

INTRODUCTION TO THE SYMPOSIUM ON INTERNATIONAL ECONOMIC LAW AND ITS OTHERS

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This symposium explores international economic law and “the others.”¹ We define “the others” as the most vulnerable in contemporary societies to international economic law and the global economic processes that it supports, those who face oppression, adverse distributional consequences, and broader challenges to their way of everyday life. Their views are traditionally not represented, or at least not well recognized, within international economic law regimes. The symposium examines the struggle of “the others” and the movements that purport to represent them, to advance their interests and perspectives on international economic law, and potentially reshape regimes at a time of severe challenge, if not crisis, for international economic law.

Traditionally, international economic law scholarship has not explored the role of those marginalized and less represented in formal processes, referenced as the “subaltern” in critical theory.² At times, these others are described as the losers in the global economy, but they are rarely represented as the protagonists of alternative forms of transnational legal ordering of the economy, who bring their own histories, experiences, and knowledges to the discussion.³ Although international economic law may remain silent about these knowledges and movements, they interact with existing institutions, at times in unexpected ways. They may also develop creative solutions to some of the most pressing planetary problems—from gaping inequality that threatens to erode social peace and democratic governance, to ecological devastation and the existential threat of climate change.

This introductory essay outlines how conventional international economic law scholarship has addressed core issues implicating “the others.” We contrast these conceptions with a view from those on the periphery—whether they live in low-, middle-, or high-income countries. The ensuing essays address the views of peasants, environmental activists, workers, and historically disfavored racial groups, who vary and diverge in their organizational capacities and abilities to speak for “the other.”

Conventional Framing of International Economic Law

Conventionally, international economic law is taught and rationalized in utilitarian, functionalist terms. The core contention is that free trade maximizes aggregate social welfare in countries because it enhances the purchasing power of consumers, expanding the country’s consumption possibility frontier. The theory of comparative advantage, originally formulated by David Ricardo and since developed by others, focuses on the mutual gains of states if

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¹ Anne Orford, *A Jurisprudence of the Limit*, in [INTERNATIONAL LAW AND ITS OTHERS](#) 1 (Anne Orford ed., 2006).

² Nikita Dhawan & Shalini Randeira, *Perspectives on Globalization and Subalternity*, in [OXFORD HANDBOOK OF POSTCOLONIAL STUDIES](#) 576 (Graham Huggan ed., 2013).

³ Exceptions include [LAW AND GLOBALIZATION FROM BELOW: TOWARDS A COSMOPOLITAN LEGALITY](#) (Boaventura de Sousa Santos & César A. Rodríguez-Garavito eds., 2005).

they specialize in the production of products in which they have a relative advantage. Modern trade theory examines how trade is much more complex than in Ricardo's original model, but largely retains and supplements its core insights.⁴

Conventional theory recognizes that there are “winners” and “losers” from trade, but it maintains that if the losers are compensated and “adjust” as capital and labor move to other sectors, countries will benefit in aggregate.⁵ Conventional theory advances a two-level approach to economic policy, advocating trade liberalism at the international level and, subject to domestic choice, any redistribution at the national level. Investment protection and capital liberalization are less clearly theorized than trade, but both regimes aim to promote cross-border capital flows through creating legal certainty and predictability.

Critiques of the Two-Level Approach to International Economic Law

Studies of “the other” in international economic law are part of many challenges to this legal field. One problem with conventional theory's two-level approach is that the losers from trade are typically not compensated, and adjustment may be difficult. As a result, communities can be devastated and ways of life upended. In addition, environmental damage is typically not “internalized” in the costs of production, which ranges from deforestation, pollution, and (most saliently) the existential risks of climate change. In parallel, critics maintain that investment law does not adequately distinguish projects that adversely affect human rights and the environment, and privileges capital over other social concerns.

A central problem with the conventional two-level approach is that international economic law can shape domestic options, structurally enhancing the bargaining power of some, such as capital, over others, such as labor. International economic law affects “who will adapt to whom so as to render the policy goals of trade and investment rules most efficacious.”⁶ In addition, states are conceptualized as representing the welfare of their citizens collectively, which may not be the case, whether because states are not democratic, or because of flaws in democratic regimes where those with more economic and social capital have privileged access.

