation of measures towards a reduction in the deficit of the Government,...combined with additional measures to secure a sharp decline in the recent rates of increase in expenditures... It is a major objective of the project to limit the deficit of the Government...it is necessary to undertake a thoroughgoing reform of the methods of and instruments for controlling public expenditure... The Government wishes to underline the strength of its intention of strictly controlling the rate of increase in cash expenditure of the total public sector.\(^{52}\)

The Maastricht agreement also proscribes excessive public expenditure in EMU-participating states. Under the rules set by the agreement, even in cases when national governments may wish to adopt an expansionary fiscal policy for achieving output or employment objectives, "they may be prevented from doing so by the fiscal constraints of the Treaty, which could come into operation well before the point at which fiscal policy becomes so loose as to cause monetary policy to tighten undesirably."\(^{53}\)

**Prescription of central bank independence**

Central bank independence is clearly prescribed in the Maastricht agreement, in which the "constitutional protection of the European Central Bank from political interference is asserted forcefully."\(^{54}\) This is achieved with several

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51 Williamson, 'The Lending Policies of the International Monetary Fund,' pp. 627, 650.
53 Christopher Johnson, 'Fiscal and Monetary Policy in Economic and Monetary Union,' in Maastricht and Beyond, ed. Duff, Pinder, and Price, p. 78.
54 Duff, 'The Main Reforms,' p. 23.
measures that endow the European Central Bank (ECB) with a high degree of autonomy. Moreover, since the rules that enshrine the independence of the ECB are subject to amendment only through the modification of the Treaty of the European Union (and not by mere passage of a national law), the ECB “will have greater independence of action than any independent national central bank.” Even the Council of Economic and Finance Ministers (the closest thing to an executive federal economic authority in the European Union’s governing structure) “will have less influence over the European Central Bank than the German government now has over the Bundesbank.” This is even more so in relation to the European Union’s legislative authority since the ECB’s accountability to the European Parliament “is likely to constrain it even less than that of the US Federal Reserve to Congress.”

Every single norm that constitutes the normative framework of neoliberalism is prescribed in at least one international agreement on trade and finance. This fact seems to give sufficient support to the claim that neoliberalism is indeed an international institution. Moreover, considering the number of agreements, the quantity and relevance of signatory states, the importance of the activities under regulation, and the importance of such agreements for contemporary international relations, it would be safe to assert that neoliberalism is an institution of considerable importance in the contemporary international system.

55 Johnson, ‘Fiscal and Monetary Policy in Economic and Monetary Union,’ pp. 73, 76. Furthermore, the policy orientation of the European Central Bank is expected to be in compliance with monetarist prescriptions. This is partly because the ECB, “anxious to establish its credentials as guardian of the world’s second currency,...will be inclined to be too tough... The ECB is eager to inherit the fearsome reputation of the German Bundesbank.” The Economist, ‘On the edge,’ 5 September 1998, p. 21.
CHAPTER IV
IMPLICATIONS OF NEOLIBERALIZATION
FOR INTERNATIONAL POLITICS

In addition to its impact on international regimes on trade and finance, the institutionalization of neoliberal norms, or neoliberalization, has had broader impacts on international politics. Two of the more significant ones are its implications for the political culture of the international system and its implications for world order and governance.

IMPLICATIONS FOR INTERNATIONAL POLITICAL CULTURE

Like any political system, the international system has a political culture composed of several attitudes towards political issues. Such attitudes can be cognitive (ideas), affective (feelings), and evaluative (judgments). At times some attitudes have greater relevance than others, making them a more influential factor in the definition of an international political culture and, consequently, in the behavior of actors within the system. Neoliberalization implies a significant modification in the relevance of attitudes towards states. This is a crucial issue in the political culture of the international system since it involves the attitudes, and the ensuing actions, of states towards statehood itself. Specifically, neoliberalization implies a change in the relative significance of communitarianism and cosmopolitanism.

Communitarianism considers states the source of the highest moral value and principal object of allegiance. The main communitarian attitudes are the idea that “the individual finds meaning in life by virtue of his or her membership of a political community;” a strong emotional attachment or devotion to a state; and the consideration that the preservation and sovereignty of one’s state is a paramount ethical imperative. In contrast, cosmopolitanism places the ultimate source of moral value and allegiance on

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non-communal entities that can be found on a global scale. The main cosmopolitan attitudes towards states are the idea that they are artificial instrumental arrangements that do not deserve total allegiance nor any supreme ethical consideration; an aversion for communitarian sentiments; and “the refusal to regard existing political structures as the source of ultimate value.”\(^2\) Having mainly antithetical attitudes, communitarianism and cosmopolitanism compete with each other for the development of ideas, feelings, and judgments about statehood. One’s gain in significance is the other’s loss of relevance in the definition of a political culture.

