

ARTICLES

THE POSSIBLE WORLDS OF ECONOMIC SANCTIONS

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I. INTRODUCTION

Any attempt to understand the future of economic statecraft is a bit like gazing into a kaleidoscope of fractured worlds, of possible futures bleeding and refracting into each other.¹ In this symposium contribution, I reflect on what it might mean to think of today's economic warriors as makers of those future worlds. "Worldmaking" projects, in the sense used by political theorist Adom Getachew, are those which resist the "legal and material manifestations" of the existing world order, and instead posit and work toward alternative "juridical, political, and economic institutions in the international realm."² The "sanctionists" of interwar Europe and America, as Nicholas Mulder shows, certainly understood their project as remaking world order.³ So too, in their own ways, did the organizers, strikers, and industrial warriors of the early twentieth century's labor movements, as well as the boycotters and economic warriors of the Chinese diaspora during the same period.⁴ By understanding sanctions and boycotts as critical tools in broader worldmaking projects, I want to suggest, we can access important descriptive and normative insights that otherwise would be obscured. But to look forward, sometimes it first helps to go back.

II. 1935–1936

One wonders if it seemed this way at the time, but in retrospect Italy's invasion of Ethiopia seems to have shattered reality into many possible worlds.⁵ In Geneva, the League of Nations moved swiftly: the League Council

¹ See ANTHEA ROBERTS & NICOLAS LAMP, SIX FACES OF GLOBALIZATION: WHO WINS, WHO LOSES, AND WHY IT MATTERS 245–61 (2021).

² ADOM GETACHEW, WORLDMAKING AFTER EMPIRE: THE RISE AND FALL OF SELF-DETERMINATION 2–3 (2019).

³ See generally NICHOLAS MULDER, THE ECONOMIC WEAPON: THE RISE OF SANCTIONS AS A TOOL OF MODERN WAR (2022).

⁴ On the latter, see GUANHUA WANG, IN SEARCH OF JUSTICE: THE 1905–1906 CHINESE ANTI-AMERICAN BOYCOTT (1995). On the former, see recently KIM KELLY, FIGHT LIKE HELL: THE UNTOLD HISTORY OF AMERICAN LABOR (2022).

⁵ For a brief account of these events from the perspective of the League of Nations, see BOB REINALDA, ROUTLEDGE HISTORY OF INTERNATIONAL ORGANIZATIONS 217–18 (2009). The standard view of the Italian invasion, and of the League's limited response, as a tragedy of European imperial politics is reflected in George W. Baer, *Sanctions and Security: The League of Nations and the Italian-Ethiopian War, 1935–1936*, 27 INT'L ORG. 165 (1973). For an important reframing of the invasion that de-centers the power politics of London, Paris, and Geneva, see Robbie Shilliam, *Intervention and Colonial-Modernity: Decolonising the Italy/Ethiopia Conflict Through Psalms 68:31*, 39 REV. INT'L STUDS. 1131 (2013). For a restatement and critique of the conventional wisdom on economic sanctions that is often drawn from this event, see DAVID A. BALDWIN, ECONOMIC STATECRAFT 159–71 (new ed. 2020).

declared Italy to be the aggressor and authorized an ambitious package of economic sanctions—a “remarkable feat of transnational coordination” that seemed to affirm the League’s role as the keeper of collective security.⁶ Across the Atlantic, the United States continued to labor under its increasingly debated policy of neutrality, which hindered the United States’ ability to support the sanctions effort either overtly or covertly.⁷ The cleavage between neutrality and collective security reflected in these diverging approaches was not simply a question of the best strategy to confront and deter aggression, though it was that. These were also competing visions of world order and world peace, wherein sanctions were either a necessary step toward peace and disarmament through law, or an attack on neutrality that would “enlarge the area of conflict and keep the world in more or less perpetual turmoil.”⁸

If we turn our gaze from governments to the social movements of interwar Europe, we see these debates repeated and refracted.⁹ The crisis in Ethiopia, as Theo Williams notes in recent work, dramatized the complex interplay between “fascism, war, capitalism, and colonialism,” and suggested conflicting paths for movements that were in principle opposed to all these things.¹⁰ One approach, represented by “Popular Front” strategies, supported League sanctions against Italy as part of a broader effort to counter the rise of European fascism by building left-liberal coalitions and interstate alliances across the Soviet-capitalist divide.¹¹ A countervailing project, represented by the leadership of Britain’s Independent Labour Party, opposed economic warfare of any kind—whether through the League or through non-state strikes and boycotts—in response to the invasion.¹² In this conflict between two rival dictators with the British Empire in the middle, the argument went, there was no need to further pound the drums of war: it would be “criminal if Europe [were] allowed to become again one vast battlefield.”¹³ You could say this was the same collective security debate, but replayed through the politics and strategy

⁶ See, e.g., MULDER, *supra* note 3, at 214.

⁷ *Id.* at 216–20.

⁸ Edwin Borchard, Book Review, 33 COLUM. L. REV. 552, 553 (1933) (reviewing NICHOLAS MURRAY BUTLER, *BOYCOTTS AND PEACE* (Evans Clark ed. 1932)). For summaries of these debates from diverging perspectives, see OONA A. HATHAWAY & SCOTT J. SHAPIRO, *THE INTERNATIONALISTS: HOW A RADICAL PLAN TO OUTLAW WAR REMADE THE WORLD 168–74* (2018); STEPHEN WERTHEIM, *TOMORROW THE WORLD: THE BIRTH OF U.S. GLOBAL SUPREMACY* 15, 32–35 (2020).