Broadening the Critique: International Economic Law and Its Others

Critiques from movements representing “the others” focus on two predominant implications of international economic law: one is material, in terms of distributive gains and losses, and the other is normative, in terms of values, knowledges, and ways of life. The material aspect involves increased job precarity and economic inequality, affecting individuals, families, and communities. The normative aspect is about both “representation” and “recognition.”⁷ These normative challenges to local knowledges and ways of life can give rise, in the words of Boaventura de Sousa Santos, to “cultural epistemicide,” paralleling devastation to other species.⁸ Law, in other words, is not just about a clash of interests (such as between capital and labor, or traders and local producers), but also clashes of ways of life, of lifeworlds that can become colonized through processes of economic globalization.⁹

⁴ Paul R. Krugman, *Increasing Returns, Monopolistic Competition, and International Trade*, 9 J. INT'L ECON. 469 (1979); Marc J. Melitz, *The Impact of Trade on Intra-Industry Reallocations and Aggregate Industry Productivity*, 71 ECONOMETRICA 1695 (2003).

⁵ Gregory Shaffer, *Retooling Trade Agreements for Social Inclusion*, 2019 U. ILL. L. REV. 1 (2019).

⁶ Nicolás M. Perrone & David Schneiderman, *International Economic Law's Wreckage: Depoliticization, Inequality, Precarity*, in *RESEARCH HANDBOOK ON CRITICAL LEGAL THEORY* 446, 446 (Emilios Christodoulidis, Ruth Dukes & Marco Goldoni eds., 2019).

⁷ NANCY FRASER, *SCALES OF JUSTICE: REIMAGINING POLITICAL SPACE IN A GLOBALIZING WORLD* (2010).

⁸ BOAVENTURA DE SOUSA SANTOS, *EPISTEMOLOGIES OF THE SOUTH: JUSTICE AGAINST EPISTEMICIDE* (2014).

⁹ JÜRGEN HABERMAS, *THE THEORY OF COMMUNICATIVE ACTION* (1981).

The challenge for the others lies at both the national and international levels. At the international level, the history of international economic law shows that powerful states and corporate interests played the primary role in shaping international economic law. The United States and Western Europe, victorious after World War II and the Cold War, were central to the creation of the General Agreement on Tariffs and Trade in 1948, and the World Trade Organization, in 1995. Powerful actors shape agendas and texts to address their concerns. Today, for example, debates over the World Trade Organization focus on how to preserve the dispute settlement system given U.S. demands threatening its very existence, rather than on how to promote sustainable and inclusive development in poorer countries.¹⁰ Likewise, the reform of ISDS became more salient once major powers became respondents and faced internal domestic political pressure.

Nationally, even where peripheral countries play greater roles, they generally do not reflect the views of social movements within them. Elites in developing countries often control the state apparatus and large export businesses, benefitting from international trade and investment.¹¹ In parallel, business associations have greater input than other actors, and particularly labor and other social movements, in the United States and Europe. For critics of rising inequality, there is a “North” in the “South,” and a “South” in the “North,” and international economic law is implicated.¹² Overall, a combination of (neo)colonial, socio-economic, patriarchal, linguistic, racial, gender, and cultural reasons have excluded “the others” from power structures. The result is that “the others” have been largely invisible to international economic law debates.

Who Speaks for “The Others”?

A key challenge lies in defining who are the subaltern and who speaks for them. For post-colonial scholars, subalternity “is a condition of not being able to represent oneself, articulate one’s interests, or make one’s claims count in face of the lack of institutional validation.”¹³ Spivak contends that privileged actors represent the subaltern as in need of “heroes,” but then those who speak on their behalf may represent the subaltern’s situation to the more privileged speaker’s benefit.¹⁴ Social movements and scholars nonetheless work to articulate their perspectives and interests by “looking to the bottom,” to the experiences and knowledges of the oppressed.¹⁵

Most international economic law scholarship focuses on the international level and existing institutions, treaty texts, and negotiations. It thus generally responds to the historical, economic, and political preferences of the main protagonists of those institutions, treaties, and their surrounding negotiations. This legal ordering reflects a particular “normative universe,” and it potentially destroys others—what Robert Cover calls law’s “jurispathic” quality.¹⁶ In a broader sociological sense, international economic law reflects and shapes not only the economic and political, but also particular epistemologies and ontologies—Indigenous groups being just one example.¹⁷

¹⁰ Cf. Gregory Shaffer, *Governing the Interface of U.S.-China Trade Relations*, 115 AJIL 622 (2021), with Håkan Nordström & Gregory Shaffer, *Access to Justice in the World Trade Organization: A Case for a Small Claims Procedure*, 7 WORLD TRADE REV. 587 (2008).

