Viral Governance: How Unilateral U.S. Sanctions Changed the Rules of Financial Capitalism[1]

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This article presents how global governance went viral as its targets moved from sovereign to corporate entities and its source from multilateral financial institutions to domestic U.S. institutions. It argues that viral governance describes how the United States rewrote global rules through its sanctions program first against Iran, then against Iran-affiliated global banks and businesses, and finally against the daily compliance practices of global money, information, and technology flows in general. Utilizing over 150 interviews with international experts in the field of sanctions and banking, the article describes the recursive process that led the U.S. government to assume global regulatory powers and to initiate deglobalization in its trade war against the European Union and China. The article concludes that viral governance perpetuates crises, whereas multilateral governance seeks to extinguish crises; it operates through sustained legal uncertainty over the jurisdictional limits of the hegemonic power, while multilateral governance seeks to absorb legal uncertainty; it requires the abolition of all regulatory counterpowers, whereas multilateral governance can allow strong states to assume the equality of sovereign powers.

With growing trade tensions between the United States and the European Union, the U.S.-China standoffs, the U.S. boycotts of multilateral governance mechanisms, and tensions over the global pandemic, the fundamental fabric of international laws, rules, and norms on which global capitalism

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has prospered for more than half a century seems to be melting or even collapsing.[2] These processes of deglobalization may look too recent to have captured the attention of sociologists of financial capitalism and globalization (Babb 2001; Dezalay and Garth 2002, 2010; MacKenzie 2011; Riles 2013; Nelson and Katzenstein 2014; Pénet and Mallard 2014; Pénet 2018; Kentikelenis and Babb 2019) and sociological scholars who have paid attention to the role of law and transnational legal orders (TLOs) in the working of global markets (Braithwaite and Drahos 2000; Bartley 2007; Halliday and Carruthers 2007; Shaffer and Waibel 2016). In sociological discussions, globalization is presumed to be an irreversible trend, a fundamental transformation (Kentikelenis and Babb 2019), or a forceful pressure (Polillo and Guillén 2005) on global and national laws or norms (Carruthers and Halliday 2009), financial markets (Knorr Cetina and Bruegger 2002), and trade policy (Chorev 2007; Fairbrother 2014), which makes its impact felt on income inequality (Alderson and Nielsen 2002), human rights (Finnemore and Sikkink 1998), and professions (Liu and Wu 2016). Any backlash to globalization is presented as a process of local resistance and adaptation (Çakmaklı, Boone, and van Witteloostuijn 2017) that does not question the overall global superiority of transnational norm making spurred by clubs of states, international organizations (IOs), and multinational companies (MNCs), such as global banks (HSBC, BNP Paribas, or Deutsche Bank, to cite a few) and industrial and tech giants (e.g., Airbus, Alstom, Google, or Huawei) that have participated in coconstructing the new rules of global financial capitalism. If they do not account for the quick unraveling of the rules of globalization (Blyth 2013), sociological models of transnational rulemaking will treat the deglobalization process and the undermining of multilateral rules as an "anomaly," in the Kuhnian sense of being a reality that sociologists ignore until better models can treat it as a plausible outcome.

In this article, we propose a new theoretical model of global governance that integrates insights from transnational legal ordering (Halliday and Carruthers 2007; Block-Lieb and Halliday 2017) and world system theory

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[2] U.S. boycotts of multilateral governance mechanisms include boycotts of the WTO (the World Trade Organization), the Paris Agreement dealing with greenhouse-gas-emissions mitigation signed in 2016, the Iran Nuclear Deal or Joint Comprehensive Plan of Action (JCPOA) reached in Vienna on July 14, 2015, to name just a few.

(Wallerstein 2004) so as to explain how processes of transnational rulemaking associated with the globalization of financial capitalism have also paved the way for the current deglobalization processes. From world system theory, we take the central notion of hegemony, which describes a situation in which the most powerful state manages to impose its own rules of governance on other states—as occurred with the Spanish Empire in the 16th century, the British Empire in the late 19th century, and the United States today. Drawing on this insight, but going beyond the traditional state-centered approach common to world system theory, we hypothesize that deglobalization cannot simply be associated with the return of nationalism against globalism and the sacralization (Douglas 1966) of national sovereignty as the sole source of legal and political legitimacy. In fact, deglobalization relies on TLOs and the diffusion of the hegemon's interpretation of global rules in the world of MNCs and select domestic state agencies.

Our main theoretical contribution in this article is to build a model of global governance that puts at its heart the notion of hegemony and that shows how transnational mechanisms have reconfigured how hegemony functions: no longer through multilateral governance but according to a new logic that we call "viral." We use the notion of a virus in a concrete legal sense rather than as a metaphor. The metaphor of a virus fills the discourse of domestic and multilateral institutions in charge of protecting the "financial integrity" (FATF 2008; Szubin 2015) of the world's financial system: these financial integrity watchdogs assume that the financial system is highly vulnerable to the "viruses" that may run through the veins of financial capitalism along flows of global money, technology, and goods. According to this organicist metaphor, the financial system is the human body, and any illicit transaction (linked to terrorism, nuclear proliferation, corruption, or money laundering) is a virus that can potentially cause a heart attack, pushing a global bank found in noncompliance with international rules—and more importantly U.S. law—to the verge of bankruptcy, resulting in a worldwide market panic. This metaphor is constantly used by financial regulators to understand the problem they are trying to solve and legitimize their strong unilateral measures against domestic and foreign companies (Zarate 2013).

In contrast to global regulators in charge of financial integrity programs, we understand the viral dimension of contemporary transnational rulemaking in the sense of its following the operations of a digital virus, like a Trojan horse infecting a computer and turning its user into an informant working for a foreign entity. U.S. sanctions law, so we argue, works like a virus by requiring infected corporate giants in high-risk countries (Farrell and Newman 2019*a*) to act as if they were U.S. legal persons and therefore to always follow U.S. law over other rules. This is how territorial and extraterritorial operations of U.S. sanctions law enforcement agencies work: once targeted by U.S. sanctions enforcement agencies—from the Treasury Department's

Office of Foreign Assets Control (OFAC) to the Federal Bureau of Investigation (FBI), the Department of Justice (DOJ), or the New York Department of Financial Services (DFS)—for alleged violations of U.S. sanctions against foreign countries, targeted global banks and MNCs not only have to submit to costly restructuring programs to reinforce their detection and monitoring systems internally, but they are forced to fully participate in the logic of "surveillance capitalism" (Pasquale 2015; Zuboff 2019), which requires them to send the information they have on their clients to U.S. enforcement authorities in case of suspected violation of U.S. law, creating more targets of U.S. sanctions enforcement. This viral governance thus operates in a recursive manner (Halliday and Carruthers 2007): such viral infections end up with potentially endless secondary sanctions, with more and more infected companies participating in this new global surveillance program that strengthens the hegemony of U.S. rule at the expense of the old model of multilateral rulemaking.

Our contribution to the study of market governance is not only theoretical but also historical in kind. Our article proposes to relate the current trade and financial wars between the United States and Europe, and the United States and China, to little-known regulatory developments that started in the 2000s with the U.S. "war on terror" and U.S. sanctions against Iran more specifically. We argue that the extension of U.S. hegemony through viral governance of financial capitalism finds its origins in the U.S. sanctions program against entities involved in Iran's nuclear program, which the United States subsequently applied against global banks and businesses with ties to Iran, and then far beyond Iran or global actors tied to Iran, as they now affect such MNCs as Renault, ZTE, Huawei, TSMC, Google, TikTok, and hundreds of other companies in the United States, Europe, and Asia as well as millions of their suppliers and customers. By first sanctioning the weakest links in global capitalism (Iran's economic state conglomerates) and moving upward to the center through the global monitoring of U.S. sanctions against Iran by global banks (like HSBC, BNP Paribas, and Deutsche Bank, to cite a few), the rules of global capitalism have been rewritten and have now expanded U.S. law to every corner of global capitalism. This iterative process of sanctions design, implementation, monitoring, enforcement, and redesign explains how, starting with a few nondescript companies dealing with Iran's shadow economy, now the largest European banks, the world's largest telecom equipment providers, the world's largest aircraft manufacturer, the world's largest oil companies, and the world's largest rolling stock manufacturers have all seen their inner rules reconfigured by U.S. sanctions law, forcing them to pull out of global markets if not complying with U.S. sanctions law.

In order to trace the genealogy of this new model of global governance, the article proceeds as follows: we first construct a theoretical framework of transnational legal ordering through viral governance and then briefly overview the data and research methods. We next describe how the evolution of the governance of financial and trade flows related to the Iranian case was shaped according to classical models of bilateral cooperation and multilateral governance through IOs and why these efforts failed to transform the trade and investment rules to produce the desired effects (i.e., the exclusion of Iran's economy from global capitalist circuits). In subsequent sections, our viral model of global governance is used to shed light on the historical evolution of the enforcement of U.S. sanctions on European banks that failed to apply U.S. sanctions law against Iran in their worldwide operations and later to U.S. trade sanctions on China in the meltdown of the world trade rules. In these sections, we link the success of unilateral U.S. global sanctions to two unique features in this viral model of governance: the enrollment (Latour 1987) of global private sectors by U.S. regulators and the viral mutation of MNCs. We conclude with an analysis of how our findings can shed light on processes driving deglobalization.

A MODEL OF VIRAL GOVERNANCE: FROM FINANCIAL GLOBALIZATION TO DEGLOBALIZATION

Multilateral Governance in TLOs Theory

Among the sociological models that seek to explain changes in the global governance of capital flows in the last 40 years, the theory of TLOs has taken pride of place (Halliday and Carruthers 2007; Halliday and Shaffer 2015; Shaffer and Waibel 2016; Kentikelenis and Babb 2019; Shaffer 2021). The actors and mechanisms involved in producing the legal infrastructure of market globalization, so these authors demonstrate, can be represented in reference to the recursive logic of transnational rulemaking, which associates two levels that continue to be quite distinct through the process: the multilateral and domestic levels of governance. At the multilateral level, actors are involved in policy design and legislation, and at the domestic level, actors deal with policy implementation and enforcement (Halliday and Carruthers 2007)—although feedback loops linking the two exist, as domestic processes of rules transposition and implementation can also lead to the "bottom-up" creation of new rules, thus feeding the discussion of new reforms at the multilateral level (Block-Lieb and Halliday 2017).

