Globalizations of Law from the Perspective of International Trade Law (and Agricultural Commodities)

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The impact of Duncan Kennedy on legal scholarship has been undeniable. In this paper the author pays tribute to Duncan Kennedy and the impact that his work has had on the study of law, most specifically, the globalization of law. This paper analyzes the institutional history of international trade law and demonstrates how Duncan Kennedy's work on the globalization of law is relevant to this project. At the heart of this project, the author attempts to show international law as a historicized narrative that both arises out of and regulates economic policy. This paper first gives a general theoretical introduction to Duncan Kennedy's Three Globalizations. The next section of this paper highlights the period of classical legal thought where formalism banished financial treaties and instruments beyond the purview of international law into a category of mere diplomacy. The second section of this paper analyzes the period of international trade law that coincided with the rise of GATT. The author draws parallels between this period of trade law and what Prof. Kennedy termed the Social *(the period between 1900 and 1968. This paper demonstrates how this period was integral to the growth of a neo-liberal agenda of price stabilization using the instrument of law. This section shows how the interplay between economists and legal theorists is far more apparent than in the classical legal tradition. Critically it demonstrates the fact that international law was constitutive of material and economic realities. Finally, the paper concludes with questions about the third globalization and quizzically wonders whether it is time for the construction of a new language of law.*

I. My Introduction to Duncan Kennedy's Three Globalizations

I had the good fortune of attending Duncan Kennedy's course on the three globalizations of law and legal thought the first time he taught it for a full semester at Harvard Law School in 2006. This course was full of new ideas not simply about law, but encompassed politics, economics, and sociology. Kennedy began the course explaining that he would be using the notions of *langue* and *parole*. Drawing from the work of Ferdinand de Saussure, Kennedy used structural theories of language to examine legal thought. Just as English is a language (*langue*) that has an infinite number of utterances (*parole*), according to Kennedy, so is law a language (*langue*) with its own grammatical conventions and infinite particular arguments, counterarguments and positively enacted rules (*parole*). To Kennedy, "the meaning of each word in the system depends on the meanings of all the other words in the system, rather than just denoting one of a preset collection of concepts."[1] He used these ideas to identify three eras of legal globalization: Classical Legal Thought, the Social, and the Third Globalization. The way he demarcated each era was by examining how a wide array

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[1] Duncan Kennedy, *A Semiotics of Critique*, 22 CARD. L. REV. 1147, 1152 (2001).

of legal utterances promulgated and were structured by a system of meanings to form a distinct global legal language. Throughout the course, Kennedy worked through examples from private law (the law of the market and the law of the family), public law (constitutional law and criminal law), and international law (public international law and international economic law) in each period of globalization. He wanted to ensure that we were able to describe and distinguish the *langue* and *parole* in different contexts.

If words are defined by the system in which they are embedded within, we needed some way to think about "systems". Here, Kennedy turned us to world-systems theory. Even though world-systems theory receded into the (always discernible) background of the course, it nevertheless left its mark on me. Kennedy thought it was useful to examine the world as a system within which at any given moment power structured relations. World-systems theory had a particular spatial sensibility and imagined the core as powerful industrialized countries where manufactured products were produced, the periphery as weaker countries where primary products were produced, and the semi-periphery which produced a bit of both and acted as a buffer between the other two. Power provided a sense of which direction these products flowed in. Primary products and sometimes workers moved from the periphery to the center whereas manufactured products moved from the center to the periphery.

Kennedy found this geographical imagery – of core, periphery and semi-periphery – to be a compelling way to tell the story of the globalization of law. One reason might be because Immanuel Wallerstein provided a pluralistic way of talking about the world-- ie—the politics of trying to generate a plethora of institutional possibilities. As stated by Wallerstein, *"[n]ote the hyphen in the world-system and its two subcategories, world-economies and world-empires.*"[2] He then explains the methodological implications of his choice of punctuation:

> "Putting in the hyphen was intended to underline that we are talking not about systems, economies, empires of the (whole) world, but about systems, economies, empires, that are a world (but quite possibly, and indeed usually, not encompassing the entire globe)."