⁹ My understanding of these debates owes a great deal to THEO WILLIAMS, *MAKING THE REVOLUTION GLOBAL: BLACK RADICALISM AND THE BRITISH SOCIALIST MOVEMENT BEFORE DECOLONISATION* (2022).

¹⁰ Theo Williams, *Collective Security or Colonial Revolution? The 1938 Conference on Peace and Empire, Anticolonialism, and the Popular Front*, 32 TWENTIETH CENTURY BRIT. HIST. 325, 327 (2021).

¹¹ *Id.*

¹² WILLIAMS, *supra* note 9, at 85–97.

¹³ *Id.* at 93 (quoting Independent Labour Party MP James Maxton).

of the European Left: economic sanctions are either a tool for countering fascist aggression and securing a larger peace, or they are the path toward a hell of endlessly warring empires.

One must think that, had we lived at that time, at least some of us would have found these options stifling. Must it be that we either accommodate ourselves to the League and its system of collective security—embrace its paeans to peace and ignore its accommodation of empire—to resist the greater enemy, or we adopt a stance of studied neutrality in the face of the spreading darkness? Do any of these possible worlds provide a meaningful chance of resisting fascism, imperial capitalism, war, or colonialism?

Surely, if we were transported from the present day, we would be caught up short by one prominent lawyer's defense of the system of neutrality by asserting that "[i]t was the abolitionists, you know, who were largely responsible for the Civil War. It is the abolitionists of neutrality who will probably have a lot to do with the next war. In a paroxysm of righteousness they will fight to get us into it."¹⁴ It is likely only a coincidence that 1935, the year this statement was made, would see the publication of a canonical work devoted to correcting the myths and propaganda of America's own convulsive history, and to reexamining Reconstruction as a repurposing of military tools and offices, however imperfectly and tragically, to emancipatory ends.¹⁵ A coincidence, perhaps, but a suggestive one.¹⁶

As it happens, even in 1935, there were still other worlds than these. Cyril Lionel Robert James arrived in England in 1932, and over the next three years his politics would move steadily leftward, embracing socialism, Trotsky, and Pan-Africanism.¹⁷ When Italian forces first invaded Ethiopia, James initially joined with the International African Friends of Ethiopia in demanding "that the League of Nations take measures to restrain Italy from this gross infringement of international law," but he soon disavowed this stance.¹⁸ The League, James argued, provided little but a smokescreen for Britain's imperial interests: "Once British interests are no longer threatened . . . , they have no more interest in the League than they had when Japan stole a large piece of China."¹⁹ Empowering the League, through sanctions or otherwise, would only empower the British and the French, and they "have shown the Negro

¹⁴ *First Session: General Discussion*, 27 AM. SOC'Y INT'L L. PROC. 55, 62 (1933) (comments of Edwin Borchard).

¹⁵ See W. E. B. DU BOIS, *BLACK RECONSTRUCTION IN AMERICA 1860-1880*, at 186, 219 (1935).

¹⁶ Cf. CEDRIC J. ROBINSON, *BLACK MARXISM: THE MAKING OF THE BLACK RADICAL TRADITION* 313 (1983) (framing the emergence of Black radical thought as a response to the limited perspectives of their European comrades).

¹⁷ See *id.* at 251–57.

¹⁸ WILLIAMS, *supra* note 9, at 83.

¹⁹ C. L. R. JAMES, *Abyssinia and the Imperialists*, in *THE C. L. R. JAMES READER* 63, 65 (Anna Grimshaw ed., 1992).

only too plainly that he has got nothing to expect from them but exploitation.”²⁰

At the same time, James reserved some of his strongest words for members of the leftist Independent Labour Party (ILP) who opposed not only League sanctions, but also the “workers’ sanctions” of independent strikes and boycotts.²¹ The ILP leadership, through some maneuvering, had managed to convince a majority of its membership to oppose workers’ sanctions, a move that presaged James’s break with the Party.²² James had instead argued that workers’ sanctions, independent of the League or the system of states and empires, were in fact a necessary counter to fascist aggression.²³ This was, as all arguments about sanctions are, in part a tactical argument and in part an ideological one. But James’s argument was also about power and organization. As the news of Italian aggression broke in Europe, James staked out the position that “the greater the crisis the more the working class must guard its independence.”²⁴ Workers’ sanctions, James argued, “would create alliances between European and colonized workers in preparation for the coming world war and the political revolutions it would inevitably unleash.”²⁵

Italy’s victory in Ethiopia in 1936 may have seemed to bring an end to these imagined worlds, but in a way each faction obtained a fragment of what it had sought. The world war that soon followed—or was already under way, depending on who you ask²⁶—would result in a settlement that firmly cemented sanctions in the architecture of world order, both in the Charter of the United Nations and in the laws of powerful states.²⁷ And though neutrality

²⁰ *Id.* at 66.

²¹ WILLIAMS, *supra* note 9, at 89–90, 100.

²² *Id.* at 91–94.

²³ In *Abyssinia and the Imperialists*, for example, James writes:

The only thing to save Abyssinia is the efforts of the Abyssinians themselves and action by the great masses of Negroes and sympathetic whites and Indians all over the world, by demonstrations, public meetings, resolutions, financial assistance to Abyssinia, strikes against the export of all materials to Italy, refusal to unload Italian ships etc.

Mussolini, the British government and the French have shown the Negro only too plainly that he has got nothing to expect from them but exploitation, either naked or wrapped in bluff. In that important respect this conflict, though unfortunate for Abyssinia, has been of immense benefit to the race as a whole.

JAMES, *supra* note 19, at 66.

²⁴ C. L. R. James, *The Workers and Sanctions*, NEW LEADER, Oct. 25, 1935, <https://www.marxists.org/archive/james-clr/works/1935/10/sanctions.htm>.