Neoliberalism is supportive of cosmopolitan attitudes and mostly incompatible with those of communitarianism. The neoliberal belief of the individual as the ultimate source of moral value is an adequate cosmopolitan object of allegiance and is in opposition to ideas considering states the principal object of allegiance. Neoliberal disdain for public entities fits the cosmopolitan aversion for communitarian sentiments. The beliefs of the primacy of private freedom and the minimal role of states are congruent with the cosmopolitan rejection of political communities as primary moral entities and they conflict with desires for state sovereignty and preservation. Neoliberalization thus implies the preponderance of cosmopolitan attitudes over communitarian ones.

This is exemplified by the behavior of states as they establish rules that impair the implementation of several measures that pursue state integrity and sovereignty. Free trade drastically reduces the scope and degree of protectionist measures. Prohibition of incentives for local investment or national exports reduce support for national firms. Privatization, strict rules for private property protection, and permissive regulations on investment significantly constrain the extent to which states may pursue national control of resources, industries, and firms by keeping them from foreign acquisition or control or by making them subject to acts of

'nationalization.' In this case the reduced significance of communitarian concerns is evident since national control of certain resources, industries, and firms has been a crucial historical and political issue in many countries where the nationality of the owners and administrators of certain resources and firms "is immensely sensitive and cuts into the heart of what nation-states exist for."³ From natural resource exploitation to pension fund administration, since the 1970s states have allowed "foreign intrusions into some of their previously sacrosanct spheres of national control. What was once an inviolable preserve of state autonomy is increasingly open to foreign business."⁴

The predominance of cosmopolitan over communitarian attitudes is also clear in the renunciation by many states of preferential public procurement, a practice that has traditionally been used to provide public support to nationals. The WTO Agreement on Government Procurement thus represents "a significant achievement in opening one of the most politically sensitive areas of international trade" and "an encouraging sign of the gradual evolution throughout the industrial world of the political will necessary to free, definitively and permanently, a significant share of public procurement from the economic fetters of biased buy-national procurement programs."⁵ Also important is the liberalization of international trade in services, particularly because services are "capable of penetrating more closely to the heart of a nation's individual concept of economic independence than will an equal volume of trade in tangible goods."⁶ Not

⁵ Christopher C. Nicholls, 'Government Procurement after the Uruguay Round,' C.D. Howe Institute Commentary 74 (December 1995), p. 11.
surprisingly, the liberalization of trade in culture-related services has been partial given the significance of cultural aspects for the communitarian aspirations and obsessions of some nations.\(^7\) Significantly, though, with the WTO’s General Agreement in Trade in Services, services have been set “firmly on the multilateral trade-policy agenda,” making the GATS “just the first step in what will hopefully prove to be a fruitful path leading to substantial liberalisation of international transactions in services.”\(^8\) The change in the *anima mundi* towards states is also evident in the widespread acceptance, implementation, and imitation of IMF and IBRD conditioned credit programs which have served “as a tool for reforming the policies of economic nationalism.”\(^9\)

There is perhaps no better example of the prevalence of cosmopolitan attitudes over communitarian ones than the widespread prescription and implementation of the rule of national treatment. By establishing that conditions affecting foreign firms and citizens be no less favorable than those affecting nationals, national treatment significantly erodes a principle and practice that is deep in the heart of nationhood: preferential discrimination for nationals. In areas in which national treatment has been granted, states cannot implement any measures that benefit their own citizens without extending the same benefits to foreign citizens. The shift from a communitarian to a cosmopolitan order of things is evident — especially when national treatment is extended to many more nationalities through

\(^7\) France, for example, threatened to sabotage GATT negotiations in 1993 in order to keep audiovisual goods and services out of any free trade agreement. Likewise, Canada’s single most persistent and inflexible negotiating position for the US-Canada and the North American Free Trade agreements was to secure continuous protection for its ‘cultural industries.’ In 1998, 19 states (including France, Canada, Britain, Brazil, and Mexico) met in Ottawa to discuss ways of exempting cultural goods and services from free trade agreements “on the view that free trade threatened national cultures.” On that same year the UN sponsored a similar meeting in Stockholm that resolved to insist for special exemptions for cultural goods and services in negotiations towards the OECD’s Multilateral Agreement on Investment. *The Economist*, ‘Culture wars,’ 12 September 1998, p. 97.


