Cambridge University Press
978-1-107-04717-4 - Linking Global Trade and Human Rights: New Policy Space in Hard Economic Times
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Introduction: Emerging Policy Spaces During Global Economic Crises

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POLICY SPACE: A CRITICAL ARENA FOR GOVERNANCE

The concept of policy space is critical to understanding the impact of globalization on public policy in the twenty-first century. For the purposes of this book, a policy space is an arena where national governments have the freedom and capacity to design and implement public policies of their own choosing (Grindle and Thomas, 1991; Koivusalo et al., 2010). In market economies, policy spaces reflect the insight that certain realms of public life should be governed by collective decision making designed to advance the public interest whereas in other realms markets reign (Drache, 2001). The spatial metaphor expresses, in other words, the claim that there are certain sites where government action has legitimacy. Ultimately, national policy spaces matter because they provide opportunities for governments to be innovative in the development of public policy on these sites, especially in terms of advancing social justice goals (Jacobs, 2004).

The unifying theme of this book is that there are major reconfigurations of social and economic policy spaces for national governments on the international landscape during the hard economic times that follow global financial crises. After the 2008 financial crisis, state action extended into new areas and was being deployed in new and innovative ways from the Cash for Clunkers program in the United States to successful anti-poverty programs in Brazil. In India the national Rural Employment Scheme to guarantee a minimum number of paid hours annually to hundreds of millions of its poorest is the largest social welfare scheme in the world. Obamacare pushes Washington into a new, albeit controversial, policy area requiring complex coordination between the federal government and the states that impacts significantly on the daily lives of Americans. The trillions of dollars invested in bailouts and infrastructure spending across the globe marks a departure from neoliberalism *pur et dur*. In the EU, the establishment of the European Bank regulator is widely seen as the first step toward regaining economic health. Curbing financial private-sector compensation is also on the agenda in both Europe and the United States. State intervention in the economy has reemerged as a strategic option for policy makers. Even the International Monetary Fund (IMF) is relenting and bending. In a remarkable intellectual shift, some observers are of the view that a sea change has occurred and the IMF is embracing stimulus spending and just not espousing strict austerity in its junior troika role along with the European Commission and its Central Bank (Beattie, 2012).

These new policy spaces promise potential and, with the global slowdown deepening and the onset of dismal economic times, more innovative responses are likely on the way within global cities and countries. Pessimists look at these global events as evidence of the structural barriers further institutionalizing neoliberal practices. They see financial crises as constraining the maneuver room of states. We beg to disagree! As change speeds up, the most recent global meltdown has had many transformative progressive impacts on policy making. The new policy spaces created in the aftermath of the 2008 economic panic is enabling the building of mass public transportation systems in India, South Africa and Brazil, all of which suggest a new role for governments in these countries. In Los Angeles, its citizens recently voted to build a fully integrated subway and light rapid transit system funded by an increase in the sales tax in order to reduce cars on the freeways. These mega-projects are transformative for millions who inhabit the mega-cities of the globe. By far the most innovative new public arena has been the World Wide Web, social networking, and especially the mobile smart phones which have enabled massive participation across the globe in policy development. Governments have lost tight control over the agenda on public debate and discourse. The revalidation of the role of the state in the economy explains the powerful attraction of using policy space innovatively for many different pressing domestic goals.

The exact character of the new era for national policy space is, however, still contested. Moreover, it is not yet even clear that the new era is a decisive break from the neoliberal period that preceded it. Global labor remains under siege and in transition as workplace representation and the historical gains from collective bargaining continue to shrink. The pushback from workers is still in its early days as can be seen in the newfound labor militancy in South Africa's strategic mining sector around a national living wage. Influential American economists such as Krugman (2009, 2012) and Stiglitz (2012) argue for renewed stimulus spending and other forms of macroeconomic intervention in the economy of the United States but fear that the neoliberal perspective is once again prevailing in Washington. Nonetheless, despite being unsure about the future direction of the reconfiguration of policy space, what is undeniable is that the changing landscape for policy space is on a global scale and that making sense of the new era of policy space requires focusing on the impact that recent globalization and the expansion of international trade and human rights law has on the shape, size, and availability of policy shape for states.

