Dennis Patterson and Ari Afilalo. ***The New Global Trading Order: The Evolving State and the Future of Trade.*** Cambridge: Cambridge University Press, 2008. Pp. 270. $32.99. ISBN: 9780521875189.

There is without a doubt a growing academic and popular literature about the World Trade Organization (WTO), and more broadly international trade law. Reading Patterson and Afilalo, I came away with the feeling that, given time, this book may be one of those books that straddle both worlds. Given that there is often a divide between academic and popular works, I think that this is a work which should be welcomed. It is well written and, importantly for a book that could cross over into a wider market than academia, it reads with the ease of a story. Patterson and Afilalo deserve credit for being good storytellers. They weave a seamless story about the changing nature of the state and the corresponding changes in the international trading system. Crediting Philip Bobbitt they posit that the fall of communism in 1989 was not the Fukuyama 'end of history' so much as the start of the 'market state'. They argue that, as the state can no longer promise to protect its citizens from external attack, the strategic ground of its legitimacy is changing (at Chapter 1). It also cannot meet its welfare function of maintaining legal regimes for the enhancement of wealth, protection, or health. Therefore the 'State is moving from a regime of (legal) entitlements to one of incentives' the writers argue (at 6). The state in its current form has lost control over what were generally seen as domestic issues, such as wealth transfer and protection of property. They argue that understanding the current global trading system lies in being able to explain the relationship between the state and global trade. For example, they argue that globalization was not simply a result of the technological communications revolution. They write that 'the establishment of comparative advantage as the normative foundation of global trade created a global web of economic actors thereby making it necessary for them to communicate rapidly and efficiently in a single market' (at 85). Therefore they contend that Bretton Woods contained the seeds of its own demise in providing the structural mechanisms which created global actors not pinned to the state (at 86). Further, for Patterson and Afilalo, the current constitutional order of the state as having the power to create and enforce law in its jurisdiction and beyond, with the world as a subdivision of national economies, no longer holds true. They highlight that 'the overlapping of ownership and spread of production has for quite some time made it difficult to identify a particular product as belonging to one nation versus another' (at 6).

The Bretton Woods institutions have therefore lost their effectiveness to govern the international system which was crafted after World War II. Patterson and Afilalo make the claim that in our multi-polar economic world the 'ontological centrepiece of the global trading order – an aggregation of nation-states governed by the sovereignty, welfare, and balance of power principles of the twentieth century – is eroding' (at 6). The state as a regime of entitlement and welfare is giving way to the 'market state' as an enabler of economic opportunity (see Chapter 3).

If there is a small criticism of the work it is that at times it seems repetitive. That, however, can be explained by a need to reinforce the story and keep the reader at pace with an analysis which is fast-moving and covering a large period of economic history. The other issue which is not so much a criticism as a point to note is that the work does not explicitly say that systems of law are socially created. By that I mean that we determined the WTO legal system and we can change it, if we see it as necessary. However there was perhaps no need to do this, because the writers make it clear that the systems which regulate trade are not accidental (at 85). They are at pains to show that globalization did not simply 'happen to coincide with the communications revolution' (at 85). Commodities such as currencies and privatization of public debt, for example, did not simply overlap with globalization, but because of this interloping of economic activity, information needed to move rapidly to take advantage of currency, investment, and economic activity (at 85). This discussion provides an opportunity for Patterson and Afilalo to make important suggestions for reforming the global trading system. Even if you do not agree with all the terms of their suggested Trade Council, it seems like an interesting way in which to expand the countries at the top table of the decision making process of global trade (see Chapter 6).

Patterson and Afilalo advance that developing countries missed critical stages of development, which developed countries went through: for example, the consolidation of a national identity, the forging of a middle class, and the promotion of a modern economy (at 118–120). They argue that developing countries, due to colonialism, missed these stages and today remain somewhat pre-modern.[1] This is where the Trade Council becomes a useful tool to help integrate these developing countries into the global economy based on the enablement of economic opportunity. They see the concept of enabling economic opportunity as an 'animating constitutional principle' which would replace regulation with a scheme of incentives as a way to drive the trade regime (at Chapter 7). Incentive-based schemes would 'lead to a race to the top of the economic opportunity ladder instead of a race to the bottom of the regulatory well' (at 161). This incentive-based post-modern framework they argue, for example, could involve debt-for-nature swaps (at 161). The idea is that 'conservation organisations can obtain some of the devalued debt and trade it for rain forest protection' (at 161).[2] Essentially the writers seem to want to use the concept as a way of judging the legitimacy of norms in the international trading system (at Chapter 7). GATT, they argue, cannot assist developing countries to integrate into the global economy because it is designed for modern countries, whereas developing countries exist in a pre-modern phase (at 119–120). Patterson

1 Patterson and Afilalo classify countries as follows: '[m]ost of Africa, large segments of countries like Afghanistan, Pakistan, Egypt, and other Asian and South American states . . . alongside the pre-modern states are what we call partial graduates of the pre-modern era. These include Brazil, Argentina, Hong Kong, Taiwan, Indonesia, South Africa, and most prominently China and India. They share characteristics of the modern world, and yet they contain pockets of pre-modern population that are so large that cannot be considered fully modern. This group comprises many countries formerly known as less developed such as Brazil or India, that have developed an industrial and other economic base typical of the modern world' (at 119).

