The institutionalisation of free trade and empire: a study of the 1902 Brussels Convention

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The 1902 Brussels Convention, which discouraged sugar-production subsidies through countervailing duties, created what was arguably the first modern multilateral trade institution. This treaty not only defined the concept of free trade but also reconfigured the political structure of the British Empire. Thus we see how free trade was interlaced with imperialism.

INTRODUCTION

A sudden drop in the price of sugar in the late 19th century led to a reconfiguration of the British Empire and innovations in the institutional landscape of international law. Plummeting sugar prices disrupted the world market since sugar producers could no longer cover their basic costs and many faced closure. In the British West Indies, because the islands' societies and economies depended on sugar, the potential collapse of the sugar industry threatened to destabilise British control over the islands.[1] Sugar cane producers in the British West Indies thought the price-drop was caused by the subsidisation

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1 Although different regional delineations are sometimes used, such as the West Indies or the Caribbean, I tend to refer to the 'British West Indies' since that is often how they were referenced in British political thought of the time. For two excellent regional, historical overviews see G Heuman, 'The British West Indies', in A Porter (ed.), *The Oxford History of the British Empire: The Nineteenth Century* (Oxford UP, 1999) 471; B Brereton, 'Recent Developments in the Historiography of the Post-Emancipation Anglophone Caribbean', in J De Barros, A Diptee & DV Trotman (eds), *Beyond Fragmentation: Perspectives on Caribbean History* (Markus Weiner Publishers, 2006) 187.

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of sugar beet production in Continental Europe. The matter was resolved with the conclusion of the 1902 Brussels Convention Relative to Bounties on Sugar (the Brussels Convention).[2] This treaty discouraged governments from subsidising sugar production by allowing countries to impose countervailing duties against subsidised (or 'bounty fed') sugar from any country regardless of whether the sugar originated from a non-signatory country. The treaty thus created an incentive for signatory and non-signatory countries to do away with subsidies if they wanted access to the UK—the largest sugar consuming market in the world.[3]

The Brussels Convention constituted what was, arguably, the first modern multilateral trade institution.[4] The story of its conclusion illuminates the somewhat contradictory character of efforts to institutionalise the principle of free trade, which also brings to the fore the complex, and sometimes intimate, relationship between the promotion of the free trade agenda and the furtherance of imperial rule. In tracing that story, I want to direct attention towards three things. First, I want to suggest that the development of the regime of free trade in sugar was not, as it might be supposed, founded upon an opposition to colonial rule (and the trade privileges that ensued), but informed by a concern to sustain the political and economic integrity of the (sugar-producing) colonies. Imperialism and free trade, in other words, were not set in opposition to one another. Second, I want to highlight how the parameters of the debate surrounding the institutionalisation of the sugar regime were concerned not

2 International Convention Relative to Bounties on Sugar, signed at Brussels, 5 March 1902, Cd. 1535, 191 Parry 56 (Brussels Convention). The original signatories were Great Britain, Germany, Austria-Hungary (as well as Austria and Hungary in their individual capacities), Belgium, Spain, France, Italy, the Netherlands and Sweden. Russia was present at the original negotiations but did not join until 1908. Peru joined in 1904.

3 The treaty in effect came to an end in 1912–13 when the UK refused to renew its membership. Great Britain refused to sign a 17 March 1912 protocol to the Convention and declared that it would withdraw from the Convention as of 1 September 1913. See 'Despatches to His Majesty's Minister at Brussels Respecting the Signature and Ratification of the International Sugar Union' Cd. 6146 (1912); 'Correspondence Relating to the Withdrawal of His Majesty's Government from the Brussels Convention' Cd. 6325 (1912); 'Correspondence Relating to the Withdrawal of His Majesty's Government from the Brussels Convention' Cd. 6877 (1913).

4 The 1860 Cobden–Chevalier Treaty is often credited as one of the earliest free trade treaties. But this treaty was a bilateral agreement between the UK and France and did not establish any sort of institution. The Permanent Court of Arbitration (PCA) created by the 1899 and 1907 Hague Peace Conferences was the other international institution of the time with significant legal and political power. Even though today the PCA occasionally administers investment treaty arbitrations, it usually does so under the rules set out by a particular investment treaty. Moreover, its historical antecedents in the 19th century emerged out of the desire to prevent war and enable peace rather than encourage commerce. N Ando, 'Permanent Court of Arbitration', in R Wolfrum (ed.), *The Max Planck Encyclopedia of Public International Law* (Oxford UP, 2008), available at http://www.mpepil.com (last visited 10 January 2014).

so much with the question of whether or not to have free trade, but rather as to the particular kind of free trade to be preferred. What constituted free trade, and how it might relate to the maintenance of subsidies or other stabilising measures, was a point on which there were significant differences of opinion. Third, I argue that the treaty not only re-organised the sugar trade itself—privileging, marginalising and excluding various transnational sugar interests—but intervened much more directly in the political economy of the British Empire, reconfiguring the relationship between the metropole and the colony, breaking it apart and re-forming it in new ways.

THE BRUSSELS SUGAR CONVENTION

The Brussels Convention of 1902 was remarkable in several respects. It created a multilateral institution that was distinctive both in virtue of its explicitly multilateral character and in its ambition to regulate the entire global market in the production and trade of a particular product (sugar).[5] Its overt purpose was to equalise the conditions of competition between beet and cane sugar from various different countries and, more generally, to promote the consumption of sugar. It was directed, in particular, towards the abolition of the system of subsidies (bounties) that had long underpinned European continental beet sugar production,[6] and sought to establish in its place, a regime of free trade that would regulate, whether directly or indirectly, all parts of the world market. Member states undertook to suppress all direct or indirect bounties upon the production or export of sugar for the duration of the Convention (Art. I), and limit the imposition of surtaxes upon imported sugar (Art. III). It required states to ensure 'continuous supervision, both by day and night' of sugar refineries and factories by state revenue officers for the purpose of guarding 'against the surreptitious removal of sugar' (Art. II). Such revenue officers should have 'the right of entry into all parts of the factories' (Art. II). They also undertook either to prohibit, or to impose countervailing duties on, all imported, bounty-fed sugar (Art. IV, also known as the 'penal clause'), and to provide tariff inducements to those exporting countries that did not subsidise their

5 Whereas the 1815 Central Commission for Navigation on the Rhine or the 1885 General Act of the Berlin Conference on West Africa were treaties that governed trade through the negotiation of territorial access and rights.

6 GB Hagelberg, 'International Sugar Agreements, 1864-1977', 109 *FO Licht's International Sugar Report* (1977) 5. For an excellent summary of the various bounty systems see PG Chalmin, 'The Important Trends in Sugar Diplomacy Before 1914', in B Albert & A Graves (eds), *Crisis and Change in the International Sugar Economy 1860-1914* (ISC Press, 1984) 12–14. For more detail see N Deerr, *The History of Sugar*, vol. 2 (Chapman & Hall, 1950) 501–08; HC Prinsen Geerlings, *The World's Cane Sugar Industry Past and Present* (Norman Rodger, 1912) 21–35.

production. No differentiation, furthermore, was to be made between types of sugar, whether cane or beet, and all contracting states would benefit from most favoured nation status (Art. V). The one exception recognised in the Convention was for those countries which produced sugar but did not yet export (Switzerland, Italy and Sweden). For those states, the provisions relating to bounties did not apply.

If in terms of its ambition it represented a novel initiative, it also brought into being an institution (sometimes referred to as the 'Sugar Union'), and a mode of governance, that was quite unique. The Convention gave rise to the establishment of a 'Permanent Commission' (Art. VII) that was responsible not merely for overseeing the admission of new parties (Art. IX), or for resolving disputes between contracting parties, but for operating a system of surveillance,[7] to which end it (along with the Permanent Bureau) employed innovations in the use of statistics.[8] The Permanent Commission was empowered to collect an array of information both as regards the legal regulation of production and trade, but also, and more significantly, information relating to the industrial output of sugar from factories and refineries as to the level of bounties and as to the quantity of sugar exported.[9] This pointed to the complexities of its role in the regulation of the sugar market. In one direction, its work was concerned with the supervision of domestic regulation—evaluating, for example, whether the Peruvian legislative framework was in conformity with the requirements of the Convention for purposes of its admission in 1904. In another, however, it was also concerned with the far more complex issue of determining when the production of sugar might be said to have been subsidised, and of evaluating the level of such subsidy for the purposes of applying countervailing duties: at what point did a surtax amount to a bounty? Since the regime differentiated between exporting and non-exporting states, the Commission was also required to monitor all exports in a general sense so as to ensure that the privileges of being a non-exporting state were not being abused (Art. VI). Perhaps most remarkably, however, it was also required to collect information (and make determinations) in respect of non-states parties, in order to ensure that their bounty-fed sugar, if imported, would be

7 Cf. M Foucault, *Security, Territory, Population: Lectures at the Collège de France 1977-1978* (Picador, 2009) 104–05.

8 MR Moreno Fraginals, 'Caribbean Plantations and the European Sugar Beet Industry', in H Ahlfeld (ed.), *Sugar: Essays to Mark the 125th Anniversary of F.O. Licht* (FO Licht, 1989) 19, 23; G Bruhns, 'F.O. Licht and the Development of Sugar Statistics' (English summary of 'Zur Geschichte der Firma F.O. Licht und der Zuckerstatistic'), in Ahlfeld (ed.) (1989) 1.

