Abortion Law in Transnational Perspective: Cases and Controversies
by Rebecca J Cook, Joanna N Erdman and Bernard M Dickens (eds)
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It is hard to think of a legal issue that polarises opinion as much as the regulation of abortion. Even for those who live within a jurisdiction where women can access abortion relatively easily, the associated moral dilemmas are confronting. In jurisdictions where abortion is difficult to access, the ability of women to control their fertility can be limited in terms of both pregnancy prevention and access to safe abortion facilities. It is no surprise that the countries with conservative abortion laws have higher rates of abortion than countries with liberal abortion laws and critically, higher rates of maternal mortality and morbidity from unsafe abortions.[1] Neither is it a surprise that countries with conservative abortion laws tend to promote traditional gender roles more fervently than those with liberal abortion laws.[2] The regulation of abortion, which has its origins in criminal law but now traverses the areas of public health law and human rights law, is inescapably a feminist issue.

Abortion Law in Transnational Perspective is a compilation of articles related to the development of abortion law across the globe (although with a notable concentration of contributions related to South America and Europe). Aimed at legal academics, students, and legal practitioners, it considers "which ideas are changing the way we advocate, regulate, and adjudicate on abortion" (p 1). This fascinating collection traces the various ways in which national, regional and international courts have developed abortion rights, both procedural and substantive, since iconic yet dichotomous decisions of the United States Supreme Court[3] and the German Federal Constitutional Court[4] handed down in the mid-1970s.

Part 1, entitled "Constitutional Values and Regulatory Regimes" examines how constitutional law has framed the abortion debate in cases from around the world. For example, in Chapter 1, focusing on key German and United States' decisions, Reva Siegel tracks the decline in the zero-sum-game paradigm of maternal versus foetal rights in abortion law. Regulatory approaches now vary from criminalisation to regimes that permit abortion upon request at least until the foetus reaches a certain stage of gestation. Regimes that permit abortion may still have a range of "disincentives" in place such as compulsory dissuasive counselling (which portray women

1 World Health Organization *Unsafe Abortion: Global and Regional Estimates of the Incidence of Unsafe Abortion and Associated Mortality in 2008* (6th ed, World Health Organization, Geneva, 2011) at 6.

2 See most chapters in *Abortion Law in Transnational Perspective* but particularly J Lemaitre "Catholic Constitutionalism on Sex, Women, and the Beginning of Life" (Chapter 11).

3 *Roe v Wade* 410 US 113 (1973).

4 *Bundesverfassungsgericht [Federal Constitutional Court]* (1975) 39 BVerfGE 1.

as making flippant unconsidered decisions) but also policies to promote childcare and financial support for parents. Discussions of the way in which the constitutional abortion debate has played out in Portugal and Slovakia are outlined in Chapters 2 and 3. In Chapter 4, Verónica Undurraga considers the way in which proportionality review can force courts to engage with the effects of criminal abortion laws. This is important because of the ease by which, historically, the effect of criminalisation on women's health can be obscured by focusing purely on the foetus.

It is notable throughout Part 1 that abortion has come before constitutional courts not by women seeking access to abortion but by anti-abortion lobbyists opposing liberal legislative reforms. Thus, in Chapter 5, Rebecca Rebouché posits an alternative functionalist analysis of the complicated network of actors and interests at play in abortion practice, challenging the centrality of abortion law to abortion liberalisation. She articulates how a "country with a functioning but submerged market for abortion may be coded as restrictive, but women may gain access to abortions … Conversely, the law on the books may grant broad legal permission … but practical impediments and other legal rules may make it difficult for women to gain access" (p 107). This is a helpful reminder about the benefits of socio-legal approaches to questions of law reform.