most-favored-nation treatment. Moreover, in many cases the actual implementation of national treatment leads to an "ongoing process of state/firm bargaining in which governments may often offer greater inducements, waive more rules and demands, to a foreign firm to enter its territory than it will to a native one to stay."\textsuperscript{10} As often happens in many developing countries,

> it is the local investors who feel that they are being discriminated against while foreign investors are being pampered...[for] it is often not a question of extending to foreigners the same treatment as is accorded to nationals, but rather the other way around. To circumvent such discriminations, it is not unusual for local investors to register themselves as companies in a foreign country, then invest in their own countries under the banner of a foreign investment.\textsuperscript{11}

Just as communitarianism and nationalist economic schemes (such as mercantilism, socialism, communism, and Keynesianism) are mutually supportive, cosmopolitanism and neoliberalism support each other. Neoliberal norms undermine the legitimacy of communitarian protectionist and discriminatory measures, which in turn increases the legitimacy of further liberalization and non-discriminatory treatment. The implementation of nationalist economic schemes strengthens attitudes towards international relations that focus on the integrity and sovereignty of states. In contrast, the implementation of neoliberal prescriptions (that reduce states' jurisdictional barriers to international trade and investment, reduce preferential treatment to their own citizens, and extend many benefits of citizenship to foreigners) is consistent with a cosmopolitan attitude towards international relations which is "oriented away from particularistic sources of value and towards a global community."\textsuperscript{12} Also in contrast to nationalist economic schemes that subordinate economic gains to national identity and

\textsuperscript{10} Strange, 'The Defective State,' p. 60.

\textsuperscript{11} M. Ariff, 'TRIMs: a North-South Divide or a Non-Issue?' World Economy 12 (September 1989), p. 354.

\textsuperscript{12} Brown, International Relations Theory, p. 44.
sovereignty, the reforms that have taken place since the 1970s have led to a "redefinition of the public and national sectors" which entails

a belief that states and their nationals should not maintain control over certain economic activities if there are significant losses in economic welfare attendant on their maintaining control. In other words, states are gradually accepting constraints on their autonomy or internal political control as a result of participation in international regimes whose central purpose is to capture mutual economic gains. Implications of these developments are, of course, that regimes based on the maintenance of a high level of state policy autonomy are weakening and that economic nationalist forces are losing to transnational firms and groups.¹³

**IMPLICATIONS FOR WORLD ORDER AND GOVERNANCE**

World order is composed of several institutions that regulate the behavior of public and private entities. Since the 1970s neoliberalism has become one among the many institutions that affect human interaction world-wide. As an institution, neoliberalism affects world order through its structural and systemic dimensions. The structural dimension of an institution affects the arrangement of power and interests among actors. It does so by establishing constitutive principles that generate situations of power and interest among actors "as a function of their respective occupancy of the positions defined by those principles...therefore making possible certain practical dispositions." The systemic dimension of an institution generates particular practices through the establishment of organizing principles that "shape those practices that are rational actions by defining the choice environment facing agents...as a set of constraints and possibilities that define the relative attractiveness of different courses of action."¹⁴ The institution of neoliberalism affects world order by establishing, in its structural dimension, a set of constitutive principles that defines a disposition of power and interests among public and private actors; and by establishing, in its

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¹⁴ Wendt and Duvall, 'Institutions and International Order,' pp. 60, 61.
systemic dimension, a set of organizing principles that define the practices of public and private actors.

In its structural dimension, the institution of neoliberalism establishes three constitutive principles: liberalization, privatization, and monetarism. These principles promote a disposition of power and interests that favors the private sector. This is most visible in three areas of activity: production, bargaining, and finance. In the area of production, the result of the minimization of public production is a drastic reduction of the public sector’s power to produce goods and services. Each loss in productive power by the public sector is an increase in that of the private sector. The result is that countries experience “dramatic...shifts in the balance of power between the state and private sectors after they adopted privatization programs.”\(^{15}\) As mentioned, industries that used to be either heavily dominated or monopolized by the public sector such as telecommunications, utilities, infrastructure, long-distance transportation, or natural resource exploitation have been largely privatized. The elimination or reduction of “public cartels” in long-distance transportation and communications by way of large-scale privatization of SOEs, for example, clearly constituted “quite a notable change in the international political economy and the international political system.”\(^ {16}\) Worldwide privatization has thus led to an “unprecedented shift of power from government to other parts of society.”\(^ {17}\)

In terms of bargaining power, the constitutive principles of neoliberalism increase the private sector’s bargaining position in its relations with the public sector. This is evidently so that reductions of public discretion in taxation and regulation of activities reduce the leverage public authorities may have in their relations with private firms: the less maneuverability states have in imposing tariffs or granting permits, the weaker their


\(^{16}\) Zacher with Sutton, Governing Global Networks, pp. 11, 12.