9 Prinsen Geerlings (1912) 378–80.

the subject of special duties (Art. VII). Only sugar produced locally for non-European markets would escape the terms of the Convention.

The degree of executive power[10] that the Permanent Commission exercised over the signatory states was unprecedented,[11] and for many this was a point of considerable concern. British MPs, for example, opposed the Brussels Convention on the grounds that the Commission exercised too much autonomous decision-making power over national sugar production in a manner that infringed national sovereignty.[12] Russia too initially[13] refused to sign the Brussels Convention on the grounds that it conceded too much authority to the Commission merely by allowing it to determine the existence of a bounty.[14] Others, however, viewed such powers to be a point of strength. Indeed, for the few scholars of international organisations in the early 20th century the Permanent Commission was taken as a possible exemplar for other international institutions.[15] For most, however, it was the technical, or pragmatic, character of the Brussels Convention that stood out.[16] Even if the language of sovereignty remained important for international jurists,[17] it was a language

10 N Politis, 'L'organisation de l'Union internationale des sucres', 2 *Revue de science et de Législation Financières* (1904) 1.

11 LS Woolf, *International Government* (Fabian Society, 1916) 156.

12 See, e.g., HC Deb 17 February 1903, vol. 118, cols 59–105; HC Deb 28 July 1903, vol. 126, cols. 587–627; HC Deb 29 July 1903, vol. 126, cols 759–807; HC Deb 5 August 1903, vol. 126, cols 1653–709; HC Deb 23 February 1904, vol. 130, cols 730–31; HC Deb 2 March 1904, vol. 130, cols 1545–84; HC Deb 14 February 1905, vol. 141, cols 108–41; HC Deb 28 February 1905, vol. 141, cols 1494–551; HC Deb 6 March 1905, vol. 142, col. 410.

13 It later joined in 1907.

14 Each year, the Russian government determined the amount of sugar necessary for home consumption, allowing for sugar surpluses to be exported and taxed at a lower rate than domestic sugar. US Senate Committee on Finance, *Proceedings of the Conference on the Question of Bounties Held At Brussels Jun 7 to 25, 1898* (Blue Book Commercial No. 6, 1898) Procès Verbal of the First and Fifth Sitting; Protocol Respecting the Accession of Russia to the Sugar Convention on March 5, 1902, and the Additional Act of August 28, 1907, 19 December 1907, 206 Parry 56, BTS 12 (1908) Cd. 3968 (entered into force 31 March 1908). See also 'Correspondence Respecting the Adhesion of Russia to the Brussels Sugar Convention of March 5, 1902' Cd. 3877 (1908).

15 PS Reinsch, *Public International Unions* (World Peace Foundation, 1911) 50–51; FB Sayre, *Experiments in International Administration* (Harper & Brothers, 1919) 15–16.

16 Politis (1904) 1; A André, 'La convention sucrière de bruxelles du 5 Mars 1902 et sa Commission permanente', 19 *Revue générale de droit international public* (1912) 665.

17 Politis (1904); André (1912); W Kaufmann, *Welt-Zuckerindustrie und Internationales und Koloniales Recht* (Franz Siemenroth, 1904) (my general understanding of this German text is indebted to a précis by Jason Tashea). Some were also concerned that countervailing duties, which differentiated between, and punished, states, were not legally compatible with the most favoured nation principle, which was based on treating all states equally. L-E Visser, 'La clause de 'la nation la plus favorisée' dans les traits de commerce (deuxième article)', 4 *Revue de droit international et de législation comparée* (1902) 159,

which seemed to have limited relevance given the economic, rather than political, nature of the regime.[18] When invited to comment upon the political implications of the Convention, for example, one member of the German Reichstag exclaimed:

> In answer to the question raised—as to why we should allow the foreigner to interfere in German tariff legislation—he is not interfering with ours any more than we are with his; every Tariff and Commercial Treaty binds both parties, and cannot be looked upon as undue interference of a third Party.[19]

Such an intuition also extended to the role of the Permanent Commission itself. In one of the few extensive legal studies, it was noted that when the Commission was engaged with a dispute between two parties it was not acting as a governing authority of the Sugar Union, but as an *ad hoc* arbitration court established by the agreement of the litigants.[20] This, of course, had a certain resonance given the formal limitation of the powers of the Commission to 'findings and investigations' (Art. VII), but it was equally clear, in practice, that the Commission was expected to do a good deal more than confine itself to questions of fact-finding or ad hoc deliberation. Its general role, for example, was to determine what constituted a 'notable proportion' of sugar in analogous products such as biscuits,[21] or when a surtax constituted enough of an 'advantage' as to warrant being treated as a bounty. And such determinations, when made, were frequently taken as 'general rules' applicable to all state parties, the content of which, on occasion, might be the subject of appeals.[22]

At first blush, it might seem that the regime of free trade envisaged by the Convention would be incompatible with the existing framework of imperial

165–76; S Hornbeck, 'The Most Favored-Nation Clause', 3 *American Journal of International Law* (1909) 619, 640–45.

18 D Kennedy, 'The International Style in Postwar Law and Policy', 1 *Utah Law Review* (1994) 7, 59; JH Jackson, *Sovereignty, the WTO and Changing Fundamentals of International Law* (Cambridge UP, 2006). See also A Lang, *World Trade Law After Neoliberalism*: *Reimagining the Global Economic Order* (Oxford UP, 2011) 343.

19 Quoted in 'Enclosure to No. 70, Memorandum on Debate in Reichstag on the Abolition of Sugar Bounties' Cd. 1013 (1902) 58, 59.

20 Politis (1904) 7.

21 'Further Findings of the Permanent Commission Established Under Article VII of the Sugar Convention of March 5, 1902 and Further Reports of the British Delegate' Cd. 2094 (1904) 26.

22 'Commercial No. 1, Further Findings of the Permanent Commission Established Under the Sugar Convention of March 5, 1902, Report of the British Delegate and Appeal of His Majesty's Government Against Certain of Those Findings' Cd. 2349 (1905) 3.

rule insofar as the latter continued to be marked by preferential trade arrangements between the metropole and the colony which would have the effect of undermining the overall objective by insulating the 'internal' traffic of sugar between parts of an imperial polity from the broader regime. As I hope to show, however, the free trade agenda developed in the Brussels Convention was not only conceived as a way of sustaining imperial rule in certain parts of the world but ultimately reconfigured the structure of (particularly British) imperial rule in important ways.

Before turning to the history of the Convention itself, however, two more general points should be made as regards this relationship between free trade and imperial rule. In the first place, whilst advocates of free trade in the 19th century were often understood to be 'anti-imperial', for the most part the agenda was a more modest one, finding expression in an opposition to colonial *expansion* (as opposed to colonial *rule* per se) coupled with advocacy for imperial reform.[23] JA Hobson, for example, who was one of the most prominent critics of imperialism at the time,[24] argued only against further imperial expansion on the grounds that it contravened principles of free trade,[25] advocating in relation to the existing Empire the creation of an imperial federation of self-governing colonies.[26] Free trade and Empire, in that sense, were not conceived as categorically opposed.[27]

23 B Porter, *Critics of Empire: British Radicals and the Imperial Challenge* (IB Tauris, 2008) [1968]; M Taylor, 'Imperium et libertas? Rethinking the radical critique of imperialism during the nineteenth century', 19 *Journal of Imperial and Commonwealth History* (1991) 1; M Matikkala, *Empire and Imperial Ambition: Liberty, Englishness and Anti-Imperialism in Late-Victorian Britain* (IB Tauris, 2011).

