

Summer 2000

Globalization of Culture

Gary Minda

Follow this and additional works at: <https://scholar.law.colorado.edu/lawreview>



Part of the [Law Commons](#)

Recommended Citation

Gary Minda, *Globalization of Culture*, 71 U. COLO. L. REV. (2000).

Available at: <https://scholar.law.colorado.edu/lawreview/vol71/iss3/4>

This Book Review is brought to you for free and open access by the Law School Journals at Colorado Law Scholarly Commons. It has been accepted for inclusion in University of Colorado Law Review by an authorized editor of Colorado Law Scholarly Commons. For more information, please contact rebecca.ciota@colorado.edu.

GLOBALIZATION OF CULTURE

GARY MINDA*

THE COMMANDING HEIGHTS: THE BATTLE BETWEEN GOVERNMENT AND THE MARKETPLACE THAT IS REMAKING THE MODERN WORLD. By *Daniel Yergin & Joseph Stanislaw*. New York, N.Y.: Simon & Schuster. 1998. Pp. 457. \$26.00.

INTRODUCTION

One fine day on South Beach in Miami, I overheard the conversation of a Brazilian talking on a cell phone while sunbathing. I really didn't mean to intrude into his conversation, but then I could not avoid overhearing it either because he was talking loudly only a few feet away from where I had laid out my beach blanket. The Brazilian was actually teleconferencing with several people in Miami, New York, and Chicago for commitments to buy large quantities of "really nice" vintage 1998 red wine from Milan, Italy. I overheard him explain to his telemediated others that he was giving them an opportunity to buy wine at extremely low prices if they agreed to buy within the next hour. He explained that the shipment of wine from Milan was leaving Rome in the next hour and that there were only a few containers of wine not already committed for sale. The shipment was bound for New York and, once it arrived, the price would go up. To take advantage of this opportunity, a commitment had to be e-mailed to the Milan dealer in Rome. Within minutes, the Brazilian had closed the deal with his customers. The Brazilian connected his cell phone to his laptop computer and appeared to send an e-mail message to his Milan wine merchant. The Brazilian then turned to his friends and

* Visiting Professor of Law, University of Miami School of Law; Professor of Law, Brooklyn Law School. Funding for this essay was provided by Brooklyn Law School's faculty research stipend program. This review developed from a paper for a symposium issue on the fundamentals of government and property. See Gary Minda, *Globalization, Decline of Nation-State and Foucault*, in *THE FUNDAMENTAL INTERRELATIONSHIPS BETWEEN GOVERNMENT AND PROPERTY* 151 (Nicholas Mercuro & Warren J. Samuels eds., 1999).

expressed his satisfaction at selling the entire container of wine on the ship leaving Rome that very hour.

In observing this little South Beach vignette, I thought about Daniel Yergin and Joseph Stanislaw's book, *The Commanding Heights: The Battle Between Government and the Marketplace That Is Remaking the Modern World*,¹ which I had read over the summer. Yergin and Stanislaw's book attempts to explain how globalization of markets is transforming our world. Yergin and Stanislaw's focus is on the big picture of transnational corporations, global markets, and major shifts in world politics (such as the collapse of the Soviet Union and the introduction of markets in Communist China). Globalization, however, has also brought about many small changes on the local level that are just as important as the big changes that are the subject of Yergin and Stanislaw's book. My brief encounter with the Brazilian wine merchant on South Beach, for example, presents a vivid example of how globalization is changing even the mundane social practice of going to the beach. You can go to the beach, get a tan, and at the same time conduct business affecting people and events all over the globe. Being "connected" means being able to transact global business at any place and at any time.

Being connected also means that we now have it in our power to transform the meaning of a place—South Beach is no longer just a beach; it is a global office with sand, sunshine, and, of course, lots of people in various stages of undress. The experience of a place is altered by the connection with far distant worlds. In breaking the natural ties of locality to the meaning of things, globalization has altered the way we understand fundamental concepts relied upon in talking about subjects. The idea of a "market," for example, is no longer something that we can define in terms of a specific locality or geographical territory. In the cyberspace of globalization, a market exists in the virtual reality of e-commerce where there are no boundaries of territory or geography. In the virtual marketplace, the market is defined in terms of the number of "hits" on a home page on the internet. Globalization has thus disrupted the common understanding of a market; the concept

1. DANIEL YERGIN & JOSEPH STANISLAW, *THE COMMANDING HEIGHTS: THE BATTLE BETWEEN GOVERNMENT AND THE MARKETPLACE THAT IS REMAKING THE MODERN WORLD* (1998).

of a market is no longer tied to a particular place or locality, but instead is coming to be situated in the virtual reality of electronic communication.

Even our sense of privacy has been fundamentally altered by globalization. We now take for granted that cellular phones, beepers, and other communication devices can be used in public places, even in close proximity to strangers. Cellular phones have altered the previously shared expectation that telephone conversations are private. Hence, while telephone conversations once required the private space of a "public" telephone booth, they now commonly take place in the public spaces of society, and frequently within close proximity to strangers. The mobility of the phone and its new capacity to interface with other world communication systems, especially the internet, has transformed our common understanding of a "telephone." A telephone is becoming a personal information device that we carry with us at all times to remain "connected" to the world. Cell phones have thus facilitated a "life-world" where mobility no longer requires physical travel, and where lack of privacy and physical distance is no longer an obstacle to being "connected."

As I pondered the Brazilian's accomplishments on South Beach, I thought about how faxes, cell phones, laptop computers, and global communication networks have altered the importance of geography or context. Milan and South Beach are no longer separated by ocean and land; they are instead separated by web addresses that are connected by the complex network of digital signals and computational operations of a computer program. Milan and South Beach, like everywhere else, are "connected" to globalization phenomena. Being connected means being in close proximity to the subsystems—economic, political, technological—of the life-world of globalization. In the life-world of globalization, the experience of place is expanded to include connections with people in other distant places. In the life-world of globalization, geography and locality no longer limit what we do, nor define the meaning of our world. Even the mundane experience of going to the beach is interwoven with, and penetrated by, influences and experiences that have their origins in faraway places. "Think globally, act locally" is no longer just a slogan of the Green movement; it is the slogan of the life-world of globalization.

Yergin and Stanislaw's *The Commanding Heights* equates the life-world of globalization with the marketplace activity of transnational corporations in the global economy. Globalization phenomena involve much more than that; globalization is a multidimensional phenomenon, affecting a broad spectrum of issues that include politics, culture, and technology, as well as the economy. The forces that generate globalization involve opposing ideas about the local and the global, universalism and particularism, uniformity and difference. Globalization is not a one-dimensional phenomenon, moving in any particular direction, but rather a contradictory set of ideas that gives meaning to our most local and intimate "worlds" of experience. Globalization is a push-pull dialectic that describes the paradox of living in a place where locality is no longer the defining ground of culture.

Yergin and Stanislaw's *The Commanding Heights* presents an excellent introduction to those who view globalization as the consequence of business strategy. The book fits within the recent literature of corporate business strategy, which has dominated the field in the last few years. One of the leading writers of this school is the Japanese business strategist Kenichi Ohmae who, like Yergin and Stanislaw, argues that government regulation is becoming irrelevant in the global free markets of transnational capitalism.² As a school of thought, business strategy views globalization phenomena as the consequences of business opportunity and free markets. The theory of business strategy fails, however, to tell us much about the life-world of globalization because these are the *effects*, not the *cause*, of the transformation that globalization phenomena represent.

Business strategy theory is a reaction to broader changes that are altering the way we understand our world. What is changing the world is globalization of culture on a grand scale. By "globalization of culture," I mean the complex and multidimensional pressures that are working to give new meaning to what we do and how we understand what we do in even the most commonplace activities like "going to the beach." The experience of going to the beach is given new meaning by ever-new technological wonders that enable beachgoers to transcend the context of the beach by entering into the life-world of a

2. See KENICHI OHMAE, *THE END OF THE NATION-STATE: THE RISE AND FALL OF REGIONAL ECONOMIES* (1995).

global community, independent of geographic territory. Globalization reflects not just an enlargement of economic activity but, more importantly, an enlargement of global cultural practices of production and exchange that are transforming the way we understand our world and our lives. Globalization of culture refers to the way globalization of exchange affects the everyday experiences we rely upon to make sense of our lives and our world. In analyzing globalization as a cultural phenomenon, one discovers how globalization is creating a new cultural code for regulating global market activity.

The idea of globalization of culture is reflected in the advertising text of global corporations like the Ford Motor company and its announcement of its new Lincoln. In introducing the Lincoln to the market, Jacques A. Nasser, president of Ford Automotive Operations, states that the Lincoln is now “designed to travel beyond the borders—beyond the design borders, beyond the geographical borders and beyond the psychological borders—that Lincoln has traditionally operated in.”³ Mr. Nasser’s statement describes the aesthetic of the new world order of the Ford Motor company with its acquisition of the English Jaguar and its worldwide manufacturing system. In the new global order of Ford, markets are designed so that transactions travel beyond borders—beyond the geographic borders and beyond the psychological borders of the “legal-economic nexus” that existed before there was any real awareness of a global marketplace.

The idea of globalization of culture is derived from the work of scholars who have approached globalization phenomena as a new global ethic that is transforming the realms of the political, the economic, and the cultural. Fredric Jameson, for example, associates globalization with the conditions of late capitalism that are considered to be working toward an “untotalizable totality which intensifies binary relations between its parts.”⁴ For the Mexican cultural theorist Néstor García Canclini, globalization is bringing about a sense of cultural *hybridity* in which peasant and urban cultures confront each other and serve to bring about a new hybrid culture that has become

3. Michelle Krebs, *There, on the Autobahn, Could It Be a Lincoln?*, N.Y. TIMES, Apr. 12, 1998, § 12, at 1.

4. FREDRIC JAMESON, *Preface to THE CULTURES OF GLOBALIZATION* xii (Fredric Jameson & Masao Miyoshi eds., 1998).

estranged from any particular local or international culture.⁵ In reviewing the literature on globalization, John Tomlinson argues: "Globalization lies at the heart of modern culture; cultural practices lie at the heart of globalization."⁶ For Tomlinson, this means that "the huge transformative processes of our time that globalization describes cannot be properly understood until they are grasped through the conceptual vocabulary of culture; likewise that these transformations change the very fabric of cultural experience and, indeed, affect our sense of what culture actually is in the modern world."⁷ Such sweeping views about the nature of globalization phenomena have to be compared to the tendency of globalists like Yergin and Stanislaw, who see the globalization as merely business opportunity on a grand scale.

In this review, I will use the term "globalization of culture" to explain how the life-world of globalization is working to create a cultural code for regulating economic, political, and social activity. Part I briefly reviews the fundamental economic changes that Yergin and Stanislaw attribute to governmental policy and transnational corporate action. Part II examines the relationship between globalization and culture, and explains how globalization of culture is in fact changing our world. Part III identifies the nature and limits of the cultural codes of globalization. Part IV then examines and evaluates the cultural implications of Yergin and Stanislaw's nation-state decline thesis. This Part also illustrates how the work of the French social theorist Michel Foucault is relevant to an examination of the cultural code of globalization. Part V analyzes the "new technological-market nexus" that Yergin and Stanislaw believe is responsible for legitimating the global economy. Finally, Part VI explores the dilemmas and contradictions of globalization. This Part presents the view of globalization as a push-pull dialectic of opposed ideas or visions to challenge Yergin and Stanislaw's reductive understanding of globalization as "business opportunity." The Conclusion argues that the meaning of globalization phenomena cannot be fully grasped

5. See NÉSTOR GARCÍA CANCLINI, *HYBRID CULTURES: STRATEGIES FOR ENTERING AND LEAVING MODERNITY* (Christopher L. Chippari & Silvia L. Lopez trans., 1995).

6. JOHN TOMLINSON, *GLOBALIZATION AND CULTURE* 1 (1999).

7. *Id.*

without an understanding of how globalization of culture is changing our understanding of the world.

I. YERGIN AND STANISLAW'S "*COMMANDING HEIGHTS*"

Globalization, a word that has become popular in just the last decade or so, and is now a buzzword in the popular press and in the legal academy, encourages us to ponder the meaning of the transformations that are now occurring in the world. The technology of high-speed computers, fiberoptics, and video transmissions verify the experience that we live in a new world order where the limits of geographic and political borders are unnatural and unnecessary. In the "borderless" world of globalization, even a beach can be the site of transnational activity. The meaning and significance of global phenomena are less clear. The possibility of having connection to faraway places poses contradictory messages about the world. Will connection to distant places lead to greater assimilation and cultural uniformity or will it lead to greater cultural diversity and pluralism? Will globalization lead to greater uniformity in the world or will it lead to greater inequality and difference? Will global markets lead to global brands and uniform consumer tastes or will global markets create more diversity in product choice and consumer tastes? Questions such as these are not easily answered, and thus the meaning of globalization remains a hotly debated topic.