In TLO scholarship, the cycle of multilateral rulemaking is represented as a circle, which generally starts with the adoption of new rules through consensus within IOs (process 1 in fig. 1). Usually, IO secretariats elaborate new standards and rules that are first adopted and then translated by IO member-states (often by consensus, obtained through persuasion and peer pressure) into domestic laws, which private actors then have to comply with when they operate within these domestic contexts (Halliday 2018). This

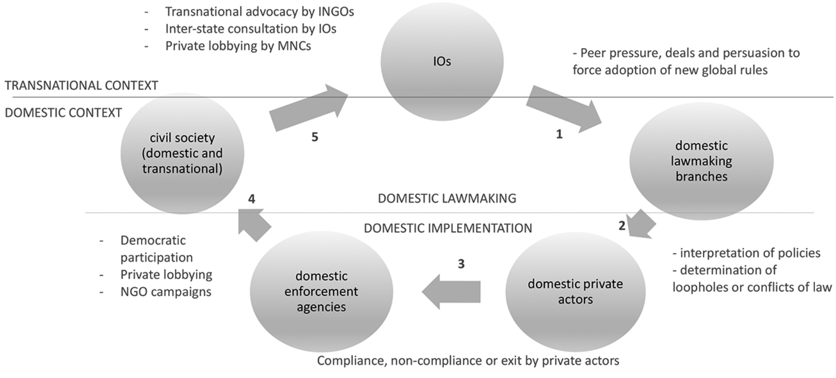

Fig. 1.—Recursive mechanisms in multilateral governance. Color version available as an online enhancement.

common sequence can be observed in most issue-specific regimes, from human rights to trade, labor, finance, or environmental protection (Balachandran et al. 2018; Charlesworth et al. 2018). IOs also matter for implementation, as they monitor global compliance with such new rules through the creation of indicators and the mobilization of expertise (Merry 2011; Halliday, Levi, and Reuter 2014; Merry, Davis, and Kingsbury 2015; Morse 2019) or by engaging in investigations to gather their own primary data about state compliance with common rules—such as the panels of experts (POEs) created to assist UN Security Council Sanctions Committees in charge of documenting the (lack of) implementation of certain UN Security Council Resolutions (UNSCRs), like those against North Korea, by all states (Mallard and Niederberger 2021). When compliance lags behind, or when unintended effects appear as a result of policy implementation, new ideas to solve these problems are relayed at the level of IO secretariats and multilateral assemblies of member-states, starting a new cycle of legislative reform, in conformity with a classical model of multilateral governance.

Although they pay more attention to deliberative processes taking place at the multilateral level, TLO theorists acknowledge that innovation in transnational rulemaking can also be initiated at the domestic level. Indeed, IO-initiated reforms generally produce new rules that have a level of indeterminacy, which explains why the transposition of IOs' recommendations in domestic policies may lead to different regulatory outcomes in different countries and why bottom-up processes of rule creation often complement top-down processes (processes 2 and 5 in fig. 1). Bottom-up rule creation is important for many reasons, from the fact that states claim sovereign prerogative to flexibly interpret international rules, to the fact that various countries have different traditions when it comes to market regulation leading to hybridization or contextualization of rules (Dobbin and Sutton 1998; Hafner-Burton and Tsutsui 2005; Djelic and Sahlin Andersson 2006), to the fact that some states may have already contracted obligations that force them to water down new international rules in order to lessen conflicts of law in their domestic jurisdiction (Alter and Raustiala 2018). But if cross-national variations in how international rules are interpreted, implemented, and enforced in domestic jurisdictions can initially lead to the famous "decoupling" (Meyer et al. 1997) between norms and practices identified by world society theorists, this decoupling is likely to lessen over time, as self-reinforcing cycles of legislation and implementation build up a global system of multilateral rules that are assumed to be increasingly effective, wide-ranging in scope, and stable in the long run (Carruthers and Halliday 2009).

Authors thus assume that global governance underlying economic globalization will continue unhindered over the long term, despite contingent setbacks and a sometimes chaotic process (Shaffer 2021). IOs help socialize states that fail to enforce new multilateral rules into accepting new expectations and conduct and eradicate possible loopholes in existing templates (process 4 in fig. 1). Closing loopholes and forcing reluctant states to align words with acts can take many forms, by hardening existing legal language, by increasing penalties in cases of observed violations (Drezner 2007), by persuading all concerned actors to agree with the goals and benefits of implementing regulations—an important task to avoid implementation failures due to "mechanisms of actor mismatch" (Halliday and Carruthers 2009)—or by universalizing the geographical scope of IO-sponsored rules (Lascoumes and Nagels 2014) so as to prevent private actors' forum-shopping strategies (Benvenisti and Downs 2007), for instance, when the Organization for Economic Cooperation and Development (OECD) proposes new rules to punish private multinationals that choose the national jurisdiction that offers more lax tax or transparency rules. The recursivity of transnational rule making, although it may sometimes end up creating "regime complexity" (Alter and Meunier 2009), thus generally leads to the gradual harmonization of domestic rules across a wide range of states (DiMaggio and Powell 1984). This is a key assumption in models of multilateral governance that seek to explain how globalization happened and why it is here to stay.

Sociologists and criminologists who have studied the reforms to banking governance brought about by the global war on terrorism financing and associated financial crimes (Amicelle 2011; Goede 2012) have made reference to such models of multilateral, multilevel, and recursive governance (Mallard 2019*b*) to trace the genesis of the global "financial integrity" regime. The multilateral actors involved in this domain are classical IOs—the International Monetary Fund (IMF), the OECD-based Financial Action Task Force (FATF), or the Egmont Group of Financial Intelligence Units—to which global banks report suspicious financial transactions and which pool resources (Goede, Leander, and Sullivan 2016). Even before 9/11, these multilateral bodies pushed new rules onto global banks on behalf of financial integrity campaigns and other "rule of law" reforms that were part of the new "Washington Consensus" (Best 2005). The same IOs that participated in "financial integrity" programs thus also pushed anticorruption campaigns, which culminated in the 2005 UN Convention against Corruption, the OECD Anti-bribery Convention and the convention's 2009 Anti-bribery Recommendation, as well as the actions of the FATF in anti–money laundering (AML)/combatting the financing of terrorism and "counterproliferation financing" (CPF) and anticorruption from 2011 to 2013. Eventually, as loopholes were closed through this accumulation of converging directives and guidelines regarding financial integrity, MNCs started to fully comply with the new international rules (process 3 in fig. 1), when they realized that the fight against corruption and associated campaigns not only moralizes business practices (Maurer 2005) but also ensures fair market competition and avoids the misdirection of foreign direct investments to less productive companies in a context of neoliberal globalization.

The existing models of TLO thus treat a sudden reversal like the epoch-shifting move from multilateral to unilateral governance and from globalization to deglobalization either as a Kuhnian anomaly, which will be ignored, or as an external shock, which could set the self-reinforcing logic of the model onto a radically different path, for instance, the election of Donald Trump, who is often blamed for single-handedly changing the rules of global capitalism, or a global pandemic like COVID-19. In contrast, we propose a new model of governance that differs in important respects from this model of multilateral governance.

Viral Governance: Integrating Hegemony into TLO Theory

Our model of viral governance puts at its center the duality between "center" and "periphery," which has been introduced by world system theorists (Arrighi 1994; Wallerstein 2004) and developed by Bourdieuan sociologists of power elites (Dezalay and Garth 2002, 2010). Whether these authors claim a Marxist inspiration, focusing on the accumulation and circulation of money and economic capital (Arrighi 1994), or a Bourdieuan inspiration, focusing on professions conceived as "fields" where not only economic but also social and cultural forms of capital circulate (Dezalay and Garth 2002), they all consider that world society and TLO theories mistakenly flatten the world of transnational rulemaking by ignoring the important dichotomy of center/periphery in world society. They not so much challenge the historical narrative according to which multilateral governance has been the privileged tool to organize the international sphere since the Second World War, but they instead challenge the idea that multilateral governance would respect the equality of states, their national sovereignty (each state being free to adopt its own laws), and the exclusivity of one national legal system in one territory. For them, these so-called structures (Meyer et al. 1997) of the international society are all but norms, which are often used as a facade to hide and further the hegemony of the dominant power that set up those multilateral bodies (Krige 2008).

Still, so far, world system approaches have failed to seriously study contemporary challenges to multilateral governance (Shaffer 2021). Their models do not really account for how changes in the international environment in which the central power operates would affect the nature of the relationship between center and periphery. They see the duality between center and periphery functioning almost unchanged in an era of multilateral governance marked by a profusion of IOs as compared to times when IOs were scarce. Their assumption is that powerful states in the center will continue to exert their hegemony on peripheral states with or without the leverage of multilateral organizations. In so doing, both Marxist and Bourdieuan theorists have developed a "realist" view of international relations (Dezalay and Garth 2004), according to which the transnational is not a separate space distinct from the national contexts in which "agents of globalization" (Mirowski and Plehwe 2009) accumulate and spend power to advance their own hegemonic goals as well as those of their nation-state. A new generation of Bourdieuan sociologists have tried to address that limitation, by extending the notion of "field" to the transnational level and thus challenging the realist view of earlier world system theorists.[3] But while doing so, they have sometimes lost sight of the centrality of notions of center/periphery in the production of hegemony. Our current theoretical contribution parallels such efforts, but it takes the development of TLO theory as a starting point, by placing at the core of its model the opposition between center and periphery.

Our model of viral governance assumes that not all states are equal and that, in fact, transnational rulemaking differs in essential ways for two categories of states: the hegemon and the peripheral states.[4] Compared to

[3] The "fielding" of transnationalism studies (Go and Krause 2016) has been a major part of Bourdieuan sociologists's theoretical accomplishments. Bourdieuan scholars of colonialism have talked, e.g., about the emergence of a "colonial field" (Go 2008; Steinmetz 2008, 2013; Mallard 2019*a*) in which colonial subjects and colonial officers coconstructed rules of colonial governance with metropolitan elites traveling across the center-periphery boundary (Benton 2002). Scholars of the European Union have also introduced the notion of a "weak field" (Mudge and Vauchez 2012) to capture the fact that power exercised by strong regulatory states on weaker states is mediated through a liminal transnational field.

[4] We could consider a third category of states and IOs: the semiperipheral ones, like China or the European Union, which sometimes act as hegemonic emitters of norms—e.g., E.U. data privacy law today (Bradford 2020)—and at other times as peripheral receivers of norms. The model would not fundamentally change.

figure 1, the transnational space we represent in figure 2 is located in a liminal space between two categories of states, which are thus all aligned on a horizontal axis, as they make up a universe populated by states on both ends of the spectrum: at the emitting end, the hegemon, and at the receiving end, peripheral states. Our model rejects, first, the assumption that all states are equal before the IOs, international governmental organizations, and international courts that populate the space of multilateral rulemaking. Second, it challenges the alleged verticality of the relation between international and domestic spheres of rulemaking that is assumed in classical TLO theory—the latter may look vertical only when seen from the point of view of peripheral states but not from the point of view of the hegemon. In many ways, the transition from figure 1 to figure 2 parallels a Copernican revolution: figure 1 represents a view of the world in which the ecosystem of states is flat and where the sunny light of IOs comes from the sky above their heads; figure 2 represents a galaxy where the hegemon, the IOs, and peripheral states belong to the same horizontal magma of stars and planets, all entertaining relations of attraction and resistance with one another and with potentially expanding boundaries to this universe.

This representation of the galaxy in which the hegemon and peripheral states, as well as IOs, operate, allows us to define how viral governance works and how different it is from both bilateral and multilateral governance in an age of hegemony (Drezner 2007). It allows for the possibility that one state (the hegemon) could exert direct bilateral pressure on peripheral states (process A in fig. 2) or indirect pressure through multilateral organizations (processes B in fig. 2) or extraterritorial effects over global private actors through the direct control it claims on MNCs (processes C in fig. 2).[5] Bilateral governance is a very common way for hegemony to be exerted (Hopewell 2016): with bilateral governance, the hegemon is able to exercise "soft power" (Nye 1990), generally by using bilateral coercion, exchange, and persuasion to encourage peripheral states to copy its own domestic laws in order to multiply their effects across borders (process A in fig. 2). Multilateral governance can also hide hegemonic rulemaking disguised as inclusive deliberative governance. Throughout the Cold War and beyond, the U.S. hegemony on semiperipheral and peripheral states operated through multilateral organizations, as world system theorists who have studied the Bretton Woods system and the Washington Consensus that followed its downfall know very well (Chase-Dunn 1998).

