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978-1-107-04052-6 - Sugar and the Making of International Trade Law

Michael Fakhri

Excerpt

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PART I

Prologue

The power of the book . . . lies in its ability to make the familiar strange – so that the reader sees it in a new light.

Cayley, “Ideas: Markets and Society. Part Three – Socialism and Freedom”

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1 International institutions as part of the history of agriculture

One cannot discuss international trade law and policy without some reference to the World Trade Organization (WTO). Even with the proliferation of bilateral and regional trade agreements, the multilateral institution remains a principal component of international trade law. How is it, then, that the idea of multilateral institutions came about and became an important practice and arrangement?

The answer lies in an account of agriculture. The history of agriculture begins approximately 12,000 years ago in the Neolithic era. Agriculture has been central to many moments of human social transformation, playing a role (though not always one of causation) during profound innovations in law, social relations, political economy, and religion.¹ Against the backdrop of the long history of agriculture, we can examine international institutions, which are first created in the late nineteenth century, as a relatively novel phenomenon.

Around 1400 CE, people around the world developed a number of modes of (mainly agricultural) production.² Some places were organized through a tributary mode in which a farmer or herdsman was granted access to land and resources, and in return they paid a tribute to a political or military ruler. Others were kin-based, in which the social organization of working and producing was structured around different ideas of consanguinity, marriage, and affinity. Other people organized themselves through capitalism, which was a mode in which

¹ Toynbee, *Industrial Revolution*; Weber, *Roman Agrarian History*; Friedmann and McMichael, "Agriculture and the State System"; Cauvin, *Birth of the Gods*; Mazoyer and Roudart, *History of World Agriculture*.

² Wolf provides an elucidating definition of modes of production: "a specific, historically occurring set of social relations through which labor is deployed to wrest energy from nature by means of tools, skills, organization, and knowledge." Wolf, *Europe*, p. 75.

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one group – capitalists – controlled and restricted the means and tools of production. Those people who produced goods through work – laborers – had to sell their time for money in order to gain access to the very goods that they produced and all their other needs.³ Capitalism's principal goal was to indefinitely accumulate and employ labor, land, and money – capital – in order to accumulate and generate more capital.

By 1760, the invention of the steam engine sped up transportation and mechanized production of agricultural products. Legal innovations in agricultural land expanded industry's geographic scope and compressed rates of production. Due to new enclosure laws, wealthy men (property transactions were a gendered affair) were now able to buy what was formerly common land. Since more land was now available to be bought and sold, wealthy people were more willing to devote resources to improve the land's fecundity, since they could now reap all the financial benefits from their investment. As a result, farms increased in size and productivity.⁴ The territorial expansion of private property law's purview also meant that small farmers and herdsman lost their right of pasturage and were forced to sell their time and labor to landlords.

Yet the most fundamental transformation that occurred at the end of the eighteenth century was the interlacing of capitalism with industrialization in Western Europe. In the past, merchants bought and sold goods for the everyday use of different social classes. Industrial production always had its own historical relationship with commerce and mostly served the needs of merchants. Thus, industry mostly produced what was socially needed. Now commerce began to serve industry. Merchants began trading in the elements of industry. They saw profit in meeting industrialists' growing demand for long-term investments in machinery, raw materials, and infrastructure (and learned to share their distaste for risk).⁵

By the late nineteenth century, British technology and know-how behind agricultural industrialization began to spread to other parts of the world. With the spread of industrialization, capitalism followed. People, goods, and wealth were now travelling around the world at unprecedented speeds and were being bought and sold on a global scale. This was also when the British Empire was at the height of its

³ *Ibid.*, pp. 73–100. ⁴ Toynbee, *Industrial Revolution*, pp. 62–3.

⁵ Polanyi, *Great Transformation*, pp. 74–5.

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power and territorial scope. Imperialism was driven by the dynamic of territorial expansion. As such, it needed new modes of governance to rule on a global scale. By mode of governance, I mean a specific, historically occurring set of social relations through which authority is deployed to direct a certain group's activities by means of violence, organization, and knowledge.

International law was one of the many new modes of governance forged out of empire.⁶ The publication of the first international law journal, the *Revue de droit international et de législation comparée*, in 1868, and the creation of the *Institut de droit international* in 1873, marked the moment that international law became the profession that we recognize today. It shifted from being the musings of "professors and philosophers, [as well as] diplomats with an inclination to reflect on the procedure of their craft," to becoming the practice of lawyers.⁷

International institutions were another mode that emerged from the same context of capitalism and imperialism. Today, international law and institutions are deeply intertwined and we now describe international institutions as lawmakers unto themselves.⁸ But the history of international institutions does not arise from the optimistic, humanist imagination of the men of 1868 and 1873. Rather, it is a history told in more functionalist and pragmatic terms.⁹

The history of international trade institutions is predominantly drawn from the practice of diplomats, politicians, civil servants, capitalists, and economists. Only recently, with the creation of the WTO in 1994, have lawyers become important protagonists.¹⁰ This is not to say that there was no theory of law informing the work of these non-lawyers over the past century in how they designed and negotiated international trade institutions. But it is because most of the people were not lawyers that today's trade law has not focused on this history.