²⁵ GETACHEW, *supra* note 2, at 69; see also CHRISTIAN HØGSBJERG, C. L. R. JAMES IN IMPERIAL BRITAIN 89–100 (2014).

²⁶ See, e.g., Mary Dudziak, *Law, War, and the History of Time*, 98 CAL. L. REV. 1669, 1687–88 (2010).

²⁷ See MULDER, *supra* note 3, at 291–97.

was largely consigned to the dustbin of legal history, the aims of neutrality advocates find an echo in the arguments of postwar free-trade liberals, for example, who hoped that trade law might constrain economic warfare and preserve the peace.²⁸ And today's human rights organizations and advocates continue to debate the wisdom and relative benefits of economic sanctions in pursuit of global justice, albeit often in a technocratic register that fundamentally lacks the revolutionary and overtly worldmaking tenor of the earlier age.²⁹

And what of C. L. R. James and his unrealized call for workers' sanctions to solidify the bonds between the European working class and the colonial subject? This moment, as Getachew notes, was one of several that led the radicals of the Black Atlantic to break from the Communist International and forge a new Pan-Africanism in opposition to the existing world order.³⁰ Williams's history turns our attention back to the mid-1930s, showing that the debate over sanctions and Ethiopia in metropolitan London helped forge a broader "transnational network of anticolonialists," including key figures like Kwame Nkrumah, who would later articulate a revolutionary vision of anticolonialism.³¹ This global movement would not overthrow capitalism, as James and many others may have wanted. But, Williams reminds us, this movement's ultimate success in the anticolonialist project "represents perhaps the left's most significant victory of the twentieth century."³² The worldmaking projects of anticolonialism were, in other words, descendants of this moment in history.

III. 1961–1986

If sanctions—whether by workers, states, or empires—are tools for worldmaking, then it serves to ponder the world that modern sanctions have made. The period of decolonization redrew the map of the world in profound ways. Where once much of the world was a network of empire and territory, today the surface of the globe is carved up into nearly two hundred formally sovereign states.³³ Each of these states is recognized to have *de jure* if not *de*

²⁸ See, e.g., Michael J. Hahn, *Vital Interests and the Law of GATT: An Analysis of GATT's Security Exception*, 12 MICH. J. INT'L L. 558 (1991).

²⁹ See, e.g., Aryeh Neier, *Do Economic Sanctions in Response to Gross Human Rights Abuses Do Any Good?*, JUST SEC. (Apr. 29, 2021), <https://www.justsecurity.org/75908/do-economic-sanctions-in-response-to-gross-human-rights-abuses-do-any-good>.

³⁰ GETACHEW, *supra* note 2, at 69–70.

³¹ Williams, *supra* note 10, at 332–33.

³² *Id.* Williams hastens to add that, naturally, this was not a victory of the left alone: while Nkrumah and other members of this network, like Jawaharlal Nehru, were leftists, this label surely does not attach to all successful anticolonial movements or leaders. *See id.* at 333 & n.25.

³³ See generally RAYMOND F. BETTS, *DECOLONIZATION* (1998).

facto equality on the international plane and exclusive authority within its own territory.³⁴ Sovereignty may not have been the primary goal of the anticolonial worldmakers, as Getachew persuasively argues, but it was an important achievement nonetheless.³⁵ And, after the demise of these worldmaking projects in the late twentieth century, sovereignty was an aspect of world order that provided both an ideal to be achieved and a powerful defensive weapon.³⁶

Economic sanctions, though, posited a different kind of world order from the one that we see on the map. This was recognized almost from the very beginning. In his classic work, Frantz Fanon observed that the process of decolonization often involved “the colonizer withdrawing his capital and technicians and encircling the young nation with an apparatus of economic pressure.”³⁷ Lest the reference to economic sanctions be missed, Fanon illustrates this point with a discussion of the U.S. economic embargo against Cuba, then still in its early days.³⁸

That embargo, which remains in place today, would provide one prototype for the more modern use of sanctions under the International Emergency Economic Powers Act (IEEPA) of 1977.³⁹ Other countries adopted their own sanctions laws.⁴⁰ And sanctions were not the exclusive province of the Global North, as the OPEC oil embargo and price hikes of 1973 “signaled what the

³⁴ An entire body of excellent critical work is dedicated to showing how international law in the decolonial period managed to preserve or replicate older formations of empire, hierarchy, and unequal status, even as the law also provided a meaningful vocabulary for national sovereignty and independence. See, e.g., NTINA TZOUVALA, *CAPITALISM AS CIVILISATION: A HISTORY OF INTERNATIONAL LAW* (2020); SUNDHYA PAHUJA, *DECOLONISING INTERNATIONAL LAW: DEVELOPMENT, ECONOMIC GROWTH, AND THE POLITICS OF UNIVERSALITY* (2011); GERRY SIMPSON, *GREAT POWERS AND OUTLAW STATES: UNEQUAL SOVEREIGNS IN THE INTERNATIONAL LEGAL ORDER* (2004); ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* (2005).

³⁵ GETACHEW, *supra* note 2, at 14–36.

³⁶ For discussions of the issue from different perspectives, compare MOHAMMED AYOUB, *THE THIRD WORLD SECURITY PREDICAMENT: STATE MAKING, REGIONAL CONFLICT, AND THE INTERNATIONAL SYSTEM* (1995), with B. S. Chimni, *International Institutions Today: An Imperial Global State in the Making*, 15 EUR. J. INT’L L. 1 (2004).