Along similar lines, after 9/11, many scholars have noticed that the UN Security Council (UNSC) morphed into a global lawmaker under the influence

[5] Processes B are already included in fig. 1, but here a key distinguishing feature is added: the possibility that the hegemon will use IOs as a cover to exert its hegemony over peripheral states.

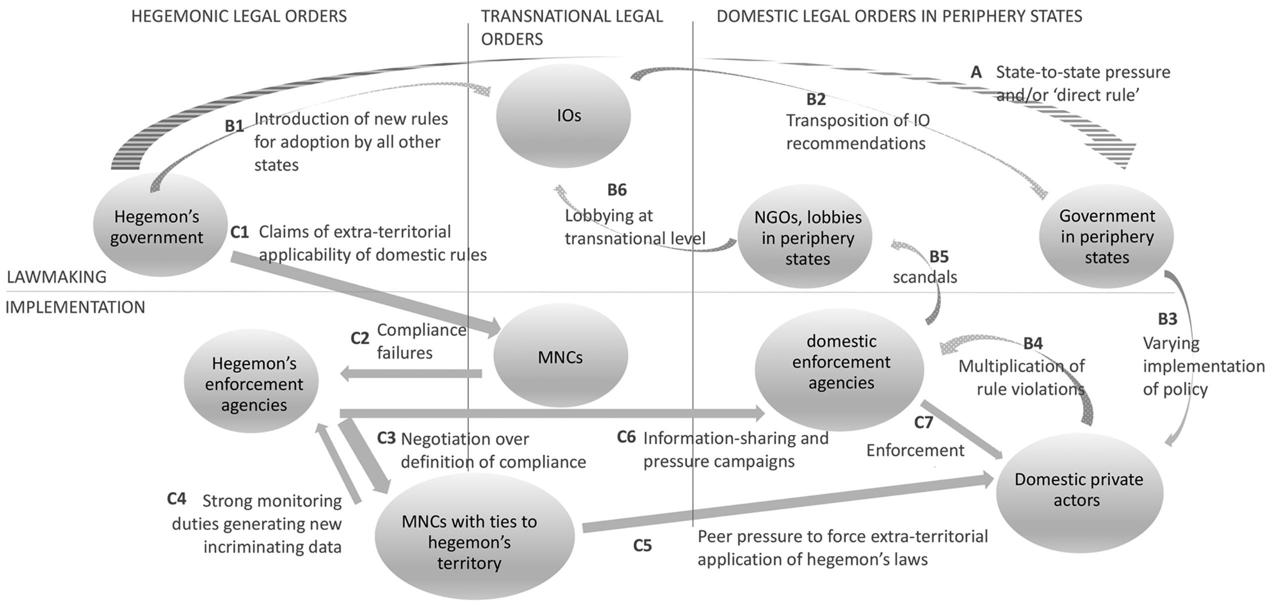

FIG. 2.—Recursive mechanisms in viral governance of international finance. Color version available as an online enhancement.

of the U.S. government, which used this multilateral forum to exert its regulatory hegemony on peripheral states by forcing them to copy its own domestic legislation using chapter 7 of the UN Charter (Scheppele 2007). Legally binding counterterrorism UNSCRs have pushed U.S. antiterrorist law—the Patriot Act especially—through every parliament in the world (processes B1 and B2 in fig. 2). Peripheral states were obliged to transpose the hegemon's new norms into their domestic law and to entrust their domestic enforcement agencies with the task of policing the implementation of such rules by the private actors located in their territory (B3 in fig. 2). Throughout instances of this process, the power to resist the top-down diffusion of new rules by peripheral states is indexed on the states's economic and military power: some (semiperipheral) states, like the E.U. member-states in the 1990s, could sometimes resist the top-down diffusion of U.S. rules through IOs, as they did, for instance, when the European Court of Justice refused to recognize the universal legal validity of the hegemon's counterterrorism rules (Halberstam 2010).[6] But except for a few (semi)peripheral big states, most states will lack the power to resist the hegemon's demands, especially if they are relayed by multilateral organizations.

How viral governance produces hegemony differs from both bilateral and multilateral governance, and, we argue, it best describes how hegemony is being produced today. The viral model of governance we sketch seeks to explain the fact that the hegemon can impose the universal validity of its own domestic laws directly onto private actors operating outside its territory, in particular, the MNCs that move capital and money around the globe, without requiring peripheral states to adopt those laws (processes C in fig. 2). Viral governance describes a case in which the hegemon influences practices outside its territory directly, without going through bilateral or multilateral engagement with foreign states (C1 in fig. 2). The hegemon can work directly on the MNCs' fear of being excluded from a major worldwide market or technology supply chain—such as the U.S. financial market or the U.S. core technology in any global supply chain today (Prakash and Potoski 2007)—by threatening to take sanctions against those foreign private companies that dispute the extraterritoriality of the hegemon's domestic laws (C2 in fig. 2). Over the last decade, this fear of market exclusion, cultivated by the U.S. government, has worked to convince global banks to negotiate with U.S. enforcement agencies over the definition of what constitutes a tie to the U.S. legal order (C3 in fig. 2), leading them to comply with U.S. financial rules in their worldwide operations (Zarate 2013). Still, the incentives created by

[6] The protection of the autonomy of E.U. law vis-à-vis foreign or UNSC law drove the reasoning of the advocate general of the European Court of Justice in the famous "Kadi case," which led to the unfreezing of the European assets of M. Kadi, a Saudi citizen suspected of terrorism financing activities whose assets remained listed in the United States (Halberstam 2010).

the hegemon to convince global actors to abide by its market rules in their worldwide operations do not operate autonomously: our model of viral governance precisely describes the process that makes these incentives effective.

We hypothesize that viral governance strongly involves the cooperation of private actors in processes of rulemaking and that the hegemon, by itself, cannot coerce all major global players to react positively to its extraterritorial claims. Global banks and the other MNCs, like global insurance companies, tech companies, or freight companies, play a role in viral governance not only by implementing the hegemon's rules but also by helping the hegemon expand its domestic rules beyond its territory and by acting as its "deputies" (Farrell and Newman 2019*b*). The deputization of global private actors means that MNCs are additionally put in charge, either willingly or through coercion, of forcing their clients—other MNCs and local enterprises in the rest of the world—to abide by the hegemon's rules (C5 in fig. 2). Today, this may happen, for instance, when MNCs see a risk that their non-U.S. clients could fall victim to U.S. secondary sanctions if they do not strictly apply U.S. sanctions on all activities. Such uncertainty is unbearable for MNCs: as they want to secure both their contracts with local firms everywhere and their ability to continue servicing U.S. markets, they may threaten their non-U.S. clients with cutting off contractual engagements if the clients do not also conform to U.S. legislation (Zarate 2013). As local firms in peripheral states can also be under the watch of local enforcement agencies, themselves pressured by the hegemon's enforcement agencies to apply maximum pressure campaigns (C6 and C7 in fig. 2), these processes combined have created a new U.S. financial hegemony.

We thus consider hegemony to be produced by viral (rather than bilateral or multilateral) mechanisms when the hegemon's extraterritorial law enforcement works as a virus, changing the genetic code of MNCs by turning them into national agents willing to participate in the worldwide expansion of the hegemon's legal authority. Today, the MNCs have thus been acting as if U.S. law trumps local or international law (Verdier 2019), even when the latter plan penalties specifically against MNCs that privilege foreign law over the domestic law of the jurisdiction in which their activity is located (as the European Union did with its "blocking statutes"). When local companies surrender to peer pressure, choosing to disregard the possible consequences under local law, they not only legitimize the universal dominance of the hegemon's laws and rules, but they also transform themselves into domestic legal persons subject to the hegemon's law. Of course, not all MNCs consider themselves as U.S. legal persons even when carrying out activities with non-U.S. persons and outside U.S. territory, and some will resist the pressure to do so: some will reorganize, creating silos to isolate operations that are clearly outside the reach of the hegemon's law from activities that run the risk of falling under its jurisdiction. Others will camouflage activities they consider outside the realm of the hegemon's domestic law but that the hegemon may consider otherwise—like clearing U.S.-denominated transactions between non-U.S. actors (Verdier 2019) or international trade between third-party countries with some percentage of U.S.-sourced core technology. If such companies have a branch in its territory, the hegemon can start enforcement campaigns through judiciary proceedings, bringing variable costs for the MNCs, depending on the judiciary system (C3 in fig. 2).

Hegemonic governance is viral in yet another sense, which finds its origins in the way the hegemon treats MNCs suspected of actively rejecting the universality of the hegemon's law. When the MNCs under judiciary scrutiny decide to cooperate with the hegemon's judiciary authorities and share documentation about possible wrongdoing, in the hope of obtaining the good graces of the prosecutors, they may turn themselves into local informants actively exposing their clients (C4 in fig. 2). Our viral model of governance thus assumes that the hegemon has many more tools than bilateral coercion or multilateral suasion to force regulatory hegemony in global markets, which include imposing the direct expansion of its domestic laws in foreign contexts, as well as submitting private multinational corporations to various waves of viral transformations, which first turn them into purely domestic actors, then into enforcers spreading the hegemon's laws, and then into global informants reporting information on their clients' activities worldwide. The empirical sections of this article focus on how this parallel model of governance, which has turned MNCs like global banks into U.S. legal persons, slowly emerged over the last 30 years or so because of the increasing acceptance of the legitimacy of U.S. extraterritorial claims and on how it has changed the nature of the bilateral/multilateral model of neoliberal governance.

DATA AND METHODS

America's comprehensive war against its financial enemies, including the sophisticated financial embargoes it put in place against Iran, is not a common topic in the sociology of globalization and law. While the making of trade rules has been the topic of sociological studies for more than a decade, many sociologists of globalization have privileged the study of one central IO in the rise of the neoliberal order, like the WTO (Chorev 2007) or the IMF (Kentikelenis and Babb 2019), which explains why their studies did not anticipate the collapse of multilateral rules that were negotiated by the United States, European Union, and China outside the forums provided by these institutions.

To document this process of deglobalization and the associated demise of multilateral governance, our research followed a mixed-methods approach based on process-tracing methods (Collier 2011), which involves (1) archival research (media coverage, congressional reports, testimonies, press releases, law enforcement records, court judgments, and deferred prosecution agreements signed by the U.S. government and MNCs) and (2) interview research, in particular, "relational biographies" (Dezalay and Garth 2002) conducted with specialists of financial governance and sanctions in the United States, Europe, and China.[7] The collection of archival material is useful to analyze the general trend of (1) the U.S. hegemonic law enforcement on global entities across different administrations and in various contexts, for instance, before and after the Iran nuclear deal known as the 2015 JCPOA and before and in the midst of trade disputes with the European Union or China, and (2) the making of parallel legal orders in other major powers. The archival material was also used to generate specific questions for interviewees, based on their participation in different areas as established in the written record.

