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Trade is War, and 'War is Peace': Reflections on International Economic Law in Challenging Times

*Dáire McCormack-George**

Abstract

This paper aims to reflect on the current trade disputes occurring in the international trading regime through an analysis of trade theory. The paper proceeds as follows. It first sets out the relevant factual background. Specifically, it notes (i) the growing multilateralism evident globally, characterised by increasing interlocking and integrated multilateralism, through the mobilisation and availability of regional development bank funding (eg the EIB and AIIB) and preferential trade agreements; and (ii) the simultaneous withdrawal from global trade towards regionalism, characterised by differing degrees of economic protectionism. The paper then considers the causes of and for this withdrawal, placing a special emphasis on US-China relations, particularly as these arise out of, and relate to, the growing reliance on and use of the renminbi. Second, this work outlines a theory of international economic integration, suggesting a view of international economic law as a constituent element of global justice, by considering the views of political philosophers Thomas Nagel, David Miller and Derek Parfit. The account that emerges is relatively conservative in nature, providing a justification for increasing regionalism and limited internationalism.

Introduction

This paper reflects on the current trade disputes occurring in the international trade regime through an analysis of international trade law theory. The paper proceeds as follows. It, first, sets out the relevant factual background. Specifically, it notes (i) the growing multilateralism evident globally, characterised by increasing interlocking and integrated multilateralism, particularly through the mobilisation and availability of regional development bank funding (eg the European Investment Bank ('EIB') and Asian Infrastructure and Investment Bank ('AIIB')) and preferential trade agreements; and (ii) the simultaneous withdrawal from global trade towards regionalism, characterised by differing degrees of economic protectionism. The paper considers the causes of and for this withdrawal, placing a special emphasis on US-China relations

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and tensions, particularly as these arise out of, and relate to, the growing reliance on and use of the renminbi. The paper, secondly, outlines a theory of international economic integration and suggests a new perspective on international economic law as a constituent element of global justice, by contrasting the views of political philosophers Thomas Nagel, David Miller and Derek Parfit. The account which emerges is relatively conservative in nature, providing a justification for increasing regionalism and limited internationalism.

1. Background

International trade is presently characterised by a number of salient features. These are (i) an increase in multilateralism, particularly through the mobilisation and availability of development funding from investment banks such as the EIB and AIIB, which provide alternatives to the World Bank and IMF, and (ii) the withdrawal from a globalised free trade ideal towards increasing regionalism and protectionism. I address these in turn.

1. *The Multilateral Turn*

The ‘multilateral turn’ in international trade law and policy should be viewed against the background of the stalemate from which the Doha Round of trade negotiations has suffered for several years. The Doha Round, launched in 2001, intended to reform the WTO system by lowering trade barriers and amending trade rules. However, little progress was made during the early years due to the complexity of its topics, antagonistic interests and the WTO’s cumbersome, consensus-based decision-making process. More recent trends have compounded this process in two ways. The first feature is the development of an increasing number of bilateral and multilateral trade agreements, such as CETA and TiSA—so-called ‘mega-regional’ trade agreements between some of the world’s largest trading blocs.¹ The second feature is the shift, at an international level, in trust away from traditional sources of credit and funding in the international monetary system, which must itself be understood as playing a vital role in facilitating and enabling international trade. The availability of development funding from the EIB and AIIB, for example, heralds an era in which the United States can no longer seek to maintain its global hegemonic position. As one commentator notes:

The US-led Bretton Woods institutions still function today. Multilateralism embedded in them has enabled the USA as a hegemon to strengthen its leadership in the world economy [...] Chinese multilateralism for the AIIB is different. China is not a hegemon; and most importantly, it has no will to counter the existing world order through the establishment of the AIIB. Rather,

¹ Stefan Griller, Walter Obwexer and Erich Vranes (eds), *Mega-Regional Trade Agreements: CETA, TTIP and TiSA: New Orientations for EU External Economic Relations* (OUP 2017).

the Bank has positioned itself in a complementary role in international development financing. Meanwhile, *Chinese multilateralism aims to improve global governance, tilting toward balance in favour of those underrepresented*. The AIIB meets both the needs of China's domestic reforms, and *the world's expectation of a responsible stakeholder and contributor*.²