\(^{17}\) Poole, ‘Privatization for Economic Development,’ p. 1.
bargaining position is. Also, mandatory open public procurement, for example, eliminates the bargaining leverage states could obtain from the selection of providers; states’ diminished capacity to impose performance requirements eliminates a crucial source of bargaining power that states have when negotiating with private firms. These losses of bargaining power by the public sector are compounded by the increasing voice that private actors have in public policy due to the greater availability of options of exit that they derive from neoliberal norms.\textsuperscript{18} Capital mobility and currency convertibility, for example, allow private actors to shift to other currencies or to withdraw their capital from a country, thus increasing their ‘voice’ and strengthening their bargaining power.

Quite importantly, guaranteed rights of establishment, investment, and market access for private actors and their products vastly reduce public bargaining power by severely limiting “the most important resource available to all states”: the capacity to grant legitimate territorial access.\textsuperscript{19} In other words, neoliberal norms of trade and investment nullify to a large extent one of the crucial sources of bargaining power that states could derive from their sovereignty. Moreover, neoliberal rules on trade and investment, along with multiple options for relocation (the variety of countries where favorable conditions for operation exist), diminish states’ bargaining power due to the higher degrees of mobility that private firms enjoy:

The bargaining power of the state is much weaker if territorial access is not important... The greater the homogeneity of labor across countries and the less the cost of transportation and communication, the greater the number of options available to the [trans-national corporation]. If production

\textsuperscript{18} According to Hirschman’s notion, the bargaining power of actors in an economic system depends on their capacity to evade a state’s policies (exit options). The easier it is for an actor to evade public policies, the greater its possibilities of having direct influence over the state’s policy-making (voice). And the lesser the state’s command of loyalty is.\textsuperscript{19} Albert O. Hirschman, \textit{Exit, Voice and Loyalty: Responses to Decline in Firms, Organizations, and States} (Cambridge: Harvard University Press, 1970).

can take place in any one of a number of countries, the ability to grant entry to any one country will not be worth much.²⁰

In financial matters, in addition to technological instruments that allow instantaneous financial transactions and to enormous amounts of private capital, the combined effect of monetarist policies and liberalization of financial regulations is a drastic increase in the private sector’s financial power. This has been repeatedly demonstrated on numerous occasions in which the resultant superior financial capability and ability of the private sector has nullified the effectiveness of public financial policies.

The collapse of the Bretton Woods fixed exchange rate system, which came about after partial liberalization of capital controls in the European Economic Community, “at least partly reflected the increasing inability of states to counteract the rapidly escalating volume of speculative international financial movements in this period.”²¹ In 1987 the group of the seven wealthiest and most financially powerful states, the Group of Seven, tried to maintain the value of the US dollar (by buying US$90 billion dollars) but failed because of a superior private financial capability.²² In 1992 and 1993 a monetary arrangement of some of the world’s wealthiest, most capable and powerful states, the European Exchange Rate Mechanism, had two consecutive crises when “private capital movements played havoc with the exchange rates set up by the European Community and overwhelmed the efforts of central banks.”²³ On that occasion the Banque de France spent approximately 300 billion francs (US$50.6 billion) in its futile effort to defend the franc.²⁴ The French state thus “spent the equivalent of a Desert Storm to

²⁰ Ibid., p. 275.
²¹ Helleiner, 'When Finance was Servant,' p. 38.
²³ Stanley Hoffmann, 'The Crisis of Liberal Internationalism,' Foreign Policy 98 (Spring 1995), p. 175.
unsuccessfully defend its currency."

Similarly, the British pound was forced out of the European Exchange Rate Mechanism despite of the costly efforts of the Treasury to stop the process, and Sweden failed to maintain the parity of the krona relative to the Deutschemark despite increasing its inter-bank lending interest rate to 500 percent.

These events "starkly revealed the inability of European states to maintain their exchange rate targets in the face of the massive speculative flows in the international financial markets." Of course, many similar situations have occurred in less capable states. In all cases, intervention by central banks "has become an expensive exercise in futility." States, says former German Finance Minister Martin Bangemann, "cannot fight the markets for too long...the markets are much too strong. Co-ordinated central bank intervention can only inspire the markets to be more stable."

