

# THE CASE AGAINST GUARDIAN

**IN JUNE 2000**, hundreds of government leaders and activists gathered in Warsaw, Poland, for the first World Forum on Democracy. Organizers billed it as a celebration of “the extraordinary democratic gains of the last twenty-five years.” The U.S. State Department, an enthusiastic supporter of the forum, said it was a testament to the fact that, at long last, “democracy is triumphant.”

Historians could easily write a story about the many reforms that were adopted by governments over the last three decades to advance democratic values. Many countries held free elections for the first time. Highly centralized nations shifted power downward to state and local levels. Dozens of countries adopted new laws to promote openness, allow public participation in policymaking, and provide new channels for resolving citizens’ grievances.

All of these reforms were based on the premise that citizens are responsible, competent, and entitled to play an active role in government. “The relationship between state and citizen has changed,” British prime minister Tony Blair said in 2004. “People have grown up. They want to make their own life choices.” And it was also true that people seemed increasingly distrustful of government elites. Instead, they celebrated the wisdom of crowds. “Groups are remarkably intelligent,” wrote journalist James Surowiecki in 2004, “and often smarter than the smartest people in them. There’s no reason to believe that crowds would be wise in most situations but suddenly become doltish in the political arena.”

This version of history is inspiring but incomplete. It overlooks a number of important government reforms that took a more jaded view of the democratic process. These changes were premised on the idea that elected leaders and citizens were incompetent, or shortsighted, or hopelessly fickle, and that sometimes the best thing was to take power out of their hands and give it to experts, carefully protected from political influence, who could make hard choices on the public’s behalf.

Consider, for example, what the world did to its central banks. Three decades ago, most central banks were kept under the thumb of elected officials precisely because their decisions had such an important effect on the health of the economy and the distribution of gains and losses from economic growth. But over the last 15 to 20 years, there has been a “quiet revolution” in central banking, according to economist Alan Blinder; it is now taken for granted that central banks must be strictly independent.

The contemporary central bank, the economists Paul Bowles and Gordon White wrote in 1994, is the “modern embodiment of the Platonic guardian ... by virtue of its independence and apolitical character, it is deemed to be above and beyond the normal political pressures and requirements of democratic societies.”

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Why did this transformation occur? Because governments came to believe, after years of runaway inflation in the 1970s, that politicians and voters were incapable of taking the painful steps necessary to ensure long-term price stability. The public needed guardians to pursue tough measure on its behalf. The attitude was expressed in 1998 by Wim Duisenberg, head of the new European Central Bank, which was established in 1992 on the model of strict independence. It is “normal,” Duisenberg said, for politicians to have views about monetary policy—but it would be “abnormal if those suggestions were listened to.”

Inflation receded in the 1990s and early 2000s, and many economists said that this proved the value of tough, independent central banks. And so the central bank model was replicated in other areas of governmental work. Countries that were suffering through economic crises or wrestling with chronic budget deficits were told that they should give more power to finance ministry bureaucrats, who would act as guardians just like central bankers. “Parliament is incapable of exercising its responsibilities,” a British treasury official said in 1987. “We must do it for them.” Around the world, the political scientists Lotte Jensen and John Wanna wrote in 2003, countries in crisis saw fiscal power move “upward to an elite strata of decision-makers inside government.”

The same logic worked itself out in other areas. International organizations like the World Bank encouraged many countries to reorganize their tax collection agencies so that they would be more independent of elected officials, who were alleged to be either incompetent or corrupt. The aim was to create “an island in the public sector ... an institution similar to the central bank,” a Peruvian tax collector explained to researcher Robert Talierno Jr. in 1998. Independent authorities, it was argued, would do a better job of ensuring that governments paid their bills on time—including, not incidentally, the money owed to foreign holders of government debt.

There was a similar “revolution” in the way that the world’s ports and airports were organized. Economic globalization caused a surge in marine and air traffic, resulting in congestion around the world and threatening a breakdown in new globalized production systems. Shippers, manufacturers, and airlines argued that the problem would not be fixed so long as ports and airports were under the control of politicians obsessed with short-term agendas. The solution, they said, was to give ports and airports more autonomy so they could concentrate on efficiency and expansion.

Many countries also reorganized their regulatory functions, transferring power over the regulation of major businesses to formally independent agencies that were “technocratic rather than political in orientation,” in the words of researcher Fabrizio Gilardi. The complaint, according to a 2005 World Bank study, was that legislators had a bad habit of behaving “in a shortsighted and populist manner.” Countries that were most eager to attract foreign investment—or which had the worst track record in treating investors—became the biggest enthusiasts of new independent regulatory agencies.

The same pattern repeated itself in other areas. The general problem with democratic processes, some reformers argued, was that

voters and politicians had strong incentives to forget about the long term and ignore the needs of business. And so governments were pushed to adopt laws that took certain functions out of politics—and put them in hands of technocrats. In particular, reformers targeted many of the functions that were critical to the operation of a newly globalized economy, typified by deep international capital flows and booming cross-border trade.

So the story of the last three decades is not just about democratization. We have also witnessed a fundamental transformation in the organization of the world economy, and this created new pressures to reorganize government, often in ways that undercut the democratic virtues of participation, transparency, accountability, and responsiveness. The keyword for reformers in these critical areas was not empowerment, but discipline. In their view, democratic processes had to be constrained so that a global economy could flourish.