The possibility of seeking and relying on other sources of credit for the purposes of facilitating local and regional investment in infrastructure and trade suggests, at a fundamental level, a shift in trust and reliance, to some degree, away from the traditional sources of international credit. Further evidence of this trend lies in the fact that many central banks around the world have begun to shift, albeit only slightly, their currency reserves away from the US dollar and towards the Chinese renminbi.³ While there is no prospect of the renminbi becoming a global reserve currency like the US dollar any time soon, the shift in reserves nonetheless suggests a shift in the fundamental trust in the global monetary system which underlies international trade.⁴

2. *Trade is War*

The recent shift in currency reserves towards the renminbi and away from the US dollar may indicate a broader breakdown in trust in the current global economic order, reflected as it is by the US's hegemonic position. However, it is more difficult to assess whether the global breakdown in trust is as a result of global dissatisfaction with the current order or whether it is as a result of local dissatisfaction, particularly in the USA, with the consequences of contemporary economic globalisation. To clarify this point, it is worth reflecting on the background to the current 'trade wars' occurring in international trade, particularly between the USA and China.

According to Tao Liu and Wing Thyee Woo, three issues led the US to initiate the current Sino-US trade war: (a) a concern that China's chronically large trade surplus was depressing job creation in the US; (b) the concern that China was using illegal and unfair methods of acquiring US technology at an effectively discounted price; and (c) that China seeks to weaken US national security and its international standing.⁵ For my purposes, the most significant of these factors is (a). Accordingly, we need to understand more about China's trade surplus with the USA. Essentially, the USA

² Bin Gu, 'Chinese Multilateralism in the AIIB' (2017) 20 JIEL 137, 157-158 (emphasis added). See also David M Ong, 'The Asian Infrastructure and Investment Bank: Bringing 'Asian Values' to Global Economic Governance?' (2017) 20 JIEL 535.

³ Jong-Wha Lee, 'Will the Renminbi Emerge as an International Reserve Currency?' (2014) 37 World Economy 42; Steven Liao and Daniel McDowell, 'No Reservations: International Order and Demand for the Renminbi as a Reserve Currency' (2016) 60 International Studies Quarterly 272; and Javier Guzman Calafell, 'The Renminbi as a Global Reserve Currency' (2018) 25 Economic and Financial Review 121.

⁴ Ioannis Lianos and Okeoghene Odudu (eds), *Regulating Trade in Services in the EU and the WTO: Trust, Distrust and Economic Integration* (CUP 2012).

⁵ Tao Liu and Wing Thyee Woo, 'Understanding the US-China Trade War' (2018) 11 China Economic Journal 319.

imports more products and services from China than China does from the USA and vice versa. It does so for a variety of reasons, prominent among them being (i) China's lower labour costs, (ii) China's cheaper raw materials and (iii) China's undervaluing of the renminbi.⁶ The aggregate impact of such a trade deficit for the USA could be substantial. This is so because by producing products cheaper than US producers, China contributes to the de-industrialisation of the USA, requiring it to adopt leaner and more efficient production chains, resulting in the need to lower costs – eg labour – to remain competitive. The trade surplus which China has obtained over the USA has led some to call for a reinstatement of tariffs across the board. Domestic representatives have acted accordingly; US President Donald Trump has levied a series of tariffs on Chinese products, such as steel and aluminium imports, making it more expensive to import Chinese products. However, the harsh reality is such that, by imposing tariffs on such products, US producers are thereby required to use more expensive domestically produced steel and aluminium, with the result that the additional costs will be likely borne by the ultimate consumer. This then results in weaker *purchasing power parity* for US consumers – that is, US consumers can purchase less with their dollar, resulting in a lower standard of living in the USA. But the negative consequences do not stop at the US border. Indeed, the consequences of protectionism transcend borders, affecting the welfare of consumers across the globe. As US consumers' purchasing power decreases, the concomitant risks of a national recession rise. And another US recession is surely a precursor to a global slow down.⁷

3. *Trade is War, and 'War is Peace'*

To more fully understand the international trade disputes, we need to outline what international trade involves. The most basic theory of international trade lies in an analysis of the benefits of free trade between nations. Free trade entails the abolition, in whole or in part, of restrictions to trade and competition between states. By abolishing such restrictions, free trade allows for specialisation. Specialisation leads to comparative advantage and comparative advantage leads to economies of scale, which maximise consumer welfare and ensure the most efficient use of worldwide resources.⁸ In other words, by facilitating heightened competition through the liberalisation of markets, resources will be allocated according to the laws of supply and demand, resulting in improved welfare for all. Thus, even the most basic theory of trade involves *competition*, and competition involves the destruction of certain forms and ways of life and business – inefficient commercial practices, unprofitable companies and so forth. In this sense, then, all trade is a war – a competition – and that war is peace. Now that I have clarified what international trade requires, it is evident that trade disputes will

⁶ Myeong Hwan Kim, 'The US-China Trade Deficit' (2014) 28 *The International Trade Journal* 65.