In *The Commanding Heights*, Daniel Yergin and Joseph Stanislaw understand globalization as business opportunity on a grand scale. Their book attempts to persuade the reader that the meaning of globalization can be grasped by considering how transnational capitalism is transforming an economic landscape that had once defined the fundamentals of the relation between private markets and the modern nation-state. Yergin and Stanislaw are global business enthusiasts who see globalization of markets establishing a new set of ideas and opportunities for the twenty-first century. They claim that a new breed of global entrepreneurs is creating a new world order by seizing the market opportunities of a global economy. Globalization phenomena are seen as "dynamism and opportunity on a massive scale," carried along by computers and information technology, creating a "woven world" of "communication, coordination, integration, and contract at a pace and scale of

change that far outrun the ability of any government to manage.”⁸

The main title of the book—*The Commanding Heights*—is taken from a 1922 speech by Lenin on the occasion of the Fourth Congress of the Communist International Convention in St. Petersburg. In November of 1922, the Russian economy had nearly collapsed as a result of a serious depression, and Lenin was forced to initiate a New Economic Policy that permitted, for the first time, a modest resumption of free trade and private markets in the agricultural sector of the economy. Yergin and Stanislaw claim that the phrase “commanding heights” was used by Lenin to defend his new economic policy from communist militants who were then attacking him for turning to capitalist solutions instead of those of state ownership and central planning of communism. In response to his critics, Lenin purportedly declared that the state would remain in control of the “commanding heights”—the most important elements of the Russian economy. The modern meaning of the phrase “commanding heights” has, according to Yergin and Stanislaw, been used to “ensure government control of the strategic parts of the national economy, its major enterprises and industries.”⁹ In the United States, the idea of state control over the “commanding heights” of the economy has meant economic regulation of the national market. Until the 1990s, the decade of globalization, the idea of nation-state control of the “commanding heights” was, according to Yergin and Stanislaw, shorthand for nation-state control over markets.

The subtitle of the book—*The Battle Between Government and the Marketplace That Is Remaking the Modern World*—highlights Yergin and Stanislaw’s other claim that a battle is now raging between the governments of nation-states and the market for control of the “commanding heights” of the “most important elements of the economy.”¹⁰ What is allegedly at stake is whether the nation-state will remain in command or be replaced by a “new marketplace consensus”—a free market in all contexts. In Yergin and Stanislaw’s view, the decline of the nation-state and the corresponding rise of global market phenomena in the 1990s constitute evidence that the market will shape

8. YERGIN & STANISLAW, *supra* note 1, at 14.

9. *Id.* at 12.

10. *Id.*

the emerging new world order by winning the war for control of the commanding heights of the nation-states' power over the economy. The result, according to Stanislaw and Yergin, is a world in which control of the commanding heights over the economy is in the hands of transnational corporations and not nation-states. The book is yet another exposition of Kenichi Ohmae's globalization thesis, which asserts that the nation-state is becoming irrelevant in the "borderless world" of globalization where business strategy and opportunity are the new organizing principles and regulations of a new form of global capitalism.¹¹

Yergin and Stanislaw first attempt to explain the most crucial economic and political changes of globalization since the post-World War I New Deal era. In the introduction, they state that their book is intended to be their "story, a narrative of the individuals, the ideas, the conflicts, and the turning points that have changed the course of economies and the fate of nations over the last half century."¹² The story begins with the final meeting of the Allied leaders at the end of World War II in the Potsdam suburb of Berlin in 1945. Yergin and Stanislaw claim that the Potsdam meeting was the defining point for the economic and political structures that were to give nation-states control over the commanding heights of their economies for the next thirty years.¹³

Yergin and Stanislaw assert that the Potsdam meeting helped to solidify the regime of regulatory reform that had been initiated in America during the New Deal.¹⁴ Yergin and Stanislaw conclude that "[t]hese years were the apogee in the United States of the belief in government knowledge."¹⁵ The last effort to manage the economy of the United States is said to have occurred during the Nixon Administration. The "central economic issue became how to manage the inflation-unemployment trade-offs in a way that was not politically self-destructive; in other words, how to bring down inflation without slowing the economy and raising unemployment."¹⁶ Yergin and Stanislaw claim that Nixon's effort to control inflation and

11. See OHMAE, *supra* note 2, at 5.

12. YERGIN & STANISLAW, *supra* note 1, at 17.

13. See *id.* at 19–21.

14. See *id.* at 51–53, 58–60.

15. *Id.* at 59.

16. *Id.* at 61.

reduce unemployment, as well as the advancement and creation of new regulatory agencies like the Environmental Protection Agency, the Occupational Safety and Health Administration, and the Equal Employment Opportunity Commission, earned his presidency the distinction of being the “last liberal administration.”¹⁷

Yergin and Stanislaw argue that public trust in the government’s ability to manage the economy was put in question during the energy crisis of the 1970s, a time when the Carter Administration felt itself under “siege,” prompting the president to wonder whether “narcissism” was at the heart of America’s economic and political problems.¹⁸ The fall of the Carter Administration and the election of Ronald Reagan represent for Yergin and Stanislaw the outward political indication that “winds were changing” and a new battle for the commanding heights of the economy was about to commence. Yergin and Stanislaw point to the new free market policies in Britain and in Asia as the beginning of a new global critique of nation-state control over the economy. By the 1980s, a new consensus in favor of markets is seen to have replaced the Potsdam consensus in favor of governmental regulation over the economy.¹⁹ In describing changes that have occurred since the 1980s, Yergin and Stanislaw’s story shifts to the narrative of globalization.

Yergin and Stanislaw seek to explain the bewildering pace of change brought about by globalization by considering the way the world looked just a mere decade or two ago. It is at this point that Yergin and Stanislaw’s story shifts to the plot of globalization in the contemporary era. The most fundamental propositions about the economic role of government had been premised upon a world that was still divided by the cold war, by geographic isolation, and by nationalistic themes and policies that had vanished. In the West, debates and controversies about the economic role of government, which had once been a way for Western democracies to define the contours of the modern welfare state, came to be seen as being out of touch with the new realities of the times. We were a world of interrelated economies, where geographic distance was no longer an obsta-

17. *See id.* at 64.

18. *See id.* at 65.

19. *See id.* at 125–55.

cle to trade. The internet was up and running, and the source of power of government and business was defined largely in terms of global connection and technological endowments. Socialism and communism were no longer sharply pitted against liberalism and capitalism.

The "fundamentals" of the economic role of government in the West, which had been concerned with whether private economic power should be subordinated by state regulatory control, is now seen to be an impoverished or boorish way of looking at the world.²⁰ It was assumed that the economic functions of government were invariably in tension with private markets, but that intervention in the private economy was necessary in order to protect the public interest. Nation-states traded with each other and interacted to deal with international relations and issues, but their local economies were thought to be largely disconnected and autonomous.

Today, as Yergin and Stanislaw report, all has completely changed. The Berlin Wall has come crashing down and the Cold War has given way to new political alliances based on transnational forms of private economic activity. Communism and socialism have collapsed and have been transformed by a global market paradigm. Governments are getting out of businesses by privatizing their functions.²¹ The integrated world wide web has shrunk the world, creating a new planetary cyberspace of global proximity for the interplay of economic activities. The technology of this new medium, the global geographic distributions of its users, and the connectivity of its global electronic content, is thought to be immune from nation-state regulation. Where greater distance once made communication progressively more expensive and complicated, it is now increasingly irrelevant.²²

The new imageries of global "closeness," "interconnections," "networks," and "flows" found in the discourse of globalization create the linguistic support for what Yergin and

20. See Walter Adams & James W. Brock, *Government and Competitive Free Enterprise*, in *FUNDAMENTALS OF THE ECONOMIC ROLE OF GOVERNMENT 1* (Warren J. Samuels ed., 1989); see also Andrew Altman, *Power Politics of Economics*, in *FUNDAMENTALS OF THE ECONOMIC ROLE OF GOVERNMENT*, *supra*, at 9.

21. See YERGIN & STANISLAW, *supra* note 1, at 13.

22. See Frances Cairncross, *A Connected World*, *THE ECONOMIST*, Sept. 13, 1997, at S3.

Stanislaw call a “woven world.”²³ Yergin and Stanislaw use the “woven world” metaphor to convey the idea of closeness and connection.²⁴ In the emerging new world order, the “international” is no longer something that is “out there,” “foreign” or “dangerous” to our national identity. What was “local,” and hence “national,” is now incorporated within a discipline that no longer sees the international as being something that is “out there,” something “foreign,” or “dangerous,” to national sovereignty.²⁵ We are brought into “closer contact” by the woven connections of globalization. It is the sense of “closeness” or “proximity” that gives Yergin and Stanislaw reason for believing that, for the first time in history, the world is becoming a single social and economic setting.

Behind these changes are the new global communication technologies that create the “woven world” experience. Yergin and Stanislaw describe how the ever-increasing innovation of global information technology is in fact rendering borders of nation-states “porous,” creating a “woven world” of instantaneous communications and connections.²⁶ They explain how information technology is central to their understanding of globalization:

Information technology is creating a woven world of distinct encounters and instant connections. Knowledge and information do not have to wait. Within, outside, and across organizations and national boundaries, people are tied together, sharing information and points of view, working in virtual teams, bartering goods and services, swapping bonds and currencies, exchanging chatter and banalities, and passing the time. Information of every kind is available. With the establishment of the U.S. Government data Web site in 1997, a ten-year old could gain access to more and better data than a senior official could have done just five years earlier. Libraries are open for business on the Inter-

23. See YERGIN & STANISLAW, *supra* note 1, at 369–71, 373.

24. See TOMLINSON, *supra* note 6, at 3–4 (“Here the connections that affect our lives (for example, the financial networks that tie our bank accounts into the global capitalist market or shared global environmental threats like ‘global warming’ which we confront) are made sense of *as though* they really bring us into closer contact.”).

25. See David Kennedy, *The International Style in Postwar Law and Policy*, 1994 UTAH L. REV. 7, 92; see also Lan Cao, *Toward a New Sensibility for International Development*, 32 TEX. INT’L L.J. 209 (1997).

26. See YERGIN & STANISLAW, *supra* note 1, at 14.

net. Researchers share their results in real time. Activists band together to promote their causes. Would-be terrorists surf for weapon designs. All this is increasingly heedless of the nation-state and outside the traditional structure of organizations.²⁷

What Yergin and Stanislaw are describing in this passage is the experience of global connectivity that is made possible by a “nexus” between information technology and global markets. It is the intersection of information technology and global commerce that is bringing about the “woven world” experience that Yergin and Stanislaw see as transforming our world. The nexus is made possible by the internet revolution in communication and commerce. It is the internet that creates the experience of a borderless world. What makes the internet unlike other information technologies of the past, such as the telephone and telegraph, is that it offers the vast capability of transmitting global information exchanges at extremely low transaction costs based on a *packet switching network*, which enables users to route around blockages and restrictions in the free flow of data.²⁸ The packet switching system, coupled with powerful chip technology, created information storage capability that, in turn, facilitated a new information economy for the non-place of virtual reality. The internet offers a cheap, anonymous communication system within the reach of anyone

27. *Id.* at 369.

28. The packet switching system is the result of the Transmission Control and internet Protocols (TCP/IP) which are the common communication standards that enable networking between computers and thus allow data to be shared without a direct line of communication. See A. Michael Froomkin, *The Internet as a Source of Regulatory Arbitrage*, in *BORDERS IN CYBERSPACE: INFORMATION POLICY AND THE GLOBAL INFORMATION INFRASTRUCTURE* 129, 130 (Brian Kahin & Charles Nesson eds., 1997). TCP/IP creates the packet switching system that makes the internet possible. Froomkin explains how packet switching works by using the following analogy:

It is as if rather than telephoning a friend one were to tape record a message, cut it up into equal pieces, and hand the pieces to people heading in the general direction of the intended recipient. Each time a person carrying tape would meet anyone going in the right direction, he or she would hand over as many pieces of tape as the recipient could comfortably carry. Eventually the message would get where it needed to go.

Id. The decentralized method of transmitting information was a feature of the original design by the Defense Department, which wanted an information system to be capable of surviving nuclear attack. See *id.* at 131.

with a computer equipped with appropriate software codes and an operating system.

The “technological-market nexus” of the internet is bringing about changes in the meaning of the geographic boundaries that define a common culture. Boundaries and geography have united people as a culture. In breaking these bonds, globalization phenomena expose new and ever-complex patterns of unity and disunity between people of the world. As more and more people internalize Yergin and Stanislaw’s “woven world” experience, we will move further away from the bonds of local culture. Global information technology shifts perception and experience to a new virtual reality where physical geography of national boundaries no longer serves to give meaning to the world.

For some, this means there will be more opportunity for realizing connections with other people and other communities. For others, there will be new opportunities to experiment with antisocial and deviant forms of behavior. One can “role play” by assuming a different identity and “act out” behavior that would be forbidden or unacceptable in real space. Chat rooms in cyberspace offer places for indulging in deviant and antisocial conduct. The propensity for the worldwide dissemination of hate speech on the internet also creates new anti-communitarian forms of expression.