The structural dimension of the institution of neoliberalism thus generates a configuration of power and interests in which even the aggregated financial power of the wealthiest and most powerful states in the world is routinely belittled by the private sector's superior financial capabilities and masse de manoeuvre. Ideational notions espousing the primacy of private actors and the minimization of public power are thereby materialized in real situations of power distribution. For instance, the idea that states should intervene the least in economic matters led to the abolition of the fixed exchange rate system of the gold standard, and "what has been remarkable in the financial arena since 1971 and the breakdown of the Bretton Woods system has been the lack of a stable state-based 'regime'

except in the vaguest sense of the virtual abdication of state power via the floating exchange rate mechanism." Therefore, the end result of a seemingly idealistic notion is that "[t]he balance of power between state and market authority has been transformed since the 1970s," as power "is shared more unequally between public and private monetary authorities now than at any time in the postwar period...this changing balance of power between public and private authority must be considered one of the driving forces behind the reconstitution of international monetary order in the contemporary world."  

In its systemic dimension, the institution of neoliberalism is established on thirteen organizing principles: proscription of constraints to private property ownership, of barriers to exchange, of constraints to freedom of establishment, of excessive public debt and deficit, and of constraints to private property management; and prescription of protection to private property, of minimal public provision, of minimal public production, of maximum private production, of currency competitiveness, of currency convertibility, of minimal public expenditure, and of central bank independence. These principles organize and regulate the behavior of actors. The existence of a disposition of power and interests defined by the constitutive principles of neoliberalism is then complemented by a disposition of practices defined by the organizing principles of neoliberalism, resulting in an environment with defined norms and a sociopolitical structure to uphold them.

Compliance with the organizing principles is promoted with positive and negative incentives. Maintenance of freedom of ownership, exchange, establishment, and private property management attract trade and investment to an economy. Due protection of private property fosters investor confidence in a country and leads to capital inflows. Maintenance of

minimal public debt, deficits, and expenditures sustain healthy public finances, promote currency stability, and increase a state's creditworthiness, which in turn increases the value of its bonds and lowers debt service. Maximum private production and minimal public exclusiveness attract investments and increase an economy's efficiency. Currency competitiveness and convertibility diminish the likeliness of monetary crises, encourage domestic savings, and attract trade and investment. Central bank independence creates confidence in a state's monetary policies and improves the prospects for price stability.

At the same time, deviations from the organizing principles result in negative incentives. Protectionist measures may lead to retaliation by affected states. Violation of private property rights could provoke lawsuits and deter investments. Disrespect for private property management can discourage investments and may spur capital flight. Extensive reductions in the scope for private production discourages investment and production. Non-compliance with the norm of currency competitiveness places serious constraints on a state's policy autonomy and generates high levels of risk and incapacity to react to unexpected developments. Currency inconvertibility and exchange controls discourage trade and investment. Excessive public debt and deficits reduce a state's creditworthiness, the value of its bonds, the stability of its currency, and its prospects for obtaining financial aid. Immoderate public expenditure may cause capital shortage and inflation.

Among the most powerful disciplinary incentives for states to maintain their behavior in accordance with the organizing principles of neoliberalism are capital flights, runs on currency, and investment strikes. Since they regulate the actions of public actors in a quite stringent and meaningful way, a large part of the neoliberal order is upheld and promoted by these "powerful weapons that no government can ignore with impunity." 31 The

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31 Robert W. Cox, 'Global Restructuring: Making Sense of the Changing International
possibility and occurrence of capital flight, coupled with a high degree of international capital mobility, "systematically constrains state behavior by rewarding some actions and punishing others... Consequently, the nature of the choice set available to states...becomes more constricted,"32 prompting states "to remove or alter institutions and practices objectionable to business and finance."33

For example, deviation from the organizing principles prescribing maintenance of appropriate levels of public debt, deficit, and expenditure by any government that attempts "an alternative, 'reflationary' strategy and neglects these financial market fundamentals...risks a financial crisis."34 Quite appropriately, due to their typical economic negligence, capital flight and runs on currency "have come to act as a strong disciplinary force on left-of-centre governments around the world."35 In 1981, for example, a socialist government in France announced and implemented the initial stages of a program for economic growth through public expenditure that would drastically increase the already high levels of public debt and deficit, which in turn would weaken the franc and compromise French economic stability. These prospects soon provoked capital flight and a run on the franc, which prompted the government to cancel the program and offer reassurances that it would not deviate from fiscal discipline again.36 For these and other reasons, "[o]ne unprecedented feature of the latest wave of liberalization is clear: although several variants of market economies may exist, no coherent