¹¹ BALAKRISHNAN RAJAGOPAL, *INTERNATIONAL LAW FROM BELOW: DEVELOPMENT, SOCIAL MOVEMENTS AND THIRD WORLD RESISTANCE* 21 (2003).

¹² B. S. Chimni, *International Institutions Today: An Imperial Global State in the Making*, 15 EUR. J. INT’L L. 1 (2004).

¹³ Dhawan & Randeira, *supra* note 2.

¹⁴ Gayatri Chakravorty Spivak, *Can the Subaltern Speak?*, in *COLONIAL DISCOURSE AND POSTCOLONIAL THEORY: A READER* 66, 74 (Patrick Williams & Laura Chrisman eds., 1994).

¹⁵ Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987).

¹⁶ Robert M. Cover, *The Supreme Court, 1982 Term—Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4, 40 (1983).

¹⁷ SERGIO PUIG, *AT THE MARGINS OF GLOBALIZATION: INDIGENOUS PEOPLES AND INTERNATIONAL ECONOMIC LAW* (2021).

Social Movements' Alternatives for International Economic Law

It is predominantly subaltern suffering that captures the attention of international non-governmental organizations, think tanks, and academics. But “the others” are not just victims; they have a history, they produce knowledge, and, through social movements, they form translocal alliances. These movements are not necessarily anti-globalization, in the sense that they may promote cosmopolitan solidarity and/or may favor a localist position.

Social movements generally do not trust their governments to represent them, especially the trade, finance, and mining ministries. They thus tend to work outside the state, pressuring international economic law from below. They combine legal and non-legal tools of resistance, grounded in different values, knowledges, and visions for legal ordering in transnational context.¹⁸ As the essays by Fakhri and Ferrando and Mpofu show, groups have organized translocally, giving rise to networks of movements, many of them non-Western, meeting at forums such as *La Vía Campesina*.

Accounts of international economic law increasingly will be viewed as less legitimate if they fail to account for the situation of Indigenous peoples, workers, peasants, women, historically discriminated racial groups, and the environment. The failure of international economic law to address some of the most pressing planetary challenges such as climate change, extreme inequality, and pandemics raises new opportunities for “the others” and their knowledges. The essays in this symposium illustrate these challenges and propose responses to them.

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Tomaso Ferrando of the University of Antwerp and Elizabeth Mpofu of the Zimbabwe Smallholder Organic Farmers Forum open this symposium discussing the experience of peasants, focusing on *La Vía Campesina*, an organization Mpofu knows from the inside as former general coordinator.¹⁹ They explain that peasants have not remained idle despite lacking any role in international economic lawmaking and institutions. Instead, they have harnessed their essential place in food systems to organize translocally and advance their interests and visions. The most important outcome is *La Vía Campesina*, a platform for translocal “solidarity” created in 1993 in reaction to the Uruguay Round of Trade Negotiations. Ferrando and Mpofu observe that this organization not only condemns the unchecked power of multinational corporations, but also has developed an alternative vision for food systems based on food sovereignty. Crucially, *La Vía Campesina* was pivotal in the adoption of the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas.²⁰ Ferrando and Mpofu conclude by describing *La Vía Campesina* as “insurgent cosmopolitans” who do not propose “abolishing the international,” but rather the creation of “new spaces for recognition, organization, democracy, and collective emancipation.”²¹

Julia Dehm of La Trobe University Law School next evaluates environmental activists’ challenges to neoliberal globalization.²² She highlights that those who speak for the environment do so from particular vantages, and distinguishes those based in the Global North and the Global South, on the one hand, and those who engage with international organizations to advocate reforms and radical environmental justice groups that frontally resist trade and investment regimes, on the other hand. These latter groups organized more successfully against multilateral trade negotiations in the late 1990s and early 2000s, but were unable to stem the proliferation of bilateral free trade

¹⁸ Examples include ideas, such as *Buen Vivir* or *Sentipiansan con la Tierra* as formative concepts. Arturo Escobar, *Thinking-Feeling with the Earth: Territorial Struggles and the Ontological Dimension of the Epistemologies of the South*, 11 REVISTA DE ANTROPOLOGÍA IBEROAMERICANA 11 (2016); DE SOUSA SANTOS, *supra* note 8.

¹⁹ Tomaso Ferrando & Elizabeth Mpofu, *Peasants As “Cosmopolitan Insurgents,”* 116 AJIL UNBOUND 96 (2022).

²⁰ [UN Declaration on the Rights of Peasants and Other People Working in Rural Areas](#), UN Doc. A/HRC/RES/39/12 (2018).