24 JA Hobson, *Imperialism: A Study* (James Nisbet & Co., 1902).

25 Ibid 22, 112; JA Hobson, 'The Approaching Abandonment of Free Trade', 71 *The Fortnightly Review* (1902) 434. Hobson's thinking about the relationship between imperialism and free trade was complex and would change over time, see PJ Cain, 'J.A. Hobson, Cobdenism, and the Radical Theory of Economic Imperialism, 1898-1914', 31 *The Economic History Review* (1978) 565.

26 Hobson, *Imperialism* (1902) 74, 179, 245, 251, 347–76.

27 See further J Gallagher & R Robinson, 'The Imperialism of Free Trade', 6 *The Economic History Review* (1953) 1. See also B Semmel, *The Rise of Free Trade Imperialism: Classical Political Economy and the Empire of Free Trade and Imperialism 1750-1850* (Cambridge UP, 1970); WR Louis (ed.), *Imperialism: The Robinson and Gallagher Controversy* (New Viewpoints, 1976). For contemporary manifestations of the debate see, e.g., WR Louis, 'Introduction', in RW Winks (ed.), *The Oxford History of the British Empire: Historiography* (Oxford UP, 1999) 1, 38–41; *contra* A Howe, 'Free trade and global order: the rise and fall of a Victorian vision', in D Bell (ed.), *Victorian Visions of Global Order: Empire and International Relations in Nineteenth-Century Political Thought* (Cambridge UP, 2007) 26; D Bell, *The Idea of Greater Britain: Empire and the Future of World Order, 1860-1900* (Princeton UP, 2007).

In the second place, it was also clear that there were several ways in which the structure of imperial rule could be organised to respond to different conceptions of trade. In the case of the British Empire, for example, four different models presented themselves, each of which prescribed a conception of Empire tied to a particular trade policy. First, there was the idea of a free trade empire, favoured by Gladstone's Liberal Party, which would comprise self-governing colonies setting their own tariffs only for the purpose of raising revenue; the objective would be to create a system of uniform tariffs for goods and do away with differential tariffs based on place of origin. Secondly, there was the idea of an imperial customs union premised upon the colonies agreeing to a common revenue-only imperial tariff with the aim of increasing a sense of imperial political integration. This was popular with some members of the Conservative Party but did not gain much traction. Third, was the idea of an imperial *Zollverein* with free trade within the British Empire but allowing for high, protective duties against foreign goods. Chamberlain championed this idea along with various imperialist and fair trade organisations. Finally, there was the model of imperial preferences involving the UK granting the colonies certain preferences for imperial goods but imposing protectionist duties upon foreign goods. This idea arose only after other models of empire more consistent with free trade principles were ruled out, and after 1902, came to inform Chamberlain's 'tariff reform' campaign.[28] The sugar regime did much to shape that policy.

THE 1884 SUGAR CRISIS AND THE POLITICAL ECONOMY OF SUGAR

In order to understand why the Brussels Convention arose and how it changed the sugar trade and the British Empire, we must turn back several decades from its inception. From 1861 to 1902, European sugar diplomacy went from 'failure to failure' through eleven conferences and two multilateral treaties.[29] The negotiations were spurred by the rise of beet sugar production in the 1850s and were carried through by the sugar crises of the 1880s. Sometime between 1881 and 1883 beet sugar production levels in the world surpassed cane sugar production for the first time.[30] This coincided with an influx of surplus sugar beet,

28 A Howe, *Free Trade and Liberal England 1846-1946* (Clarendon Press, 1997) 213–16.

29 Chalmin (1984) 14. See also DP Myers, *Manual of Collections of Treaties and of Collections Relating to Treaties* (Cambridge UP, 1922) 475; GA Pigman, 'Hegemony and Trade Liberalization Policy: Britain and the Brussels Convention of 1902', 23 *Review of International Studies* (1997) 185.

30 JH Galloway, *The Sugar Cane Industry: An Historical Geography from its Origins to 1914* (Cambridge UP, 1989) 132; Chalmin (1984) 12; CY Shephard, 'The Sugar Industry of the British West Indies and

mostly from Germany and Austria-Hungary, being dumped into the British market causing a significant drop in sugar prices in London in 1884–85.[31]

The UK was the financial centre of the world's sugar trade and home to the largest number of consumers. As such, sugar prices in London had a global effect. There was not, however, a world sugar market as such. Rather, there were a number of more-or-less distinct regional markets. Even though the European market was by far the largest and most internationally influential, it could be distinguished from markets elsewhere.[32] The USA protected its domestic sugar imposing high tariffs along with duty-free exceptions upon sugar from its colonies in Hawaii, Puerto Rico and the Philippines, and lower tariffs for sugar from Cuba. It would only indirectly influence Europe's treaties and would not enter into multilateral sugar agreements until after the collapse of the Brussels Convention.[33] Asian countries and territories, with the exception of British India and Dutch Java, produced sugar mostly for domestic consumption and would not directly enter European multilateral agreements until the 1930s.[34]

The 1884 sugar crisis had been brewing since the mid-19th century partly because of continental European sugar policies. Austria-Hungary and Germany had adopted a novel, complex system of bounties, duties and domestic taxes that shielded local industry from foreign competition and stimulated local industry. It was a system where domestic consumers paid an excise tax on domestic sugar, which was returned to the sugar producers according to the amount of sugar that they exported. Sugar producers were also encouraged to invest in new technologies that increased the extractable sugar content of beet. By the 1870s, this bounty system and new technology made Austro-Hungarian and German sugar the cheapest on the world market, and the policies they had put in place were later emulated by France in 1884. This led to a 'bounty war' primarily between France and Germany as they competed for access to consumer markets in the USA and the UK. It also resulted in an

British Guiana with Special Reference to Trinidad', 5 *Economic Geography* (1992) 149, 151; Deerr (1950) 490–91.

31 The price of sugar went down by approximately 50 per cent from 1872 to 1884–85. See Deerr (1950) 503–5; Galloway (1989) 238–39; Chalmin (1990), 23–24.

32 PG Chalmin, *The Making of a Sugar Giant: Tate and Lyle, 1859-1989* (Routledge, 1990) 16–17.

33 M Fakhri, 'The 1937 International Sugar Agreement: Neo-Colonial Cuba and Economic Aspects of the League of Nations', 24 *Leiden Journal of International Law* (2011) 89.

34 Galloway (1989) 197–217.

increasing proportion of citizens' excise taxes being used to subsidise sugar for the purpose of export. This strained national treasuries, while European consumers paid an ever-increasing amount for sugar.[35]

Sugar consumers throughout Europe were frustrated to see British consumers have access to sugar at two to three times below the price that they were required to pay, and demanded lower sugar prices in turn. Consumers were further angered because the European bounty system benefited British confectioners to the disadvantage of European consumers. The national politics of sugar, however, were always complex. In France, for example, where Napoleonic ideas of agricultural self-sufficiency were still influential, the state had to navigate between the competing interests of the rising refiners who demanded cheap raw sugar, ardent agriculturalists who benefited from the subsidies, and colonialists whose power to challenge domestic agricultural policies was on the wane, but nevertheless sought protection of their overseas interests.[36] What impelled the desire for reform, however, was the great strain that was being placed upon government treasuries as a consequence of the maintenance of the subsidies, and a corresponding belief that European producers had enough of a technological advantage to enable the eventual abandonment of the bounty system.[37]

The dynamics in Britain were different. For decades, London had been reluctant to address or reform the bounty system despite agitation from certain parts of the Empire. The European system resulted in cheap sugar subsidised by continental taxpayers to the advantage of British consumers and confectioners. Since the British consumer benefited from the European bounty system, many politicians saw little reason to respond to colonial claims for relief. It was reasoned, furthermore, that the subsidies themselves did not offend any free trade principles. It was the potential response that was seen to be problematic—if the British government were to launch an attack on subsidies by the imposition of countervailing duties it would disrupt the free flow of cheap goods that 'free trade' otherwise ensured.

This was to change, however, following growing unrest in the British West Indies, which had been acutely affected by the sugar crisis. These colonies primarily relied on producing—that is, harvesting and processing—cane sugar for the purpose of refinement. Historically, they sold most of their sugar to refiners

35 G Martineu, *The Statistical Aspect of the Question of Sugar* (Royal Statistical Society, 1899) 7–13; MM Beeton, *The Truth about the Foreign Sugar Bounties: the Case for Abolition* (Simpkin, Marshall, Hamilton, Kent & Co., 1898) 137–40; Chalmin (1984) 11–14.