Of course, policy space is nothing new in federal states. Federal states are configured around distinct policy spaces for national and state governments, although there are shared policy spaces in some instances between federal or national governments and state or provincial governments. In fact, many of the most important programs such as health care, education, industrial relations, and mass transit require cooperation between levels of government in countries like Canada, Germany, and the United States. Moreover, in a post-Westphalian age where sovereignty is more porous and less rigid, policy space has emerged a way to mediate those sites where local and national government action has legitimacy to address concerns of a global reach such as public health and financial regulation. What is new we are suggesting today is that the most important and challenging policy spaces are now being defined in this globalized context.

For popular democracy, this emerging global realm for policy spaces poses difficulties that are reflected in deep unease about the power of international institutions and the lack of representation and control by ordinary people in the decisions made by these institutions. At root, social movements from Seattle in 1999 to Occupy Wall Street in 2011 to student movements in London, Montreal, Santiago, and Madrid in 2012 can all be seen as galvanizing around the lack of visible democratic decision making in these policy spaces. The transition in the World Trade Organization (WTO) from being initially a club for the few to a coalition of the many is in a similar vein.

THE QUANDARY OVER LINKING TRADE AND HUMAN RIGHTS

Traditionally, international trade and human rights law have operated in separate spheres and had distinctive orientations toward policy space (Cottier et al., 2005; Hernndez-Truyol and Powell, 2009). The orientation of global trade law has been towards constraining governments in their uses of national policy spaces whereas the orientation of international human rights law is to provide aspiring manifestos for the uses of national policy spaces. International trade law has valued trade liberalization between countries where trade liberalization is understood to reflect a series of commitments including the reduction of tariffs, deepening market access, the removal of subsidies, greater transparency, anti-dumping and openness to foreign investment. The legal instruments for trade liberalization have been multilateral trade agreements between many countries such as the WTO or the EU and bilateral trade agreements between two countries such as, for example, the free trade agreement negotiated between the United States and Canada in 1987. Now there are hundreds of such agreements with the prospect of more jumbo deals between the United States and the EU and the EU and India, not to speak of the eleven-member Transpacific Partnership soon to be formalized with Washington. These agreements have aspired to so-called hard law in the sense that they ordinarily include dispute resolution and enforcement mechanisms (Abbott and Snidal, 2000). The point of trade agreements is in part to bind national governments in their uses of national policy spaces, in effect reaching over borders and preventing them from pursuing policies that hinder trade liberalization.

By contrast, international human rights law emphasizes in an even-handed way both civil and political rights as well as social and economic rights to well-being. The legal instruments for protecting international human rights have been multilateral declarations such as the 1948 United Nations Declaration on Human Rights, the International Covenant on Civil and Political Rights (1966) and the International Covenant on Social, Economic, and Cultural Rights (1966). The point of these legal instruments is to set international norms and performance standards for member states. Unlike in international trade law, however, violations of international human rights agreements are not constructed as disputes between member states but rather as assaults on individual citizens and peoples. Human rights declarations and conventions typically contain neither dispute mechanisms nor enforcement provisions, but do nonetheless ground legal and moral obligations for states. They are for this reason often described as soft law (Abbott and Snidal, 2000). International human rights law is oriented towards encouraging governments in their national policy spaces to embrace progressive policies that promote better access to health care or lower levels of child poverty or protections from arbitrary arrest and detention. The critical point of the current international human rights system is that enforcement and implementation norms are left to domestic authority, with a significant degree of flexibility (Jacobs, 2013).

Despite separate spheres of trade and human rights, over the past two decades since the end of the Cold War there has been growing sensitivity to the fact that international trade and human rights law share a similar intellectual lineage reflecting a liberal commitment to the importance of the rule of law, private property, economic markets, representative democracy, education, and limits on social inequality (Ruggie, 1982; Cottier et al., 2005; Petersmann, 2012). In the 1990s, international organizations like the World

Bank, which is a champion of trade liberalization, began to embrace the idea that accessible schools and health care as well as anti-poverty measures are fundamental to economic development and free trade (Sen, 1999). Although there is already a vibrant debate among international law scholars about what these changes mean, it suggests to us that it is worthwhile to better understand the prospects for coordination between free trade agreements and international human rights law from a much broader multidisciplinary perspective.