³⁷ FRANTZ FANON, *THE WRETCHED OF THE EARTH* 53–54 (1961) (Richard Philcox trans., 1963).

³⁸ *Id.* at n.128. On the development of the embargo from 1959 to 1963, see generally PATRICK J. HANEY & WALT VANDERBUSH, *THE CUBAN EMBARGO: THE DOMESTIC POLITICS OF AN AMERICAN FOREIGN POLICY* 11–18 (2005).

³⁹ See, e.g., ANDREAS F. LOWENFELD, *INTERNATIONAL ECONOMIC LAW* 892–93 (2d ed. 2008).

⁴⁰ Barry E. Carter, *International Economic Sanctions: Improving the Haphazard U.S. Legal Regime*, 75 CAL. L. REV. 1159, 1167 & n.12 (1987) (“The frequent use of these sanctions by many countries constitutes persuasive evidence that no clear norm exists against them in customary international law.”).

power of collective action in the international sphere might accomplish,” even as they imposed significant pain in the Third World.⁴¹

If we redrew the map to take account of Fanon’s circles of economic pressure, it might look radically different, with some states enjoying outsized freedom to move while others are squeezed from all sides. The position of the Third World vis-à-vis this map would be complex, even seemingly to be contradictory.⁴² On the one hand, some of the same countries that condemned Western economic coercion also participated in the Arab oil embargo.⁴³ Ibrahim F. I. Shihata, then the Legal Adviser for the Kuwait Fund for Arab Economic Development, argued forcefully in the pages of the *American Journal of International Law* that, if the law could really preclude weaker states from using the tools of economic warfare, this “could not serve the interests of international justice. It would only help the development of what President Roosevelt once described as ‘a one-way international law which lacks mutuality in its observance and therefore becomes an instrument of oppression.’”⁴⁴ On the other hand, Third World states often resisted campaigns of economic pressure by the West.⁴⁵ In disputes over the United States embargo against Nicaragua a decade later, for example, many states insisted that the U.S. measures violated principles of international law, and that “a small country with modest resources” like Nicaragua could not possibly threaten U.S. security.⁴⁶ Perhaps these countries were seeking their own “one-way international law”—a law that allows collective action by the weak against the strong, and affords protection from the reverse?

It was possible, of course, that international law provided just this means of resistance. The United Nations Charter recognizes the sovereign equality of all member states, requires the settlement of disputes by peaceful means, and recognizes a domain of matters “essentially within the domestic jurisdiction” of every state.⁴⁷ The General Assembly later asserted that these principles entailed the obligation not to intervene in matters within the domestic jurisdiction of a state, including the requirement not to “use or encourage the use of economic, political or any other type of measures to coerce another

⁴¹ GETACHEW, *supra* note 2, at 169–70.

⁴² See, e.g., Stephen C. Neff, *Boycott and the Law of Nations: Economic Warfare and Modern International Law in Historical Perspective*, 59 BRIT. Y.B. INT’L L. 113, 144–45 (1989).

⁴³ *Id.*

⁴⁴ Ibrahim F. I. Shihata, *Destination Embargo of Arab Oil: Its Legality Under International Law*, 68 AM. J. INT’L L. 591, 626 (1974); see also Umut Özsu, *Hydrocarbon Humanitarianism: Ibrahim Shihata, ‘Oil Aid’, and Resource Sovereignty*, 23 J. HIST. INT’L L. 137, 142–43 (2020).

⁴⁵ Neff, *supra* note 42, at 135–44.

⁴⁶ See, e.g., *Minutes of Meeting Held in the Centre William Reppard on 29 May 1985*, GATT Doc. C/M/188, at 6 (June 28, 1985) (comments of Peru).

⁴⁷ U.N. Charter art. 2.

State in order to obtain from it the subordination of the exercise of its sovereign rights.”⁴⁸ Similar prohibitions on coercion can be found in regional treaties, such as the Charter of the Organization of American States.⁴⁹ The notion of “coercion,” as a general matter, is elastic and subject to influence by the relevant context.⁵⁰ In the right hands, then, the concept of non-intervention could become a defensive shield against the overwhelming economic power of the West, while preserving the sovereign rights of Third World states to engage in collective economic action.

International law, then, might be leveraged to right the map, to make the forces of economic pressure match more closely the borders of sovereign states that exist in theory. This insistence on domestic jurisdiction and sovereignty was not exactly postcolonial worldmaking, but maybe it could prevent economic sanctions from unmaking a world of sovereign equals that had only just come into existence. This is the route Nicaragua attempted before the International Court of Justice, arguing that the United States’ comprehensive embargo under IEEPA constituted “indirect” intervention in the states’ affairs.⁵¹ The Court disagreed, finding that it was “unable to regard such action on the economic plane . . . as a breach of the customary-law principle of non-intervention.”⁵² While the embargo was found to breach a commercial treaty between the two countries, the Court’s ruling could be seen to have effectively foreclosed recourse to the customary principle of non-intervention even for crippling economic sanctions.⁵³ Although there is nothing inevitable or particularly sacred about the ICJ’s ruling, it remains a point of departure for

⁴⁸ G.A. Res. 2625 (XXV), Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States in Accordance with the Charter of the United Nations, at 123 (Oct. 24, 1970). On the status of this declaration as law, see, most recently, Mohamed Helal, *On Coercion in International Law*, 52 N.Y.U. J. INT’L L. & POL. 1, 58–59 (2019).

⁴⁹ Charter of the Organization of American States arts. 19–20, Apr. 30, 1948, 2 U.S.T. 2394, 119 U.N.T.S. 3.

⁵⁰ Cf. Helal, *supra* note 48, at 70–74 (discussing varying approaches to coercion).