⁷ Anirban Sengupta and Siddhartha Kumar Rastogi, 'US-China Trade War Data: Truth and Post-Truth' (2018) 19 *World Economics* 189.

⁸ For detailed summaries see Catherine Barnard, *The Substantive Law of the EU: The Four Freedoms* (6th edn, OUP 2019) ch 1; Simon Lester, Bryan Mercurio and Arwel Davies, *World Trade Law: Text, Materials and Commentary* (3rd edn, Hart 2018) ch 1.

arise from time to time. What is then required is a mechanism beyond mere retaliation which states can rely on and adopt to defend their interests in difficult times.

2. The Regulation of International Economic Integration

By liberalising markets – permitting and facilitating competition throughout – some ways of life, skills and companies will be eliminated and some will survive. Ultimately, market forces will operate and thus, the market will determine which forms of value – and which skills – survive. There should, however, be limits on market forces. In particular, the operation of the market should be restricted, and state-led interventions permitted so as to guarantee and maintain an economy, society and culture that are fair, just or equal in some respect. If such interventions are not permitted, then an economy, society and culture which are presently fair, just and equal may become, by the operation of market forces, unfair, unjust and unequal. To put it another way, undistorted competition may lead to illiberal or dominating practices. Theorists must therefore make distinctive normative arguments for the maintenance of a culture which is fair, just and equal, while avoiding the creation of an (wholly) illiberal culture. While cultures are in general dynamic, elements thereof may need to remain static to ensure such fairness.

The question which then arises is on what basis, or according to what principle, should competition be regulated? On what basis do we regulate international economic integration? Political theorists across the spectrum differ on this issue. According to one liberal theorist, the moralistic ‘harm principle’ provides the grounds according to which a person or group of person’s autonomy may be restricted to ensure fair competition.⁹ According to one republican theorist, the doctrine of ‘freedom as non-domination’ defines the contours of the circumstances in which it is legitimate to restrict the autonomy of others to ensure fair competition.¹⁰ However, these theorists (generally) presuppose the spatially or territorially bounded nature of obligations of justice – the conditions according to which it is legitimate to restrict competition. Indeed, many theorists are of the view that interventions in the market require a definition of the relevant market, which consists of a given community of people or states.¹¹

⁹ Joseph Raz, *The Morality of Freedom* (OUP 1986) ch 15.

¹⁰ Philip Pettit, *Republicanism: A Theory of Freedom and Government* (OUP 1997); Philip Pettit, ‘Freedom in the Market’ (2006) 5 *Politics, Philosophy and Economics* 131; Philip Pettit, ‘A Republican Law of Peoples’ (2010) 9 *European Journal of Political Theory* 70; Philip Pettit, *On the People’s Terms: A Republican Theory and Model of Democracy* (CUP 2012); Philip Pettit, *Just Freedom: A Moral Compass for a Complex World* (WW Norton & Co 2014); Philip Pettit, ‘The Republican Law of Peoples: A Restatement’ in Barbara Buckinx, Jonathan Trejo-Mathys and Timothy Waligore (eds), *Domination and Global Political Justice: Conceptual, Historical and Institutional Perspectives* (Routledge 2015); and Philip Pettit, ‘The Globalised Republican Ideal’ (2016) 9 *Global Justice* 47.

¹¹ Michael Walzer, *Sphere of Justice: A Defence of Pluralism and Equality* (Robertson 1983); Raz (n 9); Pettit (n 10).