Part 2, entitled "Procedural Justice and Liberal Access" analyses the way in which courts have developed abortion rights in the impersonal terms of procedural justice rather than facing the issue of access to abortion front on. For example, in Chapter 6, focusing on European Court of Human Rights (ECtHR) jurisprudence,[5] Joanna Erdman explains how legal cases have been successful on the grounds that limited pre-existing legal rights to abortion must be protected by the state via positive obligations to overcome practical impediments in access. She goes on to demonstrate how, by working through rather than against existing state laws, the ECtHR has been able to influence substantive rights protection in state law without purporting to impose values on states. Relevantly for us, and in the only mention of New Zealand in the collection, Erdman notes how the procedural turn may have a conservative effect on countries such as New Zealand where access to abortion relies on the exercise of discretion. In *Right to Life New Zealand Inc v Abortion Supervisory Committee*[6] the abortion supervisory committee was challenged for not carrying out its statutory supervisory role adequately (in other words, not reigning in

5 *Open Door Counselling and Dublin Well Woman v Ireland* (1993) 15 EHRR 244 (ECHR); *Vo v France* (2005) 40 EHRR 12 (Grand Chamber, ECHR); *Tysiąc v Poland* (2007) 45 EHRR 42 (Section II, ECHR); *A, B, and C v Ireland* [2011] ECHR 2032 (Grand Chamber, ECHR); *RR v Poland* (2011) 53 EHRR 31 (Section IV, ECHR); *P and S v Poland* (57375/08), Section IV ECHR, 30 October 2012.

6 *Right to Life New Zealand Inc v Abortion Supervisory Committee* [2008] 2 NZLR 825 (HC); *Abortion Supervisory Committee v Right to Life New Zealand Inc* [2011] NZCA 246, [2012] 1 NZLR 176; *Right to Life New Zealand Inc v Abortion Supervisory Committee* [2012] NZSC 68, 3 NZLR 762.

liberal abortion practices). Other chapters in Part 2 examine the way in which a procedural approach has been used to frame constitutional abortion reform in Argentina (Chapter 7) and could be used to frame constitutional abortion reform in African states (Chapter 8).

The introduction notes that abortion law is on the whole "unexamined and undertheorized by legal scholars" (p 1). Parts 3 and 4 take on this challenge directly. Part 3, entitled 'Framing and Claiming Rights', investigates how debate about abortion is framed by reference to the way in which knowledge is constructed. In Chapter 9, Sally Sheldon examines the approach to early medical (as opposed to surgical) abortion in the United Kingdom as a means to critiquing the dominance of the medical framework over abortion. While this has enabled liberalisation of abortion it has also dominated the discourse around abortion in a way that obscures other frames of reference, such as women's rights.

In Chapter 10, Bernard Dickens explains how the right to freedom of conscience applies not only to religious claims *not to assist* in carrying out abortions on the basis of conscience but also that religious organisations which provide healthcare must accommodate conscientious commitments of healthcare professionals *to provide* abortions. A healthcare practitioner may conscientiously believe that the effective medical monopoly over abortion services should be used to prevent the well-documented risks to women's health from both pregnancy and childbirth, and illicit abortions. Chapter 11 focusing on Catholic constitutional values and Chapter 12 focusing on the Brazilian Supreme Court's constitutional discourse around the termination of anencephalic pregnancies, which are incompatible with foetal survival, both examine the way in which legal argumentation constructs and constrains the development of abortion law.

In Chapter 13, Melissa Upreti describes a 2009 landmark judgment of the Supreme Court of Nepal,[7] as representing "a dramatic shift from treating abortion as a matter of crime and punishment to one of reproductive choice and justice grounded in a vision of transformative equality" (p 279). The Nepalese abortion case determined that "pregnancy cannot be imposed on women … but rather … must be freely chosen" (p 279). Further, the court addressed the double barriers of rural and socio-economic status in requiring the Nepalese government to provide access to abortion facilities for all Nepalese women. This chapter also highlighted the mutually reinforcing effects of gender discrimination and poverty: Upreti presents the case as an illustration of the transformative model of equality envisaged in the Convention on the Elimination of All Forms of Discrimination Against Women.[8] The decision addresses the unequal power dynamics that prevent the practical realisation

7 *Lakshmi Dhikta v Government of Nepal* Writ No 0757, 2067, Nepal Kanoon Patrika (2009).