It turned out, however, that the task of transferring power to guardians was harder than expected. Advocates of these reforms often took a simplistic view of how guardians could be empowered: pass a law to establish their authority, and the job was done. But this proved to be misguided. There was “a tendency to oversimplify the issues at stake,” the influential development economist Dani Rodrik wrote in his 2007 book.

One problem was the ability of well-established interests—powerful political groups, rival bureaucrats, disaffected workers—to subvert the law and undermine the power of guardians. A 2008 study of sup-

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posedly independent tax agencies in Africa found that there had actually been “very little loosening of the political and bureaucratic grip of central executive authorities.” Another study of formally independent regulators in Latin America reported that “practice is significantly different from what legal provisions would lead one to expect.” In India, the heads of newly established airport authorities still found themselves entangled in local politics and labor disputes.

But the difficulty was not simply the capacity of entrenched interests to undermine a new law. A larger issue was the collision between two basic ideas—the first, that citizens were competent and entitled to participate more fully in policymaking; and the second, that they were incompetent and needed to be disciplined. In practice, this collision usually produced heated arguments about the legitimacy of expert decision-making.

In many countries, for example, concentration of power in the hands of finance ministries produced a backlash from legislators and voters. New Zealand’s treasury launched “something of a coup” after a 1984 economic crisis, according to historian Malcolm McKinnon. (“We did not create crises,” an official told McKinnon. “But we weren’t above

taking advantage of them.”) But popular anger about treasury dominance grew, eventually resulting in constitutional amendments that weakened its hold on power.

A similar dynamic unfolded in Canada in the early 1990s. Shaken by attacks on the Canadian dollar during the Mexican financial crisis of 1994, Canada’s Liberal government launched a retrenchment program guided by a newly empowered finance ministry. Journalist Jeffrey Simpson complained that the country had become “a friendly dictatorship” in which key decisions were made by small band of bureaucrats. The government survived the fiscal crisis but was eventually turned out by frustrated voters.

Of course, Americans saw this process at work in the fall of 2008, as Treasury Secretary Henry Paulson sought broad powers to deal with the U.S. financial crisis. *Newsweek* dubbed Paulson “King Henry.” Vermont Senator Bernie Sanders criticized the Federal Reserve for wielding power “with absolutely no accountability, no transparency, and no honest reckoning with the American people.” By August 2009, two-thirds of the House of Representatives had co-signed Rep. Ron Paul’s bill to give the Government Accountability Office the power to scrutinize Federal Reserve activities more closely.

Challenges to guardian power have arisen in other areas too. The ports of Los Angeles and Long Beach, nestled together on the shore of San Pedro Bay, were deliberately structured so that they could “invest wholeheartedly in infrastructure without too much interference.” But public anger about the side effects of growth—noise, congestion, pollution—mounted as the ports expanded during the trade boom of 1995–2007. Port leaders belatedly realized that the backlash would jeopardize their expansion plans and launched a campaign to consult with neighboring communities about ways of mitigating the collateral damage from growth.

This will be a familiar story to Boston residents: essentially, it’s a reprise of the debate over the expansion of Logan Airport during the 1960s and early 1970s. MassPort, the operator of Logan, was established as an independent authority but learned from painful experience that it could not ignore the rising protests of its neighbors. Now economic globalization has spurred dozens of Logan-style disputes around the world, as newly independent ports and airports struggle to deal with the boom in marine and air traffic.


The clash between guardians and citizens is also obvious in the field of infrastructure development. Around the world, private operators of infrastructure have been given unprecedented authority over critical water, electricity, and transportation systems. But they have confronted a burgeoning number of protest groups who challenge the operators’ right to manage those systems independently. “With the spread of democratic values,” a roundtable of business executives concluded in 2005, protestors “came to feel more empowered than before.”

In some areas, the case for guardian power has also been weakened by the financial crisis. The premise, after all, is that guardians will do a better job than politicians and citizens in performing key functions. But the credibility of independent central banks—the archetype of guardian power—has been damaged by their failure to anticipate the crisis of 2007–2009. Economist Barry Eichengreen recently wrote that



the “pressure of social conformity” within the profession was intense, discouraging serious attention to signs of a looming crisis. In August 2009, the *Financial Times* even suggested that “the era of economic theocracy, in which unelected experts ran the global economy, is over.”

Advocates of guardian power should learn from the experience of the last few decades. Simplistic proposals to get important functions “out of politics” do not work. Laws designed to transfer authority to technocrats cannot be effective if the underlying political dynamics and broader political culture are hostile to the idea of delegation. Old notions about the virtues of rule by guardians cannot survive in an era in which citizens are captivated by the rhetoric of democratization.

In practice, guardians are more likely to make better decisions if they are compelled to accommodate the interests of broad range of stakeholders—including many of those who bear the immediate costs of economic modernization. Of course, this puts guardians back in the thick of politics, a development likely to frustrate enthusiasts of rapid globalization. But there is no way around it. Politics has its frustrations, but it produces one good that guardians cannot make for themselves: the broad legitimacy that is necessary to make the process of globalization durable. 

This article is adapted from Alasdair Roberts’ book, *The Logic of Discipline: Global Capitalism and the Architecture of Government*, an examination of the radical governmental reforms of the “era of liberalization” from 1978 to 2008. The book will be published by Oxford University Press in March 2010. Roberts joined the Suffolk Law faculty in 2008 as the first Jerome L. Rappaport Professor of Law and Public Policy.