

The background of the book cover is a photograph of a busy port. In the foreground, there are stacks of intermodal containers in various colors, including blue, red, and white. In the background, several large gantry cranes are visible against a clear blue sky. The overall scene suggests global trade and logistics.

THE NEW GLOBAL TRADING ORDER

THE EVOLVING STATE
AND THE
FUTURE OF TRADE

DENNIS PATTERSON & ARI AFILALO

CAMBRIDGE

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THE NEW GLOBAL TRADING ORDER

The international institutions that have governed global trade since the end of World War II have lost their effectiveness, and global trade governance is fractured. The need for new institutions is obvious, and yet, few proposals seem to be on offer. The key to understanding the global trading order lies in uncovering the relationship between trade and the State, and how the inner constitution of Statecraft drives the architecture of the global order and requires structural changes as the State traverses successive cycles. The current trade order, focused on the liberalization of trade in goods and services and the management of related issues, is predicated on policies and practices that were the product of a global trading order of the twentieth-century modern nation-states. Today, a new form of the State – the post-modern State – is evolving. In this book, the authors propose a new trade norm – the enablement of global economic opportunity – and a new institution – the Trade Council – to overhaul the global trading order.

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The New Global Trading Order

The Evolving State and the Future of Trade

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Dennis dedicates this book to Barbara, Sarah, and Graham.

Ari dedicates it to his mother, Suzanne Afilalo, and to the memory of his father, Moshe Afilalo.

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Preface

In the winter of 2006, we published an article in the *Chicago Journal of International Law* with the title “Statecraft, Trade and the Order of States.” In that short piece, we developed an outline of the argument of this book. During the nearly two years that elapsed since completion of that article, we worked on a book-length version of the argument. As we were completing the manuscript during the spring of 2007, The Atlantic Council of the United States published a Policy Paper with the title “Transatlantic Leadership for a New Global Economy.”¹ We were pleasantly surprised to find that the authors of this paper – important personages from the academic, business, and political worlds – validated virtually every aspect of the analysis we had advanced in our article published more than a year earlier. While agreeing with our claims regarding the current state of the institutions of global trade, the solutions advanced by this august body were rather different from our own.

This book is the story of the rise and fall of the institutions of the modern global trading order (the “Bretton Woods Order”). We share the view that the current crisis in the institutions of world trade poses great dangers for global order and must be addressed with deliberate speed. We come to the table with ideas and concrete proposals. We believe that no understanding of the questions posed by global trade can be resolved without at least an in-depth understanding of the reasons these institutions did as well as they did for so long and what has rendered them ineffective. In this book, we answer both of these questions.

In addition to explaining the rise and fall of the Bretton Woods Order, we advance concrete, detailed proposals for a new institution, one that will complement the unfinished work of the WTO. This new institution – the Trade Council – will be smaller, nimbler, regional, and *ad hoc*. The need for new institutions of trade is obvious to many. What remains elusive is identifying the appropriate type and character of institution needed. We

believe that the answer to this important question lies in the nature of what we identify as “Statecraft” and its relationship to the global trading order.

This book is written for all with an interest in the politics of trade and global order. As you will see, we consider the strategic relations of states to be an integral feature of the understanding of the global trading order. This wider perspective on trade and the problem of global order makes for a richer and more complicated narrative than one usually encounters in discussions of global trade. In our view, this richer narrative yields insights not otherwise available, thereby enriching the discussion and engendering a deeper understanding of the challenges posed by trade and global order in the twenty-first century.

We wish to thank the Dean of Rutgers Camden Law School, Rayman Solomon, for his unstinting support for this project. Through measures large and small, Ray has always been a source of encouragement for this project. We could not have completed our work without his support.

The library staff at Rutgers Camden – especially Lori Rowland and Gloria Chao – have helped us with countless resource requests. Their timely and efficient work has been invaluable.

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The idea for this book was first presented at a conference on global trade at Bar Ilan University in Ramat Gan, Israel. We learned much from that initial presentation, as we did from subsequent presentations at Brooklyn Law School (thanks to Claire Kelly), Boston University School of Law (thanks to Pnina Lahav), and Columbia University Law School.

