Introduction

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Every year, the United States Department of State publishes a list of treaties and international agreements to which the United States is a party. The most recent publication is 489 pages in length. These are the treaties and international agreements entered into by one state, albeit a powerful one, with another state or group of states. The list ranges from multilateral treaties of enormous significance, such as the United Nations Charter and the World Trade Organization Agreements, to bilateral treaties of limited scope. The list obviously increases if the exercise is extended beyond the United States. Many of these treaties have to do with economic relations and international trade. Historian Eric Hobsbawm tells us “the major fact about the nineteenth century is the creation of a single global economy, progressively reaching into the most remote corners of the world, an increasingly dense web of economic transactions, communications and movements of goods, money and people linking the developed countries with each other and with the underdeveloped world.” Globalisation persists into the 21st century, but with a pervasive multilateral institutional architecture added to an ever more intricate bilateral and regional one. This architecture includes hundreds of nongovernmental organisations with real power over global governance. While the most sophisticated and developed of these institutions are still at the level of the state, the sovereignty of states is ever becoming a quaint and outdated idea. Every international lawyer knows that state sovereignty is massively eroded by the “dense web” of treaty commitments, some of which have even produced bureaucracies surpassing those of some states in terms of size, budget and authority.

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We live in a world filled with institutions of global economic governance. These institutions make possible the numerous and substantial relationships between people at a distance and across state borders. The potential for good in opportunities for global trade and exchange is substantial, as is the potential for harm. The global economy is made possible through a set of institutions and actions widely understood to be unjust. This injustice has taken different forms throughout the past two centuries. In Towards Perpetual Peace, Kant wrote about a “cosmopolitan right to hospitality” as a principle to limit exploitation by states in economic affairs: “If one compares the inhospitable behaviour of civilized, especially commercial, states, in our part of the world, the injustice they show in visiting foreign lands and peoples (which is tantamount to conquering them) goes to horrifying lengths.” Kant wrote this in 1795. The social facts of injustice may have changed somewhat since Kant’s time, yet injustice persists and the world still struggles with the idea of justice in global economic arrangements. When we think globally, we seem to lose our grip on the normative language and concepts of justice.

It is furthering our understanding about the justice required in global economic governance to which this book is dedicated. This Research Handbook serves at least three purposes. First, it augments the intellectual tools with which to evaluate and critique international economic law. The Handbook supplements traditional legal and economic approaches to thinking about international economic law. The primary conceptual framework for doctrinalism is coherence and for economics it is efficiency. In the case of trade agreements, which are produced in the non-ideal world of politics, progressive trade liberalisation takes centre stage as a normative concept. Traditional legal analysis provides powerful tools by which to understand and evaluate institutions. This Handbook proceeds from this premise. It does not question traditional legal analysis and takes a positive view of doctrinalism in international economic law. Traditional legal analysis is a vital and important intellectual enterprise. It serves an important epistemic function, which is what to expect from coherentism. It is an analysis of international economic law internal to the law itself and so the coherence it seeks is in the legal rules themselves. While traditional legal analysis is essential to our understanding of international economic law, we often cannot rely on it alone. If we do, we risk

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accepting the agendas of governments who make the rules and the powerful multinational enterprises who influence governments. We want to avoid accepting the interests of states and powerful enterprises as unalterable givens, as exogenous to our inquiry. We want to put our unexamined assumptions under a critical gaze. For critique, we need some normative benchmark other than what states (and multinational enterprises through states) have put in place in international economic law itself. Principles of justice, for example, provide such a normative benchmark.

Critique does not have to be radical. It can be accomplished within the liberal tradition and indeed many of the chapters in this Handbook are firmly in the liberal tradition. The aim of critique is to take propositions or ideas that we leave unexamined or simply assume and put them under scrutiny. We are often assailed with claims from governments, non-governmental organisations, intergovernmental organisations, the media, law firms, multinational enterprises and others about the state of the global economy and global economic governance. We want to be able to critically engage with these claims and draw our own conclusions.

Economics also provides powerful tools by which to understand and evaluate institutions. As with traditional legal analysis, this Research Handbook proceeds from this premise for economics as well. It does not question the importance of economics and takes a positive view of economics. If we want to understand the effects of particular institutions on the material welfare of persons and societies, we would be hard pressed to ignore economic analysis. Economics provides one of several normative benchmarks by which to evaluate institutions. Economic efficiency, while an important normative standard, is certainly not the only normative standard by which to evaluate institutions. Economics has no normative apparatus to deal with justice. It says nothing about the legitimacy of institutions, though it may provide the means to assess people’s preferences for various institutions and policies. It provides a way to assess what economists call distribution but does little to inform us whether a particular distribution is fair or just. We need a different toolkit for that.

Second, this Research Handbook offers practical guidance on institutional design, though that guidance is in its nascent stages. It helps to answer questions about what states and their officials ought to do in negotiating trade or investment agreements, for example. The theories outlined in the Handbook have the potential to assist those who engage in deliberating on institutional design to decide what to do. Policy makers and trade negotiators may find themselves in the dilemma of needing to put the interests of their state and its citizens first. We live in a world
dominated by states. The cosmopolitanism explicated in Gillian Brock’s chapter in the *Handbook*, for example, is an ideal theory. Still, while Hobbesian self-interest may prevail over other more intrinsically moral motivations, it is important that we see and appreciate the effects of actions and policy choices on others, particularly on the global poor.

Third, much in the *Handbook* informs us on how we might go about justifying international economic law and institutions to people around the world. International economic law is a vast global scheme of social cooperation. It creates relationships between people at great distances from one another. The petrol in my car, the coffee I drink, the produce I buy, the computer I am typing this introduction on right now, are all made possible through the global network of institutions regulating the global economy. These institutions pick winners and losers. International economic law has a substantial distributive effect. It enriches some and makes others worse off. Such a massive global scheme should be acceptable to all persons under conditions of moral equality. Economic efficiency or aggregated measures such as GDP per capita may not be the right standards for broad-based justification. They are certainly valid measures of success for law and policy and may lend credence to any broad-based justification of why we have the institutions that we have, but these standards if applied in isolation may lead to perverse results. We want to know when they do and we need other approaches to make this determination.

The *Handbook* offers a broad yet deep survey of approaches to dealing with these questions of critical engagement, practical guidance and justification. Together, they illustrate the wide range of strategies that can be employed to deal with these issues. The *Handbook* enjoys a substantial interdisciplinary approach. The contributors, experts in their fields, are philosophers, economists, political scientists, development studies scholars and legal scholars. It is the editor’s hope that the *Handbook* will stimulate discussion and have some impact in legal and policy venues.