As we begin to identify more with the global context, the bonds to the locality of any particular place will grow weaker. The loss of connection to our homes and our common cultures weakens the connection to any particular community. The anonymous nature of internet communication also works to distance people by creating barriers to true intimacy necessary for trust and human connection. The anonymity of the internet creates a form of faceless discourse, which in turn creates a form of alienation, estranging people from each other.²⁹ Yergin and Stanislaw’s cheerful slant on the globalization of market activity fails to recognize its serious cultural downside—namely, the loss of commitment to a real community. Indeed, it is the loss of commitment to the community that gives Yergin

29. John Markoff, *A Newer, Lonelier Crowd Emerges in Internet Study*, N.Y. TIMES, Feb. 16, 2000, at A1 (reporting the results of a survey of internet users, which suggested that “the Internet is leading to a new form of social isolation”).

and Stanislaw reason to believe that the nation-states will be less significant in the future.

What Yergin and Stanislaw fail to see is that the same information technologies, which create the "woven world" experience, can also bring about frightening new opportunities for nation-state control over global information markets. For example, the global technological-market nexus for the first time gives governments of nation-states the technological capability to coordinate nation-state regulatory systems necessary for global regulation. Communications on the internet offer the opportunity for the collection of vast amounts of data regarding economic transactions and information acquisitions from "cookies" or program files copied from the hard disk of an internet user's computer. Any party to a transaction can now record and archive information pertaining to the transaction from the cookie file. If government should find a way to become a silent third party to these transactions, there would be an awesome opportunity for the state to collect vast amounts of information. The information could in turn be used to regulate otherwise private activity. As Michael Froomkin, an expert on the internet, has recently observed: "the Internet could become the mother lode of consumer profile information; parallel developments in the public sphere make it increasingly feasible to monitor what citizens do and where they go. Combine the two, and there is little privacy left."³⁰ The Orwellian specter of "Big Brother" government in the sky would no longer be the subject of fiction; it would be the reality of the everyday global experience. Yergin and Stanislaw never consider this potential, which exists in the collection of web information about individuals compiled through computer-generated dossiers, case histories, and databases. The privacy-free state at the heart of the libertarian conservative ideology, which Yergin and Stanislaw attribute to the free market of globalization, may turn out to be less free and libertarian than they think.

Global communication technologies, in theory, may someday enable nation-states not only to collect more information about the world, but to use that information to control the global economy. Centralized control may be made possible by

30. A. Michael Froomkin, *Flood Control on the Information Ocean: Living with Anonymity, Digital Cash, and Distributed Databases*, 15 J.L. & COM. 395, 480 (1996).

the development of new cryptography codes modeled after the "Clipper Chip," which restricts access to coded information.³¹ The "Clipper Chip" is a device that would be hardwired into phone, fax, and computer systems using a special algorithm to encrypt communication.³² Clipper codes could, in theory, be used to afford government agents exclusive access to private information flows for purposes of tagging unauthorized and forbidden transactions. New developments in encryption technology may someday permit nation-states to take a more active role in regulating the technological-market nexus. The software running the internet could be "hardwired" to permit regulatory control by the government, leading to nation-state control of the digital revolution.³³

Nation-states could also regulate the global information infrastructure by coordinating new regulations over the telephone lines that link the internet, or by developing new encryption codes that permit nation-states to monitor and regulate the information flow on the internet. The internet now operates on the basis of an electronic transmission of signals, which relies upon simple telephone line or cellular/digital technology. Governments of nation-states thus have it within their power to curtail internet communication by curtailing long-distance telephone communication. If government can curtail such transmission, then governments may also seek to regulate information flows indirectly by regulating the technology that telephone companies use to make internet communication possible. Internet communication could be brought under enforcement and regulatory bodies could be created to

31. See James Boyle, *Foucault in Cyberspace: Surveillance, Sovereignty, and Hardwired Censors*, 66 U. CIN. L. REV. 177, 202-04 (1997). The "Clipper Chip" uses a "key escrow" system which permits the government to create a "back door" key to decrypt all communications—phone, fax and computer—linked to the chip. See *id.* at 203. The Clipper Chip encryption system was designed to permit law enforcement officials to have a safe communication system, but the technology could be used domestically by any regulatory authority seeking to control digital communications. See *id.*

32. See A. Michael Froomkin, *The Metaphor is the Key: Cryptography, the Clipper Chip, and the Constitution*, 143 U. PA. L. REV. 709 (1995); Howard S. Dakoff, Note, *The Clipper Chip Proposal: Deciphering the Unfounded Fears that Are Wrongfully Derailing Its Implementation*, 29 J. MARSHALL L. REV. 475, 482-84 (1996).

33. See Boyle, *supra* note 31, at 204 (arguing that "technological changes of the digital revolution are always outside the control of the state seems unproven").

protect the public interest of the nation-state. For example, the 1994 Communications Assistance for Law Enforcement Act³⁴ now requires telephone companies to make "tappability" a design feature of their technology. The legislation allows law enforcement agencies access to a vast amount of data, including the user's name, address, telephone number, telephone toll billing records, and other information previously considered private. The Act is a model that the government could use to gain greater access to internet communication.³⁵

The technologies of globalization thus create new sources of power that can be exploited by nation-states if they choose to take a greater role in shaping the path of globalization. The centers of power are located within the software and operating systems of the computer information systems running the internet and making global communication possible. That technology has been permitted to develop, in part, through the effort of private interests, which have developed by exploiting the technology for private ends. The internet has developed a form of atomistic competition, which, until now, has developed outside the control of organizational bureaucracies, private or public. The decentralized and anonymous features of the technology seem to be outside nation-state control, but in fact the potential for central control exists, should government ever decide to control access, monitor the information flow, or coerce user behavior by using liability or criminal rules.

The "battle" Yergin and Stanislaw see developing between "free" markets and government regulation may therefore be misleading. The battle between government and the market will be fought, but it will not be about free markets versus governmental regulation, as Yergin and Stanislaw assume. The future battle over the internet may involve a fundamental struggle for control over the technology that now "rules" the global information marketplace. As the technology was created by human beings, it only stands to reason that human beings will someday find ways to tame and control it. In the meantime, there are now opportunities for control, and the primary question is whether the control will be exercised by private or public actors.

34. See 47 U.S.C. §§ 1001–1010 (1994 & Supp. III 1997).

35. See Boyle, *supra* note 31, at 203–04.

For example, the software codes and computer programs that now regulate electronic global marketplace activity are regarded as species of private property, when in reality they have public consequences affecting who can and cannot gain access to the global information system. If nation-states were to begin treating the enabling technology—software codes and computer programs—as public, rather than private property, there would be justification for having nation-states assert a role in the day-to-day activities of the technological-market nexus. By exposing the latent sovereign context of software codes, one could, as the Legal Realists once did with the law of private contract,³⁶ justify state regulation over the activity of global markets. Liability and criminal law could be used to influence how the codes and operation systems are used. What is now largely an unregulated “open system” could be redesigned into a “closed system” enabling regulatory control by nation-states.

Consider, for example, how software codes establish standards for internet communication. In order for the global information infrastructure to work, there must be a general agreement on the standards utilized in transmitting information over the internet. Standards are set by an international non-governmental organization called the Internet Engineering Task Force (“IETF”), which has a voluntary membership that, like the internet itself, is open, decentralized and unstructured.³⁷ Web standards are, in theory, open and freely accessible. Technology and software code designs, on the other hand, are products, which once adopted in the market become entrenched, thereby serving to control how standards operate in practice. A product that becomes a standard in the market, either because it is deemed superior or because it is the first to be used by many, can quickly establish itself as a *de facto* standard for the industry, as Netscape’s Navigator and Microsoft’s Internet Explorer browsers demonstrate. Once adopted, these programs create *de facto* standards that are now difficult to dislodge. The expense and time of writing and promoting a new browser would probably wipe out any innovative benefits that such a program might offer. Once coupled with market

36. The legal realist Robert Hale, for example, argued that the law of private contract drew its justifications from the coercive power of law rather than the ideal of freedom of contract. See Robert L. Hale, *Force and the State: A Comparison of “Political” and “Economic” Compulsion*, 35 COLUM. L. REV. 149 (1923).

37. See Froomkin, *supra* note 28, at 131–32.

power, de facto software standards pose a serious, potentially anti-competitive danger to global information markets.

The antitrust case against Microsoft's Windows operating system, for instance, was premised upon the fear that Microsoft's monopoly power in the operating system market might be used to dominate the software technology used in the computers linked to the global information system. In controlling access to software technology, a technology giant like Microsoft is capable of dominating and controlling the future development and use of future global information technology by entrenching de facto standards for software and operating systems.³⁸ Microsoft's operating and software systems may, therefore, represent a potential threat to free access to the digital pathways of globalization. Civil and criminal rules of antitrust law may soon come into play in order to shape the use of internet market power toward public ends.

Whether the internet remains competitive is a question that cannot be answered with any certainty as long as a relatively small number of firms dominate not just the product equipment markets, but more importantly, the software technology that runs the internet. Microsoft seems nowhere near capturing the internet at the present time. The recently proposed acquisition of Netscape and Time-Warner by America Online, for instance, establishes a serious competitive challenge to Microsoft's ability to control web sites on the internet. Although web sites on the internet seem to be proliferating freely, there remains the possibility that accumulation of private technological property, by either a single firm monopoly like Microsoft or a new combination of dominant players created by acquisition or cartel agreement, would permit a tech-

38. The Microsoft antitrust litigation may be a defining moment for the current culture of globalization. Federal District Judge Thomas Penfield Jackson's findings of fact now establish that Microsoft is a legal monopoly. See *United States v Microsoft Corp.*, 65 F. Supp. 2d 1 (D.D.C. 1999). The challenge for the antitrust division of the Justice Department in the months to come will be to first establish that Microsoft had used its power to monopolize the operating and software systems market. Once the legal case is established, then the much more difficult question of remedy will require the antitrust court to figure out how to curtail Microsoft's domination over the operating and software systems market without damaging the technological innovations of Windows. One possible remedy would be to require that the source code for Microsoft's Windows operating system be available free to all users—like the competing but less significant Linux operating system, which is less important as a standard bearer.

nologist to foreclose competition on the internet in the same way that the Standard Oil trust was able to monopolize the oil industry by controlling railroad rates at the end of the last century.³⁹

In reading Yergin and Stanislaw's text, one may come away with the false impression that the law of the nation-state will be less important as nation-states decline and are replaced by the "law" of global capitalism. One might conclude after reading their text that transnational corporate transactions and communication technology are the sources of globalization phenomena. Yergin and Stanislaw's book may become more fodder for the power of the law and economics movement's growing hegemony in legal studies. In the new global law schools, law students learn how the internationalization of commercial law, finance, and corporate law can facilitate the reduction of transaction costs and enable efficient global market activity. Yergin and Stanislaw's text thus seems to fit within a growing body of quasi-economic pop-literature that tends to view the world as merely the logical outcome of business strategy on a grand global scale, much in the same way that the younger Richard A. Posner and other zealots of the law and economics movement proclaimed that a new organizing principle of the market was transforming the way we approached the law.⁴⁰

The perception of the world as "business opportunity" leads Yergin and Stanislaw to the conclusion that there is an ongoing alteration taking place in the relation between government and the market. Yergin and Stanislaw see the emergence of a unified global market based on the global functioning of a new form of transnational market capitalism replacing nation-state regulatory systems. They argue that the shift from Soviet-style communism to a Russian market economy has come about as the post-communist generation became "tied into the global community by the enabling technologies of computers, Internet, telephone, and fax."⁴¹ They conclude that the only thing holding Russia back is a legal system that refuses to uphold and protect property rights and the market system, a conclu-

39. See MATTHEW JOSEPHSON, *THE ROBBER BARONS* 112-19, 161-63 (1962).

40. See GARY MINDA, *POSTMODERN LEGAL MOVEMENTS: LAW AND JURISPRUDENCE AT CENTURY'S END* 83-105 (1995).

41. YERGIN & STANISLAW, *supra* note 1, at 293.

sion that subtly undercuts their view of an autonomous global market system.⁴² The mood of their study of globalization could be summed up by the slogan, "Socialism is out, Market is in."

The literature on globalization tends to be upbeat because much of it tends to view the world through the lens of the capitalist market.⁴³ In viewing globalization as market phenomena, free market advocates tend to see the world as simply a huge arena for the achievement of new economic opportunities. What is ignored is the significance of globalization as cultural phenomena. What remains unexplained is why we should care that the world is shrinking and becoming a giant shopping mall as information technology brings the global marketplace to everyday activity. The internet and its enabling technology have the potential for transforming our world, but the question remains: why should we care?