In addition to collecting and analyzing documents, we sampled interviewees across institutions, positions, and countries in the field. In this case, interviews were conducted with over 150 interviewees including a wide range of actors involved in the implementation of sanctions, either in domestic settings (the United States, Europe, and China) or in multilateral settings (like IOs in charge of combating financial crimes).[8] Access to these individuals

[7] Documents were collected and analyzed about the following cases brought against companies listed here in alphabetical order: ABN Amro ($80 million to the Federal Reserve Board, OFAC); Agricultural Bank of China ($215 million to DFS in 2016); Airbus (WTO cases against Airbus between the United States and the European Union, mainly DS316); Alstom (*USA v. Frederic Pierucci, et al.*; $772 million to resolve the DOJ Foreign Corrupt Practices Act charges); BNP Paribas ($140 million in *USA v. BNP Paribas*; $963 million to OFAC; $8.9 billion to DOJ); Commerzbank ($718 million in sanctions and $734 million for AML with DOJ, OFAC); Deutsche Bank ($200 million to DFS and $58 million to the Federal Reserve in 2015); HSBC ($1.256 billion in a DPA [Deferred Prosecution Agreement] with DOJ for AML and sanctions violations); Huawei (regarding hardware suppliers, e.g., TSMC: the Bureau of Industry and Security's [BIS] Entity Listing based on the Export Administration Regulations; software suppliers, e.g., Google: Trump's Executive Order [EO] 13873 of May 15, 2019; banks, e.g., HSBC: DOJ charges against Meng Wanzhou for her role as Skycom's former director; U.S. customers: Federal Communications Commission ban on Huawei in the United States; European and Asian telecom operators: the U.S. global pressure campaign against Huawei); PSA Peugeot, Citroën, Renault, and Toyota (left Iran because of U.S. unilateral sanctions in 2012 and 2018); Siemens (SEC and DOJ Foreign Corrupt Practices Act charges); Standard Chartered ($1.1 billion settlement with DOJ, OFAC, et al. for Iranian sanctions violations); TikTok and WeChat (President Trump's EOs 13942 and 13943 of August 6, 2020); ZTE (BIS's Entity Listing based on the Export Administration Regulations; $892 million to Department of Commerce and OFAC for violations of International Emergency Economic Powers Act [IEEPA] related Iranian sanctions).

[8] About 90 interviews were conducted in the context of Grégoire Mallard's Bombs, Banks and Sanctions project funded by the ERC: about 30 interviews were conducted with practitioners working in IOs headquartered in New York (Sanctions Committees and their POEs), Washington (IMF and World Bank), Toronto (Egmont Group), Brussels (E.U. External Service), and Paris (FATF); more than 30 interviews were conducted with U.S. sanctions specialists, former or current U.S. State Department and Treasury

was negotiated through a reliable network of contacts that the authors had constructed over the years while researching the shaping of nonproliferation policies in Europe, the Middle East, and Northeast Asia. We also used contacts in international financial institutions (e.g., IMF, FATF, Egmont Group) and national AML law enforcement agencies to access interviewees in major global banks and MNCs, including the largest Chinese and European banks ever fined by the U.S. AML agencies as well as global technology champions directly targeted by the U.S.-China trade war. Finally, the authors' sustained involvement in over a dozen track 2 and track 1.5 multistakeholder meetings on JCPOA implementation gave them access to sanctions diplomats, bankers, experts, and scholars, from the United States, Europe, and the Middle East, with deep knowledge of the issues at stake. Intensive interaction with the global private sector and regulators from the United States and Europe allowed us to also obtain contacts in the legal world and to interview global banks' counsels and compliance officers over a period of four years.

Our interview strategy used two different methods. The first is "relational biographies," commonly used by Bourdieuan scholars who develop field-theoretic approaches to international law. "Relational biographies" are used "as a way to learn how [interviewees'] points of view and strategies define their possibilities [and decisions], who their competitors are, what capital they can mobilize . . . and the hierarchical structures and institutions in which the individuals and groups operate" (Dezalay and Garth 2002, p. 9). This method allows sociologists to relate strategies and positions to informal groups so that "related biographies link categories that have been constructed, in part, to hide connections" (p. 10). These relational biographies allowed us to draw a sociological mapping of institutionalization processes by which interrelated groups claim jurisdictional superiority over institutional niches (Abbott 1988). Here, interview guidelines questioned specific decisions in crafting or implementing legal technologies in the following areas: the UNSCRs against Iran; the implementation of new regulations to help banks identify and fight against proliferation suspects, such as banks with ties to Iran; and the legitimacy of charges brought by the U.S. authorities for related sanctions or other claims ("secondary sanctions"). Second, our interviews also incorporated discussions of selected "dilemmas" (Liedtka 1992), or moments when interviewees sensed that their legal claims or policy decisions would have been disputed, should the grounds for their decisions have been made public or had companies decided to push action in the courts. All the interviews conducted in English were

Department officials as well as Congressional staffers, and U.S. academics and bank compliance officials; and about the same number of interviews were conducted with their European counterparts. In the context of his ERC-funded dissertation, Jin Sun was responsible for conducting about 60 interviews with bank compliance officials, AML law enforcement agencies, and technology specialists in Beijing, Shanghai, Wenzhou, Shenzhen, Hangzhou, and Hong Kong.

transcribed and analyzed using Atlas-ti, a software that increases intercoder reliability. For reasons of space, we limit the number of direct quotes from our interviews in the empirical sections below.

U.S. BILATERAL RULEMAKING TO CURB IRAN'S REGIONAL POWER: ATTEMPTS, SUCCESSES, AND LIMITATIONS

From afar, it seems that the current deglobalization associated with the collapse of world trade rules in the United States, European Union, and China is quite remote from U.S. efforts to curb Iran's nuclear ambitions. However, we demonstrate here how the new hegemonic governance of capital flows (Tooze 2018) that may now threaten to fragment the global financial system and world trade rules originated in U.S. unilateral sanctions against Iran's nuclear program. Before we delve into the description of viral mechanisms of governance, we describe here various attempts by the U.S. government to use more classical forms of rulemaking to limit the exposure of key MNCs to the Iranian market and impose its own rules onto them, in particular through bilateral attempts targeted at convincing friendly governments to emulate the restrictive approach to trade with Iran that the United States initiated after the Iranian revolution followed by the Iranian hostage crisis from 1979 to 1981. In this section, we show both the operations and limits of the bilateral model of rulemaking and the reasons why the U.S. government followed another path to hegemonic rulemaking.

The strategic purpose of bilateral governance is for the stronger state to seek to obtain the direct, bilateral consent of weaker states to adopt, implement, and enforce its preferred rules. Here, direct U.S. pressure has long been cast on friendly third-party states (like E.U. member-states) to regulate the bilateral trade between themselves and targeted states like Iran and, thus, indirectly enforce U.S.-originating policies. The U.S. sanctions regime against Iran, which from the beginning tried to convince states around the world (and in Europe especially) to join the sanctions, has its origins in a series of events that began when King Pahlavi was overthrown by the Islamic revolution, after which the deposed king looked for and obtained political asylum in the United States. On November 4, 1979, over 4,000 students in Tehran, supported by Iran's revolutionary Supreme Leader Khomeini, occupied the U.S. embassy, detained 52 diplomats, and demanded that the U.S. government hand over King Pahlavi. In response to the hostage crisis, U.S. President Jimmy Carter put in place enormous sanctions on Iran: oil imports banned, Iranian citizens deported, and $8 billion in Iranian assets frozen in the U.S. financial system (Fayazmanesh 2003). The crisis, lasting for three years, caused the failure of Carter's reelection in 1981, which led all U.S. presidents after Carter to take a hard-line policy toward Iran. Throughout the 1980s, the lasting impact of this incident was clearly visible, most notably in the Iran-Contra scandal, for which the Republican Party was swept from the majority in both the Senate and the House. More than 15 years later, in 1995 the Clinton administration reaffirmed the ban on investing in Iran's oil industry for U.S. companies and then pushed for the passage of the Iranian Transaction Regulations, which banned all trade and investment between the United States and Iran. In the following decades, the U.S. government tried to expand its sanctions regime on Iran to Europe and the rest of the world in a bilateral fashion, through negotiations between U.S. leadership and that of foreign countries.

Most of these bilateral efforts failed. The weakness of bilateral rulemaking is that (1) targeted states like Iran might never surrender to U.S. hegemony, as long as normal trade with Europe and Asia, or even undercover trade with neighboring countries like Turkey or the United Arab Emirates, continued, and (2) the United States was exhausted by trying to convince each third-party state individually (such as E.U. member-states) to enforce U.S.-inspired rules on its private actors (like European banks) in domestic, international, or offshore business. A typical case is the Iranian Sanctions Act (ISA) of 1996, which, for the first time in history, extended the application of sanctions to subjects other than U.S. companies (Drezner 1999). The ISA prohibited worldwide companies from making large-scale investments in Iran's oil industry and threatened those companies that defied U.S. extraterritorial law and continued to trade with Iran (or even those that traded with E.U. companies that traded with Iran) with a ban from the U.S. market—what sanctions experts call "secondary" sanctions. In response to these extraterritorial claims by the United States, in November 1996, the E.U. Council immediately adopted "blocking statutes" to protect its sovereignty: European companies that applied U.S. rather than E.U. sanctions would be fined by the European Union ("the stick"), and in exchange, if they disregarded U.S. sanctions and were fined by the United States, they were promised compensation by the European Union ("the carrot"). In these bilateral negotiations, the European Union resisted the U.S. push to expand its law worldwide and reaffirmed the distinction between MNCs headquartered in Europe (not subject to U.S. law) and those on U.S. soil (subject to U.S. law). This failed attempt at imposing the hegemony of U.S. rule by a combination of unilateral moves and bilateral negotiation with the European Union forced the U.S. government to make concessions and backtrack.

Furthermore, even when bilateral pressure leads peripheral states to adopt a stronger state's preferred policy, the enforcement of such policy still remains under the discretionary purview of peripheral states. Failure to control enforcement thus opens the possibility of a decoupling (Meyer et al. 1997) between formal adoption and effective implementation of new rules in certain countries. This decoupling characterized the second phase in the decades-long history of U.S. sanctions targeting Iran: after 2006, when, following U.S. pressure (ElBaradei 2011), the Board of the International Atomic Energy Agency (IAEA) sent the Iran nuclear file to the UNSC, more states joined the U.S. efforts to limit trade with Iran (Mallard 2014). Indeed, in 2006, the IAEA had just finished thorough investigations of the 2003 revelations that Iran had conducted a nuclear dual-use program comprising both enrichment activities and potentially military activities thanks to Pakistan's state aid (Mallard 2018). At that point, the UNSC issued a series of resolutions, starting with a call for Iran to suspend enrichment activities (UNSCR 1696) and, when Iran declined to obey, moving forward with a series of restrictions on trade and financing activities, which the UNSC asked all UN member-states to enforce (see UNSCRs 1737, 1747, 1803, and 1929). E.U. member-states then started cooperating with the United States to curb their economic exposure in Iran (Nephew 2017). Although overall the E.U. sanctions adopted against Iran from 2006 to 2012 actually went beyond the UNSCRs cited, the restrictions applied by European oil companies and banks were quite limited in scope, as E.U. restrictive measures still insisted that only those suspicious transactions directly related to Iran's nuclear program should be blocked by European banks (Nephew 2017). In fact, over this period, the U.S. government consistently complained that these financial sanctions were underenforced in the European Union (Pouponneau 2013).