8 *United Nations Convention on the Elimination of All Forms of Discrimination Against Women* 1249 UNTS 13 (opened for signature 1 March 1980, entered into force 3 September 1981).

of women's rights in Nepal (p 287). As such, this chapter and the case (if an English translation could be acquired)[9] would make an excellent teaching resource about transformative equality.

Part 4, entitled 'Narratives and Social Meaning', was the highlight of the book. Having been lulled into celebrating the legal successes that women have achieved in framing and claiming their rights, this part enlightened me to the way in which the legal strategies employed had the effect of producing social meanings which arguably cast a shadow over the victories. For example, as Lisa Kelley describes in Chapter 14, the popular example of a successful abortion case involves a minor (sexual innocence) who has been raped (violation) and is supported by her parents in seeking an abortion (family privacy). This narrative fails to account for the majority of circumstances in which women seek abortions, including adult women who engage in non-procreative and consensual sex and adolescent women in conflict with their parents. The narrative therefore risks "reinforcing narrow conceptions of the reasonable or deserved abortion" (p 305). Kelley cautions abortion activists to carefully consider the potential long-term consequences of the way in which they select and frame cases (p 326).

Another important and common narrative, prenatal personhood, is discussed by Alejandro Madrazo in Chapter 15. It is important to articulate how the prenatal personhood narrative can render the woman's personhood invisible, separate her decision to undergo abortion from considerations about her body and draw attention away from her social circumstances to the act of abortion itself (p 335). The danger of this form of narrative extends beyond abortion law to issues such as a woman's legal right to refuse a caesarean section and to birth vaginally. Although a very personal decision, when viewed through the lens of prenatal personhood, this can be framed as child-neglect warranting state intervention (p 336).[10] A mature approach to abortion law must find a way to acknowledge women's continued personhood, even once pregnant, at the same time as navigating the complex issues around prenatal life, particularly in light of swiftly moving medical and technological advancement.

Equally poignant is Rebecca J Cook's contribution on stigmatisation in abortion law. In Chapter 16, Cook explores the different social meanings invoked by regulation of abortion via criminalisation versus via a public health approach. She explains how "societies criminalize abortion in part because of preconceptions about women, their sexuality, and prenatal life … and criminalization then reinforces those preconceptions" (p 349). This produces a cycle whereby the enforced silence around (illegal) abortion practices produces further stigmatisation. Cook enunciates a powerful

9 See Centre for Reproductive Rights "Lakshmi Dhikta Case Summary and Translated Excerpts" (2009) <www.reproductiverights.org>.

10 Citing *New Jersey Division of Youth & Family v VM* 974 A2d 448 (SC NJ App D 2009). See further S Meredith *Policing Pregnancy: The Law and Ethics of Obstetric Conflict* (Ashgate, Aldershot, 2005).

critique of criminalisation as a means of regulating abortion. Her arguments lead me to question whether those of us who live in jurisdictions that regulate abortion via the criminal law (such as New Zealand) should be doing more to challenge this state of affairs. Public health and human rights are surely both more appropriate frameworks for regulation?

Overall this collection makes an excellent resource for law reformers, scholars, and students interested in abortion law but also more generally, in constitutional law and feminist theory. The bibliography includes an extensive list of cases, legislation and other documents from 25 national jurisdictions, which will be a useful resource to lawyers and researchers. Although the Americas and parts of Europe have led constitutional abortion reform in the 21st century, from a New Zealand perspective, it would have been interesting to me to have included some more examples of the narratives at play in countries such as the United Kingdom, Australia and New Zealand given our distinctive constitutional arrangements.[11]

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11 H Douglas, K Black and C de Costa "Manufacturing Mental Illness (and Lawful Abortion): Doctors' Attitudes to Abortion Law and Practice in New South Wales and Queensland" (2013) 20 JLM 560; A Dixon "Authorisation of Abortion for a "Serious Danger to Mental Health": Would the Practice Stand up to the Judicial Test?" (2012) 43 VUWLR 289.