In breaking the bonds of geography, globalization phenomena are redefining our understanding of our culture. Global shopping on the internet, day trading on South Beach, cell phones, faxes, and computers are reminders of the ever-decreasing relevance of distance and geography for our culture. We no longer feel as connected to any particular locality and we no longer feel as committed to community values. Instead, our world is redefined in terms of a new shopping culture that exists in the non-place of virtual reality. The changes brought about by globalization thus involve larger issues precisely because globalization touches the everyday and ordinary experiences of our lives. To grasp the meaning of globalization of culture, it is necessary to consider how globalization brings about cultural transformations.

42. *See id.* at 292.

43. *See, e.g.*, ROSABETH MOSS KANTER, WHEN GIANTS LEARN TO DANCE: MASTERING THE CHALLENGE OF STRATEGY, MANAGEMENT AND CAREERS IN THE 1990S (1989); ROSABETH MOSS KANTER, WORLD CLASS: THRIVING LOCALLY IN THE GLOBAL ECONOMY (1995); OHMAE, *supra* note 2. For a critique of this literature, see generally PAUL HIRST & GRAHAME THOMPSON, GLOBALIZATION IN QUESTION: THE INTERNATIONAL ECONOMY AND THE POSSIBILITIES OF GOVERNANCE (2d ed. 1999).

II. GLOBALIZATION AND CULTURE

What exactly does it mean to think of globalization *and* culture? First, one must consider what is meant by the term "culture." By culture I do not mean the "cultivation" of certain sensibilities that are available only to an elite class of people. Rather, the meaning of culture I wish to explore is captured by Raymond Williams's idea that "culture is ordinary."⁴⁴ By this Williams meant that culture describes a whole way of life. As Williams put it: "The questions I ask about our culture are questions about our general and common purposes, yet also questions about deep personal meanings. Culture is ordinary in every society and in every mind."⁴⁵ The principle that "culture is ordinary" places emphasis on the "small" details of everyday life rather than the "big" picture of epic change. "Culture is ordinary" also refers to the importance of blurring the boundaries between high art and mass culture.⁴⁶ It suggests that culture is not limited to particular texts or standards of aesthetic value. As John Tomlinson explains: "The Tao-te-Ching, the late quartets of Beethoven, Picasso's *Guernica*, or Robert Mapplethorpe's photographs are no more and no less 'cultural texts' than *NYPD Blue*, a Spice Girls album, the media coverage of the death of Princess Diana, football 'fanzines' and the latest Levis advert."⁴⁷

The idea of culture is also associated with particular historical eras. In the current era, culture is associated with capitalist development. Fredric Jameson thus situates the current cultural situation with the development of "late capitalism."⁴⁸ According to Jameson, this expression is meant to convey the idea that "something has changed, that things are different, that we have gone through a transformation of the life world which is somehow decisive but incomparable with the older convulsions of modernization and industrialization, less per-

44. See RAYMOND WILLIAMS, *RESOURCES OF HOPE: CULTURE, DEMOCRACY, SOCIALISM* 4 (Robin Gable, ed., 1989); see also TOMLINSON, *supra* note 6, at 19.

45. See WILLIAMS, *supra* note 44, at 4.

46. This is a point that is central to Rosemary J. Coombe's cultural study of the law of intellectual property. See ROSEMARY J. COOMBE, *THE CULTURAL LIFE OF INTELLECTUAL PROPERTIES: AUTHORSHIP, APPROPRIATION, AND THE LAW* 58 (1998).

47. TOMLINSON, *supra* note 6, at 19-20.

48. See FREDRIC JAMESON, *POSTMODERNISM FOR THE CULTURAL LOGIC OF LATE CAPITALISM* xx-xxii (1991).

ceptible and dramatic, somehow, but more permanent precisely because more thoroughgoing and all-pervasive."⁴⁹ One could say, as Jameson says, that the cultural conditions of our era share the qualities or "logic" of late capitalism.

Rosemary Coombe, in turn, associates the cultural qualities of late capitalism with the condition of postmodernity. As Coombe explains:

Postmodernity is distinguished by a dramatic restructuring of capitalism in the postwar period, a reconstructing of labor and capital markets, the displacement of production relations to nonmetropolitan regions, the consolidation of mass communications in corporate conglomerates, and the pervasive penetration of electronic media and information technologies.⁵⁰

The cultural qualities of postmodernity include the blurring of the boundaries between high and mass culture, especially the way electronic and information technologies convey messages about brand names and corporate trademarks. Brand names like Coca-Cola are communicated globally to send messages, not just about a product, but about people's understanding of their lives. Coca-Cola is the "real thing" and General Electric "brings good things to life."⁵¹ Advertising texts of transnational corporations have thus become part of the "cultural industry"⁵² of globalization; they provide us with narratives of how life may be lived in the life-world of globalization. As Coombe observes: "With phrases like the Coca-Cola-ization of the Third World, the Cadillac[®] (or the Edsel) of stereo systems, meeting with the Birkenstock[®] contingent (or the Geritol[®] generation), we convey messages easily and economically."⁵³

By identifying the relation between culture and a particular historical period or condition, cultural critics such as Jameson and Coombe provide reasons why culture is a multidimensional term that obliges one to consider the relation between

49. *Id.* at xxi.

50. COOMBE, *supra* note 46, at 51.

51. *See id.* at 56.

52. The idea of market advertising as a "cultural industry" was used by Horkheimer and Adorno disparagingly to describe the instrumental purposes of capitalism. *See* MAX HORKHEIMER & THEODOR W. ADORNO, *DIALECTIC OF ENLIGHTENMENT* (John Cumming trans., 1993).

53. COOMBE, *supra* note 46, at 57.

business or economic phenomena and culture. What Yergin and Stanislaw fail to grasp is the cultural meaning of global capitalism. A cultural analysis of globalization would seek to explain how global phenomena enable people in "ordinary" situations to understand their world in new ways. In stressing the importance of the "ordinary," we are encouraged to look to the small details of everyday life in order to comprehend the meaning of globalization.

When we think of "culture," we also think of the experience of a place, and of its symbols and signs as a means for understanding it. South Beach, Miami, for example, is a place that has a unique artistic mode of expression (art deco), a South American medium of aesthetic, gay and lesbian sexual orientations, and, of course, a central defining institution, which is a beach. The signs and symbols of South Beach help to define the way residents and tourists come to have shared understandings about their relation to the values, desires, and activities of South Beach culture. The "culture" of South Beach is quite different from that of SoHo in New York City or even that of the beach scene in Laguna Beach, which defines the surfer culture of Southern California. Culture thus describes a way of life that enables us to give meaning to the places we inhabit. Culture is the order of life that enables us cognitively to give meaning to our experiences of a place.

Globalization, however, has cut the natural ties between culture and locality. Culture is given meaning in reference to a global virtual reality that no longer depends on signs or relations to a particular geographic place. Globalization has disrupted the "natural" relation of place and culture. Néstor García Canclini calls this "the loss of the 'natural' relation of culture to geographical and social territories."⁵⁴ John Tomlinson argues that the cultural implications of globalization arise from the fact that globalization "transforms the relationship between the *places* we inhabit and our cultural practices, experiences and identities."⁵⁵ The meaning of globalization cannot be grasped fully without first considering how the loss of the natural relation between a territorial place and culture alters lifestyles by transforming the way we understand our current economic, political and cultural situation.

54. CANCLINI, *supra* note 5, at 229.

55. TOMLINSON, *supra* note 6, at 106.

Raymond Williams, writing in the early 1980s, provided the following example of how globalization was then influencing lifestyles in London:

There was once this Englishman who worked in the London office of a multinational corporation based in the United States. He drove home one evening in his Japanese car. His wife, who worked in a firm which imported German kitchen equipment, was already at home. Her small Italian car was often quicker through the traffic. After a meal which included New Zealand lamb, California carrots, Mexican honey, French cheese and Spanish wine they settled down to watch a programme on their television set, which had been made in Finland. The programme was a retrospective celebration of the war to recapture the Falkland Islands. As they watched it, they felt warmly patriotic, and very proud to be British.⁵⁶

By the 1990s, John Tomlinson writes that Williams's yuppie couple would have cable TV, cellular phones, laptop computers, and faxes in their cars, their homes, and on their person. They would have the capability of transacting business while they watched world events on different broadcasters (BBC or ITN) as well as commercial satellite channels like BSky B and CNN, as well as those of Europe or the United States.⁵⁷ They could also get alternative news stories from specialist web sites on the internet.⁵⁸ The couple, though probably still proud to be British, would probably think of themselves as global entrepreneurs and citizens of the world. Like Ford Mo-

56. RAYMOND WILLIAMS, *TOWARDS 2000* 177 (1983), *cited and quoted in* TOMLINSON, *supra* note 6, at 113.

57. *See* TOMLINSON, *supra* note 6, at 115–16.

58. Tomlinson observes that by the 1990s, Williams' "time-traveling couple" can

choose between the coverage of news events not simply of different national "terrestrial" broadcasters (the BBC or ITN) but of commercial satellite channels like BSky B, international news specialists like CNN or even, allowing for the language problems, of other national stations in Europe or beyond. Not only this; they can now check this coverage against information from specialist websites on the internet. So, for example, they might want to check the BBC's coverage of some environmental issue against the version provided on Greenpeace International's website.

Id.

tor Company's new Lincoln,⁵⁹ the couple would probably see their life and work as moving beyond the geographic and psychological borders of England or even the cultural identity of London. Globalization becomes part of their everyday lives, representing and interpreting social surroundings and self-identities.

Globalization is unique in that it redefines the meaning of our worlds without reference to context or geography. Markets and culture no longer depend on a fixed locality or territory, which means that the *places* we inhabit are no longer the determining ground of our economic and cultural practices. Williams's yuppie couple illustrates how lifestyles have become redefined by "deterritorialized"⁶⁰ global phenomena. Our everyday lives are no longer situated in a place, but are instead situated in distant places. Several cultural theorists have used the term "deterritorialization"⁶¹ to describe the sense in which the globalization is transforming the "natural" relation of culture to the places of local territories we inhabit.

Deterritorialization is an idea that reminds us that global culture is a culture that no longer defines itself in terms of a particular place. The idea of deterritorialization refers to what Néstor García Canclini means by the loss of the "natural" relation of culture to geographical and social territories. When applied to the nation-state, deterritorialization refers to the loss of the natural relation between a nation-state's sovereignty and its boundaries. As a consequence of global technology, nation-state regulation no longer depends on the location of boundaries, but instead depends on the ability of the nation-state to control and affect the information flow of global communications and exchanges. The experience of deterritorialization is a source of ambiguity and anxiety in our daily lives.

The experience of deterritorialization creates anxiety in that it opens our daily lives to a wider world that can threaten our sense of security. Technically, the Gulf War, televised globally by CNN among others, took place in a desert. Most viewers who watched the Defense Department videos of mis-

59. See Krebs, *supra* note 3, at 1.

60. Deterritorialization is a concept used by several global theorists to describe how globalization "transforms the relationship between *places* we inhabit and our cultural practices, experiences and identities." TOMLINSON, *supra* note 6, at 106.

61. See *id.* at 100-49.

siles crashing into buildings and bridges, however, came to see the war in real time as instantaneous video transmissions of the battle reached viewers all around the world. One could listen to a CNN reporter pointing to missiles flying overhead and watch as they struck the earth at the very moment of impact. The surrealism of the video images made us all part of the conflict, and the immediate connection to the carnage reminded us of how vulnerable we all are. The Gulf War was in this sense the first "global" war.

The Gulf War gave rise to highly ambivalent feelings as the experience of globalization technology both removed the event from its geographic moorings and brought it to strange localities and places, such as one's home, where its meaning became lost in the translation. In presenting the war much in the way that television would present a football game with instant replays or a video game with laser weapons, viewers were encouraged to forget the meaning of the carnage caused to the people of a particular place. One could watch instant replays of missiles hitting buildings and bridges in faraway places in the comfortable and safe environment of the family home and experience the aggression of "war" in a rather detached and neutral way. The war had the curious name of "Desert Storm," but for most Americans, the war took place in virtual reality, not in a desert, and the "storm" was really a video moment that Defense Department officials analyzed and measured with charts, statistics and video replays. It was as if the "war" had been invented by a Hollywood screenwriter and produced by Oliver Stone for release during the holiday season. The image of a burning desert following the war was, however, a sober reminder of the vulnerability of the new global order.