36 Fraginals, (1989) 22; RL Stein, *The French Sugar Business in the Eighteenth Century* (Louisiana State UP, 1988) 50, 88–89.

37 Martineu (1899) 7–13; Beeton (1898) 137–40.

in Great Britain who further processed the sugar for the purpose of consumption. By the latter half of the 19th century, however, West Indian planters (who were mostly white) were economically depressed and were no longer selling their sugar to the British market, but had to compete with the subsidised sugar being produced in Europe. Planters saw this system of subsidies to be the cause of the sugar depression and finally managed to persuade the British government to take up their demands in the 1880s.[38]

The proximate cause of the British government's change of mind was both economic and political. If the sugar industry failed, it was expected that London would have had to bear the cost of the increasing economic and political instability in the West Indies. According to Gerald Balfour, British President of the Board of Trade, '[w]hat is at stake in the West Indies is the fate of entire communities under the British Crown. Take away the export trade from the West Indies, and you take away from them the means of maintaining a civilised Government.'[39] Yet, the political instability in question was not simply a consequence of the (prospective) impoverishment of the planters but of the political agitation on the part of the newly emancipated black workers, and indentured workers who had recently migrated there from China and India.

In 1846, the Sugar Duties Act was passed in the UK, which led to the gradual removal of all duties on sugar and ended the protection and preference that West Indians had previously enjoyed in the UK.[40] Free trade advocates regarded this legislation to be a considerable victory. The planters, by contrast, were infuriated. Historically, there had always been tension between (predominantly white) West Indian planters, who organised themselves via the colonial legislatures, and the Crown represented by the colonial governor.[41] Now, the planters argued that allowing for duty-free slave-produced sugar from Brazil (which was perceived to cost less than free wage-labour produced sugar) would ruin West Indian economies and encourage slavery. They also pointed to the political dangers: the resulting economic distress potentially leading to violence on the part of recently emancipated slaves who would find themselves destitute as a consequence.[42] Beyond the problem of sugar itself, West Indian planters

38 See, e.g., J Cropper, *Relief of West Indian Distress: Shewing the Inefficiency of Protecting Duties on East-India Sugar and Pointing Other Modes of Certain Relief* (Ellerton & Henderson, 1823).

39 HC Deb 24 November 1902, vol 115, paras 256–57.

40 The sugar duties were completely removed in 1874. See RW Beachey, *The British West Indies Sugar Industry in the Late 19th Century* (Blackwell, 1957) 44.

41 BC Richardson, *Igniting the Caribbean's Past: Fire in British West Indian History* (University of North Carolina Press, 2004) 40.

42 See, e.g., PJ Questel, *An Appeal on Behalf of the British West Indies as affected by the Late Proposed Reduction of Duty on Foreign Sugar* (Smith, Elder & Co., 1841).

were also frustrated by the 1847–48 economic crisis in the UK that had led to the bankruptcy of several prominent West Indian merchants and banks and the abandonment of many plantations.[43]

Most of the West Indies recovered from the economic crisis by the 1860s, the one exception being Jamaica, for two different reasons.[44] Firstly, there had been a cholera epidemic in 1850 followed by a smallpox epidemic in 1852 which, when combined with a severe drought, ruined many plantations.[45] Secondly, there was also a critical labour shortage in Jamaica resulting from a large number of emancipated slaves refusing to work on plantations.[46] The UK offered West Indian sugar colonies financial support to aid in developing immigration programs, but these were effectively disrupted as a consequence of local agitation. Economic conditions in Jamaica were so dire, and workers' wages were so low relative to nearby islands, that by 1858, Baptist missionaries, citizen groups and the small number of black members of the legislature had successfully organised to keep immigrant workers to a minimum for decades by working against immigration legislation (the 1840s and 1860s being the main period of 'multiethnic immigration and experimentation' in the region). Their fear was that the influx of indentured servants would further weaken the black workers' position by reducing already low wages.[47]

Not surprisingly, the black workers' relationship with white planters was overwrought. Some Jamaican political parties (most political parties represented the interest of planters) were so infuriated by the introduction of the Sugar Duties Act in 1846 that they suggested that payment of taxes to the UK cease and that the island be annexed to the USA. Black workers, for their part, were acutely alarmed by this rumour of US annexation, fearing that slavery would be reinstated in its aftermath. The incipient unrest was so serious that in 1848 the Governor of Jamaica had to issue a proclamation explicitly denying the rumour.[48]

By October 1865, political disenfranchisement and economic adversity had led to an uprising by the black community in Morant Bay, Jamaica. Governor Eyre declared martial law and British troops were sent in. The rebellion was quelled through the burning of houses, and the flogging and execution without

43 W Look Lai, *Indentured Labor, Caribbean Sugar: Chinese and Indian Migrants to the British West Indies, 1838-1918* (Johns Hopkins UP, 1993) 10–11.

44 Beachey (1957) 40–44; Look Lai (1993) 11.

45 A Burns, *History of the British West Indies*, 2nd ed. (Allen & Unwin, 1965) 669–70.

46 Beachey (1957) 43–44, 105–11; Deerr (1950) 362–78.

47 Look Lai (1993) 18, 184–87.

48 Richardson (2004) 40, 162; Burns (1965) 653, 659.

trial of hundreds of men and women. The Members of the Jamaican House Assembly, who feared a general 'Negro uprising', passed legislation granting more power to the executive. Other islands soon followed suit. The Jamaican rebellion, and later the Confederation Riots in Barbados in 1876, shifted power in the British West Indies from the colonial legislature to the Crown represented by its governor.[49] Undoubtedly, the 1791–1804 Haitian slave revolution and independence loomed in the background of colonialist and Crown fears.

The drop in sugar prices in the 1880s exacerbated relations between colonial administrators, planters and workers. After decades of exploitation, sugar workers in the different islands responded to the economic depression by secretly burning sugar cane fields in protest (a practice which would continue until around 1902–05). Chamberlain, the Secretary of State of Colonies at the time, was not concerned for the condition of the non-white populations (who he considered as 'near savages'), but with the fact that the West Indies solely depended on sugar, and that if the industry were to collapse or go up in flames, there would be no other to compensate for the unemployed, thereby causing great political instability and financial strain for the UK.[50] He had little trust in the colonial government to keep its house in order, and largely underestimated the increasingly sophisticated, broad-based local groups agitating against local governments to improve their conditions.[51] The fires, in particular, symbolised for the London Colonial Office the possibility of a contagious political unrest that might spread across the other islands.[52]

THE EMERGENCE OF THE TREATY

Coalescing of interests in the British Empire

Starting around 1876, power dynamics within the British Empire began to change. Since the British Crown had come to rule its colonies more directly than in the past, colonial governors had more clout in London.[53] Moreover, the 1884 crisis affected the workers and plantation owners in the West Indies and the British refining and confectionary industries thereby raising the stakes of sugar in the British Empire. As such, British West Indian planters

49 Richardson (2004).

50 'From Mr. Chamberlain to Sir H.W. Norman', 5 January 1897, C. 8359 (1897) 103.