Advanced Introduction to International Human Rights Law

BY DINAH L SHELTON

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This is a highly accessible yet nuanced introduction to International Human Rights Law, written by one of the world's leading scholars and practitioners in the area. Edward Elgar Publishers describe the aim of their series of *Advanced Introductions* as pin-pointing essential principles of a particular field as well as stimulating critical thinking, Shelton's book does not disappoint.

The book's ten chapters provide an overview of the development and content of, as well as the challenges facing, international human rights law. There are some limitations that come with an *Advanced Introduction*: national norms and procedures and the overlapping fields of international humanitarian law and international criminal law are not addressed. However, this approach allows for a focused and insightful analysis of international human rights law's socio-historical foundations and sources. The body of international human rights law and concomitant obligations are elaborated with Shelton drawing from a well-considered selection of jurisprudence emanating from international and regional judicial and quasi-judicial institutions. The book concludes with a stock-take which acknowledges the backlash against international human rights and the criticisms levelled at the international and regional institutions.

Chapter 1 addresses the concepts and foundations of international human rights law and opens with two essential questions for students, scholars and practitioners of human rights law: (i) what does it mean to be human and (ii) what is a right. The chapter progresses with an exploration of the religious, philosophical and scientific foundations of human rights, as well as the foundational concepts of dignity and equality, which Shelton elaborates with reference to theory and jurisprudence. It introduces the correlative nature of rights and duties, as well as other core issues such as the universal nature of human rights, the scope of human rights protection and the balancing exercise inherent in human rights expressed by limitations and derogations. Readers are thus provided with a concise but informative introduction to the essentials of human rights.

Chapter 2's historical overview spans legal texts and traditions starting with the Code of Hammurabi and ending with the American and French Declarations. Chapter 2 refers to diplomatic protection, religious liberty, the abolition of the slave trade and slavery and the humanitarian laws of war as examples of pre-20th century international law, which Shelton notes did not overcome the view that human rights were not a matter of international law (the latter view was in time only undermined by the regional development of human rights, globalisation, and advancing technology). The establishment of the International Labour Organisation and the inter-war regime of the

protection of minority rights – both products of the League of Nations – and the increasing recognition of civil and political rights for women are used to illustrate why and how human rights concerns were increasingly recognised. Chapter 2 introduces the United Nations and regional human rights organisations as examples of the post-war human rights revolution, deftly balancing detail and brevity, to set the scene for the development of international human rights law at the institutional level and procedural level.

Chapter 3 expands on the development and role of the international institutions charged with realising human rights. It provides a succinct overview of UN treaty monitoring bodies and the complementary role played by UN specialised agencies. The structure and contribution of regional mechanisms are also elaborated. The chapter concludes with an assessment of the contribution of international institutions, noting not only the commonalities but also the potential and real challenges stemming from inadequate resourcing both financial and human.

Chapter 4 introduces the law of human rights. It explains the role of treaty, custom, general principles of law, 'soft-law' norms, peremptory norms and international crimes in developing the law of human rights. The chapter traces and explains the evolution of human rights law through the UN, considering its significance and criticism levelled at UN standard setting. A similar, but briefer, treatment is given to regional developments. Chapter 4 then addresses the question of universality and diversity in human rights law, wherein Shelton concludes that diverse regional priorities ultimately lead to global action before moving on to providing a comprehensive and insightful discussion of the interpretation of human rights instruments. It is perhaps here that the "advanced" nature of the introduction really comes into its own as Shelton demonstrates that the complex, competing yet often interrelated interpretations of human rights law need to be identified and understood.