Wallerstein clarified that when he incorporated Raúl Prebisch's categories of core-like production processes and peripheral production processes, one could use the language of core-peripheral zones or states, but this was a shorthand. A more accurate spatial reference is on core and peripheral *production processes* and not states as such. Core and periphery are terms that define each other – that is to say they are relational. Moreover, they are not to be understood as transcendental or ahistorical terms. The terms' meanings depend on their history and the particular process in question.[3]

Kennedy focused on the process of how law is produced. This is probably why his subject of analysis is legal thought, evidenced through writings of eminent jurists. The question is therefore, what legal world-system does Kennedy describe in his work?[4] One can understand his account as a story about the global production of law told through comparative legal histories and sensibilities.

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[2] IMMANUEL WALLERSTEIN, WORLD-SYSTEMS ANALYSIS: AN INTRODUCTION 16-17 (Duke Univ. Press 2004).

[3] *Id.* at 17.

[4] There is a long list of Kennedy's work through which he examines different aspects of the different eras of legal globalization. My focus is on his account of the three globalizations as was taught in his course and 2006 article.

He emphasized that the globalization of law is not a simple story where one country dominates others; Kennedy demarcates periods of history by tracing structures of transnational conceptual consensus regarding what law is. This legal consciousness was the beliefs about law shared among most of the legal elites of the core. It also diffused, adapted, changed and transformed as it moved towards, and was espoused by, the legal elites in the periphery.

One lecture in particular stands out in my mind. Kennedy was using Eric Wolf's *Europe and the People without History* to discuss the movement of commodities and labor in the nineteenth century. With great pleasure, Kennedy recounted to us the story of wheat. New technological innovations meant that wheat could be produced in the US more cheaply than in Europe. Moreover, this new technology was primarily suited to US agricultural conditions. Thus, from Wolf we learned that "American wheat sold in Europe at lower prices than the domestic product, brought a crisis in European peasant agriculture, sending a migrant stream of ruined peasants to seek new sources of livelihood in the burgeoning Americas."[5] What then follows is Wolf's sentence from which Kennedy took the time to develop into vivid imagery during his lecture: "*Ironically, many of them made the journey westward on the same ships that carried to Europe the wheat that proved their undoing.*"[6] You can see how in this excerpt one could imagine creaky old ships carrying a collection of individual stories of hope and tragedy set against the backdrop of unseen forces of human invention. These ships also carried tales of human drama interspersed with accounts of crumbling and emerging social structures.

Later on, I began my own research agenda and decided to focus on the production, distribution, and (to a lesser extent) consumption of sugar. My purpose was to tell an institutional history of international trade law. I use two of Kennedy's propositions as my principal points of inquiry. The first is that "legal institutions and ideas have a dynamic, or dialectical, or constitutive relationship to economic activity."[7] The second is that the institutions and ideas of law are also part of a plan or project to influence economic activity.[8] In Kennedy's article, the institutions and ideas of law seem to play a relatively constant formative role in shaping economic relations.

In this article, I propose to outline schematically my account of the institutional history of international trade law and bring it alongside Kennedy's account of the globalization of law. The purpose is to see how my own research may at times augment Kennedy's account and how it may draw out a different world-system and different relationships of legal production. Instead of adopting a comparative law perspective, I ask: what does the globalization of law and legal thought look like from the history of international trade law and institutions? I don't engage with the Third Globalization directly. Instead, I suggest that it may be harder than we thought to examine the Third Globalization and I propose some questions that we might ask in the future.

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[5] ERIC WOLF, EUROPE AND THE PEOPLE WITHOUT HISTORY 319 (University of California Press, 1997).

[6] *Id.*

[7] Duncan Kennedy, *Three Globalizations of Law and Legal Thought: 1850-2000 in* THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL 19 (David Trubek and Alvaro Santos eds., Cambridge Univ. Press, 2006).

[8] *Id.* at 20.