On the manuscript we have received helpful comments from Stuart Macdonald, Daniela Caruso, Jeff Dunoff, Claire Kelly, Patrick Kelly, and the participants at the Delaware Valley International Law Day and the Rutgers-Camden law faculty seminars.

We especially thank Philip Bobbitt for continuing conversation on the issues of trade and the State. We have learned much from Philip’s work and we are indebted to him for helping us see the big picture on so many issues.

John Berger, our editor at Cambridge University Press, has been a patient and very helpful friend to us. We are indebted to him.

Dennis especially thanks Barbara, Graham, and Sarah for their support as he worked on this book for what seemed an eternity. Thanks also to Iwan Davies, Head of School of Law at Swansea University, Wales, for providing a supportive environment during the final editing of the manuscript of this book.

Ari is especially indebted to Hanna Belopolsky for going beyond the call of duty in her research assistance. He is deeply grateful to Rafael Lopez-Cambil for sharing his unique insights, derived from an extraordinary life, into today's world and global markets. His love and thanks go to Inna and Maya for inspiration and empowerment.

The order of the names of the authors bears no relationship to their respective contributions to the project. In every sense of the word, this book is a collaborative effort.

Camden, New Jersey
September 2007

1 Introduction

The international institutions that have governed global trade since the end of World War II have lost their effectiveness. Global trade governance is fractured. The need for new institutions is obvious and, yet, few proposals seem to be on offer.¹ The stubborn problem of the inequality gap between the developing nations and the nations of the first world remains a centerpiece of the international agenda. Current battles over trade policy are both intense and serious, for a great deal is at stake.² The way to break out of the endless debates between the advocates of free trade and their critics is to move beyond the terms of the current discourse. To do so requires an understanding of why the current trade order was successful in fulfilling its role in international relations for as long as it did and why it is in need of a transformation to retain currency and effectiveness. This book will answer these two questions and more.

In this book, we present fresh proposals for tackling the issues presented by global trade. We argue that neither politics nor economics alone hold the key to unlocking solutions to the problems presented by global trade. Global trade is not principally a matter of economics. Though we certainly do not prescind from matters of politics and economics, we believe that *ideas* are the fundamental tools both for understanding trade and for crafting solutions to the problems of inequality and fairness that lie at the heart of the great questions of the day.

But this is not a study in political theory alone. No account of the global trading order can be adequate if concrete reform proposals do not accompany the theoretical analysis. To that end, we start with an account of the ideas that have shaped the global trading order since the eighteenth century. We use these ideas to trace the development of trade discourse through its various iterations, reaching all the way down to the level of institutions. At each turn in our analysis, we unearth connections between the politics and institutions of trade and the deeper theoretical ideas to

which the global institutions of trade give expression. In short, our argument is complete, as it starts from the abstract plane of political theory and ends with concrete institutional and normative proposals for effecting these ideas.

The first, and most important, claim we defend is that the key to understanding the global trading order lies in uncovering the relationship between trade and the State.³ A central aspect of this understanding is that the victors of war or states that otherwise dominate the strategic playing field have the opportunity to establish a trade system that accords with their Statecraft. The trade order between states is connected to a larger order of states, an order we identify as “constitutional.” The current trade order is predicated on policies and practices that were the product of a global trading order of nation-states. When the current trade order was conceived and implemented in the middle of the twentieth century, the world was comprised of nation-states. Each nation-state contained an infrastructure and a wealth of industries that were located in a place and connected to markets regulated by the states where those industries were found. For the nation-state, the nature of its Statecraft accorded with the trade system put in place at Bretton Woods, and it was in the interests of the victors of World War II to adopt such a system. This world, which comprised the material background for the institutions conceived at Bretton Woods, is not the one we live in. Yet, the policies, practices, and institutions of the global trading order are all predicated on this world. Given that the rules and institutions of trade are the product of a world that no longer exists, new norms and institutions are urgently needed. As we will show, not only does trade hang in the balance but global security as well.