This decoupling between rules adoption and enforcement observed in Europe led the U.S. government to directly lobby the European Union to strengthen its national enforcement capacities in order to better fight financial criminality, including sanctions violations, which the United States considered to be widespread in Europe. This new rulemaking cycle steered through bilateral pressure led the European Union to adopt a fourth European AML Directive (AMLD4), which aligned the European prosecutorial approach to U.S. sanctions enforcement by massively increasing the amounts of fines in cases of detected sanctions violations. In the United States, such fines had skyrocketed to reach almost $9 billion in the case of the French bank BNP Paribas, which had been found in violation of U.S. sanctions from 2006 to 2011, when it continued to authorize payments in U.S. dollars related to trades with Iranian oil. Furthermore, the European AMLD4 encouraged European authorities to adopt "the [U.S.] approach of 'naming and shaming'. . . which means that the competent authorities shall publish the decisions based on breaches of the requirements laid down by the AMLD4, unless overriding reasons require an anonymous publication" (Kunz and Schirmer 2015). It also "Americanized" (Laïdi 2019) the relationship between prosecutors, lawyers, and target companies in Europe in an effort to move the European civil code countries away from a model in which prosecutors (or *juges d'instruction* in French) seek the truth in the cases they investigate by giving equal space to incriminating and exculpatory evidence to a U.S. model of prosecuting, in which the state gathers all the incriminating evidence and leaves it to the lawyers of the incriminated party to prove their innocence (Halliday, Karpik, and Freeley 2007), with the result that the accused often seek to avoid a trial by settling with the authorities outside courts.[9] In their effort to close Europe's enforcement gap, the U.S. government thus started to meddle in the fabric of E.U. laws to a much greater extent than was commonly expected at the time. This iterative process is common in transnational lawmaking cycles, whether judicial reform starts with bankruptcy laws (Halliday and Carruthers 2007) or sanctions law. But according to some of the European lawyers we interviewed with knowledge of sanctions-busting cases, European prosecutorial offices have yet to translate these changes into practices, and most enforcement actions initiated by European agencies against European companies suspected of violating Iran sanctions have been fined with smaller penalties, which will range in the millions rather than billions of dollars.

The bilateral approach to producing hegemony is therefore quite weak, but it can be successful. The case of European and Asian automobile investments in Iran—the largest automobile market in the Middle East—may be considered a rare instance of U.S. success in this decade-long U.S.-E.U. dialogue over the extent of sanctions against Iran. While the multilateral ban on oil exports and the freezing of oil proceeds in European banks by the United States and European Union was justified by the claim that Iran used its oil exports to fund its nuclear program (Nephew 2017), a radical change occurred with U.S. EO 13645, adopted in 2013, which stated that global car manufacturers with a presence in Iran would be barred from selling cars in the United States. Until then, most EOs and acts of Congress had made the effort of appearing to target specific sources of funding that were directly or indirectly linked to Iran's nuclear program. This was the first time an EO targeted Iranian expenses, in the purchase of cars—which should have been seen as good news from the perspective of the West, to the extent that money spent on cars is not money spent on centrifuges or funneled to allies involved in Iran's proxy wars in the Middle East (such as Lebanon, Syria, Yemen, or Iraq). According to our European interviewees, EO 13645 was passed in 2013 without any preconsultation with European governments, and it placed the French government, among others, in a difficult position, as French car manufacturers (Peugeot, Citroen, and Renault) were dominant with over 90% of

[9] As a result, in the United States, 97% of criminal cases end up in a plea bargain (see the U.S. Sentencing Commission [2016] *2016 Sourcebook of Federal Sentencing Statistics, Tables and Figures*, fig. C. https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2016/FigureC.pdf.). This strategy helps the judiciary save the time and cost of court proceedings, albeit at the cost of incentivizing innocent people to plead guilty: of the 2,551 exonerations tracked by the National Registry of Exonerations at the University of Michigan Law School over the last three decades, 12% of innocent defendants gave false confessions (https://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx#; accessed February 9, 2020).

the market share in Iran. At a time when the U.S. car industry had suffered massively after 2008 and the U.S. government did not want to see European car manufacturers benefit from market opportunities that were closed to its own car producers in Iran, the U.S. government lobbied the European governments, which preferred to relay the U.S. demands to their own car manufacturers, despite the tremendous economic price the manufacturers had to pay to comply with the ban.[10] In hindsight, the tensions inherent to bilateral rulemaking anticipated the escalation of conflicts between the United States and European Union after the signing of the JCPOA. In fact, despite provisions in the 2015 JCPOA to authorize European car manufacturers and oil investors to reinvest in Iran, when the Trump administration pulled out of the JCPOA and renewed the threat to impose secondary sanctions in 2018, all European automobile investments in Iran were again suspended.

These episodes show both the importance of the bilateral approach to hegemonic rulemaking in trade and finance governance and also one of its important limitations: as long as the bilateral approach does not include all exporting countries in any given trade, a ban implemented by one or two regions of the world can start a process of actor substitution, whereby new exporters originating from third countries (e.g., China, after the 2018 unilateral U.S. abandonment of the JCPOA) step in to procure the goods that are no longer accessible to the importer on certain markets (here, transatlantic markets). For this reason, bilateral cooperation often has to be performed in association with multilateral efforts to stabilize the hegemony of one regulatory power, as will be further examined in the following section.

THE MULTILATERAL GOVERNANCE OF SANCTIONS: A LIMITED IMPACT ON THE GLOBAL GOVERNANCE OF TRADE AND FINANCE?

The prevalence of multilateral governance in the field of sanctions—with its emphasis on norms of equality of states and sovereign state independence—dominates analysts' understandings of how UNSC sanctions are supposed to have worked against Iran (Esfandiary and Fitzpatrick 2011). The impact of bilateral U.S.-E.U. governance of trade and finance, directly or indirectly, was insufficient to convince Tehran to follow the UNSCRs asking for Iran to stop its enrichment activities. For sanctions specialists (Nephew 2017), the international community showed strong collective will to relay the U.S. maximum pressure campaign only after IOs took a central role in transnational legal ordering (processes B in fig. 2) and when they imposed themselves in key monitoring functions over national transposition and enforcement of global norms (Solingen 2012). From 2006 to 2015, an important aspect of such

[10] Some OFAC officials, according to our European interviewees, estimated that such a ban has had a negative impact of 0.3% of gross domestic product for France each year.

multilateral governance has, for instance, been the issuance of sanctions passed by the UNSC and their monitoring by the UNSC's Iran Sanctions Committees and their POEs (Mallard and Niederberger 2021), which were meant to monitor implementation of these "targeted" sanctions—that is, sanctions that minimize unintended humanitarian consequences (Mueller and Mueller 1999; Biersteker, Eckert, and Tourinho 2016) and that aim to avoid incentivizing illicit economies (Cortright and Lopez 2000; Andreas and Nadelmann 2008, p. ix).

At another level, this model of multilateral legal ordering fell in large part on the shoulders of IOs specialized in financial governance, in particular, the FATF, which expanded its mandate from expertise in combating money laundering, originating from the monitoring of the UN Drug Convention of 1988 (itself modeled after the U.S. Money Laundering Control Act of 1986), to terrorism financing (Scheppele 2007) and finally to proliferation financing over the same period (2006–13; FATF 2008). Over the years, the FATF expanded membership to all major economies (like China) and managed a third round of "mutual evaluations"—jointly with the IMF—of the domestic AML laws of new members, to push for corresponding domestic law amendments (Morse 2019). Subsequently, responding to the nuclear proliferation risks in Libya, Iran, and North Korea, the FATF pushed all member-states through the fourth mutual evaluations of domestic implementation of its recommendations, including states' CPF obligations. These multilateral initiatives complemented one another and created an intertextual web of norms, codes of best practices, and mutual evaluations that granted autonomy from U.S. pressure to multilateral rulemaking authorities. Worldwide, FATF guidelines have indeed gained the force of (soft) law, carried by the weight of the FATF's grades—assigned each country after audits of legislative and administrative reforms (Mallard 2019*b*).

Still, Iran's continued defiance during this period of IAEA protocols, FATF recommendations, and UNSCRs proves that such multilateral measures did not change Iran's calculation or that of Iran's trade partners: only the massive and comprehensive sanctions adopted by the United States and European Union in the context of their maximum pressure campaigns conducted from 2012 until 2015 did have the desired effect. The weakness of this multilateral model of rulemaking was that some semiperipheral states still remained quite lax in their enforcement of the new rules endorsed by the UNSC or the FATF. As remarked by an experienced expert on international sanctions in a workshop we attended in 2020, "Russia and China show a general pattern that while they consent with rulemaking by UNSC sanctions resolutions, they reserve negotiation spaces in domestic enforcement," especially as far as CPF rules are concerned. The empirical findings made by the POEs regarding worldwide compliance with UNSC sanctions against Iran show that even with the full support of the relevant IOs, their influence is often mostly noticeable on paper, rather than in practice, and that changing the practices of the private sector depends on the domestic law enforcement action of the executive domestic agencies.

The post-JCPOA era also illustrates the failure of IOs to drive the enforcement practices of national governmental agencies. Indeed, after the JCPOA was signed by Iran and the five veto powers of the UNSC plus Germany (P5 + 1) in July 2015, the UNSC, the Joint Commission created by the JCPOA, and the FATF were put in charge of monitoring the development of new rules for Iran's reinclusion in the global trade and finance sectors. Together, they created a framework that committed the international community to lift the nuclear-related sanctions that the UNSC, the United States, and the European Union had imposed on Iran since 2006 and to facilitate the full inclusion of Iranian banks and industries into global markets, in exchange for Iran's denuclearization agreement and its financial sector reform. But as soon as this framework was presented to U.S. legislative authorities, the U.S. government expressed doubts over how much and how quickly it would authorize private companies to come back to Iranian markets. While the world's banking and trading communities were once again allowed to engage in transactions with many of Iran's companies and banks, as well as with the banks that had served as facilitators of Iran's money flows including European and Chinese banks, many Obama administration officials insisted that U.S. sanctions on other targets for terrorism-related activities, like Iran's Revolutionary Guards Corps, remained in place and that, in this context, the opacity of the Iranian financial system made foreign investment in Iran very perilous. For instance, in September 2015, Acting Undersecretary for Terrorism and Financial Intelligence and OFAC Director Adam Szubin called on private actors to remain extremely vigilant on the range of U.S. sanctions that were still in place against Iran: as he told a Washington audience: "Our powerful authorities to combat [Iran's terrorism-related] activities remain in place, and I and the people who work at the Treasury, and across the US government are firmly committed to enforcing these sanctions as vigorously as possible" (Szubin 2015). As Szubin warned, the U.S. Treasury would continue actively engaging with businesses tempted to invest in Iran, as well as remaining vigilant about the use of the $30 billion of assets of Iran's Central Bank deposits that had been frozen by U.S. and European banks (and not yet committed as collateral for investment projects) and was now released by the JCPOA (Szubin 2015). As a result of this "chilling effect," as named by many of our European interviewees, the reinclusion of Iran in global trade and finance circuits was much slower than expected when the JCPOA was signed.

This lag can be attributed to IOs' failure to impose new rules of market governance on strong states resisting the expansion of globalization to new frontiers. Here the IOs also stumbled over the compliance practices in global banking orders that had changed from 2006 to 2015. Whereas the "best practices" promoted by multilateral organizations like the FATF insist on the merits of "risk-based approaches" (FATF 2008) to trade and investment, which require compliance officers to perform a thorough risk analysis for every transaction involving a company located in a sanctioned jurisdiction, many banks refuse to pay the costs of those risk analyses and instead prefer to prohibit transactions to such jurisdictions, known as "derisking." In fact, in the Iranian case, as repeatedly mentioned by compliance officers whom we interviewed in New York, Paris, and London, global banks have largely ignored the risk-based approach in favor of a "zero-risk" approach to Iranian payments, including those related to the humanitarian trade (Mallard, Sabet, and Sun 2020). European compliance officers generally see U.S. sanctions law as the only law "with teeth" in the case of sanctions violation (intentional or not): as recounted by our interviewees with AML officers in European and Chinese banks, the training programs of certified AML officers worldwide emphasize that as far as sanctions against Iran are concerned, only U.S. sanctions matter (ACAMS 2019). This is quite a fair assessment, which also reinforces the de facto situation. Thus, although multilateral rulemaking may give a veneer of legitimacy to decisions supported by large groupings of states, multilateral organizations often lack the power to convince MNCs to follow their rules and turn geostrategic uncertainty into calculable risk.