2 Patterson and Afilalo noted that an early version of these types of agreements was signed in 1987 by the Governments of Bolivia and Conservation International, whereby CI acquired $650,000 of Bolivia's debt for $100,000. In exchange, the government of Bolivia provided the Beni Biosphere Reserve with maximum legal protection and created three more protected reserves (at 161).

and Afilalo advance that the Trade Council, following a similar path to the EU, must be based on a 'select set of states that span the territories it will reach' (at 121). They maintain no fallacy about what the Council could achieve, adding that '[a]gain, like Europe, the Trade Council will not accomplish its goal overnight' (at 121).

The Trade Council, along with promoting the integration of pre-modern countries into the global economy, will also provide the base for a 21st century 'Marshall Plan like investment to complement trade' (at 124). It would work with regional and developmental banks which provide loans to low-income households in developing countries (at 124), which is a basis for the enablement of economic opportunities to various sectors of the economy in these countries. The second task of the Trade Council would be to address issues which arise from international economic development, where, for example, fluctuations of the market cannot be addressed by any one country (at 124–125) because of the cross-border nature of many issues from labour, environment, corruption, and criminal activities (at 123). The Trade Council, for example, would address the divergence in views between developed and developing countries on the protection of the environment and the need for economic development. Where Western countries push for stricter environmental protection, developing countries accuse them of hypocrisy, in that developed countries destroyed large parts of their environment in order to develop in their pre-modern phase (at 143). They argue that the Trade Council would replace this 'dialogue of the deaf' with a system of incentives. For example, if Indonesia adopted a programme to protect its sea turtles which 'complies to Western' standards then a 'substantial' package of economic incentives could be given by Western states to prompt companies to manufacture in Indonesia. The Trade Council would also provide the basis for investments in infrastructure if states promoted environmental responsibility (at 143), as well as tackle corruption through collaboration with organizations like the International Criminal Court (at 145–146). This appears to assume that Western companies will need such high-minded incentives to invest, rather than simply investing because labour and materials are cheaper in developing countries.

Patterson and Afilalo weave an interesting story on the role of the Trade Council, but seemingly absent is any mention of the UN system and its role in tackling many of the issues the Trade Council would begin to address. The Trade Council's role is to fill the institutional vacuum left by the IMF and GATT (at 128). This means that the Council will seek to address the plight of what they call the excluded classes and the vulnerable middle classes more directly. To do this, they argue for a new Marshall Plan, not for countries, as was the original to rebuild a war-torn Europe, but to provide 'capital resources to entrepreneurs' on a 'microeconomic level' (at 132). The mandate of the Trade Council will be to 'act as an umbrella organisation, presiding over a network of institutions that could be used to make financing available' to help with infrastructure in developing countries (at 133). From this perspective the Trade Council is an agency for bringing existing private and state actors into useful networks to direct resources (at 136) rather than a large bureaucratic structure such as those conceived at Bretton Woods.

As insightful as they are about the Council, some may argue that it is worrying that the authors link most human problems to trade. The new Trade Council is charged with a mandate to address the problems either by itself or in collaboration with existing global institutions. If there is a larger criticism of the work, it is that the writers appear to assume that development is Western, democratic, and capitalist in nature. Patterson and Afilalo 'advocate' and emphasize that the Council should be established by 'modern liberal democracies' (at 121) and be 'comprised' of a 'select set of states' (at 121). There is an immediate problem. This would leave out non-democratic countries like China, which is a recognized powerhouse for trade and manufacturing. This makes the potential success of the Trade Council highly questionable.

The writers do not address, even if only at the margins, other ideas of development; whether at a cultural, political, or broader social level. Their argument for integration of developing countries into the global economy is well intended, but one should always be wary of any view which appears to be advanced as 'the' way or without inward critique. Integration in the global economy should not come at the expense of trying to devise ways in which individual countries will find their own home-grown paths to development, and the elevation of values that they decide to be worthy and economically progressive. Developing countries no doubt need assistance in addressing many problems such as poverty, unemployment, and corruption. That does not necessarily mean that the way to address those problems is through a market-driven Western economic model of development.

Additionally my other criticism of Patterson and Afilalo is that the idea of incentive-based schemes to replace regulation does not mean that the law disappears. In fact the incentive-based schemes still need rules by which they are governed. Even the example which the writers give of the debt-for-nature swap was based on a 'contract', which would be governable by contract law and the regulatory framework of a contract regime.

The final point about this work, and many in the area, is that it is often assumed that trade has to function within a liberal democratic capitalist context. The context is not questioned critically, so much as tweaked, to ensure that there are minimum services for the 'vulnerable'. My point is not a support for any particular form of *politicks*. It is an assertion that no form is ontologically necessary. Systems and ideas should be questioned even when, and perhaps more so when, you support the basic assumptions. That keeps debate open, and by questioning the nature of the system, we not only see what and whom it includes, but importantly we get to examine the arguments and people its excludes. This approach could shine a light on the vulnerable whom Patterson and Afilalo seek to support through their Trade Council.

The book is insightful and worth reading. I suggest that all people interested in trade law should have a place on their shelf for it, so, too, students and other practitioners with an interest in the development of the post-World War II institutions which have shaped the global economy.

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