In this book, we explain how the global trading order developed from the eighteenth- and nineteenth-century trade policies of mercantilism, through the twentieth-century era of comparative advantage to the present and how the structure of the trade order between states is a function of the *type* of states that comprise the trade order. We believe that the trade order of states follows the constitutional order of states, and that the states that dominate the global strategic order, whether through victory in war or otherwise, will be the powers that structure the global trading order. As the internal constitutional order of the global society of states changes, so too does the global trading order. It is the connection between the State and the trade order that is the key to understanding the global trading order.⁴ As we will show, once we understand how trade reflects the inner logic of the State, we will understand both why the trade order developed as it did and why the rules and institutions of the current global trade order are faltering and in need of replacement.

We begin our story with Francis Fukuyama's 1989 claim for "the end of history." Although criticized and often dismissed, we think Fukuyama was on to something in his claim for "the end of history." When the Berlin Wall fell in 1989, communism was vanquished. This was a "transitional end of history" moment, for after the defeat of fascism in World War II, communism was the last challenge to the supremacy of democracy as the preferred mode of State governance. What Fukuyama got right was that the century-long struggle between democracy, fascism, and communism was over. What he failed to see was that history had simply taken a turn down a new road. It is that road we intend to traverse.⁵

Fukuyama is not alone in recognizing the significance of 1989. The British diplomat Robert Cooper argues that 1989 set the stage for the emergence of a new form of the State, the "post-modern state."⁶ In *The Shield of Achilles*, Philip Bobbitt not only disputes that 1989 is the end of history, he further argues that it ushers in a new form of the State, the "market-state," which will succeed the nation-state. These two theorists of the State agree on a number of defining characteristics of the new form of State that, in their view, confirm the continuing evolution of the State.⁷ Further, their theories point to a nexus and an interplay between a particular form of the State (currently the nation-state) and its strategic foreign policy and military objectives. We think Bobbitt and Cooper are right about the State. Although each has made an enormous contribution to our basic understanding of the role and importance of strategy in the current era, they do not address the role of the global trading order. That is the story we tell in this book.

The State has two faces, an inner and an outer. The outer face of the State has two dimensions: strategy and trade. The inner face of the State also has two dimensions: law and welfare. "Statecraft" names the outer and the inner faces of the State. We shall now detail how these dimensions of the State interact with one another over time.

The outer dimension of the State is comprised of two principal features: strategy and trade. At all times, states have a strategic relationship to other states. The most basic of these are peace and war. In the twentieth century, sovereignty and balance of power were the two central attributes of the strategic relationship between states. Each of these aspects of the outer face of the State is in irreversible transition.

Trade is the second dimension of the outer face of the State. Trade ideology (e.g., mercantilism or comparative advantage) follows the constitutional order of states in that each form of the State is complemented by a particular trade regime. For instance, mercantilism is complementary to the state-nation form⁸ of the State. In the twentieth century, comparative advantage was a natural trade ideology for the era of the nation-state.

Thus, when we say that the trade order “follows” the constitutional order of states, we mean that each constitutional order of states (i.e., each iteration of the State) embraces a complementary trade ideology.

The inner dimensions of the State, law and welfare, are directly linked to the outer face of the State. Law is the means by which the State maintains domestic peace and provides an orderly structure for life and commerce. Welfare represents the State’s promise of providing for the health and well-being of the nation. “Welfare” names a wide range of policies and entitlements. In addition to support in the form of unemployment insurance, health care, and pension funding, the State also protects minority rights and provides regulation for everything from the environment to interstate commerce.

The State legitimates itself by delivering on its promises of security and welfare.⁹ In matters of security, modern nation-states delivered on the promise of security with two principal devices: sovereignty and balance of power.¹⁰ The notion of balance of power was linked to the concepts of sovereignty and of the nation as the interlocutor of the State in its quest for legitimacy. In the modern system, global order between strong sovereign powers was achieved by maintaining the balance of power between nations rather than the hegemonic domination of an empire or superpower.