⁵¹ Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, ¶ 125 (June 27).

⁵² *Id.* ¶ 245.

⁵³ Even if we take this decision as precedential, its reach is not entirely clear. On the one hand, the decision effectively blessed “the most common, and potentially most severe, economic actions that can be employed against a state.” Maziar Jamnejad & Michael Wood, *The Principle of Non-Intervention*, 22 LEIDEN J. INT’L L. 345, 370 (2009). On the other hand, the Court’s ruling “appears to be saying . . . that the particular acts at issue in the case did not amount to intervention, which is not to say that they could not in another scenario.” *Id.* at 371. Jamnejad & Wood, for example, imagine that “States that are dependent on aid from one state or conduct their trade almost exclusively with that state may find it easier to argue that the imposition of economic measures against them was coercive and thus illegal.” *Id.* But, in its extremity, even this imagined future case underlines the breadth of the ICJ’s dictum.

addressing economic sanctions today.⁵⁴ The map, it seems, would not be redrawn this way, at least not then.

IV. 2001–2021

The sanctionists, though, were not finished remaking the world. The collapse of the Soviet Union in 1989 heralded a suddenly mobilized Security Council, which embarked in the 1990s on its “sanctions decade” of unprecedented activity.⁵⁵ But it was arguably the response to the attacks of September 11, 2001, and the inauguration of the global war on terror that had the biggest impact. By this point, it had become clear that the comprehensive, state-based trade embargoes of old were cumbersome and liable to cause widespread death and poverty, precipitating their own humanitarian crises.⁵⁶ At the same time, the new focus on non-state actors, such as terrorist groups, criminal organizations, drug traffickers, and hackers suggested a new approach. This led to the widespread adoption of “targeted sanctions”: asset freezes and other measures targeted to specific regime leaders, human rights violators, suspected terrorists or criminals, and their associated corporations and organizations.⁵⁷

From some perspectives, the world according to targeted sanctions does not look much like a geographic map at all, but a network.⁵⁸ This is a world

⁵⁴ See, e.g., *id.* at 370 (beginning with the Friendly Relations declaration and the *Nicaragua* case); Helal, *supra* note 48, at 83 (arguing that the ICJ’s approach was inappropriate given the facts).

⁵⁵ DAVID CORTRIGHT & GEORGE A. LOPEZ, *THE SANCTIONS DECADE: ASSESSING UN STRATEGIES IN THE 1990s* (2000).

⁵⁶ On these effects, see generally JOY GORDON, *INVISIBLE WAR: THE UNITED STATES AND THE IRAQ SANCTIONS* (2010).

⁵⁷ See, e.g., Daniel W. Drezner, *Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice*, 13 INT’L STUDS. REV. 96 (2011).

⁵⁸ Anne-Marie Slaughter’s description of this world is instructive, though perhaps not as sunny as it was initially presented:

Stop imagining the international system as a system of states—unitary entities like billiard balls or black boxes—subject to rules created by international institutions that are apart from, “above” these states. Start thinking about a world of governments, with all the different institutions that perform the basic functions of governments—legislation, adjudication, implementation—interacting both with each other domestically and also with their foreign and supranational counterparts. States still exist in this world; indeed, they are crucial actors. But they are “disaggregated.” They relate to each other not only through the Foreign Office, but also through regulatory, judicial, and legislative channels.

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[This view makes] it possible to imagine a genuinely new set of possibilities for a future world order. The building blocks of this order

crisscrossed by likeminded, or at least grudgingly cooperative, financial regulators in jurisdictions across the world, supported by law enforcement officers and by the private sector, including compliance departments in banks, financial institutions, and multinational companies.⁵⁹ State power does not disappear—the state does not “retreat,” exactly⁶⁰—so much as it moves through these channels.⁶¹ This was rocky at first, but it has all become somewhat routine: state officials, in Edoardo Saravalle’s words, upload .pdf files to government websites, setting off a chain reaction of investigations, asset freezes, litigation, and even prosecutions.⁶² We have sent the bureaucracy to war.⁶³ And the warriors have come back as financial regulators.⁶⁴

This new networked reality changed the landscape of power relationships once again. As Saravalle argues, these new sanctions are not easily assimilated to the older “national security lens,” wherein frozen assets were meant to be held as leverage for an eventual settlement with the targeted adversary.⁶⁵ Instead of Fanon’s ring of economic pressure around pariah states, contemporary financial sanctions form part of a web of “global financial regulation,” which seeks to directly target and address “non-state global problems” such as terror finance, human trafficking, or cyber-crime.⁶⁶ The sanctions on Russia

would not be states but parts of states: courts, regulatory agencies, ministries, legislatures. The government officials within these various institutions would participate in many different types of networks, creating links across national borders and between national and supranational institutions. The result could be a world that looks like the globe hoisted by Atlas at Rockefeller Center, crisscrossed by an increasingly dense web of networks.

ANNE-MARIE SLAUGHTER, *A NEW WORLD ORDER* 5–6 (2004).

⁵⁹ See, e.g., JUAN C. ZARATE, *TREASURY’S WAR: THE UNLEASHING OF A NEW ERA OF FINANCIAL WARFARE* (2013).

⁶⁰ Thus, rather than thinking of a binary between state power and market power, it may help to think about these as being in a reflexive relationship. On this view, it is not necessary or even helpful to resolve the question whether, for example, sanctions brought about “the end of apartheid and constitutional reform” in South Africa. See SUSAN STRANGE, *THE RETREAT OF THE STATE* 28 (1996).

