

Francis Snyder, THE EUROPEAN UNION, THE WTO AND CHINA, GLOBAL LEGAL PLURALISM AND INTERNATIONAL TRADE REGULATION [Hart Publishing, Oxford, 2010]

This book helps the reader to make sense of the complex topic of economic globalization and its governance. In particular, the book, which has taken shape over a number of years, with preliminary versions of various chapters published as articles before, presents a new theoretical framework for understanding the regulation of international trade. The main argument, which relates to the existence of various sites of governance and to their interplay through what is called global legal pluralism, is built via a number of interconnected studies of relations between EU, China and WTO (and quite often the US). Even from a first, quick look at the apparatus, one can notice that we are confronted with an extremely serious piece of work. The various tables of cases and legislation and particularly a long (almost 50-page) and broad bibliography are good evidence of the research underpinning the book.

Largely, the analysis is not about law reform but about how legal relations are actually shaped. The book is an excellent example of socio-legal analysis in international law, one which directly engages with the socio-economic aspects of globalization and international trade, and inserts the normative and legal discourse into it. In a context of economic globalization, law and society impact each other in complex ways. As Snyder explains: ‘Instead of starting with norms or a normative system such as a legal system, I propose to begin with social and economic relations’ (page 54). Various disciplines, most notably sociology of law, international relations and political economy of law, are resorted to. The breadth of literature relied on is impressive and gives special credibility to the analysis.

Let us immediately introduce the core idea of the book. The premise is the known fact that the multi-faceted, and not univocal, phenomenon of economic globalization has rendered socio-political-economic-legal relations more complex. In normative terms, for example, this has led to the emergence of ‘one of the most interesting – and difficult – questions currently raised by the governance of globalization’: the relationship between ‘hard’ and ‘soft’ law.

Snyder’s thesis, which builds on a long intellectual tradition on normative pluralism,¹ is that international trade relations can largely be explained through a theory of sites of governance and global legal pluralism. Using the words of the author, a site of governance is a ‘locus of decision-making with the authority to settle disputes. Each site of governance has two dimensions: a structural dimension, comprising institutions, norms and dispute-settlement processes; and a relational dimension, which refers to relations between the site and other sites of governance. Structures affect, condition or determine relations. In turn, relations affect, condition or determine structures’ (page 49). Now, these sites of governance are in relation with each other in a framework of global legal pluralism, that is ‘the totality of strategically determined, situationally specific and often episodic conjunctions of a multiplicity of sites of governance throughout the world.’ The resulting matrix is a sophisticated tool of analysis of economic globalization and its impact on international trade regulation.

As the author notes, there are various forms of governance, those based on contractual ideas, those structured in hierarchycal relations (read: multilevel or multilayer governance) or networks. Snyder is adamant in distinguishing his theory of global legal pluralism from the much credited multilevel governance, the key distinctive factor being that the latter presupposes a relation of hierarchy which, in the author’s view, may well explain some, but crucially not all, governance relationships.

¹ See the impressive literature review at pages 29-34.

The claim is not that global legal pluralism excludes all other forms or key of interpretation of governance. It would be wrong, almost in methodological terms, if, in social-sciences, one theory pretended exclusivity. They may all be useful to explain different realities or part of the same reality. Snyder's argument though is clearly that an approach based on the existence of several governance sites, all interacting with each other, often in complex ways, is more appropriate if one wants to understand international economic and trade relations. Its added value is its recognition of the flexibility of law and economic relations which are far from being 'isomorphic'. The author warns that globalization 'has placed in question the credibility of lawyers' claims about the hierarchical nature of global economic governance'. Further: 'There is a fundamental and growing disjunction between our traditional, normative and hierarchical conceptions of the law governing international trade and the shape of the economic networks which are an integral part of economic globalisation.' To be true, Snyder acknowledges that these sites of governance may be 'part of a single system of multi-level governance' (page 54), thus showing how different theories can come to aid, but, so the argument goes, it is the apparent rigidity of that theory which cannot exhaust the understanding of a complex socio-political-economic reality.

This idea of plurality of sites of governance in international trade is thoroughly examined in the three macro-parts of the book.

In the first Part three chapters introduce the theory, focusing on the concepts of globalization, sites of governance and on the main elements of global legal pluralism.

Chapter 2 (Chapter 1 is a few page introduction to the overall project) is an excellent overview of broad themes, methodology and scholarship review on globalization and the law. The main point coming out from this chapter is that we live in a world of increasing legal pluralism.

These pages pave the way to Chapter 3 where the theory of global legal pluralism is outlined in detail. The key question is to determine how economic globalization is governed. After a brief exposition of the elements of global legal pluralism, with references to authors such as Rosenau, Teubner and Walker, Snyder renders the issue of governance of globalization fully alive using the case of the global commodity chain in toys and its International Production Network (IPN) as 'empirical anchor' for his theoretical argument of a multiplicity of varied sites of governance interacting with each other. The focus is on the relevant trade between EU and China. This is a glimpse to the approach of the whole book where conceptual analysis is continuously combined with a practical and empirical one.

Chapter 4 further builds up the framework of analysis. In another impressive example of case-study analysis, the author uses the EC anti-dumping saga on Chinese bicycles to illustrate how global legal pluralism works. At the same time this chapter offers an excellent understanding of anti-dumping law in practice. Because of the effects of globalisation, legal pluralism emerges as dynamic, fluid and often surprising phenomenon.