To determine how international law, international institutions, capitalism, and imperialism are configured and interact is to follow a moving target, since they constantly change over time. I therefore focus on a single, everyday agricultural commodity – sugar – to explain the relationship amongst these histories. I use sugar "as a kind of trace

⁶ Anghie, *Imperialism*. ⁷ Koskenniemi, *Gentle Civilizer*, pp. 17, 41.

⁸ Alvarez, *International Organizations as Law-makers*.

⁹ Kennedy, "The Move to Institutions."

¹⁰ Hudec, "GATT Legal System"; Weiler, "The Rule of Lawyers."

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element, tracking the direction of change,”¹¹ in order to outline the complex intersections of old and new ideas, interests and institutions.

I investigate three sugar treaties and their concomitant institutions: the 1902 Brussels Convention,¹² the 1937 International Sugar Agreement (ISA),¹³ and the 1977 ISA.¹⁴ I examine the text, structure, and preparatory work of the trade treaties within the political context and economic discourse of the time, juxtaposed against the international social history of certain sugar-producing countries. I do so in order to investigate what it means to organize trade through a multilateral institution and discern how institutionalization involves the prioritizing, marginalizing, and exclusion of certain ideas and interests.¹⁵

We will see that the 1902 Brussels Convention was intended to buttress the British Empire by supporting colonial sugar plantations and to secure the Crown’s control over the West Indies. The economic purpose was to stabilize the price of sugar in order to attract private investment to the sugar-harvesting industry in the West Indies. The 1937 ISA was an attempt by the Cuban elite to renegotiate their neo-colonial relationship with the US. It was also part of plans by Cuban businessmen and North American financiers to develop the island economically. The 1977 ISA was part of the Third World’s demand to redress imperial patterns of global poverty. Former colonies were now newly independent states, but still economically dependent on former imperial masters. International lawyers had little to say about the first two sugar treaties and institutions; it was not until the last sugar treaty that they began to put sugar treaties, and commodity agreements in general, in their sights.

Sugar has always been central to industry and empire, and has transformed global economic history.¹⁶ Slave-driven sugar mills of the seventeenth century were one of the earliest factories.¹⁷ But the history

¹¹ Grew, “Food and Global History,” pp. 1, 6.

¹² International Convention Relative to Bounties on Sugar, Brussels, March 5, 1902, 191 *Parry* 56, 1902 *Foreign Relations* 80, Cd 1535.

¹³ International Agreement Regarding the Regulation of the Production and Marketing of Sugar, London, May 6, 1937, League of Nations, *International Sugar Conference*, p. 7; also reprinted in International Labour Office, *Commodity Control*, p. 26.

¹⁴ International Sugar Agreement, 1977, New York, October 28, 1977, 1064 UNTS 219.

¹⁵ For an analysis of how contemporary international regimes affect the international political economy of sugar, see Richardson, *Sugar*.

¹⁶ Higman, “The Sugar Revolution.”

¹⁷ Pomeranz and Topic, *World that Trade Created*, p. 225.

of sugar predates these modern developments. It is a history that witnesses the transformation of an unassuming plant into a global commodity. For most of its existence, sugar in the human diet was a luxury that came in the form of sucrose extracted from sugar cane.¹⁸ Only in the nineteenth century did sugar beet become a competitor to sugar cane. And only starting in the 1970s did sucrose start losing out to high-fructose corn syrup and artificial sweeteners that dominate the contemporary industrialized diet.¹⁹

What began as a grass native to Southeast Asia, was picked up in Persia by Arab traders. They were the first to introduce sugar to the European palate, as the Umayyad Empire expanded into Europe through Spain and Sicily during the seventh and eighth centuries CE.²⁰ Later, crusaders established sugar cane plantations in the Levant and Mesopotamia, and brought news of what was considered an exotic spice from the Orient. European nobility then started to incorporate sugar as a luxurious additive, elevating the flavor of food and forming part of the stock for apothecaries.²¹ By 1440, sugar began replacing honey in the diet of European nobility.²² Braudel notes that in 1544 there was a German saying, *Zucker verderbt keine Speis* (“sugar spoils no dish”).²³

Sugar first came to the so-called New World on Columbus’s second voyage in 1493.²⁴ This set the foundation for centuries of African slave labor sustaining sugar cane plantations in the Americas.²⁵ By the seventeenth century, the French and British had acquired a voracious appetite for coffee, tea, and cocoa; because of this hot beverage revolution, sugar was no longer a luxury item and become an everyday good.²⁶ The British were one of the first nations to move away from a starch-rich diet towards a sugar-rich diet. By the end of the eighteenth century, sugar was a staple in Britain, as many cups of sweet tea were incorporated

¹⁸ I am referencing sucrose throughout this study when I discuss “sugar” unless otherwise noted.