There are a number of views in this area which are relevant. A first might be called 'the Restrictive View'. Under this view, there are no global obligations of justice but merely local, national ones. That is not to say that peoples or states do not owe each other any obligations whatsoever but merely that whatever obligations they do owe are not obligations of *justice*.¹² A second view may be described as the 'Intermediate View'. According to this view, peoples or states can owe each other duties of justice but these are very much context-dependent. It will depend on the extent to which there is cooperation on, say, a regional level and the extent to which regional identities and consensus can be reached.¹³ A final position can be described as the 'Radical View': peoples or states owe each other obligations of justice regardless of boundaries. There are no such limitations to obligations of justice.¹⁴

In my view, the Intermediate View represents an appropriate middle ground between the more views represented by the Restrictive View and the Radical View. Accordingly, we need to expand on the requirements of the Intermediate View to better understand its implications for international economic law. A good example of the Intermediate View is available in the work of political philosopher David Miller. According to Miller, nation states remain the conventional site for obligations of justice and the reason this is so is due to three salient features of a nation state. These features are that (i) it applies coercive laws to all their members; (ii) those members identify with one another as compatriots; and (iii) although it is not fully self-contained from an economic point of view, its economy and accompanying set of social services can be regarded as a large-scale cooperative practice, as most production, exchange and distribution occurs within the borders of the state.¹⁵ However, according to Miller, 'where we find forms of economic cooperation arising at transnational level or where people begin to acquire new identities, say of a regional kind, then the scope of distributive justice will also enlarge even in the absence of coercive political institutions.'¹⁶

The EU provides an excellent example of such regional cooperation, as, within it, we find heightened forms of economic cooperation across a multiplicity of states. Europeans now share, to some extent, a common identity. The EU has its own anthem, currency and flag.¹⁷ And, going beyond Miller's requirements, it has coercive political, administrative and legal institutions at a transnational level.¹⁸ The EU, in its relations

¹² Thomas Nagel, 'The Problem of Global Justice' (2005) 33 *Phil & Pub Aff* 113.

¹³ AJ Julius, 'Nagel's Atlas' (2006) 34 *Phil & Pub Aff* 176; and David Miller, *Justice for Earthlings: Essays in Political Philosophy* (CUP 2013) 163-164.

¹⁴ Derek Parfit, 'Equality and Priority' (1997) 10 *Ratio* 202; Nils Holtug, 'Equality, priority and global justice' (2009) 5 *Journal of Global Ethics* 173. See also Thomas Pogge, 'An Egalitarian Law of Peoples' (1993) 23 *Phil & Pub Aff* 195.

¹⁵ Miller (n 13) 161-162.

¹⁶ *ibid* 163-164.

¹⁷ See, eg Jeffrey Checkel and Peter Katzenstein (eds), *European Identity* (CUP 2009).

¹⁸ This is not to say that the EU actually meets all of Miller's requirements; indeed, the actual existence of any obligations of justice within the EU is limited. But Miller's requirements make the case for obligations of justice within the EU compelling. Moreover, academic interest in the

with third-countries, may also be described as a new regional power. An obvious example is the EEA, an association of EU and non-EU states, weaker in form than the EU itself. The EEA, like the EU, may give rise to regional, and not merely national, obligations of justice. Similarly, large trade agreements, such as CETA, could constitute an important step in giving rise to obligations of justice between the EU and its trading partners on the basis of the terms of the agreement.

In sum, obligations of justice can arise between states in the case of groups of states that form regional partnerships. What impact might this have for the current global trading regime? In my view, ensuring that resources are redistributed may ensure that individuals and entities have a fair chance to compete in the market. Those who are currently most privileged by the status quo may suffer in some respect as a result of that redistribution. Indeed, it may seem as though their standard of living is falling, or they are 'levelling down'. But this is the consequence of maintaining a global hegemonic position. As Miller notes,

... if we assume that the global protection of human rights sometimes requires rich countries to make resource transfers to poor countries, then we as democratic citizens may have to choose between, say, increasing the foreign aid budget to promote global justice and increasing the budget for preschool education to promote equality of opportunity at home.¹⁹

It, therefore, seems that any global economic, social and cultural leader will necessarily assume heightened obligations of justice and it may appear that its members' well-being will suffer. This is, in essence, the challenge from President Trump: the welfare of the people of the USA is being negatively affected by the impact of economic globalisation and measures need to be taken to secure their welfare. While there is nothing objectionable in principle about this, in practice it is difficult to justify the tariff-driven solution the Trump Administration has followed when other options are available.