The impetus for this book is our observation that during the global economic crisis of 2008, countries around the world used national policy spaces to respond to the economic crisis in ways that shed new light on the possibilities for linkages between international trade and human rights. In response to an economic crisis that was created in large part by failures of government oversight in global financial markets and trade liberalization, countries globally seemed to be embracing policies that reflected the progressive social and economic agenda of international human rights law rather than treating policy spaces as constrained arenas where concerns about trade liberalization should reign. In the United States, we witnessed massive government spending designed to promote job security through measures like the bailout of the auto industry, public investment in green energy innovations and the cash for clunkers program, the extension of unemployment benefits to two years of eligibility, universal health care, and the nationalization of some financial institutions and insurance companies. In Germany, government spending was directed at ensuring that companies did not lay off workers. In India, the national government introduced its rural employment guarantee. China stimulated its economy by pouring new funds into schools and its decaying rural health care program. Brazil embraced new spending on anti-poverty programs. All of these national policy developments and others occurred in the shadow of a global economic crisis that revealed the failings of existing techniques of global governance and the need to reframe how international institutions and legal instruments interact. So far, however, governments have sought technical solutions to the failures of oversight of global financial markets and trade liberalization without seeming to address the underlying reasons for the structural crisis in global governance. Some of these new policy spaces are fragile and at risk, and indeed often by design temporary and fluid. Nonetheless they provide significant opportunities to address structural crises and global governance.

This book is designed to explore the reframing of global governance and the opening up of new and reconfigured policy spaces for linking human rights and trade. It brings together a wide-ranging group of leading experts in international law, trade, human rights, political economy, international relations and public policy who have been asked to reflect on this important development in globalization. Their multidisciplinary contributions provide explanations for why the global landscape for national policy space has evolved and illustrate clearly instances of this change and the failure to adapt to new social and economic circumstances. The book also projects future paths for development in social and economic policy spaces, especially with reference to linkages between international trade and human rights in major market countries like China and India.

DIVERGENT CONFIGURATIONS OF POLICY SPACE

The idea that governments operate in certain national policy spaces and that these spaces reflect beliefs about what governments can and should do gained currency only in the twentieth century. Influential economists and political theorists such as Polanyi (1944), Arendt (1958) and Habermas (1991) all maintained that contemporary capitalism has an impact on how we understand the importance of politics and the public sphere. Polanyi argued that in market societies such as the United Kingdom, the development of the modern state occurred in tandem with the development of modern market economies. The state and market function in market societies in a complementary fashion. The state has certain spheres in which it can operate and others in which it has no role. The configuration of those spheres is a reflection of what goods citizens in a capitalist society should share in common and that the state has the responsibility to pursue. Policy space emerged as a way to think about collective decision making by governments oriented towards certain public goods.

The initial watershed configuration of policy spaces occurred in the context of the Keynesian revolution in macroeconomic policy beginning in the 1930s in modern industrial countries. The Keynesian revolution was organized around an explicit commitment to full employment as a public good (Keynes, 1936). The logic of full employment as a public good is a policy space where governments have policy instruments and levers to intervene in the economy with the objective of promoting full employment. Instruments like money supply, deficit cycles, and lending rates emerged as familiar elements in a nation's policy toolkit. In the post–World War II period, the emergence of modern welfare states is largely tied to this vision of full-employment capitalism. This new industrial state, to use Galbraith's (1972) famous phrase, is oriented in its economic and industrial relations policy towards establishing stable market conditions that enable long-term planning by corporations and avoids the boom-bust unemployment cycle that characterized earlier stages of capitalism. Countries differed of course in how they governed their economies, despite the broad consensus on the public good of full employment (Hall, 1986). National governments also configured their welfare state programs in a wide variety of ways (Epp-Andersen, 1985, 1990; Ringen, 1987). The diversity in economic policy and welfare states should be seen as a reflection of the opportunities for innovation and freedom that the concept of national policy space attempts to capture. The establishment of welfare states after World War II was rarely, if ever, connected to the commitment to international human rights, which is a striking omission, one that is almost inconceivable from our current vantage point (Jacobs, 1993).