With respect to welfare, there is great variation between the cradle-to-grave systems of the European nations and the leaner American approach to the social safety net. But there is more to welfare¹¹ than subsistence and aid from the State. In addition to delivering social support, the State must produce and manage a legal regime that preserves and protects the infrastructure of the nation. Thus, everything from the environment to regulation of markets and intellectual property falls within the purview of law. Most importantly, through law the State provides rights for everyone, but above all civil rights protections, especially for minorities. These protections constitute an all-important component of the “welfare” of the nation.

In matters of both strategy and welfare, the State is undergoing a process of irreversible change. Let us start with strategy. The year 1989 marks the end of the great struggle of the twentieth century between fascism, communism, and democracy. With the demise of fascism at the end of World War II, it remained for democracy to defeat communism in the struggle for the preferred model of Statecraft. The year 1989 – specifically the fall of the Berlin Wall – saw communism finally falter as a contender for global dominance. Henceforth, democracy would be the governance model for the State.

But the evolution of the State did not end with the triumph of democracy. As Cooper details, the states of the European Union have now relinquished sovereignty and embraced transparency in matters of strategy. States, Cooper argues, have now become “post-modern” in that the attributes of the State during the nation-state era are fading and being replaced with a cooperative, interloping strategy regime.¹²

Philip Bobbitt has an even stronger argument than Cooper. Bobbitt maintains that the growth of global networked terrorism and the commodification of weapons of mass destruction pose an unprecedented strategic challenge to the State. As the State can no longer deliver on its promise to protect the homeland from external attack, the strategic ground of its legitimacy is changing.¹³ This development, Bobbitt argues, portends a move from the nation-state to what he calls the “market state.” Like Cooper, Bobbitt sees the State evolving, not ending.

Now, to trade. The system of trade that was put in place after World War II reflected the inner constitutional order of the states that were its main actors. At the time, the world was subdivided into national economies coextensive with the nation-states that formed the General Agreement on Tariffs and Trade, and its successor World Trade Organization (GATT/WTO) system. The theoretical foundations of the system respected sovereignty, and left it to internal domestic policy to control the redistribution of wealth, with the essential caveat that trade restrictions should not be used for any protectionist purpose.¹⁴ However, fiscal policy, monetary policy, and welfare policies were means of domestic control over redistributive justice that, at least in theory, trade left untouched.¹⁵

At present, the world can no longer be viewed as a subdivision of national economies coextensive with nation-states and dominated by the World War II victors. Whether driven by the WTO or by other factors, the twenty-first century has inherited a multipolar economic (as well as strategic) world. Countries like Brazil, India, China, and South Korea, just to name a few, have increasingly become world economic centers. The output of the non-OECD countries has reached 45% today, and is expected to reach 60% by 2015. The old Second World, made up of communist countries, is being replaced by a new Second World made up of economies formerly classified under the global heading of “developing countries.” Lying within and alongside the first (post-modern) and second (modern) economies are pre-modern societies that lack the education, infrastructure, and other conditions to benefit from the liberalization of trade that the WTO has effected.

The ontological centerpiece of the global trading order – an aggregation of nation-states governed by the sovereignty, welfare, and balance of power principles of the twentieth century – is eroding. To be sure, the overlapping of ownership and spread of production has for quite some time made it difficult to identify a particular product as belonging to one nation versus another. But there is more to the story than these developments.

At the same time, the State has lost control over fundamental tools of wealth transfer and protection of the domestic economy unrelated to trade. Monetary policy, for example, is increasingly escaping control by states. The sheer magnitude of markets for currencies is gradually resulting in the transformation of money from a tool of exchange, which can be manipulated domestically, to a mere commodity. Public debt is increasingly held by foreign actors, and is being regulated more by the interplay of commercial interests than by domestic choices.