Before I continue, I will outline my research agenda and preoccupations in order to provide the context from where my questions arise.[9] My main focus is on the form of the multilateral institution – how it started as a relatively obscure legal form in the nineteenth century and rose to prominence in the twentieth century. In most of today's discussions regarding globalization, law is often treated either as an epiphenomenon of global markets or it is mostly ignored.[10] In my work I attempt to highlight how law, in this case manifested through multilateral institutions, is one element that both reflects and defines the global economy. I first read the text, structure, and preparatory works of the trade treaties within the context of political and economic discourse of the time. I then juxtapose these elements against the transnational social history of sugar production. I look at how, from roughly 1870 to the early 1980s, contestations over definitions of "free trade" and theories of socio-economic change and improvement (which we would later call "development") were central to the formation of these treaties. Indeed, in my account the main players are rarely individuals identifying themselves as lawyers, jurists, law scholars, etc. Rather, I tell a story of plantation workers, colonial governors, post-colonial state builders, national diplomats, international bureaucrats, statisticians, and economists. And thus I focus on the production processes of sugar in order try to determine how law turned sugar from a humble plant into a global commodity.

Comparative law's premise is that law traverses across national and regional boundaries. As such, it has a concept of sovereignty, which first has to theorize what is meant by boundaries – and then it may address how those boundaries are porous to law. International trade law never cared too much about sovereignty. Its premise is that the world is (and should be) an interconnected world; law either blocks or enhances global integration.

From an international trade law perspective, I didn't find the characterization of each era to be different from a comparative law perspective. During the time of Classical Legal Thought, the "global" was imagined to be interconnected domestic spheres; the scale of analysis was transnational. Law emerged from national legal experts, and then international institutions pushed that law across and through states. During the time of the Social, the scale of analysis was global with a focus on international institutions. Many states adopted policies which wanted to create socially stable welfare states in a liberal international economic system that avoided protectionism (which John Ruggie would call "embedded liberalism"[11]). The role of the international institution was to coordinate domestic policies in a way that avoided war and depression. Law came from the knowledge of social scientists and was employed to serve some notion of society. The Third Globalization, which is the current moment, is a legal consciousness that is an "*unsynthesized coexistence of transformed elements of Classical Legal Thought with transformed elements of the social*".[12] Today, jurists deploy a plethora of methodologies and are able to argue both in Classical

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[9] MICHAEL FAKHRI, SUGAR AND THE MAKING OF INTERNATIONAL TRADE LAW (Cambridge Univ.ersity Press, 2014).

[10] Robert Howse, *The End of the Globalization Debate: A Review Essay*, 121 HARV. L. REV. 1528 (2008).

[11] John G. Ruggie, *International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order* 36 INT'L ORGANIZATIONS 379 (1982).

[12] Kennedy, *supra* note 7, at 63.

Legal Thought and Social terms; neoformalism and a fixation on procedure stands in place of reconstruction.[13]

One exercise in line with Kennedy's project would be to trace how Classical Legal Thought and the Social are rearticulated and deployed in the contemporary global legal language. Instead, I choose a different perspective from which to tell a story of the globalization of law and legal thought. By focusing agricultural commodities and international trade law, I see a different periodization. As discussed further below, Classical Legal Thought spans from 1850 to 1914, much like it does from Kennedy's perspective. In Kennedy's account, the Social spans from 1900 to 1968. From the perspective of international trade law, the Social may be thought to be from around 1914 to somewhere around 1980. This means that the advent of the EC, NAFTA, and WTO may be situated within a more recent history than we thought. Since they are more part of our present than our past, this also means that it is more difficult to determine what larger trend of legal thought these institutions were a part of.