GLOBAL GOVERNANCE IN A VIRAL MODE: "NATURALIZATION" OF FOREIGN BANKS AGAINST IRAN

The viral model of transnational rulemaking predicts that the hegemon, rather than seeking consent from other national public authorities in a bilateral or multilateral setting, will move the discussion away from the interstate level (processes A and B in fig. 2), by directly seeking to extract consent from those private actors who are willing to give it in exchange for engaging in business relations with its markets (processes C in fig. 2). Here, we describe the steps taken by the U.S. government to obtain from MNCs—which the U.S. government had considered non-U.S. actors when it threatened them with secondary sanctions—a recognition of the "fact" that they were now "U.S. actors" and, therefore, obliged to follow U.S. law. In so doing, the U.S. government stopped expressing a contested extraterritorial ambition in favor of a claim based in its own sovereignty, which therefore any nation-state would deem acceptable. How this first viral transformation affected non-U.S. private actors is the topic of this section.

Throughout the decade during which the international community negotiated with Iran, key stakeholders in global governance expressed resistance or reservations toward U.S. claims of extraterritoriality for its sanctions against Iran. We know from memoirs of U.S. officials in charge of sanctions that many attempts by the U.S. government to impose direct U.S. rule on private institutions recognized by the U.S. government as non-U.S. actors were strongly resented by European private actors, including European multinational banks, automobile manufacturers, and oil investors (Zarate 2013; Nephew 2017). In order to escape the charge of "extraterritoriality," starting in 2005, the officials in charge of sanctions enforcement in the U.S. government began to change their discourse. Rather than extraterritorial application of U.S. law on non-U.S. actors, they claimed the existence of a link to U.S. territory, U.S. technology, or U.S. persons in the non-U.S. activities of global banks, which turned those into U.S. activities and thus warranted the application of U.S. law. When the U.S. government, under the leadership of Treasury insiders (like Stuart Levey, the first undersecretary for terrorism and financial intelligence in the Bush and then first Obama administrations), decided to enroll major European banks in the "US campaign to squeeze Iran's economy" (Donovan 2007), it did not start by claiming extraterritorial jurisdiction of its sanctions programs. Rather, the OFAC—the office of the Treasury Department in charge of monitoring and enforcing Iran sanctions—privileged the adoption of small steps: OFAC reframed U.S. claims on sanctions enforcement against non-U.S. banks as U.S. territorial sanctions enforcement against banks engaged in criminal activities on U.S. soil. As an expert in banking compliance told us during an interview, the new U.S. doctrine of sanctions enforcement, which was made official in a 2008 statement by OFAC, emerged earlier in a 2005 case against the Dutch ABN Amro bank:

> The real tipping point that changed the way the world looked at the global impact of US sanctions was the enforcement taken against ABN Amro Bank in December of 2005. This was the first significant OFAC-related enforcement action involving a non-US financial institution. . . . The theory that was developed and used as the basis for asserting that violations of sanctions had occurred because ABN Amro had sent US dollar payments on behalf of Iranian banks and sanctioned Libyan banks through US correspondent banks was that ABN Amro had involved its own New York branch in the processing of those payments. And therefore, the New York branch had violated [U.S.] sanctions even though the New York branch had no idea that the [U.S.] sanctions applied because the payment messages were structured not to reference clients of the Dubai branch of ABN Amro, which happened to be Iranian banks and the one sanctioned Libyan bank. . . . I refer to it as a primitive case because there was no assertion by anybody that the Dutch bank ABN Amro's Dubai branch had violated the sanctions. The theory was that the New York branch had violated the sanctions even though it was ignorant of the sanctions issues at the time it processed the payments. That case led to, sort of, a revolution in banking about the obligation of financial institutions globally to ensure that their US dollar payment activity complied with [U.S.] sanctions requirements. Prior to that point of time, there was a nearly universal absence of recognition of the risk.

This change was amplified on November 10, 2008, when OFAC amended the Iranian Transaction Regulations and revoked the authorization of the so-called U-turn transfer involving Iran. The U-turn transaction is a legal offshore practice in the international financial hub for a transaction between two banks representing their global clients and branches, denominated in U.S. dollars but unconnected to any account or person in the U.S. territory. In the 1990s, many European banks had acquired a New York branch in order to obtain liquidity facilities from the Fed (Tooze 2018); not all of them paid attention to this shift in U.S. enforcement strategy, and those who did not, paid the (high) price.[11] Throughout the 2000s, European bankers were convinced that, even for transactions with Iran, they could continue established industry practices that authorized U-turn transactions, as long as there was no other link to the United States than the use of U.S. dollars in the transaction. Our interviewees even confirmed that well-known U.S. consultants and lawyers did not challenge this view at the time. But OFAC further changed the playing field in 2008 by forcing all European banks to screen their worldwide activities in search of transactions denominated in U.S. dollars that might involve OFAC-sanctioned entities in Iran or in other countries where entities traded with Iran (but not in all OFAC-sanctioned countries, as, e.g., Cuba was not always concerned by this amendment, at least from 2016 until 2019). The right of OFAC to make this change derived from the Patriot Act, which amended IEEPA and expanded the authorization of OFAC to include the power to block assets related, first, to terrorism financing but then also to Iran-related businesses. But when the U.S. government started to increase the economic pressure on Iran in 2008 and after, by banning activities that had even a tenuous link with Iran's nuclear program (like oil production, the shipment of oil, insurance for the Iranian shipping industry, or Europe's automobile exports to Iran), the attitude of many European bankers was that the United States had overextended its regulatory reach in a disproportionate manner. At the time, such an attitude of defiance was expressed by one Standard Chartered top executive: "You f—ing Americans. Who are you to tell us, the rest of the world, that we're not going to deal with Iranians?" (Stempel and Mollenkamp 2012).

A good example of the European banks' changing attitude to the new U.S. enforcement campaign is provided by the actions of HSBC and BNP Paribas. Smelling the hostile attitude of U.S. law enforcement, HSBC

[11] U.S. District Court, Southern District of New York, *United States of America v. BNP Paribas, S.A., Defendant* (https://www.justice.gov/sites/default/files/opa/legacy/2014/06/30/statement-of-facts.pdf). In contrast, when the U.S. Treasury has investigated U.S. banking institutions for AML violations, it has often been for failing to detect (because of loopholes in cross-language name translation and transnational practices of name modification) or actively encouraging designated or sanctioned people or entities to open an account under a pseudonym (OFAC 2010). The type of crime thus partly explains the differences in the amount of U.S. fines levied against European banks, and the type of corrective measures that European banks were asked to accomplish, after 2008.

decided to cut off all Iranian business in 2007, along with any U-turn practices, but it continued to conceal some information regarding the real identity of its clients after that date. As a result, the fines that HSBC agreed to pay as part of its settlement with U.S. authorities did not include U-turn practices for any Iranian clients, per se, but addressed the practices of information concealing for facilitating the U-turn settlements, which showed how widespread was the collusion within European global banks to avoid complying with the newest U.S. regulations (DOJ 2012). In contrast, despite issuing a "Revised Group Policy on Iran" in September 2007, and noticing that OFAC revoked the U-turn exemption in November 2008, BNP Paribas continued to process U.S. dollar transactions involving Iranian controlled companies in violation of U.S. law through November 2012 (OFAC 2014). As a result, the Geneva branch of BNP Paribas was famously charged with massive fraud meant to hide SWIFT banking information on payments related to Iranian oil proceeds coming from or going to Iran and Iranian entities and passing through the U.S. branch of BNP Paribas and had to pay the highest fine ever, reaching billions of U.S. dollars.[12]

European banks quickly understood that the Obama administration was intent on putting "maximum pressure" (Nephew 2017) on Iran's global banking service providers through these harsh enforcement actions. The Obama administration followed by asking global banks to freeze the financial assets of the Iranian central bank and commercial banks held in their accounts. In this case, European banks froze more than $100 billion in assets of Iranian banks from 2008 to 2016—assets that were unfrozen after the JCPOA was signed. To give a sense of the scale of these funds, the billions of euros that European banks obtained by freezing Iranian accounts in the European banking system amounted to as much as what the bankrupt government of Greece owed to the German and French governments after 2009 (Aglietta and Brand 2013; Varoufakis 2017; Tooze 2018). Our European interviews demonstrate that, by 2012, European banks also understood that concealing U-turn practices related to sanctionable Iranian transactions meant taking the massive risk of losing their license in the United States or the massive legal costs involved in battling OFAC's claims in U.S. courts. By settling with the various agencies in charge of leading enforcement actions, European banks stopped disputing the "territorial" claim made by U.S. authorities on all transactions involving a U-turn practice; they accepted the lawful grounds for applying U.S. sanctions against Iran, which they had previously regarded as extraterritorial claims (Verdier 2019). As a result, extraterritoriality was replaced by new hegemonic territoriality, and all global non-U.S. banks were naturalized as U.S. legal persons. This process was completed

[12] The involvement of the Geneva branch is due to the fact that Geneva is the world's major hub for global oil trade (OFAC 2014).

by 2012, when the first wave of sanctions-busting cases ended, with all the European global banks having accepted U.S. sanctions law as "their" legal reference for their worldwide activities. Moreover, as part of special settlements reached with U.S. prosecutorial authorities, the banks had agreed to embark on open-ended programs of judicial oversight, with some of them also relocating their global compliance offices to New York and placing U.S. citizens as chief compliance or sanctions officers (process C3 in fig. 2).

An important development in this overall sequence was the creation of ad hoc legal templates that each European bank under a settlement program with the United States accepted. From 2012 on, all of the largest European banks were working on some kind of "rectification" project based on a judicial settlement or confession agreement filled with "conditionalities" (to use a language commonly used to refer to IMF loan agreements) reached with the DOJ for sanctions-busting activities related to Iran. The intrusiveness of the controls that the U.S. government imposed on European banks was protected by the DPAs signed by European banks, which required that the entire top management of banking branches be replaced—as in the case of HSBC, Standard Chartered (Standard Chartered 2015; Arnold 2016; Arnold and Binham 2018), and BNP Paribas (France 24 2014)—and that the new management show a clear willingness to cooperate with U.S. authorities. With the first wave of settlements—which came after the Fed organized currency swaps from 2009 to 2012, massively helping European central banks and through them European commercial banks established in New York (Tooze 2018)—European global banks also granted direct authority to U.S. authorities over the regulation of their AML operations and other compliance procedures, by accepting the continuous oversight of their daily operations by U.S. authorities through the mediation of U.S.-based law firms and "external monitors" embedded in their compliance offices and reporting directly to the DOJ. Some of our interviewees working in these programs were monitoring personnel hired by these big accounting firms, like Deloitte or PwC—which are the only firms with enough manpower to check their books and verify their AML and sanctions compliance systems—and many of them already had experience working in previous DOJ monitoring programs checking the books of giant European MNCs involved in corruption scandals, such as high-end manufacturing giants Siemens or Alstom, who had been accused of corruption in Africa and South Asia, respectively, by the U.S. judiciary authorities. The deals these MNCs had made with the DOJ to stop investigations included submitting to this strict external scrutiny, which cost them millions but was still more economical than the millions of dollars per day spent on looking for proof of their innocence while investigations were ongoing.