To the citizens of a nation, the State's promise of the delivery of welfare constitutes the most visible aspect of the evolving dynamic of states in the global order of the society of states. Part of our thesis that the nature of the State is changing is tied to changes in the way the State delivers on its promise of welfare. As we explain, we have a capacious view of the meaning of "welfare."¹⁶ Briefly, the welfare of a nation is a function of the degree to which the State maintains legal regimes for the enhancement of commerce (for example, a legal system wedded to the Rule of Law) and the protection of the nation in matters of health (e.g., public health regulations) and entitlements.¹⁷ With respect to the latter, entitlements, the State is evolving in its delivery on the promise of benefits to the nation. Succinctly, the State is moving from a regime of (legal) entitlements to one of incentives. This change is most evident in the states of the European Union and the United States but it can be seen as well in indicative planning states such as Japan. As we explain, we believe the move to a new global economic norm of enablement of global economic opportunity will manifest itself both in the domestic sphere (that is, within states) as well as globally (between states). That is to say, both domestic and international policy will reflect an increasing embrace of this new norm.

The consequences for trade of the erosion of the nation-state, the gradual decline of the model of a world subdivided into national economies, and the transformation of the means of production are manifold. We believe that the nexus between the inner face of the State and its outer trade face is gradually pushing the trade world to embrace both an institutional framework and a norm that will supplement and to a large

extent work hand-in-hand with comparative advantage: that norm is the enablement of global economic opportunity. This move, together with the multi-polarity and diffuseness of the new world, are bound to create new protectionist pressures on domestic governments, which the institutional tools of the WTO are not adequately equipped to handle. The flow of industry to the multi-polar world is bound to affect industries that are sensitive to the economies of the United States, Europe, and the other main GATT trading partners. Technology, software, services, and other functions may be serviced by the developing countries. At the same time, the huge comparative advantage enjoyed in the labor field by actors such as China (especially in light of China's increasing attention to infrastructure) will increase the pressure to protect domestic competitors in the United States and Europe through anti-dumping or safeguard measures.

Our claim is that Statecraft transforms itself through successive epochal iterations, and the victors of war (or states that otherwise dominate the international strategic order) have the opportunity in each era to devise a trade system that reflects their epochal Statecraft. The Bretton Woods Order¹⁸ accorded with the hallmarks of what we call "modern Statecraft": a State grounded in the nation, legitimating itself through the delivery of welfare, resting on an industrial base that was associated with the nation, cemented in the era of the state-nation, and trading with other, similarly situated nation-states. Like the preceding pre-modern order, however, Bretton Woods set in motion the seeds of its own demise. Bretton Woods inherited and shaped a world subdivided into national economies coextensive with the nation-states that established the trade order of GATT. The GATT/WTO opened up borders to trade in goods and services, an openness that lies at the heart of comparative advantage. This resulted in interloping ownership of production units across nation-states' borders, the correlative spread of production throughout the world, and the replacement of essentially "national" products and industries with global, diffuse goods and cross-border associations of economic interests that created a global market divided along industrial or sectoral, rather than national, lines. This transformation of patterns of economic activity was compounded by the revolution in global communications and, further, it was an important causal factor in the gradual shift of fundamental policy tools of economic regulation and wealth transfer from the domestic to the international realm.

The transformation of the international economic order of states wrought by Bretton Woods contributed to the erosion of the essential domestic attributes of Statecraft in the modern world and to the passage from the age of the welfare nation-state to the age of the "enablement of

economic opportunity.” In turn, just as the Bretton Woods system ushered in an international system that accorded with the nation-state, a new constitutional moment is needed to usher in the international commercial order of post-modern states. We do not believe that the age of comparative advantage signals the end of trade history. Rather, comparative advantage is an historically efficacious trade norm, one that made sense in the era of the nation-state but, today, is in need of supplementation or more. As the State fulfills its welfare commitment through the enablement of economic opportunity more than through the supply of entitlements, so too will the global trading order of states dedicate and legitimize itself by enabling economic opportunity across borders more than through the mere liberalization of international trade in goods and services.