II. Classical Legal Thought from the Perspective of International Trade Law

If we think about modern trade law as defined primarily through international institutions regulating the production and distribution of goods, the International Convention Relative to Bounties on Sugar of 1902 (the "Brussels Sugar Convention") established one of the earliest multilateral legal institutions. By this, I mean that the Brussels Sugar Convention created an international organization with some sort of a permanent executive/administrative body (the Permanent Commission), a body of experts that generated some form of technical knowledge, rules of procedure, and a system of textual interpretation and dispute resolution. One early scholar of international organizations goes so far as to consider the Brussels Convention as "the first [agreement] to give an international committee power to dictate policy."[14]

The Brussels Sugar Convention and its Permanent Commission was not treated by its contemporaries as something that was legal in form (which I'll explain in some detail below). The idea of a multilateral legal institution would not become a central idea in legal thought until the time of *the Social*. Yet, as an exception that defined the rule, this treaty and its ensuing institution still buttress the notion that Classical Legal Thought globalized during the long nineteenth century.

The main function of the treaty was to disallow the domestic subsidization of sugar for the purpose of export. It enforced this rule by allowing importing countries to levy countervailing duties against subsidized sugar. One purpose and effect was to maintain British imperial power over the West Indies, and ensure that raw cane sugar from colonies reached European industries and consumers in the metropole. The other purpose was to ensure sugar beet producers in continental Europe had access to the largest sugar consuming market, which at the time was the UK.

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[13] *See* ANDREW LANG, WORLD TRADE LAW AFTER NEOLIBERALISM: RE-IMAGINING THE GLOBAL ECONOMIC ORDER (Oxford Univ. Press 2011) (for an account of international trade law's turn to process and a practice of "balancing" competing interests).

[14] LINDEN A. MANDER, FOUNDATIONS OF MODERN WORLD SOCIETY (Stanford Univ. Press, 1941).

The Sugar Treaty negotiators and delegates also worked to ensure that the international trade institution would not take on a legalistic character. To them, the sugar treaty was simply an effective way of coordinating national tariff and bounty systems in a way to ensure subsidies would be phased out. Indeed, international lawyers were mostly silent on the matter. The journals that defined the practice of international law made no mention of the 1902 Brussels Sugar Convention.[15] This suggests that this was not a treaty that international lawyers of the time thought worth examining. The reason was that international lawyers of the early twentieth century who followed debates regarding "free trade" and "protectionism" considered the issue of tariffs, subsidies, and dumping to be a question of national economic policy and thus a comparative law question.[16] The first, and one of the rare times, that "*droit commercial international*", appears in the pages of the journal it is defined as:

> " [T]he commercial acts of traders; terrestrial, marine and life insurance; crashes, collisions and wrecks; shipping carriage contracts; general or sea-risk loans; seafarers; benefits; letters of exchange; bankruptcy; issues which arise from the immediate news of the day; all of which are particularly lackluster and come from the program of the international commercial law congress in Antwerp and Brussels, and the Institute of International Law, etc."[17]

In other words, international commercial law was not within the purview of public international law as such. Instead of public international law's grand questions of sovereignty and war, international commercial law was concerned with the more mundane private legal instruments of transnational commercial transactions and shipping. The Brussels Convention was an anomaly for its time, defying the categories of public international law and private commercial law as a multilateral treaty amongst states whose purpose was to alter domestic laws regarding domestic sugar production and export – all in order to regulate the global price of sugar. This functional and pragmatic legal style mirrors one the most popular contemporary styles of international economic law.[18]

And yet, this very contemporary legal form of the multilateral institution still made some sense in the *langue* of Classical Legal Thought. The debate was about the definition of free trade and over who had the correct definition of free trade; no one took the position of an anti-free trader. The question was whether government subsidies created an "unnatural" price of sugar in the free

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[15] *See generally* MARTII KOSKENNIEMI, THE GENTLE CIVILIZER OF NATIONS: THE RISE AND FALL OF INTERNATIONAL LAW 1870-1960 11-166 (2001) (To Koskenniemi, international law as a profession began in 1868 with the publication of the *Revue de droit international et de législation comparée* – the first international law journal).