The national policy instruments of the Keynesian period were supported through the establishment at Bretton Woods in 1944 of a system of international organizations, most notably the IMF and the predecessor of the World Bank. The Bretton Woods system was oriented towards supporting governments in the pursuit of full employment and economic development by ensuring stability during economic downturns (Ruggie, 1982). This was followed in the postwar period by efforts to establish the International Trade Organization (ITO). The ITO was proposed by the United States at the United Nations Economic and Social Committee in 1946. The ITO Charter was successfully negotiated in Havana in 1948 at the United Nations Conference on Employment and Trade, along with the General Agreement on Tariffs and Trade (GATT). The ITO Charter emphasized trade liberalization but within the perimeters of international social and economic rights. It addressed, among other things, multinational corporate governance, labor standards, and the stability of food prices. The U.S. Senate never ratified the agreement, and the ITO collapsed in the early 1950s. GATT continued to regulate international trade until it was replaced by the WTO in 1994.

THE HAYEKIAN TURN AND NEOLIBERAL POLICY SPACE

The neoliberal reconfiguration of economic and social policy space has its origins in the work of hugely influentially economists such as Hayek (1944; 1960) and Friedman (1962), who argued against the Keynesian expansion of policy space that characterized the macroeconomic and welfare state policies of most advanced industrial countries in the post–World War II period. The neoliberal conceptual vision is one where markets, not governments, are the principal vehicle for advancing economic growth. Full employment is not a priority in this vision. In its most ideological form, only the private sector is said to create jobs, not the government. Neoliberal arguments gained considerable political currency in the 1980s and 1990s in many countries, leading to the election of governments that sought to cut government spending, lower taxes, reduce intervention in the economy and retrench welfare state programs. At its extreme, the neoliberal agenda can be seen to be promoting the disappearance of the state on the policy horizon. New institutions established during the Keynesian period were path dependent in the sense that once initial policy paths were chosen, they have been difficult to reverse (Hacker, 2002; Thelen, 2004).

Policy legacies express the idea that during periods of transformation, institutions remain in place but their underlying rationale or normative foundation is altered to align itself with the new public policy paradigm (Thelen, 2004; Jacobs, 2005). Still, the Keynesian-era institutions proved to be surprisingly resilient during the neoliberal period. Welfare state programs in particular have been exceedingly difficult to dismantle in most countries, although many of them have been downsized and benefits cut (Pierson, 1994, 2001, 2004). Moreover, because of the many varieties of state-market relations (Hall and Soskice, 2000), neoliberal efforts to transform policy space have not been standardized or uniformly effective. This effect led some to question the very idea of globalization and its impact on state power (Hirst and Thompson, 1999; Weiss, 1998).

However, despite the policy legacies of the Keynesian era, the underlying rationale or justification for certain institutions was transformed. The European Union is representative of this shift into a neoliberal institution, but like many institutions originating in the Keynesian era, this transition has not been seamless and Keynesian policy legacies remain highly visible. The most important illustration of this phenomenon is its social market covering 500 million people. An example of policy legacies in Canada and the United States concerns private pension funds, which during the Keynesian era were seen as a type of deferred compensation for workers and were largely organized around defined benefit plans, but during the neoliberal period were transformed into retirement savings plans organized around defined contributions with the level of benefits paid depending on the rate of return on the savings (Wooten, 2004).

The neoliberal reconfiguration of policy space required a realignment of international institutions. In the Keynesian period, the Bretton Woods system was seen as creating international institutions that enable national governments to exercise their policy options within newly established policy spaces oriented toward full employment. Although these institutions were preserved during the neoliberal era, their role and purpose was transformed from supporting national governments in their goal of sustaining full employment to advocating for wider reliance on market mechanisms to determine economic outcomes. What developed during the neoliberal era was the role of international economic organizations as constraints on policy choices for national governments and shrinking their policy space (Gallagher, 2005). These institutions pressured countries to enter into free trade agreements and other forms of international law that promote trade liberalization at the cost of a departure from full employment.