34 Cable, 'The Diminished Nation-State,' p. 27.

35 Helleiner, 'When Finance was Servant,' p. 38.

alternative program exists after the near-demise of unreformed (nonmarket) communism and the decline of statist options."\textsuperscript{37} Indeed, "[i]deology and rash promises have been replaced by harsh realities."\textsuperscript{38}

Also, states that do comply with the organizing principle of capital mobility but fail to comply with that of currency competitiveness by maintaining fixed exchange rates put themselves in a situation in which, if they wish to avoid capital flight, they have to sacrifice either currency stability or national economic policy autonomy.\textsuperscript{39} If valuable investments are to be retained, economic policy autonomy can be preserved only by sacrificing currency stability; conversely, a fixed exchange rate target can be maintained only by losing control over domestic macroeconomic variables such as interest rates. In case a fixed exchange rate target is maintained and an independent economic policy is pursued by, for example, setting interest rates arbitrarily, investments will be tempted to leave a country to avoid imminent devaluation or possible imposition of capital controls. As this situation continues, "states begin to pay a higher price for divergent behavior owing to the risk of capital flight. Ultimately, the cost of defending policy independence may simply become too high to bear."\textsuperscript{40} And even if a floating exchange rate is adopted, states have to obey the rules of the macroeconomic game in order to maintain it within a reasonable range of value, which implies compliance with the norms already stated. In sum,

There are a lot of things, these days, which ministers and bureaucrats should not be doing. Printing money to finance reckless borrowing. Raising taxes so high as to discourage work and enterprise. Impeding flows of trade and investment. Introducing or preserving regulations that impose high costs on business and distort economic decisions. Nationalising companies, or thwarting the privatisation of existing state-owned firms. Protecting monopolies and cartels. Intervening in the economy to 'pick winners' in new

\textsuperscript{37} Kahler, 'Liberalization as Foreign Policy Determinant and Goal,' p. 300.

\textsuperscript{38} Palan and Abbott with Deans, \textit{State Strategies in the Global Political Economy}, p. 182.

\textsuperscript{39} This is due to the fact that fixed exchange rates, capital mobility, and national economic policy autonomy cannot be achieved simultaneously.

\textsuperscript{40} Cohen, 'Phoenix Risen: the Resurrection of Global Finance,' p. 281.
industries or protect 'lame ducks' in old ones. For those who accept such self-denying ordinances, politics and economic policy-making are much less fun than in the 1960s or 1970s.\textsuperscript{41}

Surveillance and enforcement of the order promoted by the institution of neoliberalism is performed by public and private actors. International organizations, investment banks, the media, securities, bond, and risk rating agencies, states, consultancies, traders, private intelligence services, investment fund managers, manufacturing and service firms, and individuals are all in charge of overseeing and acting upon their respective areas of competence and concern. The governance of this particular world order is thus performed by the public and private sectors. Of course, "governance — a social function crucial for the operation of any market economy, whether national, regional, or global— does not have to be equated with government"\textsuperscript{42} because governance "refers to activities backed by shared goals that may or not derive from legal and formally prescribed responsibilities and that do not necessarily rely on police powers to overcome defiance and attain compliance." Governance is "a more encompassing phenomenon than government. It embraces governmental institutions, but it also subsumes informal, non-governmental mechanisms..."\textsuperscript{43}

Therefore, "the issue of control of economic activity in a more integrated internationalized economy is one of governance and not just of the continuing roles of governments," since governance is "not just the province of the state. Rather, it can be a function that can be performed by a wide variety of public and private, state and non-state, national and international institutions and practices." In fact, as in the case of the neoliberal institution, the private sector-dominated market is "a substitute

\textsuperscript{41} The Economist, 'Don't be salesmen,' 1 February 1997, p. 17.

\textsuperscript{42} Reinicke, Global Public Policy: Governing without Government? p. 87.

\textsuperscript{43} James Rosenau, 'Governance, Order, and Change in World Politics,' in Governance without Government, ed. Rosenau and Czempiel, p. 4.
for government because it is held to be a satisfactory mode of governance: it produces optimal outcomes when its workings are least impeded by extraneous institutional regulation."  

As the case of neoliberalism illustrates,

In the organization of a liberal order, pride of place is given to market rationality. This is not to say that authority is absent from such an order. It is to say that authority relations are constructed in such a way as to give maximum scope to market forces rather than to constrain them. Specific regimes that serve such an order, in the areas of money and trade, for example, limit the discretion of states to intervene in the functioning of self-regulating currency and commodity markets.  

