

Michael Fakhri. *Sugar and the Making of International Trade Law*. Cambridge: Cambridge University Press, 2014. Pp. xvii + 250. £65. ISBN: 9781107040526.

International trade law purports to be concerned with regulating relations between states in the conduct of international trade. What it has amounted to in practice extends well beyond the regulation of inter-state relations manifesting in a substantial body of rules that regulates the relationship between each state and its domestic economy. Since the post-war period, the defining objective of this body of rules has been the promotion of free trade typically conceived of as trade free from state intervention (at 11). The dominant topic of debate has been what, precisely, amounts to state intervention and when such intervention may or may not be warranted. As intimated by his choice of title, Michael Fakhri in his book *Sugar and the Making of International Law* takes inspiration from Antony Anghie,¹ a scholar who famously disrupted prevalent conceptions of public international law. Using sugar as a ‘trace element’ (at 5–6), Fakhri follows Anghie’s lead in retracing the historical origins of international trade law in order to challenge pervasive perceptions about this legal regime. What he is keen to demonstrate is that free trade, like state sovereignty, is not something that international institutions are merely officiating. Rather, the meaning of this concept has shifted over time as it has been applied by different institutions and actors within the international legal order to differential effect. It has been both conditioned by, and received the conditioning of, broader political, economic and social forces. Critically, it is as much the product of international institutions governing trade as it is their purpose.

International institutions are the central objects of analysis within Fakhri’s book. In this regard, his text resembles many other works within the literature on international trade law. The critical point of difference in Fakhri’s text lies in his choice of institution. Overwhelmingly, the existing literature focuses on the institutional forms of the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization. In a radical departure from this trend, Fakhri focuses on three hitherto-seen-as-obscure multilateral institutions involved in the regulation of sugar. By asserting that the 1902 Brussels Convention, the 1937 Sugar Agreement, and the 1977 Sugar Agreement were, in fact, some of international trade law’s defining institutions, he upsets dominant understandings of what international trade law is really all about.²

Instead of a project concerned with freeing market actors from undue interference from the state, international trade law is revealed to be something much more complex and much more political. It is about defining and redefining capitalism and imperialism and negotiating between agriculture and industry (at 16). In order to illustrate this convincingly, Fakhri faces a significant challenge, as he acknowledges at the outset of the book. To try and examine how international law, international institutions, capitalism and imperialism interact is ‘to follow a moving target’ as these interactions change constantly over time (at 5). In an original and inspired move, he elects to anchor his analysis in the trading of sugar – a single, everyday agricultural commodity. By focusing on attempts to regulate the trade in this staple of modern diets, Fakhri is able to ground an expansive history and to illustrate a changing institutional climate in a relatable and manageable format. The story of sugar is used to trace the changing meanings of free trade over the past century through three sugar treaties and their concomitant institutions.

The book is structured in five parts. The first part, the prologue, sets out the book’s argument, immediately foregrounding the significance of agriculture to the project of international trade law and exposing the limitations of existing histories of the discipline. In this section, Fakhri’s

¹ Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (1996).

² International Convention Relative to Bounties on Sugar 1902, Cd. 1535, 191 Parry 56; Sugar Agreement, Proceedings and Documents of the 1937 International Sugar Conference, reprinted in League of Nations Document C.289.M.190.1937.IIB, 27 October 1937; International Sugar Agreement 1977, 1064 UNTS 219.

other major theoretical influence alongside Anghie is made explicit. The work of Karl Polanyi is briefly recounted and is used to equip the reader with a sense of the direction that Fakhri's own arguments will take.³ The third, fourth and fifth parts each provide an in-depth analysis of the context, content and conceptual underpinnings of each of the three sugar treaties. Each part is composed of two chapters. The first takes the form of a historiography, drawing together an array of literatures that explain the broader climate in which each multilateral institution for the regulation of sugar came about. Attention is paid to the political climate, prevailing economic discourse and the social history of key sugar-producing countries that conspired to produce a certain conception of free trade. The second chapter then engages directly with the specific sugar treaty in question, demonstrating how the conception of free trade underpinning it was redefined by the operation of the institution presiding over it. Fakhri's comparative study demonstrates that the contemporary agenda of liberalizing trade from 'distortive' regulatory interference by the state is a comparatively recent phenomenon. Free trade has not always been conceptualized in the way it is today – as a project of market liberalization and a matter of economic necessity. Rather, 'competing economic and political stakes are behind different free trade policies' (at 212). The interests of Empire, preoccupations with political stability, a desire for peace, the drive for economic development and visions of community welfare have competed and coalesced within institutions regulating the trade in sugar, resulting in markedly different conceptions of free trade. The fifth part, the epilogue, concludes with some brief reflections on the themes of the book and offers some final thoughts on what a sense of the 'repertoire of possible institutional configurations' on the governance of trade might imply for the future of international trade law (at 214).