Chapter 5 summarises the rights guaranteed at the UN and regional level, as well as the interpretation of these rights by their respective monitoring bodies. The chapter returns to the overarching norm of equality and non-discrimination, identifying textual references and citing a selection of cases to elaborate on the content of this fundamental norm. Using a combination of the efforts of UN and regional mechanisms, the chapter then sets out the jurisprudence of rights. However, civil and political rights are emphasised in this regard and it would have been preferable to see individual economic, social and cultural rights considered with the same level of detail rather than bunched together in one section.

Chapter 6 elaborates the binding obligations imposed on States by the text of human rights legal instruments. In simple and brief, yet insightful, terms Shelton explains the meaning and impact of the territorial and temporal scope of human rights, limitations and derogations. As in previous chapters, selected jurisprudence is effectively employed to provide concise examples of the interpretation of such legal concepts. The chapter also considers the question of whether non-state actors – individuals, business entities and international organisations – are the subject of such binding obligations.

Chapter 7 explores compliance and monitoring mechanisms and opens with a discussion of whether the jurisprudence of such bodies is binding or not. It identifies and elaborates on an array of mechanisms, providing some analysis of the merits of each approach.

Although the previous chapter considered complaints mechanisms, Chapter 8 focuses on these procedures, drawing out such issues as jurisdiction (personal, subject-matter and temporal) to set out the parameters by which these mechanisms can be employed. The chapter then proceeds to a discussion of how the processing, admissibility and merits of complaints are to be determined. It draws from a wide range of examples – given the confined nature of material – before considering the effectiveness of the redress or remedial powers of the various human rights entities.

Chapter 9 deals with enforcement of human rights with consideration being given to the law of State Responsibility and its limitations in terms of international human rights law. It explores the extent to which regional organisations may make membership and participation contingent on compliance with human rights and notes non-legal attempts to encourage compliance linking foreign assistance to human rights, trade and economic sanctions and the use of force.

Chapter 10 takes stock, offering a balanced consideration of the achievements of the UN and regional bodies in the realisation of human rights. It outlines the somewhat paradoxical development of international human rights law which is that although criticisms and concerns continue to be levelled at its resource constrained institutions, they nonetheless face heightened expectations, new functions and an ever-rising case load.

Professor Shelton convincingly achieves her aim of providing an overview of the development, content and challenges of the increasingly complex subject that is international human rights law. Readers will be equipped with essential information about the contents of this body of law and they will come away with an understanding of the array of mechanisms and procedures that contribute to the development of international human rights law, as well as an insight into emerging challenges that will influence its future evolution. As a teacher and scholar of international human rights law, I very much welcome this text.

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African Participation at the World Trade Organization – Legal and Institutional Aspects, 1995 -2010

BY JOAN APECU LAKER

[Martinus Nijhoff Publishers, 2014, 332 pp, ISBN 1572-5618. €119]

The World Trade Organization (WTO) is now twenty years old. Despite some limited and transitional exceptions carved out for developing countries under the rubric of Special and Differential Treatment (S&DT), the Uruguay Round adopted a single undertaking approach, meaning that as a matter of principle, all countries, regardless of their stage of economic development, adhered to the same rules. For more than two decades since the last successfully concluded multilateral round of trade negotiations, developing countries, which were not active participants in shaping the rules of the system, have been trying to come to grips with what the rules of the game entail for their diverse development agendas. Some, like Brazil, have been more successful than others in appropriating the WTO as a venue for advancing their pro-development agenda. For the majority of African countries, however, the WTO has largely remained irrelevant. The question whether this is due to lack of participation in the system by African countries or to some other fundamental problem, is subject to heated debate.

Apecu Laker contributes to the debate by digging deep into the existing data (from 1995 to 2010) indicating the level of (dis-)engagement of African countries with the WTO. The book provides good insight into the question of what to keep track of and how to map things out with respect to developing country participation and their "efficient" use of their scarce resources. But in order to be able to "interpret" the vast amount of useful data put forward in each chapter, let's first briefly examine the author's main research question, orientation and assumptions. "Why is it", the author asks, "that African WTO trade negotiators, including those from countries pursuing far reaching domestic reforms (on the basis of World Bank and IMF country programmes and trade rules agreed in the Uruguay Round) participate minimally, nominally and ineffectively?" (p 6).