The Gulf War failed to bring about lasting global security because the army of Iraq was permitted to survive and its leader, Saddam Hussein, continues to rule. A battle in the desert was won, but the outcome of the war remains in doubt. Indeed, because the NATO alliance was fragile and short-lived, it is far from clear whether another Gulf War could be waged by the same global interests. As global interests move away from the region, and global market demand shifts to new concerns, the NATO alliance has weakened. The transient nature of global interests also renders the meaning of the war ambiguous to this day. Oil surpluses and economic conditions have lessened the importance of the region. We are, however, still

aware of the threat posed by Iraq. The more recent missile attack on Baghdad failed to bring about any political change in Iraq. If anything, it reminded us that we are less secure as we face the possibility that the same missile technology may be used someday to wage war against our homes and our particular locality. As we become more connected to places like Iraq, we experience both the benefits of knowing more about our world and the vulnerabilities that such connections bring. The experience of globalization is thus a deeply ambiguous one, "mixing empowerment with vulnerability, opportunity with risk, in complex combinations."⁶²

In weakening the ties of culture to locality, globalization is also transforming the meaning of some of the fundamental concepts that Yergin and Stanislaw use in analyzing global phenomena. For example, the concept of a "market," central to Yergin and Stanislaw's text, needs to be critically examined in light of the changed meaning brought about by the global phenomena they purport to study. In the life-world of globalization, a market is no longer defined in terms of a specific geographical territory or locality, but instead is defined in terms of the non-place of virtual reality. Today, markets exist in the virtual reality of e-commerce, where marketplace activity is digital and electronic. The marketplace of cyberspace is created by computer codes that have themselves become commercialized as private property. As Lawrence Lessig has recently argued, the so-called "market" of cyberspace is regulated by software codes, which are the "law" governing what people can and cannot do on the net.⁶³ The software running the internet represents the "access code of globalization" in that it determines how to gain access to the world. This code is the "law" of globalization. The global marketplace may in fact be less "free" than Yergin and Stanislaw imagine.

The loss of marketplace freedom is not the only loss that globalization phenomena portend. Even more significant is the loss of connection to the bonds of local communities that serve to unite people to a culture and a place. In breaking the bonds of geography and distance, globalization has also untied the bonds of a common culture that give people a sense of connection to a place. In the new global order created by the internet

62. TOMLINSON, *supra* note 6, at 134.

63. See LAWRENCE LESSIG, CODE AND OTHER LAWS OF CYBERSPACE (1999).

and technology, we are exposed to a new a world without firm connections to any particular place or culture. We move from culture to culture, acquiring new information about our world, but in the process we become less connected to any particular place. The values of community may, therefore, not be the values of the new global order where atomistic competition and instant communication constantly redesign the contours of the social order. In the ever-changing social order of globalization, communities are terminated as quickly as they are created—as chat rooms open and close—and proliferate with an ever-increasing intensity. The anonymity of internet communication further estranges the experience, and thus weakens the possibility of true community. We meet, we talk, without ever facing or knowing the “other” in the faceless world of internet discourse.

III. THE CULTURAL CODES OF GLOBALIZATION

The software codes of global technology, which are the access “codes of globalization,” take on cultural meaning as they shape attitudes and perspectives of all who use computers to access the life-world of globalization. Our thoughts and cognitive categories are shaped by the digital computer codes that translate our reality into a new form of virtual reality. Hence, locality is now a “web page” and market activity is a “hit on the web address.” Our home address is defined in relation to a code ending in “.com.” The access code encourages us to translate reality into the language of the computer code. Because computer-mediated language is uniformly dominated by the English language, the linguistic traditions of the English-speaking culture dominate the code. The code thus operates as a linguistic regulator, which rules out the different linguistic traditions of non-English cultures. Non-English-speaking people are effectively denied access, and for those who are multilingual and speak English, they are denied the language of their choice. Internet communication thereby creates new cultural forms of lawmaking and governance, which have yet to be understood.

Because technology also denies access to people who lack computer skills, access to computers, or software equipped with the appropriate language, such a technological barrier to entry can restrict the benefits of global technology to certain people.

Exposure to social and cultural difference is thus artificially limited by the technology. "Sectarian" web sites publicizing ethnic, religious, and political viewpoints of different groups do exist on the internet, but the diversity of these sites is restricted to English-speaking people who have the technology and language skills to access them. The software codes running the internet prevent certain groups in the world from gaining access to the benefits of globalization. The software codes and the underlying enabling technology regulate cultural practice by excluding non-conforming cultures and languages from entering the global discourse. Globalized communications open the world to vast amounts of information and viewpoints, but the technology underlying such communications also creates the potential for establishing technological barriers against access.

The codes of globalization are thus the product of an ever-changing information technology that has a huge potential for shaping the meaning of our world. Within the space of a few decades, we have witnessed technological change that rivals the changes of the Industrial Revolution. The digital communication revolution, permitting instant access to faraway places, has transformed the meaning of locality and distance that has heretofore given different cultures unique meaning. The codes of globalization have created a world that is more complex, with many new dimensions and dilemmas. They serve as a new form of regulation, affecting not just global trade, but more importantly, the everyday experience of an ever-growing number of ordinary people.

The information technology that underlies global communication represents a new form of sovereign power. The so-called "new market consensus" that Yergin and Stanislaw describe in their book is the de facto consequence of the technological-market nexus, which has enabled private interests to take over the role of the regulator over global commerce. Once the nation-state stepped aside, technology became the new regulator of global markets. Thus, a new regulatory regime was created with globalization technology, and the codes of this technology are working to create a new form of global culture.

Cyberspace may not turn out to be a libertarian virtual reality, and globalization may not be as freewheeling as many now claim it to be. The power of private interests to control the code of global technology draws its justification from the power

to exclude rather than some ideal notion of free action. This power, however, relies upon software codes that remain open and hence vulnerable to subversion. The recent hacker attacks using denial of service programs that shut down popular web sites in early 2000⁶⁴ illustrate that economic self-interest may not be a rational organizing principle of cybermarkets. The codes of globalization represent a new version of the old private property regime of the nation-state with one major exception: there is no guarantee that everyone will behave in their own self-interest to insure a vibrant, growing market. Like the coercive power of private property, the private software codes running the internet represent an unpredictable form of regulation with latent political power. One thing is certain: a new form of regulation is creating a new form of social life, which is transforming the meaning of culture.

The global ubiquity of capitalism and the global codes used to create the media texts of global markets do have an immediate commercial objective, and this objective is facilitated by the information technology of globalization. The computer codes of this technology are the new cultural codes of globalization. The codes establish centers of power where wealth and influence shape behavior, values, and the ethic of culture. The connection to these codes creates a new bond with a new form of culture. In this new culture, there seems to be a dominant form of social activity developing on the basis of the social practice of "shopping." In visiting web sites, we "shop" for the latest products, ideas, and fads. We move from text to hypertext in search of new entertainment experiences and new vistas into virtual reality. The addictive quality of surfing the internet motivates users to "shop" for the latest internet fad and experience. In the act of shopping, we gain insight into the nature of global culture.

Shopping is thus becoming the most important popular cultural practice on the internet, with web sites allowing customers to "click and shop" in the comfort of their homes and businesses. Buying has become effortless, almost a "money-free experience," as web sites such as Amazon.com allow "single check" orders based on cookie files containing all of the pertinent credit information from the initial registration on the site. Internet shopping is the cultural art form of globalization.

64. See *Hacker Attacks on the Internet*, N.Y. TIMES, Feb. 11, 2000, at A30.

Shopping becomes the activity that enables us to make sense of global culture. Global shopping, digitally wired by software computer codes, gives global culture its currency and meaning. What Marshall McLuhan once called a "global village of electric circuitry,"⁶⁵ turns out to be a virtual "global shopping mall," enabled by the electric circuitry of the software codes of computer programs and the web pages that route customers to products. The commodity form of a new global shopping culture, where material acquisition and consumerism seem to be replacing the importance of territory and community, is becoming a world phenomenon, experienced by a variety of cultures.

What Fredric Jameson calls the cultural logic of late capitalism,⁶⁶ or what Rosemary Coombe associates with the condition of postmodernity,⁶⁷ are the new global commodity forms of a global shopping culture. Globalization defines a "way of life" that takes meaning from the "commodification" of geography and culture. Hence, South Beach becomes not just a "beach" with a unique culture, but merely a place to conduct day trades with faraway agents on the world wide web. One way of thinking about a global culture, then, would be to stress the way exchange and the commodity forum communicate messages about the meaning of our world. The "place" that gives these messages their unique cultural form originates in the power base of transnational corporations that control the movie studios, publishing houses, radio and television stations, advertising, and global information systems. Globalization's locus of power now sits with those who control the means of production and the information systems of the global economy.

IV. GLOBAL CULTURE, NATION-STATE DECLINE, AND FOUCAULT

If globalization means that the world is a seamless woven unity in which everyone participates in the global economy, obviously globalization has not taken place, nor are we likely to experience it any time soon. We do not yet have anything like

65. MARSHALL MCLUHAN & QUINCY FIORE, *THE MEDIUM IS THE MESSAGE* 16 (1967).

66. See JAMESON, *supra* note 48, at xx-xxii.

67. See COOMBE, *supra* note 46, at 51.

a “woven” world economy. The proliferation of ethnic, religious, and regional hostilities throughout the world is strong evidence against Yergin and Stanislaw’s belief in the emergence of a global world economy. If globalization means nation-states are on their way out, then, again, globalization has not taken place because nation-states continue to play an important role in administering the rules of global competition. It is true that globalization phenomena, as Yergin and Stanislaw explain, give private markets an important new disciplinary role in exercising state regulatory power over economies. However, as the late social theorist Michel Foucault once explained, nation-state power is exercised *locally* by private non-state actors.⁶⁸ The power of the modern nation-state is diffused through the “capillaries” of private institutions, and this diffusion in the exercise of power will only be heightened by global phenomena.

The role of the modern nation-state in a global market system can be analyzed in light of Foucault’s insights about the nature and source of power of the modern state. Nation-states exercise such power to control and manage not just the “commanding heights” of the economy, but more importantly, human behavior and culture.⁶⁹ Foucault, a post-World War II philosopher and social theorist, never had the opportunity to write about issues of globalization and economic integration.

68. In *Discipline and Punishment: The Birth of the Prison*, Michel Foucault characterizes the emergence of the modern prison as a fundamental transformation of social and political power in society. In the new “disciplinary society” of the modern prison, the state exercised its power to rule at the microlevel of everyday control and supervision of inmates. In society in general, Foucault reasoned that disciplinary agents of society were analyzing the details of everyday life to detect individual deviations and to control the behavior of individuals. See MICHEL FOUCAULT, *DISCIPLINE AND PUNISHMENT: THE BIRTH OF THE PRISON* 168 (Allan Sheridan trans., 1977). Foucault thus demonstrated that power of the state was in the hands of the disciplinary agents of private and governmental institutions who measured and shaped human behavior. See generally Jonathan Simon, *Ghosts of the Disciplinary Machine: Lee Harvey Oswald, Life-History, and the Truth of Crime*, 10 *YALE J.L. & HUMAN.* 75, 80–83 (1998).

69. Michel Foucault wrote in the post-war era; he was not therefore concerned with issues of globalization, economic integration and the decline of nation-state power. Foucault’s most important work dealt with modern prison culture. See FOUCAULT, *supra* note 68. Recently, legal scholars have used Foucault’s insights about the nature of power to rethink the legal privacy problem in the cyberspace context. See J. M. Balkin, *What Is a Postmodern Constitutionalism?*, 90 *MICH. L. REV.* 1966, 1987 (1982); Boyle, *supra* note 31; Lawrence Lessig, *Reading the Constitution in Cyberspace*, 45 *EMORY L.J.* 869, 895 (1996).

Although he never even addressed the problem of the state's economic role, Foucault does offer important insight on how the modern state regulates and manages human behavior. Foucault offers a provocative lens for understanding how power is exercised by the agents of globalization. While Foucault fails to offer a model for understanding the changing dynamics of globalization as social phenomena, his idea of how power is exercised in modern society remains helpful for understanding how the nation-state may survive to rule in the new global order.

At the heart of Foucault's critique and analysis of the modern prison system, for example, one discovers the insight about how "surveillance" and "discipline" of the multitudinous private actors of society direct human behavior to achieve desired goals and efficient actions. In his study of the prison, for example, Foucault used Bentham's invention of the Panopticon, a prison designed in the shape of a wheel, to explain how prison authorities might use observation and surveillance to discipline and control prison inmate behavior.⁷⁰ Because the prisoner could never be sure when the warden was watching, the prisoner would be prone to conform his or her behavior to the rules of the prison. Foucault expanded his notions of "surveillance" and "discipline" to explain how so-called "disciplinary agents" in private society—not just those in the prisons, but those in the schools, at the workplaces, and in other private contexts where time-and-motion studies and efficiency directives are used—measure, evaluate, and control human behavior.

Foucault offers an alternative conception of how sovereign power might be exercised by the modern nation-state. Instead of focusing on the positivistic conception of the nation-state as a command backed by coercive threats, Foucault shows how the power of the modern state is in fact exercised by multitudinous private sources of "surveillance" and "coercion" that work silently within "disciplines" of the private sectors of society to enforce state power.⁷¹ Foucault's insight enables us to see how a silent regime of sovereign power is exercised "at the capillaries," to use Foucault's term, of a new disciplinary society. The disciplinary mechanisms of such a society shape social roles in terms of standards and norms measured and evaluated by bu-

70. See FOUCAULT, *supra* note 68; JANET SEMPLE, *BENTHAM'S PRISON: A STUDY OF THE PANOPTICON PENITENTIARY* (1993).

71. See FOUCAULT, *supra* note 68, at 168.

reaucratic agents. For example, Foucault's insight about the nature of disciplinary agents in society helps to explain how sovereign power is exercised in cyberspace. Software codes and operating systems enable web sites like America Online and Amazon.com to monitor, track, evaluate and manage what people do in the virtual marketplace. The code allows agents of web sites to regulate behavior by electronic means of "surveillance" and "discipline." For example, the code allows Amazon.com to observe what consumers purchase and where they go on its web site. The code also allows America Online to define its own "community," and to "discipline" members who fail to follow the rules governing the "AOL community."