Taken as a whole, the analysis provides an immensely rich and detailed study of the operation of three multilateral institutions that have governed international trade in a manner radically opposed to that which prevails today. Each of the three sugar treaties sought to develop international mechanisms to actively regulate the price of sugar on international commodity markets in accordance with broader economic and political goals. In today's climate, such an approach appears outside of the realms of possibility. Also brought into focus is the fact that many of the self-evident truths and market 'realities' upon which the contemporary trade regime is based are the contingent outcomes of these institutional engagements. As Fakhri demonstrates, it was, in part, as a result of the 1902 Brussels Convention that subsidies came to be regarded as an unnatural intervention into the market and counter-veiling duties as a necessary remedy to protectionist measures (at 67). Equally, the negotiations and operations of the 1937 International Sugar Agreement were instrumental in furthering a shift in thought that positioned the free market as the norm, subject to exception only in the case of special circumstances warranting policies designed to improve national economic development (at 90–91). Moreover, it was, to a significant extent, a result of developing countries seeking to use the 1977 International Sugar Agreement as a tool to realize the politics of embedded liberalism on a global scale that the free market and rationalization policies⁴ to regulate prices were forced into ideological opposition (at 142–143).

Fakhri tells a very different story about international trade law than that which it tells about itself or that which is told in dominant accounts of the discipline. A vital contribution, his work upsets many of the assumptions upon which contemporary trade lawyers and others involved in trade politics are operating. Agriculture – marginalized in the GATT and widely regarded as a sector only recently subject to the attentions of the international trade regime – is revealed to have been central to its institutional evolution. Imperialism – a global dynamic seen to pre-date, and often viewed as extraneous to, the modern trade regime – is reinstalled as an organizing

³ Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Times* (2001 [1944]).

⁴ Rationalization was the theory that it was necessary to stabilize and control economic conditions of production, distribution and consumption in a way that ensured economic efficiency and improved a community's welfare (at 75).

dynamic. Delving into this alternative institutional history, Fakhri illustrates that policies positioned as polar opposites today – a choice between the pursuit of free trade or the regulation of prices by states or international institutions – were once pursued contemporaneously and regarded as complementary. Furthermore, the reasons for the pivotal, but under-interrogated, conflict between countries in the global North and those in the global South over the regulation of industry and agriculture are illuminated in Fakhri's analysis. In many accounts, this tension is portrayed as the result of differential endowments – as something that the international trade regime is attempting to negotiate. In Fakhri's account, the conflict between countries in the global North and those in the global South is revealed to be something that the international trade regime has helped to construct.

Most importantly of all, what Fakhri ably demonstrates is the fallacy underpinning contemporary conceptions of free trade and its relationship to law and the state. As he emphasizes, '[t]he sugar treaties teach us that to organize international trade in a way that assumes that the market should be "free" from the state has little practical meaning; market actors cannot operate without certain legal structures, political decisions, and social relations' (at 212). Through his study of free trade ideas, interests and institutions, Fakhri brings insights from Karl Polanyi's great study to bear on a legal regime that has been critical in shaping the political and economic conditions of our times. His work shows us that the lines implied by contemporary notions of free trade – lines between the state and the market; between domestic and international and between public and private – are, to a significant extent, works of legal construction, created and contested through the politics of international institutions.

The text could have been strengthened by a lengthier conclusion, drawing together some of the key insights of the study. Nonetheless, this is an excellent contribution to the literature on international trade law. It is remarkable in terms of its rigorous analysis of an important and neglected dimension of its history, the fresh perspective it offers on established conceptions about free trade and in terms of its broader implications for the future of the trade regime. The text assumes a significant level of familiarity with literature on international trade law. It is likely to be of interest to academics in the field or in related areas such as international development and institutional studies. It is also an informative and thought-provoking read for those involved in trade practice and policy-making. *Sugar and the Making of International Law* is an important work that furthers our understanding of many of the central issues connected to trade. By taking a critical step back, Fakhri opens up new possibilities for the way forward, helping us along the way to reimagining the global economic order.⁵ In light of the recent crises in markets for global food and global finance – crises in which the liberalized nature of the global trade in food and financial products was heavily implicated – such a reimagining is imperative.

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⁵ A. Lang, *World Trade Law after Neoliberalism: Reimagining the Global Economic Order* (2011).