¹⁹ Pollan, *The Omnivore’s Dilemma*, pp. 102–3.

²⁰ For general histories of sugar, see Deerr, *History of Sugar*; Toussaint-Samat, *History of Food*, pp. 552–63.

²¹ Geerligs, *Sugar Industry*, p. 5; Fernández-Armesto, *Thousand Tables*, p. 81.

²² Galloway, *Sugar*, pp. 1–10. ²³ Braudel, *Civilization and Capitalism*, p. 191.

²⁴ Sugar was part of the “Columbian Exchange,” which involved the movement of a large variety of plants, animals, foods, human populations, communicable diseases, and ideas between the Eastern and Western hemispheres after 1492, greatly affecting ecological conditions. See Crosby, *Columbian Exchange*.

²⁵ Mintz, *Sweetness and Power*, p. 32.

²⁶ Clarence-Smith, “Global Consumption of Hot Beverages.”

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into the diets of workers, providing a “calorie-laden stimulant that warms the body and blunts the pangs of hunger.”²⁷ Mintz notes that this change in diet coincided with the Industrial Revolution, exemplifying one sort of modernization. According to Mintz, however, it is not entirely clear whether the Industrial Revolution caused the dietary transformation, or if Britons’ taste for sweetness facilitated fundamental industrial and social changes in British society.²⁸

Sugar is central to the colonial history of the formation of many states and territories, such as Hawaii, Louisiana, Puerto Rico, Brazil, Cuba, Haiti, Indonesia, India, Taiwan, and the Philippines.²⁹ Some suggest that the desire for sugar was a driving force of imperial expansion.³⁰ Others propose that imperial expansion reduced the price of sugar, enabling popular consumption.³¹ Regardless, sugar (along with coffee, tea, and cocoa) played an important part in the expansion of the British and other European empires.

Sugar may very well have been central to the history of modern trade law because the nature of sugar production lends itself to competing transnational interests. Sugar cane harvested from the fields must be processed into raw sugar. The mill that processes cane into raw sugar must be close to the fields to ensure that the cane does not spoil. One mill would be a center of power fed by multiple peripheral sugar cane fields. As such, mill owners often constituted a sugar elite within their own country, with ties to international capital, or were owned by foreign investors. People could eat moist, raw sugar, but the demand was highest for white, refined sugar. Refining was also where much of sugar’s economic value was added. Most refineries were located in industrialized countries. One refinery might source its raw sugar from different points around the world. Thus, there was also a global pattern of an industrialized center drawing sugar from mills in the periphery. All this created a relationship of dependence and disparity of power between sugar growers and sugar refiners.

As I will soon discuss further, international trade institutions emerged when the geography of world sugar production changed with the rise of the sugar beet. Cane sugar’s course began in warm climates and traversed through Europe as a luxury export, a slave-produced staple and a colonial good. Early cane-processing technology was

²⁷ Mintz, *Sweetness and Power*, pp. 45, 80. ²⁸ *Ibid.*, p. 14.

²⁹ Abbott, *Sugar*, pp. 270–310; Wolf, *Europe*, pp. 333–6.

³⁰ Fernández-Armesto, *Thousand Tables*, p. 181. ³¹ Galloway, *Sugar*, pp. 1–10.

principally steam-powered, whereas sugar was first extracted from beetroot during the late eighteenth to early nineteenth century in Prussia, through chemical and mechanical innovations, directly from harvest to refinement. Soon after, beet sugar entered into the quotidian diet in Europe and beetroot spread across the colder soils of Europe and North America.

2 Histories as context

An emphasis on institutions

Before delving into the history of sugar and trade law, I will briefly consider some of the theoretical understandings that informed my research and explain how I structured this book. Each sugar treaty is addressed in a separate part. Each part is comprised of two chapters. The first chapter of each part outlines the broader institutional context in which I situate the treaty. Thus, the 1902 Brussels Convention is about the British Empire. The 1937 ISA is about the League of Nations and US-Cuban imperial relationships. And the 1977 ISA is about how the world of international trade law was constituted by a plethora of institutions, such as the International Trade Organization (ITO), United Nations Conference on Trade and Development (UNCTAD), the General Agreement on Tariffs and Trade (GATT), and international commodity agreements (ICAs) – all against the backdrop of Third World politics. These contextual chapters of each part serve as historiographies. The purpose is to bring different bodies of knowledge into conversation with one another. I have drawn from other disciplines and literatures, and interpreted them in order to understand how and why multilateral trade institutions came about. The second chapter of each part focuses on the specific sugar treaty.

More importantly, however, the contextual chapters are also an argument as to why I think certain institutions provide the best insight into the meaning of free trade. Each sugar institution has been informed by a conception of free trade. But what free trade means is not predetermined and simply formalized in the text of the treaty. Rather, free trade is defined through the struggles, arguments, and compromises that lead to the creation and operation of an institution;