James Boyle has written that Foucault's insight about the nature of the silent system of sovereign power of surveillance is relevant for understanding how sovereign power is now exercised over the internet.⁷² The internet, originally designed to survive nuclear war, provides the perfect medium for understanding how power of the technological market system is exercised in the capillaries of globalization. The interconnections created by the packet switching system, which links millions of computers around the globe, enables the internet to run, preventing information from being easily regulated by nation-state authority.⁷³ In the global information marketplace, law and national governments are "local ordinances" and "regulatory" obstacles to be "routed around." To the internet enthusiast, resistance to censorship or regulation is "not a bug, but a feature."⁷⁴

In actual practice, however, the so-called freewheeling nature of cyberspace is frequently controlled by private interests who hold the patents, trademarks, and copyrights, which give the owner the power to exclude. Domain names and web addresses are now subject to trademark registration, and various forms of internet search engines, personal home pages, and buttons are now subject to patent protection. The fear of patent infringement litigation in the United States is becoming a serious restriction on the freedom of internet commerce as patents are sought to protect the exclusive rights to on-line links

72. See Boyle, *supra* note 31, at 178.

73. See Froomkin, *supra* note 28, at 130-31.

74. Boyle, *supra* note 31, at 179.

between web sites, and other novel marketing technology.⁷⁵ It has become a common practice for individuals and corporations to register popular web site addresses for the purpose of reselling the trademark name at a substantial profit in the future.⁷⁶ This form of "cybersquatting" is now a serious obstacle to internet commerce. Copyright, patent, and trademark litigation allow private interests to dominate cyberspace commerce by preventing the market from functioning free of state interference. The state is therefore implicated in the current regime of private enforcement of intellectual property that is critical to cyberspace.

There is thus no reason to assume that sovereignty of the nation-state will decline with globalization. To the contrary, the opposite conclusion is more probable: nation-state power will continue to be exercised by a "type of power" that is tied to the means of surveillance and discipline of a global network of economically integrated private actors. Pursuant to Foucault's theory of state power, this power becomes diffused in the "capillaries" of a global marketplace, digitally wired and electronically linked with computer technology. The shift of power from nation-state to private transnational corporations may suggest that a new group of disciplinary agents are developing and monitoring the behavior to achieve efficient objectives. As such, the nation-state can, if it chooses, attempt to coerce the private regulatory regime of cyberspace, and direct it toward public objectives.

Foucault argued that the rise of private disciplines, such as prisons, schools, and workplaces, facilitated the order of modern society. Following Foucault's central insight, it would be more accurate to say that the nation-state is, in the postmodern era, no longer the locus or "nexus" for defining disciplinary power. As Foucault explained: "This non-sovereign power, which lies outside the form of sovereignty, is disciplinary power."⁷⁷

75. See Saul Hansell, *As Patents Multiply, Web Sites Find Lawsuits Are a Click Away*, N.Y. TIMES, Dec. 11, 1999, at A1.

76. See *Brookfield Comm., Inc. v. West Coast Ent. Corp.*, 174 F.3d 1036 (9th Cir. 1999); *Panavision Int'l, L.P. v. Toepfen*, 141 F.3d 1316 (9th Cir. 1998).

77. MICHEL FOUCAULT, *POWER/KNOWLEDGE: SELECTED INTERVIEWS AND OTHER WRITINGS, 1972-1977*, at 105 (Colin Gordon ed. & Colin Gordon et. al. trans., 1980).

Foucault's insight about the source of power of the modern state helps clarify how state power is in fact exercised in the new global order. One could say that the new digital discourse of the global marketplace has the effect of hardwiring the sovereignty and power of the nation-state into the technologies and ideologies of globalization itself by way of the codes of globalization, such that this non-sovereign power is "disciplinary power," to use Foucault's term. The enabling power of the nation-state generates the signs and the symbols that legitimate the "freedom" of global markets.⁷⁸ Hence, when Yergin and Stanislaw write that "[i]nformation technology is creating a woven world of distant encounters and instant connections,"⁷⁹ they are in fact describing the new ways in which the sovereign power of the state has become embedded in the capillaries of global networks that are technologically linked by the digital technology of the internet.

The disciplinary power of globalization, however, does not seem to follow a rational, one-dimensional pattern of development. In the disciplinary world of the modern prison system, which Foucault studied, there was a rational order for shaping the behavior of individuals. Global capitalism, however, seems to have an irrational order; its organizing principle is based on the fluid and arbitrary processes of auction markets, finance, and capital mobility. Indeed, it is the lack of a predictable guiding principle other than market forces that necessitates efforts to control and rationalize global behavior.

Hence, in the midst of globalization, local initiatives of citizen groups have engaged in citizen boycott actions to change the behavior of global corporations, to enforce regulatory norms, to protect the environment, and to curtail labor exploitation. Citizen initiatives at the local level, organized by organizations such as Greenpeace, Amnesty International, Human Rights Watch, and others, have sought to regulate global norms and behavior.⁸⁰ A recent example of this was the highly publicized demonstration against the World Trade Organization ("WTO") meeting in Seattle, Washington.⁸¹ The Seattle

78. See COOMBE, *supra* note 46, at 29.

79. YERGIN & STANISLAW, *supra* note 1, at 369.

80. See GARY MINDA, *BOYCOTT IN AMERICA: HOW IMAGINATION AND IDEOLOGY SHAPE THE LEGAL MIND* 184 (1999).

81. See Paul Schell, *What a Week* (visited Feb. 16, 2000) <http://cityofseattle.net/wto/sm_120699.htm>.

demonstration against the WTO may well be a harbinger for even more protests against globalization, which is seen by trade unions and environmentalists as a code word for global corporate interests, lower labor standards, and environmental destruction. In the aftermath of the Seattle protest against the WTO, there may be a new anti-globalization movement, itself global in scope, using global information technology to curtail the influence of the regulatory regime of private interests. Boycotts and demonstrations by citizen groups armed with cell phones, computers and faxes can organize groups around the world to bring about changes in corporate behavior. The initiatives of local groups can serve as a model for nation-state coordination in a renewed effort to control the development of globalization.

The recent events in Seattle may foreshadow a backlash reaction to global technology. Regional conflicts pitting third-world countries against the West are likely to intensify conflict between the winners and losers of global trade. Nation-states like India, Brazil, and Egypt, for example, seek to benefit from free trade by offering labor at below the Western market wage rate. For third-world workers, higher labor standards may signal the loss of their competitive advantage in the global market. As such, trade union demands for WTO enforcement of higher labor standards may yield to the resistance of third-world economies. The same conflict arises with environmental concerns that seek to curtail economic activities, which now provide jobs for low-wage workers. Private interests can use regional conflict as leverage against citizen group control over global markets.

V. THE NEW "TECHNOLOGICAL-MARKET NEXUS" AND GLOBAL CULTURE

Yergin and Stanislaw claim a market consensus now exists for managing, maintaining, and coordinating the functions of governments and their national interests on the international level.⁸² It would be more accurate, however, to refer to this not as a "consensus," but rather as a nexus created by the connection between global information technology and global com-

82. See Daniel K. Tarullo, *Beyond Normalcy in Regulation of Trade*, 100 HARV. L. REV. 546 (1987).

merce. Although there is little evidence to support the existence of a "global consensus," there is evidence establishing the existence of a global "technological-market nexus." Key features of the new technological-market nexus can be found in evidence demonstrating the increasing importance of transnational corporations in the economy; a corresponding decline in the importance of national products and technologies;⁸³ emergence of an information economy rather than a "production economy;" economic power resulting from the ability to manipulate information rather than the fact of "ownership;" inability of any national government to regulate global commerce;⁸⁴ and, finally, the decreasing relevance of the nation as the source of power and influence.⁸⁵ The nexus created between technology and the market is a product of ever-increasing connectivity, permitted by a global information infrastructure that supports internet commerce.

Yergin and Stanislaw conclude that underlying the "new market consensus" is a "fundamental shift in ideas"⁸⁶ from Keynesian economics, which created the intellectual justification for "Big Government," to a new set of ideas based on the "fierce advocate of free markets."⁸⁷ In fact, however, it is the "death of distance" and the loss of relevance of geography brought about by information technology that creates the new intellectual justification for a new technological-market nexus. As Yergin and Stanislaw see it, Keynesian economics is no longer helpful for understanding the nature of global economics because a new set of ideas based on the analysis of free markets has replaced Keynesian economics. For them, the work of Chicago School economists like Frank Knight and Milton Friedman have set forth the intellectual case for global markets. According to Yergin and Stanislaw, the intellectual case in support of free markets gives globalization meaning in the world.

The intellectual ideas attributed to libertarian thinkers do not tell us much about how the technological nexus functions,

83. See ROBERT REICH, *THE WORK OF NATIONS: PREPARING OURSELVES FOR 21ST CENTURY CAPITALISM* (1991).

84. See Fredrick Jameson, *Postmodernism and Consumer Society*, in *THE ANTI-AESTHETIC ESSAYS ON POSTMODERN CULTURE* (Hal Foster ed., 1994).

85. See YERGIN & STANISLAW, *supra* note 1, at 390.

86. See *id.* at 14-15.

87. *Id.* at 15.

nor do they provide any insight for understanding the logic behind the nexus. To better understand what is behind globalization phenomena, one must examine how information technology is creating new patterns of economic and political development in the world. First, the information system made possible by the internet enables users to move freely from jurisdiction to jurisdiction. The multinational nature of internet activity permits what Froomkin has called a form of *regulatory arbitrage*, which allows users to pick and choose jurisdictions on the basis of a choice between regulatory rules they like and those they dislike.⁸⁸ Regulatory arbitrage enables private interests to route around unfavorable regulatory regimes of nation-states. Information technology will thus gravitate to private property regimes favorable to free markets. Consequently, nation-states that have stricter regulatory regimes will be disfavored.

Regulatory arbitrage also explains why private markets seem to be favored in the new global marketplace. Private interests using the technology of the internet have an incentive to route around regulatory regimes that restrict free markets. Consequently, free-market jurisdictions become the favored jurisdictions of the global commerce. As long as nation-states remain autonomous actors, and as long as the internet is itself not captured by governmental regulation, global commerce will continue to play the regulatory arbitrage game. Yergin and Stanislaw's analysis of global market phenomena fails to consider how the software codes of globalization help entrench a new regulatory regime of private property, which effectively determines how markets and "competition" seek out systems that render government regulation unnecessary. With open source codes that can be freely manipulated by all users, private interests will route around governmental regulation and locate within jurisdictions that protect the intellectual property interests of global technology.

Regulatory arbitrage also helps to explain how regional government will seek to redefine itself in reaction to global phenomena. The European Alpine Diamond, for example, which represents a regional government across three national borders of France, Italy, and Switzerland, has re-created the

88. See Froomkin, *supra* note 28, at 129, 142.

medieval kingdom of Savoy, without, of course, the monarch.⁸⁹ The Alpine Diamond was itself a response to global commerce, which has favored the Euro-nations and has encouraged regional areas to create new alliances to be more competitive in the new marketplace. The Alpine Diamond is an example of how nation-states might redefine themselves in order to better manage their region's economic development. Globalization may, therefore, be a source for the discovery of new experiments in regional self-government. The global forces that Yergin and Stanislaw believe are eroding the power base of the nation-state may in fact be responsible for the re-invention of the nation-state at the micro-level. The re-invention of regional political spaces is itself a reaction to global market forces and global information technology that permit new alliances to be created through new communication links and networks.

Yergin and Stanislaw seem to believe that there is a consensus in favor of free markets. But not everyone believes in the global marketplace lifestyle. As the Seattle demonstration against the WTO illustrated, not everyone enjoys the new globalization lifestyle. Globalization has not meant global equality; in fact, just the opposite is true. The gap between rich and poor is growing wider as the technology divide widens between the West and the Third World.⁹⁰ The dark side of globalization is that a growing number of people and cultures are simply left off the globalization map. The global lifestyle of the yuppies described by Raymond Williams⁹¹ must be contrasted with the growing proliferation of ethnic, religious, and national hostilities in various parts of the world. Because globalization is an uneven phenomenon, it also serves to heighten existing inequalities in the world order.⁹² The technological-market nexus may not be something that benefits everyone. Globalization is, therefore, a phenomenon that provokes ambiguous feelings and reactions.