This extraordinary process of territorialization of global financial compliance operations within the U.S. jurisdiction happened over only a few years, from 2006 to 2012. This process was built along self-reinforcing cycles of extraterritorial sanctions enforcement, data collection, more designations, and more enforcement (C4 in fig. 2). Indeed, compliance costs surged for all European global banks incriminated in 2012 and 2013, as a result of their promises to the DOJ to strengthen their compliance departments. Global banks also started hiring U.S. citizens with a seasoned compliance background and offered expensive training programs for their compliance officers specifically on sanctions.[13] Most of these new trainers and personnel endorsed the U.S. viewpoint that U.S. sanctions should be thought of as having worldwide "territorial" validity as soon as the tiniest link could be traced back to either U.S. persons involved in the transaction or U.S. technology, including U.S. currency or communication by U.S. email providers. European (and even Chinese) banks specifically hired former U.S. Treasury or OFAC officials as heads of compliance in company headquarters after the signing of DPAs with the DOJ. In the case of HSBC, the new global head of compliance was Stuart Levey, the very man who, as former Director of OFAC, had crafted the strategy that the United States followed from 2001 to 2011 against European global banks during the Bush years and the first Obama administration. This choice reassured U.S. regulators, since the tacitly adopted companion rule was that as soon as a U.S. person enters the compliance room, the conflict between E.U. and U.S. law would be solved at the expense of European law and to the benefit of U.S. law. This key process of Americanization of the compliance personnel in global banks—sometimes amplified by the decision to relocate their global compliance headquarters to New York (Sun 2019)—led to a self-reinforcing cycle. Our interviewees asserted that European banks without DPAs saw in these decisions a way to send a signal of their demonstrated acceptance of U.S. claims to legal primacy and started to emulate this approach.

VIRAL GOVERNANCE UPDATE: GLOBAL BANKS AS U.S. SPIES FAR BEYOND IRAN

Historically the British imposed their claims that all trade disputes in global commodity markets should be settled in British courts of law and according to British rules (Barker 1920; Mallard and Sgard 2016). In the early 2010s, the viral transformation of key MNCs has helped the United States territorialize the operations of transnational rulemaking. During a relatively short period, U.S. law enforcement agencies captured private transnational entities through law enforcement actions, transferring to them the virus that caused those private entities to further export and implement U.S. law

[13] For example, "top tier firms with more than US$ 100 billion in assets spend an average of US$ 15.8 million on AML compliance annually" (LexisNexis 2018, p. 6) and "anti-money laundering compliance costs US financial services firms $25.3 billion per year" (PR Newswire 2018).

everywhere—even in countries where private firms' noncompliance with domestic law and compliance with foreign (e.g., U.S.) law may put them at risk of litigation (Laïdi 2019). The DPAs started the process of deglobalization through pushing European banks to "derisk" or pull out of entire countries and regions of the world in order to minimize their exposure to further U.S. judicial enforcement of U.S. sanctions (Mallard et al. 2020). For instance, one interviewee remarked how, as part of their settlements with the United States, European banks like BNP Paribas and Société Générale "voluntarily decided" not only to massively shrink their Dubai operations that might be related to Iran but also to "voluntarily" close their Cuban operations. The DPAs created a web of new obligations that went beyond either E.U. or U.S. laws: after signing, the European banks could no longer argue that they were conflicted about which type of legal rules to apply, as they had specific programs that they had to conform to.[14]

The viral model of governance postulates that each investigation into a bank or a MNC accused of AML and sanctions violations is never only a compliance investigation concerning one specific organization but part of an elaborate strategy that uses the "judicial trap" as a lever for economic gains in subsequent global trade fights between the United States and the rest of the world. The DPAs signed with the United States in 2012 and 2013 imposed strict panopticon-like monitoring conditions that have been renewed year after year by the private external auditors who are appointed by the DOJ and who also report their findings directly to the DOJ. These audits have exposed these banks to more punishment and further extension of the process of continuous supervision, which may affect the business operations and thus trigger the dissatisfaction of local customers and governments and of shareholders in the management (Morris, Crow, and Palma 2019; *Straits Times* 2015; Withers and White 2019). But more importantly, this extensive monitoring can lead U.S. regulators to directly access information on the global bank's clients, for instance, European or Chinese technological giants, like Huawei.

In the equipment vendor market, Huawei has been the world's largest manufacturer since 2014, surpassing Nokia and Ericsson in 2012 and 2013, respectively (*Economist* 2018; Pongratz 2019).[15] It was also the third largest

[14] A similar situation occurred in the case of the OFAC sanctions violation case against Germany's second-largest bank, Commerzbank. In the Commerzbank case, between 2004 and 2007, it was found that the Hamburg branch of the bank had maintained business ties with the main Iranian shipping liner, IRISL, and its affiliates—which were lawful until IRISL was designated by OFAC on September 16, 2008. The case could not be made without the effective monitoring of the bank, which sent signals about payment information through the international settlement system.

[15] "For 2018, the top seven equipment manufacturers were Huawei, Nokia, Ericsson, Cisco, ZTE, Ciena, and Samsung. Combined these seven companies accounted for about 80 percent of the worldwide service provider equipment market revenue" (Pongratz 2019).

vendor from 2014 to 2017, surpassing Apple to become the second largest after Samsung in 2018 (Statista 2019). This fulgurant rise was directly the effect of China's 2001 accession to the WTO, which allowed Chinese information and communications technology equipment vendors like Huawei to enter the European market in exchange for the Chinese telecom operator market opening for foreign investment, as specifically required by the European Union in the WTO accession negotiation (CAITEC 2003, p. 50; Shaffer 2021).[16] It was also due to the financial constraints of the European economic recession of 2008, which encouraged European operators to cooperate with Chinese vendors, causing a sharp rise of the Huawei market share in Europe (Emmott 2014). Over the period of Huawei's growth in Europe, the U.S. policy toward Huawei was conservative but not yet hostile, as Huawei was yet a small player in the era of the 4G standard. But in November 2016, Huawei won the bid for the 5G standard with its Polar Code scheme, becoming the world's leader in 5G over its European and American competitors and provoking a strong negative reaction in the United States.[17]

U.S. viral governance was key to U.S. judicial sanctions against Huawei. HSBC, previously infected with the virus, thus adhered to U.S. law over other legal obligations considering client privacy and provided information that led to the arrest in December 2018 of Meng Wanzhou, Huawei's CFO, in Vancouver Airport, allegedly regarding her short service as former director of a private Hong Kong company Skycom. The charge was for conspiracy to defraud a U.S. financial institution—HSBC's New York branch—to clear U.S. dollar-denominated U-turn transactions with Iran. HSBC was at the time still in a DPA with U.S. law enforcement, with an appointed third-party monitor sitting in its compliance office. Canadian court documents (Al Jazeera 2021; BBC 2021) indicate that HSBC did share relevant financial transactions with U.S. authorities, although HSBC tried to limit its responsibility in the disclosure (Crow, Sender, and Kynge 2019), to obtain evidence for their suspicions of links between Skycom, Meng Wanzhou, and Iran and then to initiate new rounds of sanctions against Huawei in 2019.[18]

[16] Opening for foreign investment is noted by Huawei's official corporate introduction on its "milestones" (https://www.huawei.com/en/about-huawei/corporate-information/milestone, accessed October 19, 2019).

[17] Interestingly, the winning Polar Code scheme was initiated by Huawei's lab in Europe and commercialized by its engineers in Shenzhen, China, together with other labs across the world.

[18] The arrest in Vancouver was most likely the only opportunity to apprehend a Huawei executive, as Huawei had evacuated all senior executives from the United States. A lawyer interviewee explained to us that a good way to understand the Meng Wanzhou case and Skycom's relationship to Huawei is as follows: iPhones have been sold in Iran through third-party companies not controlled by Apple, as it is difficult for leading MNCs to prevent their popular goods from being resold to sanctioned countries. Apple

To prevent the ongoing E.U.-China rapprochement, President Trump issued a new EO on May 15, 2019, banning Huawei from the U.S. market, prohibiting any sales of U.S. software or hardware to this Chinese company or its business in Europe, and also putting wide U.S. pressure on European and Asian countries to enact similar restrictions on 5G market access for this MNC. Once again, as in 1995 when the U.S. government threatened to ban European oil companies from U.S. markets if they developed activities in Iran, the U.S. president acted under statutes authorized by the IEEPA that directly took their inspiration from the 2012–15 targeting campaign against European companies in the Iran sanctions enforcement campaign.[19] Three years after the arrest (and the consecutive retaliatory arrest of two Canadian former diplomats and experts by China; Buckley and Benner 2021), a deal over the release of the Chinese executive (and the two Canadians) was settled thanks to Meng Wanzhou's negotiated confession with U.S. authorities, which the Chinese media called a "forced" plea bargain, whereby consent to admit charges is exchanged for freedom. In so doing, the Chinese media echoed similar criticisms of the political use of the U.S. judiciary system previously published by a former Alstom executive jailed in the United States under U.S. extraterritorial laws on foreign corruption (Pierucci 2019), but the media implicitly admitted that China was ready to play by the same rules to free its citizens, thus accelerating the transformation of trade competition into lawfare.

As we have seen previously, this technique of using a weak link between one MNC (or European bank) and another with ties to Iran to slap the former with heavy penalties for violating U.S. sanctions has become commonplace since 2018, when President Trump left the JCPOA. Since then, European global banks have faced a dilemma between following U.S. direct rule and reporting to the United States any suspicious tie between a Chinese bank, a U.S. firm, and an Iranian transaction that may be allowed under the JCPOA or following other (European, Canadian, or Chinese) legal obligations of protecting the privacy of the data of third parties. In this difficulty,

(or Huawei) should be sanctionable only when there is solid evidence that the company approved the third-party (or Skycom) sales to Iran. If indeed the United States is going to punish Huawei for merchandise resold in sanctioned countries, Apple could also risk being sanctioned.

[19] Huawei was excluded in 2019 from the U.S. market by the Federal Communications Commission, not for its alleged violation of the U.S. sanctions on Iran but because it constituted a national security threat. This EO was enforced by most companies with ties in the United States: e.g., TSMC, a Taiwan-based company running the world's largest semiconductor foundry, was banned by President Trump from producing chips as designed by Huawei, although its U.S.-sourced technology is less than the 10% or 25% de minimis rule (15 CFR § 734.4—de minimis U.S. content), a long-standing golden principle on the application of the U.S. sanctions law (see Legal Information Institute, De minimus U.S. content; https://www.law.cornell.edu/cfr/text/15/734.4).

HSBC seems to have chosen the former option, while Standard Chartered seemed to have chosen the latter.[20] This fragmentation in the world of banking shows that the "voluntary" measures to which global banks submitted under DPAs have started a viral transformation that turned some of these banks, first, into U.S. legal persons in their activities worldwide and, then, into global informants working for the U.S. government, as their internal documents, now exposed to U.S. monitoring personnel reporting to U.S. government agencies, provided data not only on their own activities but also on their clients' activities abroad (process C4 in fig. 2).