⁶¹ Cf. Stavros Gadinis, *Three Pathways to Global Standards: Private, Regulator, and Ministry Networks*, 109 *AM. J. INT’L L.* 1, 28–32 (2015) (describing the Financial Action Task Force).

⁶² Edoardo Saravalle, *Bargaining Chip?*, PHENOMENAL WORLD (Mar. 9, 2022), <https://www.phenomenalworld.org/analysis/bargaining-chip> [hereinafter Saravalle, *Bargaining Chip?*].

⁶³ See David Zaring & Elena Baylis, *Sending the Bureaucracy to War*, 92 *IOWA L. REV.* 1359 (2007).

⁶⁴ Edoardo Saravalle, Note, *Recasting Sanctions and Anti-Money Laundering: From National Security to Unilateral Financial Regulation*, 2022 *COLUM. BUS. L. REV.* 550 [hereinafter Saravalle, *Recasting*].

⁶⁵ *Id.* at 580–88.

⁶⁶ *Id.* at 588–93.

following its invasion of Ukraine may be an exception to this new paradigm, or they may not be.⁶⁷ Either way, the past twenty years of economic sanctions have seen the emergence of a form of global regulation that extends state power for different purposes, according to different logics, and into different places than the economic statecraft of old.⁶⁸

Again, international law might have been used to reimpose the borders of the map onto this new global reality, but it has been largely ineffective at doing so. Consider U.S. sanctions. Although the projection of U.S. financial regulation abroad might be resisted as an impermissible excess of state jurisdiction, these arguments have not served to challenge the core of this new world order.⁶⁹ There are many reasons for this. First, much of the power of U.S. sanctions relies on regulating and restricting access to critical nodes within the international financial network—nodes which are under the United States' jurisdiction and control.⁷⁰ These “access restrictions” appear to international law as manifestations of state sovereignty and are difficult to recast as exercises of extraterritorial jurisdiction.⁷¹ This means, second, that the disputes between the U.S. and many other major economies (such as the U.K. and Europe) over what is a permissible exercise of jurisdiction are relatively narrow, conceptually speaking, even when of hefty economic significance.⁷² Third, in extreme cases where countries do resist by adopting so-called “blocking statutes” prohibiting compliance with U.S. sanctions, these have been of limited practical effect.⁷³ In short, if one is concerned with unmaking or remaking world order, this fight about jurisdiction is only nibbling around the edges, unless it is dramatically reframed.

The same can be said for the great dispute concerning the Security Council's failure to afford sufficient process to sanctioned persons.⁷⁴ The failure of the Council to afford basic procedural protections before placing individuals on sanctions lists has indeed been troubling, and similar concerns arise

⁶⁷ See Saravalle, *Bargaining Chip?*, *supra* note 62.

⁶⁸ See, e.g., Kanishka Jayasuriya, *Struggle over Legality in the Midnight Hour: Governing the International State of Emergency*, in *EMERGENCIES AND THE LIMITS OF LEGALITY* 360 (Victor V. Ramraj ed., 2008).

⁶⁹ See, e.g., Tom Ruys & Cedric Ryngaert, *Secondary Sanctions: A Weapon Out of Control? The International Legality of, and European Responses to, US Secondary Sanctions*, *BRIT. Y.B. INT'L L.* (2020).

⁷⁰ See Henry Farrell & Abraham L. Newman, *Weaponized Interdependence: How Global Economic Networks Shape State Coercion*, *INT'L SEC.*, Summer 2019, at 42.

⁷¹ Ruys & Ryngaert, *supra* note 69.

⁷² See *id.* (highlighting disputes concerning matters such as the regulation of foreign corporate affiliates, the control of “re-exports,” and the prosecution of foreign banks for aiding and abetting the evasion of U.S. sanctions).

⁷³ Saravalle, *Recasting*, *supra* note 64, at 569–70.

⁷⁴ See, e.g., Devika Hovell, *Due Process in the United Nations*, 110 *AM. J. INT'L L.* 1, 9–10 (2016).

frequently in national and EU law.⁷⁵ But, from a worldmaking perspective, even a robust due process requirement for sanctions listings would not so much challenge the new world order that sanctions have made, but reaffirm it. After all, what does a global regulatory regime need more for its legitimacy than an affirmation that it respects the due process of all it regulates?⁷⁶ Other rights-based attacks on sanctions—such as those grounded in economic rights or the right to development—may have much more far-reaching implications, but so far they have had little blunting effect on the emergence of the present order of things.⁷⁷

V. 2035–2036

Sanctions may not be the reason we remade our world, but at each of these moments they were important tools for those worldmaking projects. In the prewar period, the rise of sanctions and other collective security practices heralded a break from the law of neutrality and the emergence of the modern prohibition on aggression. In the postwar years, the United States and its allies refashioned economic sanctions as tools of political pressure in the Cold War and the global contest for influence in the Third World. And now, in the twenty-first century, sanctions have emerged as the bleeding edge of a global regulatory order—a regulatory paradigm that overlays, if not entirely displaces, their earlier role in state-to-state conflicts.

The foregoing time slices, I want to suggest, also demonstrate that thinking of sanctions as tools for worldmaking has descriptive and normative benefits. As a descriptive matter, worldmaking focuses our attention on whom sanctions empower, rather than the discrete policy goals they seek to accomplish or the values they express. This turns our attention away from specific sanctions programs, and it focuses us on the legal, political, and economic architecture that supports them and that shapes and is shaped by them. In a similar way, our normative evaluation of a given sanctions program is not limited to the (still very important) question of whether the program will “work” and the (far less important) question of whether it expresses the “right” values. We are invited instead to ask who is empowered by the order sanctions create, and whether a change in sanctions practice implies a positive change

⁷⁵ See Elena Chachko, *Foreign Affairs in Court: Lessons from CJEU Targeted Sanctions Jurisprudence*, 44 *YALE J. INT’L L.* 1 (2019).