The establishment of the WTO in 1994 was for many the most powerful expression of this new relationship between international organizations and national policy space (Drache, 2010). The WTO sought to promote multilateral trade liberalization agreements based on the vision of a global market for goods and services. The increased globalization of norms in areas of tax policy, industrial relations, and financial markets reinforced the neoliberal approach to diminishing policy spaces for national governments. Domestic policy space simultaneously became internationalized through hard law and globalized by soft law norms and values. The Washington Consensus is ordinarily explained from this neoliberal prospective, providing that during financial crises, national policy space is restricted to monetary policy, and in other contexts allowing nations fiscal policy space only to the extent that the situation of the government is financially sustainable (Heller, 2005).

Both neoliberals and Keynesians share an outdated understanding of policy space in relation to the Westphalian state, a shorthand for the concentration of legal and political authority in the modern nation-state. International institutions were seen as a function of member states entering into contractual agreements to further their own self-interest. In our current dismal economic age, policy space is positioned differently in its relationship to the state and global institutions. The new global landscape requires an understanding of policy space beyond the Westphalian state model.

THE NEW GLOBAL APPETITE FOR POLICY SPACE

The 2008 global financial crisis made visible the likely end of the neoliberal era regarding policy space or at least a different configuration of what having that space means for individual countries. That crisis revealed the declining importance of the WTO and the failure of the Doha Round of negotiations to agree to lower trade barriers and reform trade rules. Prior to the crisis, certain outlier countries such as Brazil, China, and India resisted the Washington Consensus's capital deregulatory logic but supported the WTO. However, in response to the crisis, many more countries broke from the Washington Consensus and instead were innovative in their attempts to protect their own economies, institutions and citizens from the crisis. Many countries made protecting employment their highest priority. As noted earlier, the U.S. government in response to the 2008 economic crisis implemented an $800 billion economic stimulus plan, nationalized financial institutions, imposed regulations on executive compensation, extended unemployment benefits for two years, embraced Buy American provisions and bailed out the auto industry. Most countries in the EU, led by Germany and France, responded in a similar fashion. The agreed-on stability mechanism and the new role for the European Central Bank is a major step towards intergovernmental cooperation to stabilize the euro crisis. The ECB promised stunning Keyesnian-like measures to rein in European capital markets and so far they have quelled further financial panics. It would surprise few if the European Central Bank becomes the common supervisor of all EU banks.

Even countries such as Canada, with governments that expressed a lingering faith in the Washington Consensus, embraced stimulus plans and halted deregulation of the financial industry. In developing countries, the 2008 financial crisis engendered a wide range of policy innovations that would have been difficult to imagine a decade earlier when the neoliberal approach to policy space was so dominant. China and other countries on the Asia Pacific Rim provided massive public stimulus spending to prime their economies. From a broader policy perspective, what this break from the Washington Consensus showed is that despite significant globalization over the past three decades and increasing regulation via free trade agreements, governments still have national policy space to innovate in response to grassroots social movements and the human rights agenda.

The changing global landscape for policy space requires better understanding the dynamics between national policy space and international organizations and institutions. There is a need to correct our understanding of transnationality that shrunk the domestic realm of policy making and left it gasping for air. What makes the new era of policy space especially interesting, in our view, is the impact that recent globalization and the expansion of international law has on the shape, size and availability of policy shape for states. The chapters in this book explore three competing views on the dynamics between national policy space and the expansion of free trade agreements and international human rights conventions, with a view to better making sense of national policy space as the landscape for making linkages between international trade and human rights.

THE DYNAMICS OF INTERNATIONAL INSTITUTIONS AND DOMESTIC POLICY NEEDS: THREE CONTRASTING VIEWS

The dominant view, which stems from the neoliberal era, is that globalization and the expansion of international trade agreements results in the shrinkage