The second Part of the book builds on the foundations of the first 150 pages and considers the relations between the EU, China and the WTO as three distinct but interrelated sites of governance. What we see in this central part of the book are illustrations of the theory of global legal pluralism and their implications.

Chapter 5 addresses the crucial role that courts, particularly of last instance, play in constructing relations between sites of governance. The example used is that of the European Court of Justice, the 'gatekeeper' between WTO and EU. The case-law on the effect of international law and more specifically GATT/WTO law on the EU legal order is fully analyzed. According to Snyder, in

defining, from the EU perspective, the relationship between EU and WTO law, the Court has also contributed to define various relations but arguably in different directions. While the relations between the EU and its Members, and the EU and the WTO, have been strengthened, the empowerment of the individual has ended up being diminished.

Anti-dumping law and practice give the opportunity of two other examples of the effect of economic globalization and the interaction of different sites of governance, mostly the EU, the US, China and the WTO. In Chapter 6 the creation of new legal concepts, in the instant case the notion of ‘non-market economy’, is analyzed.² Snyder traces back the historical background of this concept and sternly criticizes its soundness. The subject of Chapter 7 is the normative process of ‘legalization’, the transformation of ‘soft law’ into ‘hard law’, which is the result of the development of the relations between sites of governance. The example used is that of the exception to non-market economy classification, known as ‘individual treatment’. This concept began as European administrative practice to then turn into ‘soft law’ and eventually legislation.

Chapter 8 further develops the discourse of global commodity chains, IPNs and foreign direct investment, considering the customs law arrangements of inward and outward processing. This allows Snyder to explore the complex relation between international and regional integration (notably Europeanisation). With specific reference to European integration, a paradox is uncovered: ‘Europeanization and globalization are seen [...] as complementary, mutually reinforcing, but also as competing processes’ (page 320). One conclusion is that globalization, which is encouraged by the EU, would have hindered the process of constitutionalization of EU law.

In the two chapters of Part III Snyder somewhat returns to the broad lines of analysis of Part I but he does so to look at the ‘new directions’ of global legal pluralism.

Chapter 9 analyses the creation of new sites of governance focussing on China’s regional trade agreements (RTAs), and identifies the variety of reasons underlying them as well as their implications for Asia and world at large. The richness of the case-study offers an understanding to the complex ‘constellation’ of RTA’s in international trade relations today.

Building on the previous analysis, Chapter 10 moves to a distinctly normative level, exploring the role of ethics, in particular with respect to the three areas of development,³ environmental protection and social justice, in international trade regulation and global governance. These values are referred to as ‘social solidarity ethics’. Snyder crucially notes: ‘They are, in my view, among the most important (if not the most important) ethical values for the future. Realising them in practice would require, would enhance and would entail widespread social solidarity’ (page 382). What is the link with the theory of global legal pluralism expounded in the book? The argument is that ‘an important way of ensuring that social solidarity ethics are taken into account in institutional decisions about international trade regulation is to strengthen institutional relations between sites of governance’ (ibid). The ultimate aim of the chapter – which is to a large extent the apex of the project – is ‘to contribute, in a modest way, to a re-thinking of the meaning of international trade, and to a redefinition of international trade regulation and global governance’ (page 384). This is certainly a welcomed aim and contribution. It is indeed high time for the WTO, the more universal

² The imposition of anti-dumping duties on imports presupposes, among other things, that they are sold in the export market at a price lower than the normal value, ie the domestic price. It has long been concluded that this benchmark of normality cannot be found in a non-market economy, thus requiring various techniques of construction of the appropriate reference value. The key problem with this approach is the discretion it affords.

³ Concept which the Author relates to the basic needs of ‘sufficient food, water, shelter and health’.

‘site of governance’ for international trade governance, to ask what is it for in the XXIst century, and how it does and should relate to other pivotal sites of governance. The sixteen-year period of time that has passed since its creation in Marrakesh has been momentous, replete with changes and the emergence of requests and needs coming from various and the most diverse citizenship constituencies in the globe. The identity of the world trading system needs redefinition, a frank clarification. This final chapter of the book under review suggests a way, different from other strategies, notably constitutionalisation, ie the expansion of the WTO domains of action, or regulatory competition, ie putting the WTO into direct competition with other sites of governance. The way forward suggested by Snyder is a strategy aimed at intensifying the relations and coordination with the other sites of governance which are more directly concerned with social solidarity ethics which, as of date, are relatively few. The chapter is particularly valuable in that it does not only put forward a claim but also offers several directions for the future: a) strengthening relations with other sites; b) increasing cooperation in the production of norms; c) expanding the use of observer status; and d) increased cross-reference to non-WTO norms in WTO dispute settlement.

In conclusion, we highly recommend this book. It is certainly complex material but – the reader is assured – the effort is well worth it. The comprehensiveness of the research and the questions gives it almost a treatise status in the studies on the governance of economic globalization. With relentless and secure pace Snyder builds up a convincing argument which can be useful, indeed essential, to anybody interested in attempting to understand international trade regulation as it is and think how it should be. From now on it will certainly be close at hand, in the reviewer’s shelf of favourite reference books.

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