[16] L.D., Book review of *Le procés du libre exchange en Angleterre* by Daniel Crick and *Protection in France* by H.O. Meredith (1904) t. 6, 2eme serie, Revue de droit international et de législation comparée 318 [first time "protectionnisme" and "exchange-libre" appear in the index] [translation by author]; Daniel Crick, Book review of *Protection in the United States* by A. Maurice Low & *Protection in France* by H.O. Meredith (1905) t. 7, 2eme serie, Revue de droit international et de législation comparée 253; D. Warnotte, Book Review of *Free Trade* by the Right Honourable Lord Avebury (1905) t. 7, 2eme serie, Revue de droit international et de législation comparée 611.

[17] P. Pradier-Fodéreé, "Le Congres de droit international Sud-Américain et les traités de Montevideo" (1889) t. 21, 1ere serie, Revue de droit international et de législation comparée 217 at 231. See also H. La Fontaine, "Histoire sommaire et chronologique des arbitrages internationaux (1794-1900)" (1902) t. 4, 2eme serie Revue de droit international et de législation comparée 349.

[18] David Kennedy, *The International Style in Postwar Law and Policy*, 1 UTAH L. REV. 7 (1994).

market – were countervailing duties levied by governments against subsidized sugar re-establishing formal equality between sugar producers or was it unwarranted (political) state action within the (economic) free market? Again, international jurists did not consider this treaty to be a legal instrument worth mentioning and the diplomats using the treaty did not want it to become legalistic. This reaffirms the fact that contract law and commercial law i.e. domestic and international private law was the privileged legal field of the time. To one of the few jurists to examine the multilateral institution the new institution was described as an expression of sovereign will.[19] This was much like how contracts were thought to be the result of individual will and negotiation (one of Classical Legal Thought's defining structures).

III. THE SOCIAL FROM THE PERSPECTIVE OF INTERNATIONAL TRADE LAW

Kennedy's periodization of the Social spans from around 1900 to around 1968.[20] During this time, public international law focused on international institutions. International economic law focused on autarchy, bilateralism, blocs, IMF, World Bank, and the GATT.

However, the Social's periodization and how it pervaded international economic institutions looks different when viewed from the perspective of international trade law. Or more specifically, it looks different when we take into account the history of the international regulation of agricultural commodities. Many policy-makers and economists in both the center and periphery from around 1914 to around the early 1980s, thought that the production of and distribution of commodities should be rationally organized by experts and trade negotiators in such a way that stabilized their price.[21] The debate was then over determining which were the appropriate laws and institutions to ensure stability. Indeed, many of the US, Canada, and EU's current agricultural laws and policies (with their high tariffs, subsidies and marketing boards) have their origins during the time of the Social.

This line of thinking was most popular within the Economic and Financial Section of the League of Nations and would continue its popularity after the Second World War – especially since it was an idea espoused by John Maynard Keynes. The International Trade Organization (ITO) regulated international agricultural commodities by making significant provision for international commodity agreements (ICAs). When the ITO failed to come into being, internationally trade law was functionally differentiated amongst different trade institutions. Developed and developing countries would use GATT to negotiate their interests in the international regulation of trade in manufactured products and UNCTAD and ICAs for agricultural products. This also meant that GATT's purpose was to maintain domestic and international stability in industry, whereas UNCTAD and ICA's purpose was to ensure domestic and international stability in agriculture. ICAs had some degree of independence from the other trade institutions, but they were also somewhat connected to them through doctrine and institutional affiliation. For now, I will leave out the account of the complicated relationship between UNCTAD and ICAs within the context of the New International Economic Order.

The death of ICAs as an idea can be traced to around the early/mid 1980s. This was a time when world commodity politics was in flux. It was also the time of the rise of neoliberal ideas. As such,

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[19] JOHN WESTLAKE, INTERNATIONAL LAW PART I: PEACE 309-311 (1st ed., Cambridge Univ. Press 1904).

[20] Kennedy, *supra* note 7, at 19.

[21] One notable exception were those diplomats and experts associated with the US Department of State.

after mid/early 1980s, all states turned to trying to create international trade rules for agriculture through the GATT marking a shift away from attempts to rationally stabilize global commodity prices and a turn away from the Social.