Some of the more relevant instances of private governance in this particular order are those related to financial dynamics such as investment, credit, and monetary valuation. In the present order, states that wish to avoid capital flight, worthless bonds, investment strikes, or runs on their currencies "must increasingly measure their performance according to criteria acceptable to the financial markets, i.e. they must be either strong or sound in order to retain the confidence of the transnational financial community." In the case of monetary affairs, the strictures and constraints that the constitutive and organizing principles of the institution of neoliberalism establish have led to a situation in which the public sector's role in monetary governance "has been transformed, evolving in effect from Westphalian monopolist to something more akin to an industrial oligopolist... The authority that once derived solely from legal-tender laws and other political interventions has come to be embodied more in the norms and expectations that rule the Darwinian struggle among currencies." Since deviations from the principles lead to currency depreciations, increasingly, "currency values reflect less the power and privileges of the sovereign as

45 Ruggie, 'International Regimes, Transactions, and Change,' p. 381.
much as a discipline on the economic policies of imprudent sovereigns. As it happens, moments after a public policy is implemented or announced,

thousands of screens light up, and traders all over the world vote on whether the new policy is good or bad. That vote is instantly recorded in the value of the currency. There is no longer any place to hide. Good economic policies are rewarded and bad ones punished... No matter what the politicians and the spin masters of the world say, the market will remain a giant voting machine that records in real time, real world evaluations of the value of currencies. Increasingly, currency values reflect less the power and privileges of the sovereign as much as a discipline on the economic policies of imprudent sovereigns.

Moreover, in contrast to instances of public governance that tend to be subject to the vagaries of political interests and to the mediocrity that characterizes the vast majority of public entities, "the 'market,' or the consensus of the players in it, has been found to be efficient in spotting weaknesses which governments have been trying to hide, and forcing countries to take appropriate corrective measures." In 1994-95, for example, while Mexican public officials assured of the healthy state of their public finances, private rating agencies aptly registered an excessive proportion of public debt and deficit and downgraded the country's risk and creditworthiness ratings, prompting investors, traders, and raters to pull capital out, to stigmatize Mexican public bonds, and to undervalue the Mexican peso, which led to a large-scale economic crisis.

The latest major example of this system of order and governance is the case of Brazil in 1998. The deviation from the organizing principles was an excessive amount of public fiscal deficit (close to 8 percent of GDP). The private sector punished the fault with suspensions of investments, downgrades in Brazil's risk and creditworthiness ratings, falls in the value of Brazilian currency and public bonds, increases in the price of debt payments,

48 Wriston, 'Dumb Networks and Smart Capital.'
49 Ibid.
and a severe flight of capital averaging US$1 billion a day in September and $500 million a day in mid-October (amounting to an outflow of approximately $30 billion in those two months). The behavioral correction by the Brazilian state was an austerity plan to reduce the deficit by cutting public expenditure in the following three years. The private sector rewarded that measure by improving its confidence in the Brazilian state, maintaining credit lines to Brazil open, and increasing the value of Brazilian currency, stocks, and bonds. The public sector rewarded the measure by giving the Brazilian state an IMF aid package of $41.5 billion dollars made up of contributions by various public entities like the IMF itself, the IBRD, the Inter-American Development Bank, the European Union, the United States, and other industrialized states.

Thus, the violation of one of the organizing principles of the neoliberal institution (minimum public deficit) had been punished and steps taken towards its correction had been rewarded. This was world governance by joint private-public action at its finest. Not least reflected in the actors' common perception of faults and solutions, for while private financial analysts had repeatedly stated that private sector confidence and investments would only recover until the Brazilian government took concrete steps to resolve its excessive public deficit, the IMF's managing director, Michel Camdessus, stressed that the aid package had only been made possible by Brazil's austerity program, which "first and foremost addresses the chief source of its external vulnerability, namely its chronic public sector deficit."\(^{51}\)

In these cases, as in many other similar situations such as that of France in 1981 (foreseeable excessive public expenditure and deficit), Thailand in 1997 (overvalued currency and faulty financial system due to partial deregulation), or Russia in 1998 (overvalued currency and excessive public debts), instances of private governance were swift, efficient, and compelling. From surveillance to enforcement, private agents and mechanisms maintained world order according to the organizing principles of the neoliberal institution by identifying deviations from the norms and exerting appropriate punishment. In sum,