51 Richardson (2004) 123, 181–92.

52 Ibid 9, 162.

53 Beachey (1957) 43–44, 105–11; Deerr (1950) 362–78.

aligned their interests alongside the now collapsing British refining industry and started agitating for the end of the European bounty system.[54]

There were two types of sugar-refining industries in Great Britain in the 19th century. Moist sugar refiners were mostly found in Liverpool and on the River Clyde in Scotland, and used both foreign and colonial cane sugar. Loaf sugar-refiners, which constituted a smaller industry, were mostly found in London and Bristol. They preferred cane sugar from places like Java, Havana or Mauritius to the muscovado cane sugar from the West Indies because they believed that the yields would be greater. Loaf sugar refiners directly competed with the subsidised, refined beet sugar from Europe and were always the most vocal in opposition to the European bounty systems. During the decades of international sugar negotiations, it was their voice that was to carry most weight with the British government. The moist refiners, by contrast (to which most British West Indian sugar was dispatched) voiced little concern regarding European sugar bounties prior to the UK's removal of all sugar duties in 1874.[55]

By 1876, the price of continental sugar had dropped so low that West Indian sugar producers faced significant competition from beet sugar for the first time. The price of beet sugar would not be less than cane sugar until the crisis of 1883–84, but it was low enough to challenge beet sugar's market share. It was around then that colonial sugar cane growers, sugar cane-consuming industries who competed with the rising level of imported beet sugar, and those that supported the British West Indian planters, found their concerns coalescing around declining sugar prices.[56] In 1882, the National Anti-Bounty League was formed as an umbrella group representing all those who opposed European sugar bounties and supported what later became the Brussels Convention. The League's main voice was the West Indian Committee (a lobby group representing West Indian planters' interests in London), members from the sugar refining industry, and 'sugar capitalists' (those whose invested capital was at stake) who provided the League with financial assistance. The League explicitly set out in its Constitution that its purpose was to advocate for free trade not protectionism.[57]

However, for the sugar-related industries, such as jam, confectionary and biscuit manufacturers the sudden drop in sugar prices was a boon, as indeed it was for British consumers more generally. The 1890s, furthermore, had seen the

54 For discussion regarding the British sugar refining industry in the nineteenth century see Chalmin (1990) 45–67.

55 Beachey (1957) 44–50.

56 Ibid 50–53.

57 See discussion of the Anti-Bounty League below.

emergence of the now iconic British confectioners Cadbury and Rowntree that began mass-producing milk chocolate bars[58] and which gained, in the process, both wealth and power. Opposition to the Brussels Convention thus emerged, affiliating itself with what was called the 'Cobden Club', a group deriving its name from the then-deceased Richard Cobden who had led the campaign of 'free trade' to repeal the Corn Laws in the early 19th century.[59] As a group it was to have considerable political and economic strength. According to Deerr, in fact, they were such a powerful force within British politics at the time that when an international sugar treaty was signed at a conference in 1888,[60] it failed to be ratified by British Parliament largely as a consequence of the concerns that had been raised on the part of the sugar-using industries.[61]

How countervailing duties became an influential component of free trade discourse

Debates raged in London as to what caused the 1883–84 crisis and what was to be done about it. Surprisingly enough, however, the debate was not conducted in terms of the merits or otherwise of free trade, but rather as to *which* conception of free trade was to be preferred. During the latter half of the 19th century, free trade discourse had seeped through into the general British consciousness and by the 1890s, free trade had come to dominate economic thinking.[62] The unifying idea was that 'free trade' was a policy of maintaining as little government involvement as possible in the import and export of goods. Yet people differed over the politics of free trade in the sense that there was no common agreement as to what counted as illegitimate government intervention into the market. A marked divergence of opinion was notable, in particular, on the question as to whether foreign subsidisation of exports constituted a violation of the principles of 'free trade' and whether countervailing duties were

58 N Rowntree, 'History of Rowntree', available at http://www.nestle.co.uk/aboutus/nestle-history (last visited 10 January 2014); Cadbury, 'The Story', available at http://www.cadbury.co.uk/the-story (last visited 10 January 2014).

59 L Magnusson, *The Tradition of Free Trade* (Routledge, 2004) 46–49; Howe (1997) 191–229; WD Grampp, *The Manchester School of Economics* (Stanford UP, 1960).

60 Protocol Respecting the Suspension of Bounties on Sugar, with Project of Convention, 12 May 1888, 81 BFSP 668. The draft Brussels Convention (30 August 1888) that never came into effect may be found at 79 BFSP 250.

61 Deerr (1950) 506; Chalmin (1990) 41. The confectioners were also among the principal supporters of the Liberal government.

62 Beachey (1957) 54. The most ardent challenge to free trade theories and policies was organised by the 'Fair Trade' movement which peaked in the 1880s and fizzled out by the early 1890s. Not surprisingly, the Fair Trade movement also had a complicated, varied relationship with imperialism. SH Zebel, 'Fair Trade: An English Reaction to the Breakdown of the Cobden Treaty System', 12 *The Journal of Modern History* (1940) 161.

warranted against this bounty. Whilst almost everyone—West Indian planters, British refiners, British confectioners and British consumer groups—used the language of free trade to push forward their agenda, each had their own particular conception as to what this meant for the European bounty system.

As far as planters in the West Indies were concerned, the European bounty system had two deleterious effects. First, it blocked their access to the British consumer market by reducing the price of sugar and pricing them out of the market. Secondly, and additionally, it was perceived as diminishing confidence in the West Indian sugar industry's production capacity thereby slowing down the flow of capital investment from London. Without this capital, sugar planters did not think they would be able to advance technologically the colonial sugar industry and would therefore be at a consistent disadvantage in open competition.[63] As a consequence, they petitioned the British government to impose countervailing duties against the Europeans.

Historically, of course, free traders characteristically opposed countervailing duties since they were considered direct government interference in the market. In theory, the UK could have imposed countervailing duties unilaterally. This would not only have curtailed subsidisation, but would also have allowed the British government to control European production levels by adjusting their countervailing duties at any time. While this may have granted the British considerable political power, according to free trade principles it would have destabilised the sugar market by allowing production levels to be determined by the whims of government rather than the nature of supply and demand. The British government, with its ideological aversion to subsidising local industry—preferring instead to promote its trading interests—was historically set against countervailing duties. Thus, at the 1888 Sugar Conference the British scuttled the negotiations by refusing to include an allowance for a countervailing duty system on the grounds that it offended the principle of free trade.[64]

By the late 1890s, however, countervailing duties were being employed as a principle that was integral to the idea of free trade. The general economic depression in the UK and the sugar crisis in the British West Indies obviously encouraged the (now Conservative) British government to become more

63 'Correspondence Relating to the Sugar Industry in the West Indies [1894-1897]' C. 8359 (1897); 'Correspondence Relating to the Sugar Conference At Brussels 1901-1902' Cd. 940 (1902).

64 Deerr (1950) 506. As mentioned above, this was both an ideological aversion to countervailing duties and part of advancing British confectioners' interests.

enthusiastic about countervailing duties.[65] As Taussig, (one of modern free trade theory's foundational thinkers) noted during the time of the Brussels Convention, countervailing duties were now necessary because:

> the situation [of sugar bounties] was so exceptional that even a convinced free-trader might accede to this drastic mode of ending it. The bounty system was certainly a greater violation of the principle of free-trade than the prohibition or taxation of bounty-fed imports. It was well-nigh certain to topple over sooner or later from its own weight; and, the sooner it was ended, the better.[66]

Since the policy of free trade was antithetical to the exercise of state power in the market, the real question was how to eliminate the bounty system. A new mechanism, it seemed, was required in order to both keep state power at bay, and correct the market, but that mechanism would also have to deploy further acts of state intervention (whether that be in the form of a system of unilateral countervailing duties or of subsidies). In order, then, for it to be consistent with free trade principles, it would have to police or supervise the system of duties and subsidies so as to ensure that it did not have market-distorting effects. In short, a novel type of international institution would be required.

This change in the approach to free trade can be traced to the late-19th century debates between the Anti-Bounty League and the Cobden Club, the main features of which remain of interest today.[67] The argument from the Anti-Bounty League and its affiliates can be summarised as follows:[68] the problem with the bounty system was not that it reduced the price of sugar but that it distorted its

65 This is evidenced by the influential minority report in *Final Report of the Royal Commission Appointed to Inquire Into the Depression of Trade and Industry*, C. 4893 (1886); see Zebel (1940) 174–75. See also *Report of the West India Royal Commission*, C. 8655, 8656, 8657, 8669 (1898).

66 FW Taussig, 'The End of Sugar Bounties', 18 *The Quarterly Journal of Economics* (1903) 103, 133–34.

67 See, e.g., AO Sykes, 'The Questionable Case for Subsidies Regulation: A Comparative Perspective', 2 *Journal of Legal Analysis* (2010) 473; PR Krugman, M Obstfeld & MJ Melitz, *International Economics: Theory & Policy*, 9th ed. (Addison Wesley, 2012) 179–80.