We believe the modern liberal democracies that won World War II must establish a new global trading order that “embeds” the post-modern states into the evolving trade order. John Ruggie famously observed that the Bretton Woods Order embedded the modern liberal democratic ethos by facilitating trade and enlarging the global economic pie, all the while leaving it to the nation-state to redistribute resources through its sovereign welfare system. Consistent with this structure, the institutions of trade of the twentieth century were dedicated to structuring rounds of negotiation for lowering barriers to trade, adjudicating tensions between free trade principles and countervailing domestic regulation, and implementing a minimal level of harmonization in fields (such as intellectual property) affecting the free movement of goods and services. Today’s international marketplace is diffuse, globalized, and interloped. We believe a new trade organization needs to be embedded in this new marketplace, one that should be comprised of a shifting representation of states and their governments, dictated by the industries at issue (we will call this new organization the “Trade Council”), delegating responsible persons based on expertise in a given subject matter area to work jointly with industry representatives and other international organizations.

In each instance, the Trade Council will establish programs designed to engender the conditions necessary for the enablement of global economic opportunity. Consistent with diffuseness and post-modern Statecraft, the Trade Council will coordinate with a wide variety of international institutions. In addition, the Council could determine which topical areas (beyond the traditional areas that are dealt with by the WTO) are good candidates for trade linkage or other action. The norm of enablement of global economic opportunity carries in its penumbra other norms, such as anti-corruption rules, that could be more effectively enforced by cooperation between the Trade Council and, say, the

International Criminal Court or *ad hoc* tribunals. Likewise, together with central banks and other financial institutions, the Trade Council could coordinate financial and other monetary issues, taking into account industry-specific concerns that engender an international accounting system that reflects rather than resists the erosion of the nation-state.

Unlike Bretton Woods, the constitutional moment of the twenty-first century will not usher in a comprehensive regulatory framework dedicated to advancing a singular norm. Rather, it will mark a bifurcation of the international trade order into two distinct directions: the completion of the comparative advantage enterprise within the umbrella of the WTO and its negotiating rounds, and the enablement of global economic opportunity through establishment and development of new institutions. A constitutional moment (in the form of a conference akin to the Bretton Woods gathering) should formalize and mark the passage to the redirection of trade.¹⁹ At that conference, the Trade Council would be established, and a broad document endorsing the new trade norm adopted. However, rather than a comprehensive regulatory framework such as the GATT, the conference would simply establish an umbrella framework from which future regulation and projects (including rolling, *ad hoc* modest Marshall Plans of sorts to deal with pre-modern areas) will issue.

We have said that security and trade comprise the outer face of the State. But how are they related to one another? In our final chapter, we explain why – *from the point of view of strategy* – it makes sense for the nations of the first world to embrace the nascent norm of global economic opportunity and support the activities we see as important for the Trade Council. Put simply, our view is that a trade system based on the enablement of global economic opportunity will contribute to engendering and extending economic growth in the developing nations, cement a globalized society of post-modern states incorporating the emerging trading powerhouses of the twenty-first century, and thereby directly further the security interests of the developed nations. We acknowledge the debate over the facts regarding the connection between terrorism and poverty, and the question whether trade has any relevance to containing religious fundamentalist forms of Statecraft. But we think that focus is too narrow, and we explain how a wider look at the link between terrorism and global growth reveals how the enablement of global economic opportunity is in the interest of global security.

As we said at the outset of this Introduction, our goal in this book is to present a complete theory of the global trading order. While we are as enamored of theory as any academics, we believe that theory does its best work when it yields concrete proposals for change. There seems to be little doubt that the institutions of global trade are in serious trouble, or

worse.²⁰ Despite this emerging consensus, we believe it important to explain precisely why the Bretton Woods institutions – which worked so well for over a half century – have now become so ineffective. We believe that if we understand why these institutions are now obsolete we can better see what must be done to meet the challenges posed by global trade. In this book, we tell this story in all its detail and we explain how that story leads to the institutional proposals we advance.

2 The Evolving State

Thesis:

The trade order of states follows the constitutional order of states. The current form of the State – the nation-state – is in a process of transformation. To understand the contours of the next trade order of states, we need to identify the causes of the changing constitutional order of states and explore how that constitutional order will engender a new trade order of states.