As such, commodity stabilization was a central concern of international trade law from approximately 1914 to the early/mid 1980s. Of course, the legal form of commodity stabilization arrangement was the subject of huge debates. Many scholars of today wrote at the time on commodity price stabilization. For example, Stiglitz co-authored a monograph on the theory commodity price stabilization.[22] B.S. Chimni published the last legal treatise on the matter.[23] A very young David Kennedy and Phillipe Sands also weighed in.[24] Economists, lawyers, and diplomats fervidly debated the following points: Should we create buffer stocks to regulate the price of commodities or develop a global quota system, or both? Should buffer stocks be controlled by an international organization or should they be controlled by states and coordinated through an international organization? Should agricultural commodities be regulated by a series of ICAs loosely held together by certain principles developed through practice or should there be a legally binding umbrella agreement dictating the principles of all international commodity agreements?

ICAs gained a lot of popularity in the 1960s and 1970s when they were thought of as part of a response to import substitution industrialization (ISI) policies of the 1950s and 1960s. One major criticism of ISI policies was that they ignored the potential benefits of using international trade to socio-economically develop countries and communities. Others criticized the increased inequality that ISI created between traditional rural sectors and emerging urban manufacturing sectors. These criticisms, along with external shocks such as industrialized countries de-linking from gold and adopting floating currencies, the sudden rise in the price of commodities, and the OPEC-driven oil price spike, changed countries' development policies in the late 1960s and 1970s. More and more advisors argued that developing countries should stimulate commodity export whilst attempting to diversify exports. Raúl Prebisch and the Economic Commission for Latin America (ECLA) who were ISI's more famous advocates in the 1950s and 1960s, would become more critical of ISI policies in the mid-1960s and 1970s (especially when Prebsich was Secretary-General of UNCTAD).

This would lead developing countries, ECLA, and development economists to shift their development prescriptions towards the more export-oriented or "outward looking" development policies which married international trade policies with domestic industrialization and diversification. This would also maintain modernization theory assumptions that informed ISI policies. Also, like ISI, these outward looking policies assumed that the national economy was "an enormous cycle of inputs and outputs".[25] The fundamental difference was that now the market was thought to be *global*.

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[22] DAVID M.G. NEWBERRY & JOSEPH E. STIGLITZ, THE THEORY OF COMMODITY PRICE STABILIZATION (Oxford Univ. Press 1981).

[23] B.S. CHIMNI, INTERNATIONAL COMMODITY AGREEMENTS: A LEGAL STUDY (1987).

[24] David Kennedy, *On the Cartel Bogey,* 1 THE FLETCHER FORUM 232 (1977); Philippe Sands, *The Law and Organization of International Commodity Agreements,* 57 BRIT. Y.B. INT'L L. 386 (1986).

[25] David Kennedy, *The 'Rule of Law', Political Choices, and Development Common Sense*, *in* THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL 98 (David Trubek & Alvardo Santos eds., Cambridge Univ. Press 2006).

This new development theory was manifested through a variety of different policies. Export promotion policies attempted to encourage the export of goods produced through ISI policies, export substitution policies sought to shift resources out of protected sectors, and primary-export development policies aimed to exploit the rise in world commodity prices. It was during this outward looking moment that ICAs would play a prominent role in development policies. Countries that had significant agricultural sectors would look to ICAs to stabilize (if not ensure high) world commodity prices.

Both developed and developing countries had agricultural sectors and thus turned to ICAs. This would adhere to the logic of embedded liberalism since it would be a multilateral instrument intended to ensure some domestic economic growth and social stability. Developing countries, additionally, often depended on a small number of agricultural commodities which disproportionately exposed them to fluctuating world prices. Thus, developing countries quite acutely needed stable commodity prices to maintain domestic social stability. But developing countries also wanted to change their economic structure; they wanted ICAs in order to increase capital flows into the economy in the short-term in order provide some time and resources to subsidize industrial capacities. Hence, developing countries would also participate in GATT to ensure that their development needs were addressed so that when they had the ability to competitively export manufactured goods they would have access to Western markets and reduce their dependence on primary commodities.