Money goes where it's wanted, and only stays where it's well treated, and once you tie the world together with telecommunications and information, the ball game is over. It's a new world, and the fact is, the information standard is more draconian than any gold standard...You cannot renounce the information standard, and it is exerting discipline on the countries of the world, which they all hate. For the first time in history, the politicians can't stop it. It's beyond the political control of the world, and that's good news.\textsuperscript{52}

CHAPTER V
FINAL OBSERVATIONS

Since the 17th Century there has been a trend towards greater individual freedom and empowerment of civil society in the international system. It has occurred through the institutionalization of normative frameworks defending private rights and freedoms and subordinating public power to civil society. Prominent examples include the expansion of parliamentarism and constitutionalism, the prohibition of slave trade, decolonization, the three waves of democratization, and the demise of most communist and socialist regimes. These events have progressively shaped a more liberal world order and increased civil rights and power in specific areas of human activity. Neoliberalization is one more facet in this trend as it asserts and expands private economic freedom and property rights and as it abates and confines the capacity of public entities to exert economic repression and abuse of power.

Moreover, in its principles, embodiment, and implications, neoliberalization empowers civil society in many other ways than the purely economic. For example, the abolition of public controls on the movement of capital and on currency exchange not only allows people to do as they please with their own assets and remove “what is a substantial restriction on, and could become a threat to, individual liberty.”¹ It also contributes to the promotion of a “new system of governance” whose principal advantage “is that it provides a check on the arbitrary exercise of governmental authority,” for the state, “as oligopolist, is far less likely to abuse or mismanage its monetary powers than it was when it enjoyed a monopoly.”² The contemporary free financial market not only is the result of a greater desire for freedom and proprietary security, it is also a major force that impedes,

² Cohen, The Geography of Money, p. 5.
obstructs, and deters public policies and regulations that could curtail people's economic freedom and property rights.

Similarly, the reduction or elimination of taxes and conditions on trade and investment, in addition to increasing people's freedom to trade and set up businesses, also reduces states' capacity to extract money and services from private firms and individuals, making public authorities much more sensitive to the interests of taxpayers as it reminds them of the fundamental fact that "[t]he state and its power is rooted in our acquiescence and in the taxes we pay. Ultimately, states are dependent on nations, who will only resource them if they are given adequate incentives and conditions."³

Also, privatization and the minimization of public exclusiveness give people not only more opportunities to make a productive, self-reliant, and honest living; it also gives them more economic and political significance, since "[t]hrough privatization the state's power is reduced and the power of the people enhanced...this fundamental purpose of privatisation must not be overlooked."⁴ In all, the aggregate result of liberalization, privatization, and monetarism on a global scale is the establishment of an order that thwarts the onerous and illegitimate functions of enlarged states (such as collectivist impositions, compulsory transfers of wealth, and constraints on private freedom), and fosters minimal states that treat their citizens "as inviolate individuals, who may not be used in certain ways by others as means or tools or instruments or resources;...as persons having individual rights with the dignity this constitutes."⁵

The institutionalization of neoliberalism thus results in a worldwide empowerment of civil society not unlike that generated by the institutionalization of human rights or democratic principles. And just as norms for human rights and democracy are enshrined in international


⁵ Nozick, Anarchy, State and Utopia, pp. 333-34.
political agreements, norms for economic freedom and private property rights are set and are upheld in international agreements on trade and finance. Far from being arcane and technical legal instruments for merely economic and financial affairs, international agreements upholding neoliberal norms are necessary complements to existing international regimes that seek to defend civil rights and freedoms.

This is most evident in the case of private property rights since they are "the principal means whereby sovereign individuals secure command over economic resources in order to satisfy their wants...they enable individuals to assert their own self-interest in pursuing their own objectives without the necessity of accounting for their actions to others."6 Any pursuit of civil rights and democratic order at the international level must then include full respect for private property rights. It would be absurd to have international rules that prescribe people's right to elect their own governments and to lack international rules that prescribe people's right to fair compensation whenever a state takes their property away. It would be cynical to consider state sovereignty an obstacle for international justice when people are mistreated by a government and to use state sovereignty as a justification to prohibit people from transferring their own money out of a country. Seen this way, agreements such as the WTO's TRIPs agreement or the OECD's Codes of Liberalization have a similar moral and political value to the International Declaration of Human Rights or the Charter of Paris. Likewise, the moral and political value of international agreements that expand and protect freedom of exchange or management is not too distant from that of those that prescribe freedom of expression or transit.


Hoffmann, Stanley. 'The Crisis of Liberal Internationalism.' *Foreign Policy* 98 (Spring 1995): 159-77.