68 I am drawing in this paragraph and the following two paragraphs from the following: W Smart, *The Sugar Bounties: The Case For and Against Government Interference* (William Blackwood & Sons, 1887); *Report of Proceedings at the Deputation of Members of Parliament Received by the Right Hon. A.J. Balfour, M.P. on Thursday, April 28, 1898, at the Foreign Office* (Anti-Bounty League, 1898); Beeton (1898); G Carrington, *Our West Indian Colonies: A Retrospect of the Past, a Survey of the Present, and a Plea for Justice in the Future. A Paper Read before the Royal Colonial Institute, March 8th, 1898* (Anti-Bounty League, 1899?); MM Beeton, *Twenty Years of Sugar Bounties: The Moral of the 'Policy of Inaction' as Pointed in Speeches Delivered in the Debate on the Indian Countervailing Duties Act in the House of Commons, June 15th, 1899* (Anti-Bounty League, 1899); MM Beeton, *The 'Open-Door' for British Sugar Industries in British Markets. The Case for Action, Summarised in the Speeches Delivered at the Public Meeting Held at Cannon Street Hotel, January 9, 1899, and at the Public Meeting Held at Birmingham, December 12, 1898, with Introductory Review, The Brussels Conference—And After?* (Anti-Bounty League, 1899); WPB

'natural' price. The 'natural price', furthermore, meant the price dictated by the market without any government interference. The purpose of free trade was not simply for consumers to receive goods at the cheapest price but for consumers to receive goods at the cheapest natural price. Bounties created 'unnatural' prices because they were dictated by government policy and constituted a form of protection; they disallowed sugar from outside to enter, exploited the use of national taxes to sell sugar in free trade countries, and created instability in cane sugar industries due to the fear that beet bounties might increase at any moment. Countervailing duties, therefore, compensated for this economic transgression, and served the function of restoring sugar to its natural price.

Moreover, and despite claims to the contrary, it was argued that countervailing duties did not contravene Most Favoured Nation (MFN) clauses in bilateral commercial treaties. This was because the spirit of MFN clauses concerned the question of equality. Bounties created such an unnatural disparity of competitive conditions, that they rendered MFN meaningless. Countervailing duties, in fact, were necessary in order to restore the natural state of the market before the MFN clause could apply. In order, however, for countervailing duties to have this restorative function, it was necessary for them to be regulated by some agency other than the government itself. Thus, the creation of an international institution was deemed necessary in order to monitor state action and precisely determine the amount of state subsidies and the appropriate level of countervailing duties required—a technical referee that ensured that the market ran normally in its relationship to the state.

The Anti-Bounty League considered those that supported the bounties and opposed countervailing duties to be protectionists who had misread both Adam Smith and Cobden. The League derided members of the Cobden Club for assuming that the role of government was to ensure citizens are left to be free in the market and allow competition to rule everyday life. This *laissez faire* attitude, League members argued, ignored the role that government already played through laws regarding commerce, factories, education and land. *Laissez faire*, moreover, was simply a policy of government inaction and had no obvious relationship to the principle of free trade.

This argument had much in common with the later critique of the idea of a self-regulating market elaborated by Polanyi who drew attention to the active process of commodifying land, labour and money in its formation.[69] It also had

Shepheard, 'The Most-Favoured-Nation Article', 5 *Journal of the Society of Comparative Legislation* (1902) 132.

69 K Polanyi, *The Great Transformation: The Political and Economic Origins of Our Times* (Beacon Press, 2001) [1944] 68–76.

parallels with the position adopted by some early US legal progressives and legal realists (contemporaries of the Anti-Bounty League) who provided an account of the market that outlined how the state always played a regulatory role in its relationship to the market. They showed that the state enacted the laws which determined, whether through action or inaction, how wealth and power would be distributed through the market.[70]

The Cobden Club, by contrast, argued as follows:[71] countervailing duties offended principles of free trade mainly because they demanded government intervention in the market. This was problematic because government was ill-equipped to regulate economic affairs. MFN clauses, furthermore, were a paramount concept in free trade because they ensured that all government measures apply to all goods on an equal basis, regardless of their national origin; this ensured that governments could not impose tariffs and other measures in a way that targeted goods from specific countries for political reasons and thereby destabilise the market. And so, because countervailing duties treated goods from different countries differently, the duties offended both principles of free trade and MFN clauses in commercial treaties.

The Cobden Club members also argued—much like some critics today—that establishing legally-specific definitions for economic concepts would be unworkable. Ensuring that all the different definitions were theoretically coherent was a demanding, if not impossible, objective in an international trade treaty.[72] It was, for example, extremely difficult to establish what was to be included within the definition of a bounty. Are investments in infrastructure, such as roads and railroads, bounties?[73] And if so, how would one calculate the appropriate countervailing duty?

Ideological disagreements regarding the role of the state, the role of the market, and definitions of free trade were not the only differences between those

70 See, e.g., OW Holmes, 'Privilege, Malice, and Intent', 8 *Harvard Law Review* (1894) 1; R Pound, 'Liberty of Contract', 18 *Yale Law Journal* (1909) 454; WW Cook, 'Privileges of Labor Unions in the Struggle for Life', 27 *Yale Law Journal* (1918) 779; R Hale 'Coercion and Distribution in a Supposedly Non-Coercive State', 38 *Political Science Quarterly* (1923) 470; M Cohen, 'Property and Sovereignty', 13 *Cornell Law Quarterly* (1927) 8.

71 I am drawing from the following: T Farrer, *Free Trade Versus Fair Trade*, 4th ed. (Free Trade Union, 1904) [1881]; R Johnson, *The Case against the Sugar Tax and Sugar Convention: Letters Communicated to the Press by Richard Johnson, J.P., President of the National Union of Mineral Water Manufacturers* (Barclay, 1903); EC Cooke, 'The Amended Brussels Convention', 18 *Economic Journal* (1908) 649; EC Cooke, 'Sugar and the Tariff' 17 *Economic Journal* (1907) 566; EC Cooke, 'The Brussels Convention and the West Indies' 17 *Economic Journal* (1907) 315.

72 See, e.g., DK Tarullo, 'Logic, Myth, and the International Economic Order' 26 *Harvard International Law Journal* (1985) 533; DM Driesen, 'What is Free Trade: The Real Issue Lurking Behind the Trade and Environment Debate' 41 *Virginia Journal of International Law* (2000) 279.

73 Krugman, Obstfeld & Melitz (2012) 179–80.

for and against the Sugar Treaty. The Anti-Bounty League also favoured buttressing the British Empire. They considered the West Indies to be crucial to the Empire and connected the depression in the West Indies to the depression of sugar prices, which, in turn, was the consequence of European bounties. The Cobden Club generally refuted imperialism. They discounted the economic role of the West Indies in the British Empire and assumed that the British confectioners were a more viable industry. Any depression in the West Indies, they maintained, was exaggerated and its causal relationship to the bounty system in Europe insufficiently established. Each country had such a complex and differentiated system of tariffs and duties, they reasoned, that it was not clear how to establish its relationship to the price of sugar. Moreover, argued members of the Cobden Club, if the low price of sugar was a result of foreign bounties, it was not a concern for the British government because it benefited the British consumer at the expense of foreigners. Since, in any case, it was only sustained by foreign governments at their own expense, they surmised that it would probably collapse on its own.

INSTITUTIONALISING FREE TRADE COLONIALISM

Marginalisation of the West Indies

The delegates' speeches at the opening of the Brussels Convention conference, despite their perfunctory nature, capture the political and economic conceptions that permeated the final agreement.[74] The British delegate's remarks were straight out of the pages of Anti-Bounty League pamphlets. He stated that principles of free trade demanded that products everywhere be sought at their natural market price without the artificial hindrance of bounties. When expressing his concern that unnatural interference with the natural price created uncertainty for the consumer and destroyed industries not favoured by the state, the delegate noted the depression of sugar industries in British colonies and refineries. The German justification for bounties, furthermore, showed itself to be the exception to the British rule—drawing its force from the necessity of economic policies to protect infant (but yet not mature) industries.[75] According to the German delegate, Germany was in transition to a bounty-less condition; the bounty system was only intended as a temporary measure to benefit manufactures until they could produce without government aid.

74 US Senate Committee on Finance, *Proceedings of the Conference on the Question of Bounties held at Brussels June 7 to 25, 1898* (Blue Book Commercial No. 6, 1898) Procès Verbal of the Second Sitting, 20–22.

75 A Hamilton, *Reports of the Secretary of the Treasury on the Subject of Manufactures* (US Dept of the Treasury, 1791); F List, *The National System of Political Economy*, trans. SS Lloyd (Longmans Green, 1885).

The Continental European sugar industry was, however, now mature, and governments, after nearly a century of subsidising their domestic sugar industry, needed a mechanism to give them leverage against politically powerful domestic sugar producers. The Brussels Convention, as far as he was concerned, would now ensure access to the lucrative UK sugar-consuming market in return for the cessation of subsidisation. Thus, sugar producers could be weaned off government-subsidies, and be guaranteed access to the UK market, without having to compete with sugar producers from other countries who were still subsidised by their respective governments.

