Gregory Messenger


How does international law develop and how do we examine ... the development of World Trade Organization (WTO) law? (p. 1).

With this simple opening statement, Messenger asks a question that lies at the heart of all WTO scholarship, whether it is scholarship that explores change in a discrete area of WTO law like, for example, the existing WTO rules of the interpretation of sanitary and phytosanitary (SPS) rules in the Trans-Pacific Partnership Agreement (TPP),¹ or more complex analyses that investigate whether new interpretations based on human rights and sustainable development can be read into WTO rules and if not, whether those rules must be updated to accommodate these new norms.² In each example, scholars seek to understand how WTO changes and on what basis that change should be understood.

Messenger’s question is deceptive as, at one level, it merely describes the ways that change in WTO law has been explored in the past. Yet, at the same time, it implies a new depth and complexity to this scholarship. For example, some scholars see legal change as synonymous only with institutional development, like accounts that focus on the outcome of multilateral trade negotiations, particularly how agreements supplement existing rules (p. 3). For other scholars, normative change is important, with the result that they focus on why existing rules are interpreted in a dispute before the WTO Appellate Body differently than before. The lasting nature and scope of this latter change might be less easy to discern than changes to the rules brought about by the addition of new agreements following successful multilateral trade talks (p. 193). The reasons why multilateral talks are successful at a particular point in time after years of stagnation, or why actors, their interests, and the political reality of

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² Olivier De Schutter, *Trade in the Service of Sustainable Development* (Hart 2015).
trade at national, regional and global levels all come together to constitute a change to WTO law, have all been subjects of study too (p. 192).\footnote{Andrew Lang, World Trade After Neoliberalism: Reimagining the Global Economic Order (OUP 2011).}

This diverse and complex array of ideas reveals important truths about how WTO law develops. But how should scholars understand these disparate ideas? Conventional wisdom suggests it is either a question of reconciling these accounts, or of determining which account presents the correct approach, with the remainder being discarded. Yet historic rivalries between particular schools of thought that advocate a choice between ideas are giving way to nuanced new accounts of interdisciplinary scholarship that sees interdisciplinarity as a two-way discussion. For example, legal scholarship has been shown to reinvigorate theories of international relations and is strengthened in turn when those new understandings are fed back into legal scholarship.\footnote{Jeffrey Dunoff and Mark Pollack, ‘Reversing Fields: What Can International Relations Learn from International Law?’ (2015 revision) APSA paper <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2037299> accessed 1 September 2017.} It is in this tradition of reconciling ideas in ways that enlighten and strengthen existing thinking that Messenger’s book sits.

To say that Messenger is simply drawing together existing accounts does not do justice to his complex and nuanced analysis. Messenger shows instead that seemingly disparate accounts of legal change and the development of WTO law are connected if they are explored at a deeper level. To make this connection, he draws on the work of theorists from a wide range of disciplines not commonly seen in WTO scholarship, including (but by no means limited to) Aristotle\footnote{Jeffrey Dunoff and Mark Pollack, ‘Reversing Fields: What Can International Relations Learn from International Law?’ (2015 revision) APSA paper <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2037299> accessed 1 September 2017.} (p. 35), David Hume, Quentin Skinner and Ronald Dworkin (p. 29), together with more familiar discussions of power, constructivism and sociology from Nye (p. 71), Orford (p. 32) and Bourdieu respectively (p. 32). It is this range of sources, ideas and analysis that sets Messenger’s book apart and marks it out as an innovative and important contribution to WTO law scholarship.

The book is divided into two notional parts: chapters one through to three set out the theoretical argument, starting with an analysis of the nature of international law as both part of a larger global process and as a legal system (Chapters 1 and 2). It moves on to consider legal change in more detail, specifically how law functions and what it means for one event to ‘cause’ another (Chapter 2). Chapter 3 then applies these broader ideas about the nature of change in, and the development of, international law to WTO law to show that whilst many theoretical perspectives have an important role to play in understanding such change, only legal accounts ‘explain most clearly how actors