Book Review Essays

Poverty and Justice: Competing Lenses on International Economic Law


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Posner and Sykes observe of international economic law (IEL) that it is the only area of international law in which law and economics, as a distinctive methodology, has played a significant role. Elsewhere, they lament, international law scholarship has been dominated by doctrinal, historical, or philosophical approaches.¹ In fact, their point might be put more strongly; whereas economic analysis has had little impact in other areas of international law, in IEL its dominance has historically eclipsed all other theoretical approaches.² However, just as economic analysis has begun to spread to other areas of international law, in large part inspired by the work of political scientists, so its hegemony in IEL has recently been challenged by

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¹ Eric Posner and Alan Sykes, Economic Foundations of International Law (Belknap Press 2013) 3.
² This story is well told in Robert Howse, ‘From Politics to Technocracy - and Back Again: The Fate of the Multilateral Trading Regime’ (2002) 96 Am. J. Int’l L. 94.
scholars applying insights from human rights, political theory, and moral philosophy.³

Many explanations might be offered for the late arrival of scholars from other disciplines, and in particular political theorists, to the study of IEL. Most obviously, the hegemony of economic analysis, and in particular the power of comparative advantage in trade scholarship, left little space for alternative theoretical approaches. Destabilizing the free trade consensus, in both theory and practice, was a necessary prerequisite for applying approaches that emphasize the distributive and conflictual nature of economic regulation.⁴ Dependency theorists and the movement for a New International Economic Order constituted a first generation of challengers; their retreat saw a reassertion of free trade dogmas that remained largely unchallenged until after the Uruguay Round.

Two further explanations, however, relate more closely to the project of international political theory. The first is the lack of consensus within this field of study. Domestically, our tradition of political theory goes back to Aristotle. We can draw on various fully worked out theories of justice including, most prominently, liberal, libertarian, and utilitarian. Disagreement persists, but it is substantially structured by localized consensus. By contrast, international justice became a serious focus of political philosophy only in the last quarter of the twentieth century.⁵ Theories are less developed. Intuitions are less clear. There is simply no agreement amongst philosophers on what justice might demand beyond the state. Indeed, as Thomas Nagel observes, “it is not clear what the main questions are, let alone the main possible answers.”⁶ If expert consensus is a prerequisite for epistemic communities to influence policy

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³ As well as the volumes under review, prominent book-length contributions include: Frank Garcia, Trade, Inequality, and Justice: Towards a Liberal Theory of Just Trade (Martinus Nijhoff 2003); Frederick Abbott, Christine Breining-Kaufmann and Thomas Cottier (eds.), Human Rights and International Trade (OUP 2005); Chi Carmody, Frank Garcia and John Linarelli (eds.), Global Justice and International Economic Law (CUP 2012); Aaron James, Fairness in Practice: A Social Contract for a Global Economy (OUP 2012); Frank Garcia, Global Justice and International Economic Law: Three Takes (CUP 2013).

⁴ This point is well made, albeit to criticize political theorists’ recent discovery of the subject, in Fernando Tesón and Jonathan Klick, ‘Global Justice and Trade’ in C. Carmody, F. Garcia and J. Linarelli (eds.), Global Justice and International Economic Law (CUP 2012) 217–260.

⁵ Political theory’s international turn is commonly dated to one of two publications, from 1972 and 1979 respectively: Peter Singer, ‘Famine, Affluence, and Morality’ (1972) 1 Philosophy & Public Affairs 229; Charles Beitz, Political Theory and International Relations (Princeton University Press 1979).