If the character of this debate was to capture many themes in contemporary trade debates, it is also interesting to note what was not mentioned in the treaty text or its travaux préparatoires. The labour unrest and shortages that had so inspired the work of the Anti-Bounty League were barely given a mention. The discourse was almost entirely preoccupied with commodities and capital—it being imagined, one suspects, that in the munificence of a world free of subsidies and state support, that in net at least, everyone, everywhere would be better off.[76]

Whether or not it engaged with the most immediate of political problems, the Brussels Convention no doubt changed the politics of the imperial landscape. The treaty itself extended to all parties' colonies (Art. XI) and the Permanent Commission, for its part, decided that this meant that all colonies were allowed preferential access to the 'Mother Country'. In practice, this meant that, for example, in assessing sugar produced in Cuba and the Philippines and then refined and exported from the USA, the Permanent Commission would regard the US-granted preferential treatment to sugar from Cuba and the Philippines (all non-signatories) to be akin to a formal colonial relationship and therefore not technically a bounty at all. Trade within an empire was thus intramural and not international.[77] This had certain similarities to the way in which John Stuart Mill described England's historical relationship to the West Indies:

> Our West Indian colonies, for example, cannot be regarded as countries with a productive capital of their own . . . [but are rather] the place where England finds it convenient to carry on the production of sugar, coffee, and a few other tropical commodities. All the capital employed is English capital; almost all the industry is carried on for

76 This also parallels David Ricardo's assumption of full employment in his theory of comparative advantage: D Ricardo, *On the Principles of Political Economy and Taxation* (J Murray, 1817).

77 'Commercial No. 3, International Sugar Commission Spring Session 1905, Report of British Delegate and Correspondence' Cd. 2531 (1905) 17, 23.

> English uses; there is little production of anything except for staple commodities and these are sent to England, not to be exchanged for things exported to the colony and consumed by its inhabitants, but to be sold in England for the benefit of the proprietors there. The trade with the West Indies is hardly to be considered an external trade, but more resembles traffic between town and country.[78]

This, in effect, is the intuition of the Brussels Convention: the West Indies and the UK are regarded as politically integrated but comprising separate economic units. But the nature of this relationship was modified during treaty negotiations. In light of the British sugar colonies' persistent demand for financial support, the British delegates tried to incorporate as much flexibility as possible to allow the UK to provide financial support to the West Indies.[79] Late in the negotiations, British delegates argued that they wanted to retain the right to provide bounties to the West Indies and that the penal clause only applied to Europe. This, of course, generated surprise amongst the other delegates, and talks almost broke down.[80] Finally, however, an explicit exception was agreed and included in an annex to Art. XI relating to British (and Dutch) colonies. According to that annex:

> (A) 1. The Government of Great Britain declares that no bounty, direct or indirect, shall be granted to the sugar of the Crown Colonies during the continuance of the Convention.
>
> 2. It also declares, *as an exceptional measure*, and reserving in principle entire liberty of action as regards the fiscal relations between the United Kingdom and its Colonies and Possessions, that, during continuance of the Convention, *no preference will be granted in the United Kingdom to colonial sugar* as against sugar from the Contracting States.[81]

This was to commit the UK to two things: first, to renounce its ability to subsidise sugar from the West Indies; second, to provide preferential access to sugar arriving from the West Indies (most of the British colonies in the West Indies by this time were 'Crown Colonies'). Even though the provision is written in the language of exceptionality, it was understood that the British would have to pay a high political price to other Convention members if she

78 JS Mill, *Principles of Political Economy* (D Appleton, 1848) bk III, ch. XXV, para. 17.

79 See, e.g., 'Miscellaneous No. 5, Correspondence Relating the Sugar Bounty Conference' Cd. 1013 (1902) 19, 24.

80 Ibid 36–40.

81 Brussels Convention Art. XI (emphasis added).

granted her colonies an imperial preference. These stipulations would inevitably limit the Crown's ability to inject capital directly into the British West Indies, and left labour regulation and/or land reform as the only mechanisms through which the Crown could directly address the political, economic and social conditions in the sugar colonies. The treaty, in effect, economically disconnected the sugar colonies from the British Empire and aligned itself with anti-imperialist agendas that were committed to making colonies more economically and politically independent. It also had the effect of making it significantly more difficult for Chamberlain and the Liberal Party to install their ideal system of imperial preferences.

On the face of it, the treaty employed a theory of trade that allowed for countervailing duties, and rationalised those duties as being primarily for the benefit of the sugar colonies. For those that assumed that such a trade policy would serve to strengthen British imperial power, it represented a significant victory. Yet the treaty also marginalised the West Indies in the formalised international sugar market, by making them the exception to the exception. In effect, the treaty had a built-in disadvantage as far as the British sugar colonies were concerned. The treaty allowed for an infant industry exception for countries that produced, but did not export, sugar since they did not have to remove any of their bounties (Art. VI). Only when these countries became exporters did the bounty-removal requirements apply. This exceptional status was a privilege limited to the enumerated countries (Spain, Italy and Sweden). The exceptional sugar-producing, non-exporting countries were still allowed to invoke the penal clause thereby allowing them to subsidise domestic sugar industries and block foreign subsidised sugar through countervailing duties or import prohibition. Enumerated exceptional countries could therefore develop their domestic sugar industry until they were able internationally to compete without public financial support. In one final move to cement this arrangement, the Commission decided that it did not have the power to admit new members under the exceptional category thereby forgoing the ability of any territory covered by the treaty, such as the West Indies, from pursuing an infant industry policy.[82]

82 Protocol Relative to the Accession of Switzerland to the International Convention Concerning the Regime of Sugars of March 5, 1902, 26 June 1906, 202 Parry 79, Cd. 3301 (admitting Switzerland as a sugar-producing, non-exporting exception but not allowing it to vote; entered into force 1 September 1906). See also 'Commercial No. 1, Further Findings of the Permanent Commission Established Under the Brussels Convention of March 5, 1902, Report of the British Delegate and Appeal of His Majesty's Government Against Certain of Those Findings' Cd. 2349 (1905) 3.

The sugar trade

If the Brussels Convention changed the imperial landscape by the way in which it organised the bounty regime, it also changed the world sugar market through the way in which it shaped ideas about free trade. When the Brussels Convention institutionalised countervailing duties, it provided intellectual credence to the notion that subsidies were an unnatural intervention into the market and that countervailing duties were the necessary remedy. After 1902, within the Cobden Club and elsewhere at international free trade conferences, the Brussels Convention was held out as an exemplar of a liberal free trade agreement. It was praised, in particular, for its role in restricting the 'artificial pampering' of the European sugar industry and for combating the inflation of consumer demand through lower prices.[83] This theme, in fact, was to survive throughout the first half of the 20th century.[84]

At the time, West Indian governors, despite their *de facto* marginalisation by the treaty, maintained their faith in the treaty's potential to improve conditions in their sugar colonies throughout the span of the UK's membership.[85] Regardless of how the Brussels Convention actually impacted upon the West Indian sugar industry, many in the UK and the West Indies adamantly believed that the treaty, and the ideas it embodied, were the best means of preserving economic and political stability in the West Indies. This is evidenced by the fact that the British were trying to negotiate an early enforcement date based on the assumption that the sooner the treaty was signed, the sooner the British West Indies could benefit.[86] Colonial governors held the same beliefs, and, in 1906–07, petitioned the newly-elected Liberal British government to remain a party to the Convention.[87]

There is some evidence to suggest that the Brussels Convention might have had a positive impact upon political and economic conditions in the West Indies. Richardson notes, for example, that in Barbados, the site of the worst political protest arson, the number of sugarcane fires had dropped by April

83 R Welby et al. (eds), *Report of the Proceedings of the International Free Trade Congress, London, August, 1908* (Unwin Brothers, 1908) 120, 269, 560. The Congress, the first of its kind, was an international gathering of 'free traders' organised by the Cobden Club. The opening address was by Winston Churchill, who was at the time the President of the Board of Trade and Representative of His Majesty's Government.

84 See, e.g., WF Notz, 'International Private Agreements in the Form of Cartels, Syndicates, and Other Combinations', 28 *Journal of Political Economy* (1920) 658, 676; J Viner, *Dumping: A Problem in International Trade* (University of Chicago Press, 1923) 185–86; K Wilk, 'International Affairs: The International Sugar Régime', 33 *American Political Science Review* (1939) 860, 863.