One source of deep ambivalence is that, although capital is mobile and fluid in the global economy, labor is not. Workers cannot easily move in the global marketplace. Immigration re-

89. See Alan Ehrenhalt, *Demanding the Right Size Government*, N.Y. TIMES, Oct. 4, 1999, at A31.

90. See, e.g., Masao Miyoshi, "Globalization," *Culture, and the University*, in THE CULTURES OF GLOBALIZATION, *supra* note 4, at 247, 249.

91. See WILLIAMS, *supra* note 44, at 4.

92. See *id.* at 13.

restrictions and commitments to localities ensure that most workers remain in one place. The economic benefits of globalization realized by transnational corporations and multinationals in the West have been won by exploiting the disadvantages of labor immobility. Outsourcing to countries that have low wages has been an effective strategy used by transnational corporations in America to suppress wage demands and weaken trade union bargaining. "The global bottom line is after all, if there is no job, move. If there are no jobs, close . . ."⁹³ It is ironic that global enthusiasts like Yergin and Stanislaw, who argue the merits of free trade, fail to mention that the benefits of free trade are attained largely at the expense of workers who cannot freely compete in the world market. Because modern trade union organizations are not global, and because modern immigration laws restrict free trade for labor, there is a double standard limiting labor's ability to compete in the new global marketplace. On the other hand, while third-world workers benefit from globalization, their gain comes at the expense of workers in the West who are downsized and underemployed as jobs move to lower wage countries. The gap between rich and poor, high-tech and low-tech, connected and unconnected, may intensify as a result of globalization. Yergin and Stanislaw fail to focus on problems of inequality and regional conflict because their focus is on contemporary governmental policy and corporate action. One must therefore wonder who counts in making up the so-called "new market consensus."

Yergin and Stanislaw point to the New Labor and Democratic Parties in the West—Tony Blair in the United Kingdom, and Bill Clinton in the United States—as having achieved considerable political success in persuading constituents that free-market consensus will serve democratic values of fairness and equality by advancing greater economic freedom.⁹⁴ However, the political effort to manage and expand global economic interests underlying the New Democratic parties has also unleashed extremely uneven economic consequences, some of which may be dangerous to democratic values and basic no-

93. Kenneth M. Casebeer, 2001: *A Global Odyssey Prompted by the Merritt-Cihon Upper Level Curriculum Report of the AALS*, 30 U. MIAMI INTER-AM. L. REV. 415, 423 (1999).

94. See, e.g., DANI RODRIK, HAS GLOBALIZATION GONE TOO FAR? (1997).

tions of equality.⁹⁵ The free trade policies of the North American Free Trade Agreement (“NAFTA”) and the WTO, for example, are now seen as being responsible for the loss of jobs and an ever-declining standard of living for wage earners. For wage workers, globalization has made it easier for firms to *out-source* production to countries where labor differentials are lower, thus downsizing their labor staff by substituting foreign workers for local ones.

Yergin and Stanislaw nevertheless speculate that rich and poor nations stand to benefit from free trade, and that the potential increase in economic welfare created by the globalization effort will, in their view, enable all nations to benefit.⁹⁶ As the reports on downsizing suggest, however, there is considerable evidence refuting their view.⁹⁷ The emerging organizations of world government—NAFTA, the General Agreement on Trade and Tariffs (“GATT”), the WTO, the International Labor Organization (“ILO”) and non-governmental organizations (“NGOs”)—are thought to be the social spaces for working out the new legal-economic nexus of globalization. The market orientation of these international organizations, however, has been restructured by the privatization and deregulatory movements, and these market-oriented movements are now well entrenched in the New Democratic and Labor Politics of the Clinton/Blair governments. The protocols of international trade, and the economic and political policies of the European and North American communities, represent a profound transformation in the economic role of government. Some consider this transformation to be at odds with the values of justice and equity.⁹⁸

Yergin and Stanislaw assert that the success of the new market consensus will ultimately be judged by its consequences: whether the global market system “delivers, by fairness criteria, and by the quality and cost of services it provides.”⁹⁹ The greatest recent threat to the new market consensus is the collapse of the Asian financial markets and

95. *See id.* at 67–91.

96. *See* Miyoshi, *supra* note 90, at 255.

97. *See* JOSHUA KARLINER, *THE CORPORATE PLANET: ECOLOGY AND POLITICS IN THE AGE OF GLOBALIZATION* (1997); Douglass Cassel, *Corporate Initiatives: A Second Human Rights Revolution?*, 19 *FORDHAM INT’L L.J.* 1963 (1996).

98. *See* Cassel, *supra* note 97, at 1964.

99. YERGIN & STANISLAW, *supra* note 1, at 381.

the international currency markets crisis. The Asian market crash of 1996–97 revealed the vulnerability of internationally linked financial currency markets. The vulnerability of global capital markets to regional disruption creates financial risks in the new world of decentralized global capitalism in which events can be unpredictable, indiscriminate, instantaneous and catastrophic.¹⁰⁰ In February 1995, for example, Barring Brothers, Britain's oldest merchant bank—founded in 1762 by bankers to the Queen—was destroyed by high-risk and high-speed electronic trading on the derivatives market.¹⁰¹ Confidence in global markets will ultimately depend on whether nation-states will be capable of responding to future global economic and political crises. Creating global regulatory mechanisms to temper the pursuit of global self-interest will not be an easy task. Global corporate accountability based on democratic values may be the fundamental element missing in the new global world order. There is always the possibility that the “woven world” will unravel as regional conflict and tension becomes significant. Globalization consequently becomes the stage for confronting regional difference and conflict.

During the Cold War era, the conduct of nation-states precipitated a revolution of human rights in international law. Today, a “second human rights revolution” appears to be underway, involving the human rights objectives, not of governments, but of transnational corporations.¹⁰² Boycott initiatives and demonstrations like the one recently held against the WTO in Seattle may prove to be effective in redirecting corporate responsibility and changing behavior. Hence, NGOs such as Greenpeace, Amnesty International, Human Rights Watch, the Lawyers Committee for Human Rights, and others, have attempted to perform the fundamental role of government in protecting public interest in the new global economic order.¹⁰³

100. See TOMLINSON, *supra* note 6, at 94. The trader that brought down Barring Brothers was Nick Leeson, a comparatively junior trader working in Singapore—one of the world's “youngest” markets.” See *id.*

101. See *id.* at 94. Tomlinson goes on to state that the demise of Barring Brothers at the hands of Nick Leeson makes it “emblematic of the old (complacent?) world of (western) European Imperial power being overtaken by the new world of decentered global capitalism.” *Id.*

102. See Peter J. Spiro, *New Global Potentates: Non-Governmental Organization and the “Unregulated” Marketplace*, 18 CARDOZO L. REV. 957 (1996).

103. See Frederic Jameson, *Globalization as Philosophical Issue*, in THE CULTURES OF GLOBALIZATION, *supra* note 4, at 58.

These initiatives will in turn be countered by third-world economies that are now benefiting from globalization, and thus have an economic and political stake in the status quo. The politics of globalization, privatization, and the third world have thus created a woven world of countervailing pressures for the ongoing struggle over power to control and shape transnational capitalism.

In Yergin and Stanislaw's view, the "battle of ideas" posed by the conflict between capitalism and socialism has finally been won. They assert that "[a] communism was the most extreme form of state economic control, its demise signaled an enormous shift—from state control to market consensus."¹⁰⁴ Yergin and Stanislaw thus attempt to persuade their readers that socialism has been replaced by a new set of ideas based on Western capitalism. They ignore, however, the significant amount of state intervention underlying global capitalism. Indeed, the technological-market nexus of globalization rests upon subsidies of nation-states.

The GATT convention was designed, for example, to dismantle local and national restrictions on free trade. Without the intervention of nation-states, GATT and other international conventions and laws would not have been possible. It is also the case that nation-state intervention in favor of global markets has been a zero-sum game in which one person's freedom results in the destruction of other peoples' national cultural industries. In deciding to subsidize a national industry, for example, the nation-state seeks to create advantages that will work to the disadvantage of other nation-states. Consider also the subsidies that are required to support an independent national film industry. Nation-state subsidization of an independent film industry has required policy planners to do what socialist state planners do—namely, use the economic power of the state to shape industrial or artistic development along state policy lines. As Fredric Jameson reminds us:

Those of you who think the politics of socialism is dead—those of you now inveterately prejudiced against the intervention of the state, and fantasizing about the possibilities of nongovernmental organization (NGOs)—might do well to reflect on the necessity of government

104. YERGIN & STANISLAW, *supra* note 1, at 126.

subsidies in the creation of any independent or national film industry: West Germany's Länder have long been a model for the subsidizing of *avant-gardes*; France has had intricate and valuable provisions for supporting younger filmmakers out of commercial film profits; England's current new wave, around Channel Four and the BFI, would not exist without the government and its older BBC and socialist traditions; Canada finally (along with Québec) offers a range of precedents for a really productive and stimulating role of the state in culture and even cultural politics.¹⁰⁵

Yergin and Stanislaw believe that economic laws of global supply and demand will prevail in the new global order. Global commerce exists, however, because nation-states recognize and enforce the laws of intellectual property¹⁰⁶ and commercial transactions.¹⁰⁷ The copyright, patent, and intellectual property laws of nation-states remind us that the global market is "free" only because law defines the meaning of symbolic forms of cyber-authorship as private property. The private law of nation-states "freezes the play of signification by legitimating authorship, deeming meaning to be value properly redounding to those who 'own' the signature or proper name, without regard to the contributions or interests of those others in whose lives it figures."¹⁰⁸ As Rosemary J. Coombe's work on the law of intellectual property reveals, "law operates hegemonically—it is at work shaping social worlds of meaning—not only when it is institutionally encountered, but when it is consciously and unconsciously apprehended."¹⁰⁹

There is no consensus about globalization phenomena. There is only a technological-market nexus that brings together information and markets to create new power centers and new regulatory regimes. Those who offer a one-dimensional explanation or argue that there is a consensus fail to grasp the complex nature of the technological-market nexus of globalization. Globalization is not a one-way process of determination in-

105. Jameson, *supra* note 103, at 61.

106. See COOMBE, *supra* note 46, at 7.

107. For example, the laws of nation-states that are enforced by an international law of merchant. See generally Andrea C. Loux, Note, *The Persistence of the Ancient Regime: Custom, Utility, and the Common Law in the Nineteenth Century*, 79 CORNELL L. REV. 183 (1993).

108. COOMBE, *supra* note 46, at 8.

109. *Id.* at 9.

volving global markets, but is rather a push-pull dialectic of opposing ideas, principles, and conflicts involving complex cultural forces. "Think globally, act locally" captures the contradictory mood of globalization phenomena. Indeed, if there is one generalization that can be made about the nature of the globalization phenomenon, it is that it represents a complex set of contradictory ideas about the relation between the local and the global, universalism and particularism, and identity and difference.

VI. DILEMMAS AND CONTRADICTIONS OF GLOBAL CULTURE

On one level, globalization seems to hold out the possibility of one world culture, reflected in the messages and meanings of global economic activity. Globalization of markets thus assimilates different market cultures into the single identity of a global marketplace. As Frederic Jameson has observed: "Here what begins to infuse our thinking of globalization is a picture of standardization on an unparalleled new scale; of forced integration as well, into a world-system from which 'delinking' . . . is henceforth impossible and even unthinkable and inconceivable."¹¹⁰ On another level, the appeal of global culture may work to erase cultural difference between groups as more and more people become assimilated by the commercial messages of global communication. As Jameson put it: "The violence of American cultural imperialism and the penetration of Hollywood film and television lie in imperialism's destruction of those traditions, which are very far from being precapitalist or quasi-religious traditions, but are rather recent and successful accommodations of the old institutions to modern technology."¹¹¹

Globalization consequently communicates contradictory messages about the diversity and sameness of our new world order. By enabling different cultures to come into contact, globalization facilitates the discovery of diverse new cultures, languages and practices. Globalization gives rise to a new version of global diversity based on the discovery of cultural difference. Yet in the process of commodifying global brands and products, globalization also creates a version of global uni-

110. Jameson, *supra* note 103, at 57.

111. *Id.* at 63.

formity or one-world culture. Nintendo kids in Japan and Disneyland in Paris are examples of the “monoculture” of globalization.

This is not to suggest that a global monoculture is about to materialize, or that global styles, brands and tastes are replacing those of regional cultures. Resistance to McDonald’s fast-food restaurants or Disneyland in France attests to the continuing significance of local culture. “Globalization is an *uneven* process, not just in that it involves ‘winners and losers’ or that it reproduces many familiar configurations of domination and subordination, but also in the sense that the cultural experience it distributes is highly complex and varied.”¹¹² Local cultures continue to thrive in the midst of globalization as John Singleton’s movie *Boyz N the Hood* illustrates how “locality is in fact destiny, where the horizon, far from being global, extends only as far as the boundary of ‘the Hood.’”¹¹³

“Outsider cultures” will continue to thrive at the margins of globalization, creating counter-cultures that rival the norms of global culture. The protest over the WTO in Seattle, for example, illustrates the possibility of a new form of anti-globalization sentiment of outsiders, which may serve to bring together alliances with various marginal groups and establish a movement back toward regional control and local autonomy. The movement against deterritorialization and globalization will reassert the importance of regional territory in defining the meaning of culture. A dialectic process posed by the push-pull relation between deterritorialization—rendering place irrelevant to culture—and reterritorialization—rendering place relevant again—gives globalization of culture its contradictory nature.