⁷⁶ Cf. Benedict Kingsbury, Nico Krisch & Richard B. Stewart, *The Emergence of Global Administrative Law*, 68 *L. & COMTEMP. PROBS.* 15 (2005).

⁷⁷ See generally Idriss Jazairy, *Unilateral Economic Sanctions, International Law, and Human Rights*, 33 *ETHICS & INT’L AFFS.* 291 (2019).

in the distribution of global power. In other words, worldmaking invites us to apply a “power lens” to the problem of economic sanctions.⁷⁸

From the present vantage point, it seems harder than it may have in 1935 to imagine alternative possible worlds, or at least bright ones. It seems clear enough that the world of global financial regulation inaugurated in 2001 is fracturing into something built on competition and alliances.⁷⁹ In response to Russia’s invasion of Ukraine, the United States and Europe went to work chipping away at the remaining vestiges of the old principles of neutrality, which had been squirreled away and repurposed as organizing norms of the international financial system. These included, for example, the norm that networks for international financial flows were not to be politicized or roped into geostrategic conflict.⁸⁰ This norm was bent after the September 11 attacks when the SWIFT network was used to trace the financing of terrorist organizations, and it was broken in 2012 when the U.S. and the EU pressured SWIFT to block access for Iranian banks.⁸¹ But in 2022, the United States and Europe sent an unequivocal signal that these networks were going to be weapons and battlegrounds in international strategic conflicts, not safe havens from them.⁸² This is giving rise to concerted—and to date unrealized—efforts by China and Russia to find ways around the West’s control over the financial architecture, either through the construction of their own payment systems or through technological solutions like cryptocurrency.⁸³

These moves and countermoves suggest a fracturing of the global order into overlapping and partly competing regulatory systems. This is not necessarily a bad thing. The fracturing of policy ideas and regulatory power along regional, transnational, and intra-national lines can be generative of new ideas, or it can lead to the recovery of lost alternatives.⁸⁴ And there is no shortage of new ideas. For instance, the Russian invasion of Ukraine suggests that the vast network of surveillance and enforcement mechanisms once designed to trace

⁷⁸ Cf. Jocelyn Simonson, *Police Reform Through a Power Lens*, 130 YALE L.J. 778 (2021).

⁷⁹ See, e.g., Josep Borrell, High Representative of the EU for Foreign & Sec. Pol’y, EU Ambassadors Annual Conference 2022: Opening Speech (Oct. 10, 2022), https://www.eeas.europa.eu/eeas/eu-ambassadors-annual-conference-2022-opening-speech-high-representative-josep-borrell_en.

⁸⁰ See, e.g., SUSAN V. SCOTT & MARKOS ZACHARIADIS, THE SOCIETY FOR WORLDWIDE INTERBANK FINANCIAL COMMUNICATION (SWIFT): COOPERATIVE GOVERNANCE FOR NETWORK INNOVATION, STANDARDS, AND COMMUNITY 114 (2014) (noting SWIFT’s historical “status as a neutral infrastructure that serves the global financial community”).

⁸¹ Farrell & Newman, *supra* note 70, at 66–70.

⁸² See, e.g., Adam S. Posen, *The End of Globalization?*, FOREIGN AFFS. (Mar. 17, 2022), <https://www.foreignaffairs.com/articles/world/2022-03-17/end-globalization>.

⁸³ See, e.g., Barry Eichengreen, *What Money Can’t Buy: The Limits of Economic Power*, FOREIGN AFFS., July/August 2022, at 64.

⁸⁴ See, e.g., Harlan Grant Cohen, Editorial Comment, *Multilateralism’s Life Cycle*, 112 AM. J. INT’L L. 47 (2018).

terrorism financiers and punish pariah states can now be repurposed to hunt down the assets of wealthy Russian businessmen in Vladimir Putin's inner circle.⁸⁵ These so-called "oligarchs" long took advantage of the same legal networks that Western billionaires have used to shield their assets from public knowledge, liability, and state taxes.⁸⁶ It is easy to see how the tools of economic sanctions might be repurposed to "counter oligarchic power and reduce tax evasion."⁸⁷ This could put something like sanctions into the service of redistribution, reparation, and equality.⁸⁸

This seems like a world worth working toward, in part because of the enormous shifts in power it implies. The world that economic sanctions have built emerged over decades of slow, often under-the-radar movements. Exercises of executive power have gone from spectacular to routine, the transnational networks that implement this power have become increasingly dense and professionalized, the language of sanctions increasingly technical, and the practice of sanctions increasingly permanent. For example, the Obama administration, which prominently sought to end the longstanding U.S. embargo of Cuba, expanded other sanctions programs to encompass seemingly permanent emergencies relating to transnational criminal organizations and cybercrime, along with states of emergencies with respect to at least six countries.⁸⁹

Much of this expansion happened without public fanfare, support, or opposition. The absence of any serious and sustained public engagement with economic statecraft can be seen even in the rare moments when this power flares into view. For example, in 2015, the United States imposed financial sanctions on seven Venezuelan officials connected with human rights abuses and corruption.⁹⁰ Consistent with the requirements of U.S. law, the President's order declared that the situation in Venezuela constituted "an unusual and extraordinary threat to the national security and foreign policy of the United

⁸⁵ *U.S. and Allies Launch Joint Task Force to Tackle Russian Oligarchs*, REUTERS (Mar. 16, 2022, 1:34 PM), <https://www.reuters.com/world/us-allies-launch-joint-task-force-tackle-russian-oligarchs-2022-03-16>.