²¹ Ferrando & Mpofu, *supra* note 19, at 96.

²² Julia Dehm, *Environmental Justice Challenges to International Economic Ordering*, 116 AJIL UNBOUND 101 (2022).

agreements since then. Activists redirected their energies, in part, to challenge investor-state dispute settlement, where activists from the Global North and South were more aligned in opposition. The use of trade measures to address climate change, however, could again raise tensions between activists in the North and South, such as regards carbon tariffs imposed on imports from developing countries, which could exacerbate inequities. Nonetheless, she contends that the climate crisis offers a unique opportunity for North-South environmentalist solidarity, as activists call for the repayment of “carbon debt” through debt cancellation and technology transfers. For environmental activists, the challenge is how to scale up economic justice solutions “to reshape the global economy” sustainably.

Desirée LeClercq of Cornell University’s School of Industrial and Labor Relations shifts our attention to workers and their role in international economic lawmaking and institutions.²³ She is skeptical of the Biden administration’s “worker-centered” trade policy, which she considers to be incapable of addressing labor rights abuses and bringing workers to the negotiation table. For LeClercq, there is still a significant problem of representation, as the current policy “excludes the voices of the world’s most vulnerable workers—particularly those who do not benefit from union representation or job formality.”²⁴ Multinational corporations have been the winners of globalization, while informal workers have taken much of the burden. “Unequal access to collective bargaining,” LeClercq argues, has fueled inequality and reduced the influence of labor on international economic law. Meanwhile, unions have struggled to reconcile their members’ demands and the situation of informal workers. Some unions have tried to influence trade negotiations through their states, but others “distrust and reject” this framework. Ultimately, LeClercq claims that international economic agreements must stop “serving as state-to-state contracts” and rather support “the results of collective bargaining on the sectoral level.”²⁵

Chantal Thomas of Cornell Law School then assesses race and international economic law from a distributive perspective.²⁶ She observes that racial justice analysis has extended to global institutions at a time when international economic lawyers are increasingly concerned about distributive implications. Thomas warns us about the indeterminacy of racialized identity, which involves “vastly diverse and different peoples,” but she contends that this indeterminacy should be “taken not as a refutation of, but rather as an instantiation of, the role of racialization in entrenching global economic inequality.”²⁷ Racialized structures have and continue to shape the global economic terrain. Thomas excavates some of the racial biases of international economic law, both in the United States and the Global South, exhorting us not to think about these structures as predetermined, but rather as contingent and subject to change. She concludes by noting that racial justice analysis can play a significant role in reimagining international economic law. Significant transformations have “often centered on race consciousness.”

Michael Fakhri of the University of Oregon Law School concludes the symposium reflecting from his experience as UN Special Rapporteur on the Right to Food.²⁸ He claims that most trade law scholars have ignored social movements’ demands. Fakhri locates the origin of these rural movements in the 1960s and 1970s, when peasants organized to resist states’ industrialization agenda. These organizations still influenced policymaking in those years, he explains, because developing countries relied on agriculture for their development plans. But this situation radically changed in the 1990s with the rise of neoliberal policies. Rural movements organized in networks to resist agricultural liberalization, which they perceived as a threat to their way of life. Fakhri’s main argument is that

²³ Desirée LeClercq, *Invisible Workers*, 116 AJIL UNBOUND 107 (2022).

²⁴ *Id.* at 107.

²⁵ *Id.* at 107.

²⁶ Chantal Thomas, *International Economic Law and Racialized “Others,”* 116 AJIL UNBOUND 113 (2022).

²⁷ *Id.* at 113.

²⁸ Michael Fakhri, *Transforming Trade and Human Rights*, 116 AJIL UNBOUND 119 (2022).

if trade scholars want to take the food sovereignty movement seriously and commit to transforming the global trade regime on more equitable terms, they should engage with principles that blend trade and human rights, such as dignity, self-sufficiency, and solidarity.

This symposium does not include all the voices of “the others.” The experiences and knowledges of Indigenous peoples, feminist activists, and migrants, for example, also require careful attention. However, these essays strongly suggest that “the others” constitute more than a manifestation of issues of importance to international economic law. The others are not “issues” in need of solutions, but experiences that must be heeded in light of the distributive, environmental, public health, and democratic crises that countries face. These crises press, in Cover’s term, for a “redemptive narrative” of international economic law, one that creates the normative prospect of accommodating the aspirations of the others in a fairer, pluralistic, ecologically sustainable world. Those speaking for the “others” call for a new narrative and consciousness to reshape international economic law and its practice.