I am assuming that there are alternatives to imposing retaliatory tariffs such as anti-globalisation funding (in the EU, for example, the European Globalisation Adjustment Fund comes to mind) to ensure that those negatively affected by the consequences of globalisation have opportunities to retrain and redeploy their skills as and when

nature and constitutional structure of the EU, while well underway, has much more to contribute to the existence of some, if any, obligations of justice. See Andrew Williams, 'Taking Values Seriously: Towards a Philosophy of EU Law' (2009) 29 OJLS 549; Julie Dickson and Pavlos Eleftheriadis (eds), *Philosophical Foundations of European Union Law* (OUP 2012); Andrea Sangiovanni, 'Solidarity in the European Union' (2013) 33 OJLS 213, Richard Bellamy, 'A European Republic of Sovereign States - Sovereignty, republicanism and the European Union' (2017) 16 European Journal of Political Theory 188 and Pavlos Eleftheriadis, *A Union of Peoples: Europe as a Community of Principle* (OUP 2020, forthcoming).

¹⁹ Miller (n 13) 175.

necessary. In making that assumption, I am viewing, as I have suggested elsewhere,²⁰ people as complex, multi-dimensional actors who are capable of using, developing and recognising their skills in diverse situations and for diverse reasons, economic or not. I am also assuming that people are open-minded about this possibility. That is, I am assuming that people accept the consequences of fair global competition, internalise them, and adapt their outlook accordingly. Of course, this will rarely be the case in our world. People do not generally embrace change, especially when it is relatively sudden rather than incremental.

What is interesting in this respect is the contrasting perspectives adopted by current global hegemonies. The US, for example, appears to be travelling down a path which rejects its historic 'exceptionalism',²¹ instead advancing its own, narrower agenda in economic, social and military terms. By contrast, the same cannot be said of the EU or China. China, for example, does not desire any position of global power as such but rather seeks further global integration, first through regionalism and then internationalism, bringing those countries with which it partners along for the ride. In light of the analysis of the obligations of justice, China's approach seems to be the correct approach. China is fostering economic, social and cultural partnerships with countries around the world, investing in infrastructure and capacity-building projects.

In light of these approaches, it may be preferable for the US to adopt an approach similar to that of the EU and China. While the US will almost always be a special case, requiring special considerations and measures given its global hegemonic economic, cultural and military status, integrating with and through its own regions further, giving rise to heightened obligations of justice in respect of those countries, may be preferable. In essence, then, it would be better if the world's major economic powers first sought to integrate within their own regions, facilitating fair competition throughout through the redistribution of resources and opportunities, seemingly levelling up the worse off in those regions before integrating globally, which would level up the worse off in the world as a whole. Integrating regionally first and latterly internationally may make such obligations of justice more palatable, as Miller suggests.

This theoretical perspective should also be applied to the current Sino-American trade war. On the one hand, it seems that the imposition of tariffs on Chinese steel is unwarranted. On the other hand, it may be better for the US to impose tariffs on some Chinese products and ensure that its own producers and producers in its region can level up before then opening them up to competition. To put it another way, the US should first permit greater and fairer competition between its market and its regional partners' markets before permitting competition between the US and other major

²⁰ See my 'On the Nature of Work and the Purpose of Labour Law: Some Irish and European Perspectives' (SLSA Annual Conference, 3-5 April 2019), available at <www.academia.edu/38704364/On_the_Nature_of_Work_and_the_Purpose_of_Labour_Law_Some_Irish_and_European_Perspectives> accessed 4 April 2019.

²¹ See generally Harold Hongju Koh, 'On American Exceptionalism' (2003) 55 Stan L Rev 1479.

economic powers, such as the EU and China. Such a process will better prepare producers to compete at a global level by first levelling up at a regional level. Regional integration and competition is likely, in itself, to be fierce as global economic powers scramble for the remaining resources available;²² but this will facilitate further integration in the future.

Conclusion

In this brief paper, I have made several arguments and observations. First, I outlined the growing regionalism evident in the international economic landscape. I suggested that, at a fundamental level, there seems to be a breakdown in the internationalist view of economic integration with a trend towards regional economic integration. I then considered an example of this in the current Sino-American trade war. I argued that such trade wars may occur quite naturally given the nature of international trade – a competition for survival. In response to the current situation, I suggested that obligations of global justice require that resources be redistributed to the worse off to ensure fair competition. I observed that this may result in apparent ‘levelling-down’ for those currently benefitting most from the status quo. I concluded that this was fair but that, given the heightened degree of regionalism now evident around the globe, this should first occur at a regional level before occurring at a global level. This may make such redistribution easier to stomach for those in positions of power and advantage.

²² Thomas Pakenham, *The Scramble for Africa* (Abacus 1992); Pádraig Carmody, *The New Scramble for Africa* (2nd edn, Polity Press 2016).