IV. THE THIRD GLOBALIZATION FROM THE PERSPECTIVE OF INTERNATIONAL TRADE LAW

Duncan Kennedy delineates the Third Globalization starting from 1945 to around 2000. In his article, and during his lectures, he emphasizes that his choice of the year 2000 was a little arbitrary and an attempt to create some historical distance from when he wrote his article. He is aware of the limitations of trying to place one's own time within a broader historical narrative. What makes Kennedy's account of the three globalizations of legal thought so attractive is that while it is a description of a world, it is not an account that claims to be the only description. When scholars describe world-systems, they are debating over different delineations of both space and time. There are undoubtedly multiple overlapping periods of Classical Legal Thought, the Social, and the Third Globalization depending on what field of law or geographical point one examines the globalization of legal consciousness. For example, Amy Cohen has recently read Kennedy's "Three Globalizations" alongside accounts of global food regimes. Cohen follows Kennedy's comparative perspective and temporal periodization and instead plays with the notion of scale in order to conclude that the contemporary moment is legally and politically unclear.[26] Cohen implies, as I do, that we are in more of a moment of transition than a time with some discernible, global language. That means that the global legal consciousness of the last several decades of unsynthesized elements of Classical Legal Thought and the Social may be indicative of the fact that the structures of a dominant legal language are not shared on a global scale and are still a matter of significant debate.

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[26] Amy J. Cohen, *The Law and Political Economy of Contemporary Food: Some Reflections on the Local and the Small*, 78(1) LAW AND CONTEMPORARY PROBLEMS 101 (2015).

To return to my temporal argument – if the end of the Social from the perspective of international trade law was around the early/mid 1980s, then we might ask: did the Third Globalization begin soon after the Social and are we in the middle of the Third Globalization, or is this just beginning? Was the ubiquitous reach of neoliberalism and structural adjustment expressed in the forms of the EC, NAFTA, and later the WTO the defining beginning of the Third Globalization or was it an (exceptional) moment of transition between the Second and Third Globalization? Do the 1980s, 1990s, and early 2000s appear as an amalgam of the Classical Legal Thought and the Social because legal actors were (and maybe still are) in the process of synthesizing a new global legal consciousness? Trade law scholars and officials spent a lot of time and energy from 1999 to the mid/late-2000s discussing the WTO's "legitimacy crisis".[27] If 1980-2000 was a transition, this so-called crisis may have marked the beginning of the Third Globalization. Regardless of when we mark the beginning the Third Globalization, other legal forms rose in prominence because of the WTO's legitimacy crisis. There is now a complicated web of bilateral and regional preferential trade agreements that are arguably more prominent than the WTO. What do these preferential trade agreements tell us about where are the centers and peripheries of the Third Globalization?

Different periodizations lead us to assess what is at stake in variant terms. The Third Globalization may not be as procedural and eclectic as we thought. By treating the 1980s, 1990s and early 2000s as a period of unsynthesized transition, and if we delineate the beginning of the Third Globalization closer to the present starting somewhere between 1999 and 2008, we might instead imagine the current moment as a time of constructing a new language rather than the articulation of an already existing one. We must therefore continue to examine which institutions and ideas, over the past several decades, defined the process of global legal diffusion. How were the center, semi-periphery, and periphery legally constructed, contested, and negotiated? What and where are the Third Globalization's center, semi-periphery, and periphery?[28] In a sense, we need to find the contemporary equivalents of the ships carrying wheat and workers back and forth across the ocean.

[27] Michael Fakhri, *Reconstruing WTO Legitimacy Debates* 2(1) NOTRE DAME J. INT'L & COMPARATIVE L. 64 (2011).

[28] *cf.* Akbar Rasulov, *Central Asia and the Globalization of the Contemporary Legal Consciousness* 25 LAW AND CRITIQUE 163 (2014).