The viral mutation can thus lead to a self-amplifying cycle of new designations (C3 and C4 in fig. 2), by which a sanctions regime (processes C) becomes a preferred weapon of economic power in a context of global financial and trade wars addressing the limits of bilateral and multinational governance. The relationship between HSBC and Huawei certainly confirms that each target of a DPA could potentially expose many other businesses to U.S. intelligence missions—as global banks like HSBC and providers of 5G communications like Huawei are essentially the holders of the world's secrets, recorded in financial transactions and digital telecommunication networks. For that reason, as repeatedly confirmed by both former president Trump and Treasury Secretary Mnuchin, Huawei is regarded by the White House as an excellent lever for trade negotiations with China and as a consideration in any deal package that the U.S. president, whether under former president Trump or current president Biden, could consider in general trade talks (Reuters 2019). Indeed, by investigating Huawei and blocking its access to U.S. technologies and smart phone operating systems, the U.S. government not only prevented the leading Chinese technology companies from increasing their global market share, most notably (but not only) in Europe, but it also forced the Chinese government to make substantial concessions in the trade war as indicated by the case of the ZTE Corporation below.[21]

To further substantiate our hypothesis, we look at other cases of "judicial cascades" in the "American trap" (Pierucci 2019), focusing here on ZTE, whose global banking relations were managed by BNP Paribas and other French banks investigated by U.S. enforcement agencies in the 2010s. As we have seen, global banks under DPAs often respond by appointing U.S. citizens to manage their client's compliance offices. In turn those U.S. citizens have a duty to report any suspicious transactions to the U.S. authorities,

[20] Faced with a similar dilemma, Standard Chartered chose to protect the privacy of its clients and defy the U.S. law (Shubber 2019).

[21] In the U.S.-China trade war, the DOJ used a variety of claims to increase the pressure on Huawei, e.g., by arguing that Huawei's use of U.S.-sourced code, user manuals, and testing technology constitutes conspiracy to commit fraud or theft (DOJ 2019, 2020).

and as acknowledged by our interviewees, they often feel more confident dealing with foreign companies that also employ U.S. citizens in their global compliance department. This is what happened in the case of ZTE, leading the U.S. Department of Commerce to announce in April 2018 a ban on ZTE, the world's fifth-largest telecom vendor from China, additionally prohibiting all U.S. entities from selling any parts to ZTE for a period of seven years, due to ZTE's sanctions-busting activities in Iran. ZTE immediately halted most of its operations, sending this large MNC with over 75,000 employees into disarray. In the ZTE case, the Department of Commerce had no need to use banking secrets shared by global banks under DPAs because they had access to better evidence: Ashley Yablon, general counsel at ZTE US Inc. At this position, within eight months the general counsel had accessed dozens of strictly confidential internal documents evidencing ZTE operations in Iran. Caught between Chinese state law on trade secrets that prohibited him from releasing confidential documents obtained in China to U.S. authorities and U.S. sanctions law that could make him complicit in sanctions-busting crimes, the compliance officer decided to cooperate with the FBI in 2012, citing the Whistleblower Protection Act to turn his working computer in to U.S. law enforcement agencies (Stecklow and Lee 2012; Law.com 2017). U.S. citizens not only have a duty to report violations of U.S. law, but they are also encouraged by the high rewards provided in the Whistleblower Protection Act (up to between 10% and 30% of the forfeiture) to report sanctions-busting transactions that involve Cuba, Iran, or other U.S.-sanctioned jurisdictions. In addition to the ZTE case, the case of the New York branch of the Agricultural Bank of China, China's largest bank, involved a compliance officer with U.S. citizenship acting as the whistle-blower (DFS 2016).[22] These recent cases confirm that compliance officers with American citizenship have become an important gateway for U.S. law enforcement to cast its global and extraterritorial regulatory influences.

All these cases show how U.S. law has come to trump national law in recent conflicts. They also illustrate the iterative character of viral governance: when the Chinese government quickly moved to negotiate with the White House on the ZTE case, the lifting of the U.S. sanctions against ZTE was settled, in Trump's words, at the cost of "the strictest compliance that we've ever had on any company, American or foreign" (Yu 2018). ZTE had to pay a fine of $1 billion, bring a U.S. monitoring team on board for an indeterminate amount of time, and also put $400 million in an escrow account in case of any further dispute between ZTE and the United States. This settlement thus led to the territorialization in the U.S. legal realm of

[22] See the DFS and Agricultural Bank of China consent order under New York Banking Law secs. 39 and 44 at https://www.dfs.ny.gov/system/files/documents/2020/04/ea161104_agricultural.pdf.

yet another major virus-infected MNC with worldwide operations. As confirmed by our interviewees, compliance officers in global banks and now in Chinese MNCs will not be torn for long between the U.S. sanctions law and national laws forbidding them from sending client data to foreign powers in the country in which the bank bases its operations, like France (Gauvain, d'Urso, and Damais 2019; Laïdi 2019) or China. Soon, they will have to cooperate unconditionally with U.S. law enforcement authorities, even if that means they might be leaking core client secrets, which could trigger a negative reaction from client countries (Finews.Asia 2019). Overall, such viral transformations will inevitably lead to new fragmentation in the world of banking and industry, with MNCs having to separate their operations in the U.S.-dominated world from their operations in the Chinese-dominated world. As one interviewee acknowledged, a global bank like HSBC may soon have to have an Eastern component completely independent from its Western part.

CONCLUSION

This article made several extensions to the theory of legal recursivity (Halliday and Carruthers 2007) and its application to explain the transition from hegemony produced by multilateral governance (Chase-Dunn 1998) to hegemony produced by viral governance and, relatedly, from globalization to deglobalization. Rather than assuming that neoliberal rules of global governance are established through an interactive process—first being adopted by IOs and then their member-states, before being implemented by the private sector organizations located in the territories of such member-states through a bottom-up process (Shaffer 2021)—we identify a viral process of rules creation that has not yet been fully considered by recursivity scholars (Halliday and Carruthers 2009; Shaffer, Ginsburg, and Halliday 2019; Shaffer and Aaronson 2020). Starting from a series of punishments meted out by U.S. law enforcement agencies to Europe's and Asia's largest MNCs and global banks, this article carefully examined how viral governance invaded the global commercial and banking fields from more conventional areas like collective security against nuclear or terrorism threats. In addition to the cases of companies pursued in relation to violations of U.S. unilateral sanctions against Iran, like European banks (BNP Paribas and HSBC) or MNCs forced to pull out of Iranian markets (like Peugeot, Citroen, and Renault), we could add examples that show how U.S. authorities subsequently expanded their enforcement actions against their global suppliers with no ties to Iran (e.g., TSMC or TikTok) and how, through these investigations, the U.S. judicial authorities weakened the reputation of foreign commercial companies, thus forcing these companies to settle with U.S. authorities and sometimes allowing U.S. MNCs to obtain competitive advantages against them—like General Electric when it bought the energy part of French company Alstom (Gauvain et al. 2019).

With this background, there is good reason to believe that viral global governance will continue to foster deglobalization, as it will have continued relevance in such transnational legal fields (Kingsbury et al. 2005; Krisch 2014) as world trade rules, subsidies, investor-state dispute settlement, Internet governance (Johns 2016), and global health governance. Indeed, when hegemony is produced by viral rather than multilateral governance, the hegemon is likely to expand the range of aims for such direct action against MNCs as new rules of global governance are repurposed to fit new agendas and strategic goals (Kentikelenis and Babb 2019). Once mechanisms of financial sanction and trade coercion have proved their efficacy, it becomes hard for the hegemon not to overuse them, even for purposes far beyond the scope of their initial policy domain. Confronted with dead ends in conventional bilateral or multilateral negotiations, which are typically the forums from which new trade rules emerge (Hopewell 2016; Shaffer 2021), the hegemon might be tempted to break the negotiation deadlock by enrolling MNCs that have already been turned into collaborators during prior sanctions campaigns. We argue that the U.S. campaign against Chinese tech giants in the context of deadlocked U.S.-China trade negotiations may be interpreted as following such a pattern. As we were proofreading this article, the brutal invasion of Ukraine by Russia triggered the adoption of "Iran-style" sanctions by the United States, and to a varied extent by the European Union, against the Russian government, its major financial institutions including its central bank, as well as its main operators in the energy sector. Should the conflict not deescalate soon, these Iran-style sanctions aimed at Russia will undoubtedly have rippling effects on the U.S.-China trade and financial relationships, similar to those described in this article.

Viral governance can fill a gap in the governance of international finance and trade even if it may accelerate the process of deglobalization. Indeed, we have noted that viral governance is founded on a logic governmentalism that is reminiscent of the 19th-century moral panics against populations deemed dangerous (Foucault 2007). As U.S. sanctions laws constitute more and more populations as "undesirable"—from a few corrupt officials and drug lords to any foreign group or ethnic population that the United States deems as a "terrorist" organization, even going so far, from September 2020 to April 2021, as including anyone who would collaborate with the Prosecutor's Office of the International Criminal Court in its investigations of war crimes in Afghanistan and Israel (Blinken 2021)—the list of individuals and groups with whom global banks and MNCs will want to engage is dramatically shrinking. For MNCs, the proliferation of names included on lists of U.S. sanctionable persons (Sullivan 2020) and the associated risk of becoming hostage to U.S. administrative proceedings that would require them to provide evidence of their innocence when engaging in transactions with such undesirable subjects (Garrett 2016; Laïdi 2019) has created an important source of legal uncertainty affecting their international operations. Our interviewees have confirmed time and again that global banks initially assumed they could draw a hermetic boundary between their U.S. and non-U.S. activities but that the large amount of discretion left to U.S. law enforcement agencies in interpreting what constituted a U.S. link, and the proactive role of U.S. agencies in enforcing strong fines and monitoring sanctions against any non-U.S. bank deemed uncooperative, led them to adopt a zero-risk strategy, thus debanking populations they used to service if there was any risk that those populations would one day fall under U.S. sanctions rules (Erbenová et al. 2016).

With more infected companies participating in a new U.S.-centered global surveillance program that strengthens the hegemony of U.S. rule, and more undesirable subjects of sanctions, we predict that the old model of multilateral rulemaking, which had produced a stable legal environment for the MNCs that participated in the globalization of finance, investment, and trade from the 1970s to the 2000s, will lose its relevance. Here, the recent Russian invasion of Ukraine provides a good example of how quickly and massively, in March 2022, Western companies with no ties to the Russian defense industry (like Ikea, McDonald's, and Renault, to cite only a few) have pulled out of the Russian market, thus going far beyond what newly adopted U.S. or E.U sanctions laws required them to do. Viral governance thus presents key normative questions for legal or political theorists (Pasquale 2015; Zuboff 2019) to debate in the future, as it clearly departs from best practices and norms of good governance advocated by political theorists and governance scholars (Charlesworth et al. 2018) for whom multilateral governance is a better model than the alternatives. As we show, viral governance indeed departs from traditional multilateral models of lawmaking that respect a facade of sovereign equality. Furthermore, by encouraging targeted companies to settle in plea bargaining, U.S. enforcement agencies have weakened the rule of law, by depriving such companies from the opportunity to appeal U.S. decisions, despite the fact that the U.S. Supreme Court has often reaffirmed the unconstitutionality of extraterritorial claims in U.S. law (Verdier 2019). In so doing, the turn to viral governance needs to be questioned, not only because it has been strongly associated with processes of deglobalization but also because it may spur many new crises.

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