⁸⁶ See, e.g., Thomas Piketty, Opinion, *The Western Elite Is Preventing Us from Going After the Assets of Russia's Hyper-Rich*, THE GUARDIAN (Mar. 16, 2022), <https://www.theguardian.com/commentisfree/2022/mar/16/russia-rich-wealthy-western-elites-thomas-piketty>.

⁸⁷ Nicholas Mulder, *A Leftist Foreign Policy Should Reject Economic Sanctions*, THE NATION (Nov. 20, 2018), <https://www.thenation.com/article/archive/sanctions-economy-foreign-policy>.

⁸⁸ Cf. OLÚFÉMI O. TÁÍWÒ, RECONSIDERING REPARATIONS 179–80 (2022) (identifying targeting tax avoidance as a key strategy for global justice).

⁸⁹ *Declared National Emergencies Under the National Emergencies Act*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/our-work/research-reports/declared-national-emergencies-under-national-emergencies-act> (Feb. 17, 2023).

⁹⁰ Exec. Order No. 13692, 80 Fed. Reg. 12747 (2015). By way of disclosure, the author of this Article was at the time acting as outside counsel to the Republic of Venezuela in unrelated matters not affected by this round of sanctions.

States.”⁹¹ Venezuelan President Nicolás Maduro seized on this boilerplate language, suggesting in a speech that the United States was preparing an invasion of the country.⁹² In response, the government effectively argued that these declarations are little more than meaningless formalities, which say little about U.S. national security or foreign policy priorities.⁹³ Press coverage frequently adopted this line, leaving the impression that there was nothing to see here and that Venezuelans were overreacting and missing the “nuances” of U.S. law and foreign policy.⁹⁴

The prevailing message, in other words, was that sanctions and emergency economic powers are routine parts of foreign policy, not worth all the fuss. But we do not have to agree with President Maduro’s statements to admit that he pointed to something important. By seizing upon the rote declarations of security threat and emergency—which have appeared in every IEEPA sanctions order since 1979⁹⁵—Venezuela briefly managed, for the space of

⁹¹ *Id.*

⁹² Nick Miroff & Karen DeYoung, *New U.S. Sanctions Lost in Venezuela’s Translation*, WASH. POST (Mar. 11, 2015), https://www.washingtonpost.com/world/the_americas/new-us-sanctions-lost-in-venezuelas-translation/2015/03/11/f8f3af6a-c7ff-11e4-bea5-b893e7ac3fb3_story.html.

⁹³ See, for example, the first paragraphs of this story reporting the White House line:

WASHINGTON — President Obama has declared or renewed 32 different states of national emergency during his presidency, allowing him to use extraordinary power to impose sanctions, freeze assets or blockade other nations.

Those emergency declarations come with ominous-sounding warnings that foreign governments, terrorist groups or criminal organizations pose an “unusual and extraordinary threat to the national security” of the United States.

But there’s no need to be alarmed, White House officials said this week. Those dire warnings are really just formalities.

....

“This is a language that we use in executive orders around the world,” [Deputy National Security Adviser Ben] Rhodes said. “So the United States does not believe that Venezuela poses some threat to our national security. We, frankly, just have a framework for how we formalize these executive orders.”

Gregory Korte, *White House: States of Emergency Are Just Formalities*, USA TODAY (Apr. 9, 2015), <https://www.usatoday.com/story/news/politics/2015/04/09/pro-forma-states-of-national-emergency/25479553>. To the author’s credit, this story goes on to report critically on the above statements from the White House. *See id.*

⁹⁴ See, e.g., Miroff & DeYoung, *supra* note 92 (“The ‘emergency’ declaration and labeling of Venezuela as a ‘security threat’ are legal formalities used in many other instances when sanctions are applied, administration officials said. The language does not represent a more severe assessment of the Maduro government, they said. But such nuances stood little chance in the meat grinder of Venezuela’s rough political culture, where state-financed and pro-government broadcasters dominate the airwaves.”).

⁹⁵ See Exec. Order No. 12170, 44 Fed. Reg. 65729 (1979).

one news cycle, to rouse public consciousness to the connections between economic sanctions, coercion, force, and American hegemony.⁹⁶ The U.S. government's response, emphasizing merely "*pro forma*" aspects of the process, seem almost transparently to sever those deeper connections and repaint the whole process as a rather dull, technocratic business. After the fuss quickly died down, sanctions once again recovered their "apolitical veneer," which has long served to mask their role in sustaining a hierarchically organized and profoundly unequal global political economy.⁹⁷

If sanctions are to be part of an alternative, redistributive program, such a program would require something that is relatively unprecedented: a social movement that is attuned to the use of this power and is dedicated to seizing the tools of economic statecraft for its own ends. That such a thing seems almost beyond reach is what makes it worth considering. In 1935, C. L. R. James warned that an external crisis and moral outrage are not enough to make an imperial power stop acting imperially; such crises were, instead, the time for the working class to jealously guard its independence by acting and organizing independently.⁹⁸ This redistributive vision of sanctions suggests an alternative vision of economic power that is turned to the aim of global economic justice. I cannot think of any cause more worthy of serious reflection, organization, and action. It is a world worth making.

⁹⁶ Cf. Jose E. Alvarez, *Hegemonic International Law Revisited*, 97 AM. J. INT'L L. 873, 874–78 (2003).

⁹⁷ See Jessica Whyte, *Economic Coercion and Financial War*, J. AUSTL. POL. ECON., Summer 2022/23, at 5.

⁹⁸ See *supra* text accompanying notes 19, 20, 23.