The dominant approach taken in the book seems to be perfectly in line with the classic work of Robert Hudec (*Developing Countries in the GATT Legal System*, 1987). According to Hudec, back in the GATT days, there was no incentive for developing countries to engage effectively due to the exemption orientation approach embedded in the "special and differential treatment" (S&DT). The underlying assumption, and in fact the hypothesis to be tested by the author, is that "wholesome exemption" sought by African countries from WTO rules and procedures along with their preoccupation with S&DT and "resistance to reciprocity and predisposition to waivers" has indeed undermined their effective participation in the GATT/WTO system (p 12). The alternative explanation put forward by "rational choice" theories such as Dunoff is that African countries might have acted rationally by

allocating their resources to more pressing issues within their internal policy sphere (such as infrastructure, human resources and macro stability). This argument, however, is brushed aside from the outset.

This orientation gives shape to the interesting data gathered and analysed in the subsequent chapters. Chapter 1 examines a variety of issues indicating "capacity factors" (location and size of African country missions, level of support received from their Capital, legal capacity and the level of technical assistance). Throughout the chapter, the findings point to the lack of legal capacity at the African country missions in Geneva, which are due to financial constraints but also the fact that the trade/commercial nature of the WTO is emphasised at the expense of its legal/judicial nature. There is little surprise then that African countries have not effectively engaged/participated in the WTO dispute settlement system (pp 22 and 23). It is also shown that while there has been some improvement in the "negotiating activities" with the massive increases of the level of technical assistance over the years, the level of African participation in "regular work" and "dispute settlement" has remained ineffective and minimal. So with the availability of legal technical support, the conclusion goes, the responsibility falls on the African countries themselves to make use of such assistance available to them (p 29).

The following three chapters each look at one aspect of "participation", ie the level of engagement with the WTO regular work, negotiating engagement and finally involvement in dispute settlement. Chapters 3 and 5 respectively look at chairmanship and "committee specific work" as indicators of participation in the WTO's regular activities. Forty percent of African countries (19 out of 42) have chaired WTO regular bodies (p 63) – a level of engagement that has improved over time and currently stands higher than the Middle East and North America (noting the latter's conscious policy of being minimalist in taking chairmanship). Yet, this level of participation is not perceived to be sufficient by the author due to several advantages in taking chairmanships. The main argument put forward is that African countries should not see a trade-off between allocating resources to taking chairmanships on the one hand and attending as many meetings as possible on the other. Beyond that, the author argues for an "even" allocation of resources across all the three main areas of the WTO core work (pp 63 and 64). It is not clear however, why this should be the case.

The main thesis in Chapter 5 is also along similar lines, ie a higher number of oral statements than written proposals at the General Council (p 107) and Trade Policy Review meetings perhaps because more resources and expertise would be needed for the latter (p 117). The levels of participation (statements and submissions) in various WTO Committees also generally stand at a low level, although with some notable exceptions. For instance, Africa has made the highest number of submissions to the Committee on Trade and Development, which is a committee of great significance to their interest (p 135). In the Trade-Related Intellectual Property or the TRIPS Council,

the level of engagement was similarly high with regard to oral statements although the problem remained as to the failure of following up with written submissions (p 238).

By the time one gets to Chapter 6 on the use of dispute settlement system by African countries, the message becomes too easily foreseeable: zero participation as complainant and low participation as respondents as well as third parties. But tough questions remain unanswered which I briefly point out below.

Despite the rise of technical assistance over the years, the persisting problem of having limited capacity and scarce resources (to demonstrate a sufficient level of Geneva "presence" and particularly "legal capacity"), is a theme that rightly cuts through the overall thesis of the book. Yet, there is little argument as to why, given the circumstances, African countries would be better off channeling their valuable resources to the whole range of WTO-related activities at the expense of others. In this regard, it probably does make sense that African countries score best when it comes to their engagement with negotiating activities as opposed to WTO regular work and dispute settlement. Given, for instance, the heavy administrative work involved in meeting various notification requirements (notifying subsidies, etc) and the failure of even larger economies including developed countries to follow through on that commitment, one could legitimately ask the extent to which smaller African economies would be well advised to allocate their scarce resources to more of these activities for the sake of transparency.