The contradictory visions of cultural pluralism and monoculture are both descriptions that capture the meaning of global phenomena. The types of inferences that Yergin and Stanislaw draw about the economic consequences of globalization, in challenging the status and power of the modern nation-state, are thus deeply flawed by their one-dimensional description of highly contradictory, multidimensional phenomena. Globalization’s huge transformation of our era cannot be prop-

112. TOMLINSON, *supra* note 6, at 131.

113. *Id.* (citation omitted).

erly understood as simply the new business strategy of transnational corporate enterprise.

Globalization enthusiasts like Yergin and Stanislaw describe a new global and high-tech cosmopolitan sensibility or policy style for talking about the economic role of government. The cosmopolitan sensibility is framed by the awareness that we live “in a much more fluid world, outside or perhaps beyond the neat jurisdictional delineations of public authority.”¹¹⁴ The cosmopolitan is concerned with the necessity of “harnessing public and private actors to the management of complex forces—public, private, governmental, and commercial—which constitute the international market.”¹¹⁵ The new international cosmopolitans situate themselves in the international affairs of economics and business law, pertaining not to the interests of the nation-state, but rather to those of global corporate organizations. To the cosmopolitan, global business interests call for the elimination of national sovereignty. Sovereignty, after all, remains the conceptual locus for “intervention” in a presumptively “free” or “normal” set of market practices.¹¹⁶

And yet, cosmopolitan sensibility has also prompted nation-states to recapture their national sovereignty through efforts of coordination. For example, Public Choice theorists Colombatto and Macey have recently explained how nation-states attempt to preserve their individual autonomy and sovereignty in the face of internationalization by coordinating their regulatory efforts on the international level.¹¹⁷ They claim that nation-states now attempt to protect their borders by using the international levers of power to control and limit global activity. The new sensibility of “cosmopolitanism” puts in force an older aesthetic—a more traditional “metropolitan” sensibility that attempts to preserve national sovereignty through coordinated efforts of nation-states for intervention in the international sphere. This metropolitan sensibility represents a shift back to the way nation-states attempted to protect their boundaries and to preserve their autonomy in the Cold War era. The shift to a metropolitan sensibility signals the poten-

114. Kennedy, *supra* note 25, at 13.

115. *Id.*

116. See Kennedy, *supra* note 25, at 15.

117. See Robert Colombatto & Jonathan R. Macey, *A Public Choice Model of International Economic Cooperation and the Decline of the Nation-state*, 18 CARDOZO L. REV. 925, 925 (1996).

tial renewal of national markets and interests. The push-pull dialectic between metropolitan and cosmopolitan thus sets in motion "a dance with their own politics."¹¹⁸

A new form of metropolitan world government, what John McGinnis has called a new "international federalism,"¹¹⁹ for example, is seen to offer the "nexus" for working out the conflicts between government and the global market while maintaining the normalcy of national sovereignty. The regime of "international federalism," however, has many of the same conflicts and contradictions of the old national regime of nation-states. The same economic interests and political conflicts or dilemmas characteristic of the nationalistic regimes of nation-states are also characteristic of the international federalism.

Corporate accountability, ecological responsibility, and protecting against labor exploitation, for example, are implicated in the global activities of both governments and private transnational corporations. The challenge today is to conceive of and carry out structural changes in a global government capable of responding effectively to the regulatory dilemmas of a global economy. The WTO, the place where structural changes could be carried out, however, has yielded to the market interests of private actors in the global marketplace. The creation of free trade pacts such as NAFTA and GATT has also created the political foundation for a market paradigm that operates to shrink government regulation of nation-states in order to protect the individual autonomy of market actors. Confidence in the market system buttresses the global economy and justifies the withdrawal of the economic regulation of the global economy.

As we withdraw from nation-state regulation and move toward a cosmopolitan sensibility, we experience the need for collective norms to protect individuals and nations from the dangers of the global market. Regulation of the market is thus seen to be both necessary for and incompatible with global economic freedom. As technological change, financial integration, and other global variables threaten to weaken national power and sovereignty, regulators of individual nation-states are motivated to protect their autonomy through new forms of inter-

118. Kennedy, *supra* note 25, at 15.

119. John O. McGinnis, *The Decline of the Western Nation-state and the Rise of the Regime of International Federalism*, 18 CARDOZO L. REV. 903 (1996).

national regulatory efforts.¹²⁰ The “fundamental contradiction” identified by critical legal thinkers in analyzing the pattern of liberal legalism in the West¹²¹ thus reappears at the global level. The dilemma involving the “degree of collective as opposed to individual self-determination”¹²² is as fundamental on the global level as it is on the national or local level. Nations try to maintain their sovereignty and protect their turf as their power and authority declines.

It is ironic then that economic regulation is viewed by Yergin and Stanislaw as a hindrance to global economic development. Unregulated markets, of course, do not exist *a priori* of national markets and the legal systems that establish the framework for those markets. The global marketplace is, like the old-fashioned national marketplace of the nation-state, a social construction of particular legal rules, ideology, and social arrangements. Hence, the background regime of nation-states will continue to shape and renegotiate globalized spaces. There is a general sense pervading Yergin and Stanislaw’s book that the economic regulations of the welfare state must be further deregulated. Globalization, however, gives rise to conflicting political visions about the role of the state and the market. Perhaps the love-hate relationship with government may continue to characterize the current situation of government in the new global world order. For Yergin and Stanislaw, however, the love-hate relationship with national governments may have ended the day the Berlin Wall fell.

The contradictions and dilemmas of globalization mean that globalization does not function smoothly. Globalization phenomena are always, to some extent, shifting between the opposition of the global and local aesthetics that reproduce difference and identity. The global actor is thus always, to some extent, in the position of a judge trying to balance between opposing principles and values. Globalization of culture thus has a game-like quality in which moves are determined or “ruled” by strategy, not rule. There is always the possibility of subversion by multiple actors, and thus coordination and Foucaultian

120. See Duncan Kennedy, *The Structure of Blackstone’s Commentaries*, 28 *BUFF. L. REV.* 209 (1979).

121. See *id.* at 213.

122. *Id.*

control of the key players continues to hold a potential role for nation-states in co-opting the game.

The flexible dialectic created by opposing principles and forces also means that globalization phenomena cannot be fully comprehended by structural approaches. Foucault's insight about how power is exercised in modern society is helpful for understanding how nation-states might hold on to their "commanding heights" position in the global economy. But to fully comprehend globalization phenomena, one must elaborate an explanation of globalization that takes into account the push-pull dialectic characteristic of globalization phenomena. The cultural codes of this dialectic are now becoming part of our everyday practice of representing and interpreting our social surroundings, thus necessitating a new form of cultural criticism capable of uncovering the meaning of ordinary experience, as well as the "big picture" that Yergin and Stanislaw seek to uncover.

CONCLUSION

Globalization and the decline of the nation-state's sovereign status have brought about a huge transfer of wealth and power from lower-skilled workers and less-developed nations to the owners of capital assets and the new technological entrepreneurs. A new technological aristocracy appears to be growing on the global level, and the power of this new aristocracy may represent a serious threat to democratic societies. Even more threatening, however, is that globalization appears to be cutting the natural connections between culture and the particular places we inhabit. In breaking the connection to a particular place, globalization is also breaking the bonds that have historically held communities and cultures together. It is becoming increasingly difficult to feel that we "belong" anywhere, and this loss of "belonging" can undermine the connections necessary for community. In the new global order, the values of a shopping culture seem to be replacing the values and norms of a "real" community. In the non-place of virtual reality, one comes into contact with all the various complexities of an ever-expanding commodified world, but one leaves with the empty feeling of having come into contact with the communityless world of virtual reality.

Theorists who claim that economics yields a coherent idea of globalization also fail to comprehend the complex nature of global phenomena. Their tendency to see the world simply as a business opportunity is bound to miss the complex dynamics of globalization phenomena.¹²³ There is legal, political, cultural, as well as economic content to globalization phenomena. The economic content, which is of primary importance to Yergin and Stanislaw, emphasizes the power of world markets and global economic actors like Microsoft to escape nation-state control. The economic content of globalization phenomena is significant, not because nation-state influence is purportedly on the decline, as Yergin and Stanislaw claim, but rather because private economic power offers a new conduit for the exercise of nation-state power, as Foucault's insights reveal. The process of economic change brought about by deep economic integration and internationalization of market activities operates to create a "woven world" based on a standardized system of communication and exchange. There is a consensus created by the connection between technology and the market, but this consensus is concerned with the widespread importance of global information commerce. There is no political or economic consensus in theory or practice with respect to globalization phenomena as such.

The new economic realities of global markets enable Yergin and Stanislaw to proclaim that there is an ongoing alteration taking place in the traditional relation between the state and the market. What is energizing these new economic realities, and giving them transformative possibilities, however, is the power of information technology to transform world cultures. MTV in Zimbabwe, McDonald's inside the Arctic Circle, day trading on South Beach: all are consequences of the emerging new world order created by globalization phenomena. This does not mean that cultural content explains globalization or that globalization is creating a unified world culture.

It may be that in the new century, globalization phenomena will, like the government in the twentieth century, reflect our deep ambivalence about the proper role of markets and the state. The new romance with the market signals a fundamental change in attitudes about the economic role of government. Perhaps the most significant thing that can be said about the

123. See Jameson, *supra* note 103, at 57.

globalization phenomenon is that it is helping to create a woven world based on a new commodified culture. Global corporate interests are, as Yergin and Stanislaw suggest, reshaping the social, economic, and political landscape, but it is the cultural content, as well as the economic content, that gives globalization the power to change our world. Government may be something we nostalgically long for in our world culture of late capitalism, increasingly ruled by transnational corporations like Microsoft and Disney. The push-pull forces of globalization, however, set forth a dialectic of identity and difference that enables globalization phenomena and nation-state power to change and evolve over time.

Globalization phenomena also create a new dialectic for the play of economic and cultural identity and difference. It may be, however, that the cultural content of globalization will be the single most important factor in determining how this "play of difference" shapes the emerging new world order. In other words, we need to think more about the issue of global identity—what does it mean to have a global identity, to think and act as a "citizen of the world"—literally as a "cosmopolitan"?¹²⁴ It may be, as Michael Froomkin has argued, that global information technology may lead to a more democratic self-identity in promoting liberal democratic values of openness and freedom.¹²⁵ On the other hand, it is also quite possible that the same technology will instead be a source of an ever-increasing private regulatory regime, ruled by self-interest, commercial profit, and monopoly power.

In thinking about the meaning of "global identity," we must therefore begin to contemplate the forms of identity that

124. See TOMLINSON, *supra* note 6, at 184.

125. See Froomkin, *supra* note 28, at 155. Froomkin notes how globalization communications influenced the politics of the failed 1991 coup attempt in Moscow and the Tiananmen Square protests of 1989 by bringing such events before the "world's eyes." See *id.* Froomkin concludes:

Totalitarians will fare worst in this new world, as they will be forced to choose between, on the one hand, limiting access and paying a substantial price in economic growth or, on the other hand, letting go of their control of information, a traditional tool of social control. . . . Liberal democrats . . . should be pleased since the increase in international communication will promote the emergence of a global civil society and enhance democratic values of openness and citizen participation while making censorship ever more costly to the national well-being of censors.

Id. at 155–56 (footnotes omitted).

the globalization of culture is now creating. To do this work, we need new tools of cultural criticism¹²⁶ so that we can better understand the meaning of the social identities that global identity represents. Yergin and Stanislaw are correct in suggesting that a battle is raging over the meaning of globalization, but the war is not about free markets versus state regulation. Rather, the battle is now waged over who gets to regulate the technological-market nexus of the new global world order.

To better understand the current struggle over the right to regulate requires a broader framework of analysis than that currently offered by business strategy and economic analysis. What is needed is critical examination of the cultural codes that are regulating global activity, as well as shaping the contours of the debates about globalization. Rather than attempting to "bridge" or "join" the autonomous worlds of law, culture, and globalization, as Yergin and Stanislaw seem to do in their book, it might be more useful to examine how these different dimensions of human activity operate as a complex cultural code shaping the meaning of a new global culture. We need to know how this code operates within the technological-market nexus of the postmodern condition known as globalization. We need, in other words, to better understand the mechanisms of the cultural codes of postmodernism, emitted electronically by the "globalization of culture," now transforming even the most mundane experiences, like going to the beach.

126. See Guyora Binder & Robert Weisberg, *Cultural Criticism of Law*, 49 STAN. L. REV. 1149 (1997).

UNIVERSITY OF COLORADO LAW REVIEW