

Christian Joerges and Ernst-Ulrich Petersmann (eds.),
Constitutionalism: Multilevel Trade Governance and International
Economic Law (Hart Publishing: Studies in International Trade Law,
2011)

The overarching approach, as pioneered by the two editors, Christian Joerges and Ernst-Ulrich Petersmann, is to examine the practices of States and other international actors (principally the WTO) and explores these within the political and legal theory of constitutionalism. Where this work differs from much of the comparable scholarship on international economic law is the central place reserved for the individual as a key player (and beneficiary) of international economic relations. Much scholarship exists on international trade from States' perspectives; and much has been devoted to exploring the contradictions and tensions between international economic law, individual rights and sustainable development. Recognizing that "human rights law and international trade law evolved as separate legal regimes" (p. 17) *Constitutionalism, Multilevel Trade Governance and International Economic Law* makes a positive case for interpreting international economic law and international human rights as complimentary systems that ought to be brought closer together; indeed, to form a single, coherent system of law. It is an implicit response to concerns about the fragmentation of international law and reflects the classical principle of interpretation of treaties as codified in the Vienna Convention in the Law of Treaties 1969 that: "There shall be taken into account, together with the context, any relevant rules of international law applicable in the relations between the parties" (article 31(3)(c)). With this in mind, international economic law is viewed as a tool to serve human interests, as opposed to the interests of States and multi-national corporations. Responding to the High Commissioner for Human Rights' call for a "human-rights approach to trade," (p. 22) the book provides both an account of the normative basis that would legitimise such an approach by the WTO and makes proposals for how that process might evolve.

The introductory chapter (Petersmann) provides a theoretical framework for what follows, examining different forms of constitutions and constitutional ideas (democratic constitutionalism, rights-based constitutions, national and international constitutionalism, international constitutional democracy and federal and con-federal constitutions) (p7-8). Petersmann also distinguishes process-based constitutional democracies (most common law models) and substantive rights-based constitutional democracies (the continental approach) which provides the setting for much of what follows (pp. 13, 16).

The later edition contains 4 new chapters exploring conflicts-law as constitutional forum and the role that various doctrines in international private law might play in dispute settlement in international economic law (Christian Joerges); the World Trade Organisation and global administrative law (Richard Stewart and Michelle Ratton Sanchez Badin); the interrelationships between different layers of domestic and international governance as a "Five-Storey House" (Thomas Cottier); and a research agenda on the future developments of

international economic law (Petersmann).

Petersmann concludes with four propositions based on the contributions as well as his own research. First, the legitimacy of international economic law pivots on its congruence with international human rights standards (p. 539). Second, there is a need for constitutional constraints on international institutions as there is within domestic States based upon “constitutional pluralism,” meaning that there is a range of acceptable constitutional arrangements and no single system that should be required of all players (p. 540). Third, in order to protect global public goods, such as the atmosphere and climate, a “paradigm shift” is required and this involves moving from a system of industry actors to the centralization of human subjects and Petersmann points to the European Union for leadership to this end (pp. 571-2). Fourth, international constitutionalism is necessary to guarantee global public goods in the same way that domestic constitutions have protected supply of public goods on a national scale. The international constitutional system must be rights-based, participatory and democratic (p. 575).

When the first edition of this text was published in 2006, mainstream commentators were not yet ready to question the bases of the international economic order and the priority of trade liberalism. Two years later, the rapid declines of the Nordic and Mediterranean economies of Iceland, Greece, Italy, Portugal and Spain were met with attacks on human rights and human security. Both the original crisis and the responses of international institutions to the same have led to much soul searching about the principles and priorities of international trade and this volume is a welcome contribution to that debate, sometimes controversial and always challenging. On the other hand, recent events within the Eurozone raise some questions regarding to the extent to which the European Union can be considered a model of international, constitutional, democratic, rights-based governance (compare p. 21) especially if one considers the means by which Iceland (outside of the European Union) has crawled back to economic growth while attempting to protect its most vulnerable residents compared with the demands placed on the Eurozone economies. Something more seems to be needed even within an international organization that positions fundamental individual rights at the heart of its formal constitution. Perhaps the answers are to be found in multilevel trade governance; perhaps they await further research, and one can only hope that the scholars involved in this project continue to devote their considerable talents to challenging the paradoxes and contradictions of the current international structures to develop a regime that remembers it is an instrument for human development, instead of viewing human beings as instruments for its own development.

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