Or take the issue of agriculture. All the African countries as a group have done in the Committee of Agriculture revolves around a proposal to create a fund for Net Food Importing Developing Countries (NFIDC). But while the author tells us that almost all African WTO members are NFIDC (p 139), the book does not explain in any detail as to why these countries would be better advised to engage more heavily in other areas of the committee's work (dispute settlement or making proposals on each of the three pillars of the Agreement on Agriculture – market access, domestic and export subsidies). It is no secret that countries which do so either have offensive interest as large agriculture exporting countries (such as the countries in the so-called Cairns Group) or are large agriculture protectionists with defensive interests and constituencies. Therefore, the political economic drive behind such activities is key to such analysis.

More importantly, what is lacking is some sort of a grand theory of prioritisation based on which various African countries within the larger group, each with potentially varying agendas, could make better allocative decisions. To be sure, there is little doubt that a lot in the three types of activities of the WTO could potentially make significant contribution (in the last in the form of damage prevention) to advancing the interests of African countries. In fact, large developing countries (most notably Brazil) have been argued to have gained invaluable skills to work the system, especially at the Dispute Settlement Body, despite some of the systemic biases embedded therein (for instance see

David M Trubek, Helena Alviar Garcia, Diogo R Coutinho, Alvaro Santos (eds) *Law and the New Developmental State: The Brazilian Experience in Latin American Context* Cambridge University Press, October 2014).

But even then, there are different approaches as to "how" the WTO dispute settlement can be best utilised in order to advance countries' offensive as well as defensive trade interests. Some countries mostly rely on it as a way to secure market access for their export interests while others also make use of the system as a means for carving out domestic policy space.

It is interesting to note, for instance, that African countries apply the second-lowest number of antidumping measures (as a measure of domestic industry protection against "unfair" trade) in the world (p 152). This is not to say that adopting antidumping measures is good or even necessary in the African context. But this inactivity is only a small chapter of a larger story indicating that, as opposed to a number of large developed and developing countries (India, the US and China are large users of antidumping duty measures and the like), African countries have long bought into the Washington-Consensus ideas of unilateral liberalisation. Within that framework, there is little role for the government, apart from a few well-known horizontal policies (macro-stability and investment in infrastructure and education), to even start thinking about how to correct existing market failures. There has remained little room for any form of targeted industrial policies aiming at creating strong domestic export constituencies, which have rarely taken shape in that region of the world.

In fact, the issue of "far reaching domestic reform" programmes (p 6) literally imposed by the IMF and the World Bank conditionalities is taken very lightly throughout the book. The critical issue of "policy space" advocated by economists such as Dani Rodrik and others, as well as the question of how best they must be carved out and utilised in trade policy, almost never comes up. This is perhaps because it might bring back all the alleged "negativities" associated with the S&DT mindset of seeking wholesome exemptions which had been indicated from the outset as the root of the problem of disengagement.

But looking at the case of recently acceded Least Developed Countries (LDCs) in the last decade, as a counterfactual to the African scenario, might offer good insights. In their terms of accession, latecomers to the WTO club including Tajikistan, Yemen and perhaps soon-to-be-member Afghanistan, have been asked to adhere to some rich-country standards. It is very doubtful, however, that as a result of being largely scrapped from S&DT status at the expense of their policy space, these countries would simply engage more with the system and be able to reap actual benefits from trade.

Twenty years into the WTO experience, it is increasingly more difficult to believe that a more top-down imposition of unified rules (with no graduation as a guiding principle) would automatically translate into a higher level of participation, helping small developing countries reap the benefits of the multilateral trading system.

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