85 'Papers Relating to the Brussels Convention' Cd. 3565 (1907).

86 'N. Lubbock & George Martineau, Memorandum on the Subject of the Date of Coming Into Force of the Proposed Convention', 24 January 1902, C.1013 (1902) ('Lubbock & Martineau') 37.

87 'Papers Relating to the Brussels Convention'.

1902 and in the rest of the region by 1905. He doubts, however, that the Brussels Convention had had enough time to have affected the islands and leaves it open as to why sugarcane fires started to decrease in 1902.[88] One reason might have been that sugar workers were increasingly organising themselves into unions and were expressing their grievances through organised labour rather than unruly fire.[89] This suggests that the Brussels Convention is to be understood as part of a broader movement towards improving conditions in the West Indies rather than an instigator of change in and of itself.

Nevertheless, the treaty was to have certain other important effects that indirectly contributed to the events that quelled social, political and economic anger, amongst which were the encouragement of investment in the sugar colonies.[90] Due to sugar's physical qualities, there was considerably advantage to it being processed near to where it was harvested before being sent to the refinery. Even though old mills that crushed sugar cane were being gradually replaced by steam driven mills, it was not until 1874 that the first central factory was constructed in the British West Indies (in St Lucia).[91] With the 1884 crisis, there was little financial confidence or political will to invest in central factories and very few were built.[92] After the crisis, in fact, many sugar producers in Jamaica sold their machinery to Cuban producers.[93] Colonial governors responded by lobbying London for the capital and legal authority necessary to establish central factories. London, however, did not support the idea until around 1897.[94]

To the West Indian planters and supporters of the agreement, signing the Brussels Convention provided the stability needed to instil confidence in the market.[95] The British Parliament granted £250,000 to cover the immediate

88 Richardson (2004) 124.

89 R Hart, 'Origin and development of the working class in the English-speaking Caribbean area 1897-1937', in M Cross & G Heuman (eds), *Labour In the Caribbean: From Emancipation to Independence* (Macmillan Caribbean, 1988) 43, 43–47.

90 Burns (1965) 706; B Taylor, 'The Brussels Sugar Convention', 190 *The North American Review* (1909) 347, 354–56.

91 Shephard (1992).

92 See, e.g., 'Sir F. Fleming to Mr Chamberlain', 6 August 1896, and 'Mr Chamberlain to Acting Governor Melville', 5 September 1896, C. 8359 (1897) 56.

93 F Moya Pons, *History of the Caribbean: Plantations, Trade and War in the Atlantic World* (Markus Wiener, 2007) 265.

94 'Letter to Treasury from Edward Wingfield', 9 November 1896, C. 8359 (1897) 100. See also Beachey (1957) 86 (Beachey mistypes 1827 instead of 1897).

95 Beachey (1957) 171; Prinsen Geerlings (1912) 209; E Castelot, 'The Brussels Sugar Conference', 12 *Economic Journal* (1902) 217; E Castelot, 'High Prices of Sugar', 15 *Economic Journal* (1905) 1041; G Martineau, 'The Brussels Sugar Convention', 14 *Economic Journal* (1904) 34; Taussig (1903).

needs of sugar planters for the year between the signing of the treaty and its coming into force, in anticipation that the West Indies would need help catching up with all the previously subsidised, industrially advanced sugar industries.[96] In places like the Leeward Islands and Jamaica, laws and policies were put forward that would encourage the building of central factories.[97] The factories that were built during this time shifted control of sugar production from planters to factory owners, and many of the resulting changes endure today, both in terms of technology as well as in the dynamics of power between estate owners, cane farmers and central factories.[98]

Yet, local conditions were not all that West Indian planters had to worry about. Global interests also shifted after the Brussels Convention. Both supporters and opponents of the treaty assumed that the treaty would benefit colonial sugar cane growers to the detriment of sugar consumers and sugar related industries; they vehemently disagreed, however, over the normative implications of this perceived benefit. What does not seem to have been anticipated was that, even though the treaty did allow for unsubsidised sugar cane to have increased access to the growing British and European appetites, it would not be to the benefit of the West Indies. Latecomers to the treaty such as Peru, alongside non-signatories such as Argentina changed their domestic system of tariffs and duties in order to gain access to the world's largest market of consumers in the UK and continental Europe.[99] Similarly, Cuba and Hawaii, which had benefited from US preferential treatment, also made headway into the expanding European market.[100]

This suggests that the Brussels Convention may well have actually hampered the development of the sugar industry in the West Indies rather than sustained it. Under the treaty, the sugar colonies no longer had the option of receiving imperial aid, nor of implementing an infant-industry economic policy. At the moment at which it came into force, the West Indies were so technologically disadvantaged when compared with the bounty-fed sugar producers, that even with the UK's injection of capital immediately before the treaty was signed, West Indian sugar producers could never match the

96 Prinsen Geerlings (1912) 209. See also 'Lubbock & Martineau' 37. To give a rough sense of what this meant, in 2005 it would have been approximately equivalent to £14,200,000: see http://www.nationalarchives.gov.uk/currency (last visited 10 January 2014).

97 'Governor Sir H.M. Jackson, Leeward Islands', 25 February 1902, Cd. 940 (1902) 37; Galloway (1989) 148.

98 Galloway (1989) 148–82.

99 Ibid 180, 188.

100 VP Timoshenko & B Swerling, *The World's Sugar: Progress and Policy* (Stanford UP, 1957) 240.

industrial efficiency of others. This meant that the Brussels Convention had the effect of 'kicking away the ladder' from under the feet of West Indian sugar producers.[101]

It is worth questioning, ultimately, why the British government agreed to the marginalisation of the West Indies in the Brussels Convention and why West Indian governors were pleased by the final results? One reason may be that it is only with hindsight that we are able to discern the treaty's economic and political effects. But also, one must not discount the government officials' shared powerful faith in free trade ideas and in the benefits of private capital that made it so much more difficult for them to assess clearly the stakes of the Brussels Convention.

Given the prominent role of the West Indies in providing the economic and political impetus to push forward the Brussels Convention, it is deeply ironic that most of the sugar consumed in the UK in its aftermath was refined beet sugar from Europe.[102] This might have been because Europe's bounty system had generated an efficient and productive sugar industry that could compete in the British market without subsidies. But it might equally have been the consumers' gastronomical preferences, regardless of price differential, that was the determining factor.[103] The British displayed a distaste for cheaper unrefined viscous brown Caribbean muscovado sugar preferring in its place, the more expensive refined granulated white European version.[104] In order for Caribbean sugar to be attractive to British consumers it had be further refined, and there were hardly any refineries in the West Indies. Moreover, by 1902, the cane sugar refining industry in the UK was practically extinct.[105] What saved the British West Indies' sugar industry was access to Canada's growing consumer market, which maintained its partiality for muscovado and benefited from preferential trade arrangements.[106]

101 H-J Chang, *Kicking Away the Ladder: Developmental Strategy in Historical Perspective* (Anthem Press, 2002).

102 Chalmin (1984) 15.

103 I do not assume that consumption patterns are simply the product of biological needs for survival or a matter of personal preference or taste. Historians remind us that consumption is the result of a complex mix of social, economic, and political conditions along with psychological and cultural forces. See F Trentmann, *The Oxford Handbook of the History of Consumption* (Oxford UP, 2012).

104 Beachey (1957) 143–44; Deerr (1950) 109–10, 528–30.

105 Beachey (1957) 172.

106 Ibid 139–40, 173–74.

CONCLUSION

If sugar was arguably central to life in the British West Indies, and the British West Indies central to the life of the British Empire, the reconfiguration of the sugar trade through the medium of the Brussels Convention was to have considerable significance for the way in which the British government subsequently organised its political and economic relations with its Crown colonies. No longer would this be a relationship determined exclusively in the corridors in Westminster, rather it would be subject to the supervision and surveillance of a 'technical' Commission commanded with the responsibility of implementing a regime of free trade.

This story highlights how the free trade regime separated the political economy of the British West Indies from that of the rest of the British Empire, disaggregating, in a general sense, production from consumption. This story also highlights how trying to organise international trade in a way that assumes that the market should be 'free' from the state has little theoretical meaning. The debate is instead about negotiating the relationship between the state and market while the international institutions' role—after political contest and compromise—is to demarcate those tenuous boundaries.