Our book confronts a number of myths that have pervaded the intellectual conversation of the late twentieth and early twenty-first centuries. These myths all have a common denominator: they are grounded in the claim that history has ended and that with the rise of the modern liberal democracies, we have reached the final stage of development in government.¹ These myths evince a somewhat linear progression, akin to scientific evolution, which culminates in the survival and triumph of the modern liberal democratic model. States, the story goes, went through a succession of oppressive forms of government that did not sufficiently take into account the well-being of the people. Kings, princes, emperors, dictators, and other rulers succeeded one another until Western political thought matured enough to invent “democracy” as the embodiment of the good society. After a bloody struggle against its last, ferocious fascist and communist enemies, democracy defeated the “totalitarian” ideologies, thereby ushering in the end of history.

The “end of history” thesis is widely attributed to Francis Fukuyama, who announced it in 1989.² Of course, Fukuyama was not the first to make this bold claim. Hegel had said as much about Napoleon’s victory at Jena in 1806.³ But, unlike Hegel, Fukuyama was not declaring the triumph of the state-nation.⁴ Rather, he was declaring the end of the great struggle of

the twentieth century, which pitted democracy, fascism, and communism against one another. After the defeat of the Axis Powers in World War II, and following the fall of the Iron Curtain, Fukuyama believed that democracy had triumphed and would, henceforth, be the preferred model for State government.⁵

These political claims, which dominated the world of ideas in the late twentieth century, usually went hand-in-hand with a series of economic assumptions. Since their inception, the economies of the modern liberal democracies were what one may characterize as “tempered market economies.” The pure operation of market forces was checked by various welfare programs which, as we describe below, were of the essence of democracy. The political spectrum of Europe and the United States, the cradles of modern democracy, exhibited sharp differences with respect to the extent of government regulation of market forces. Germany’s Social-Democratic Party, France’s Socialist Party, England’s Labor, and like-minded political movements insisted on a deeper correction of unfettered economic activity to achieve redistributive results than more free-market oriented parties (which tended to be associated with the right wing of the political spectrum). Some states (such as the U.S.) believed more in tax-and-spend programs, some adhered to cradle-to-grave protection systems (e.g., Britain), and yet others (e.g., Japan) took an indicative planning approach to achieving the welfare of their people. Regardless of their political affiliation, though, all modern liberal democracies followed an economic system where the well-being of the people (which, as we discuss below, was broadly defined to include the legal apparatus associated with the regulatory state) would be protected through government regulation of the market.

The General Agreement on Tariffs and Trade (GATT) and its system of trade based on comparative advantage were assumed to be a natural complement to the market economies of the modern liberal democracies. As we will discuss in detail throughout this book, modern consciousness was grounded in the assumption that comparative advantage and free trade, working in conjunction with concessions to the domestic need to insulate certain sectors of the national economies, went hand-in-hand with the economic systems of modern liberal democracies. The ultimate global organization of government would include a tempered free market, trading with similarly situated foreign economies. This world outlook had a distinctly Western profile. The end of history, of course, coincided with the victory over the Soviet bloc and, after the defeat of fascism in World War II, the removal of communism as the second and last mortal enemy of democracy. Democracy triumphed and, in time, it would be exported to the newly liberated nations of the Eastern bloc. As to the so-called Third

World, which in time graduated to “less developed” and then to “developing” status, democracy and its political and economic apparatus would also bring about peace, prosperity, and a form of government that would last for the ages.

At the same time as history ended in the marriage of democracy and tempered economies, we have been told that the State is withering away.⁶ The evidence, it seems, is everywhere. The states of the European Union have yielded a substantial portion of their authority to Brussels. The inviolability of nation-states’ territory, which was enshrined in the United Nations’ charter, is giving way to an international system where collective intervention to prevent massive human rights violations is warranted. Networks have now replaced states as the focal point of world governance.⁷ States have ceded authority and control of sovereign territory to multinational corporations, whose tentacles span major trading centers, and who jump from one jurisdiction to the next, taking advantage of qualified industrial zones and other privileged export zones, regulatory comparative advantage, and the cheapest available resources. Global or supra-national organizations such as the World Trade Organization (WTO) and the European Commission now control policy questions once thought to be the sole province of sovereign states.

The “end of history” and “death of the State” theses, however, express only partial truths. While it is true that democracy defeated fascism and communism in the ideological struggle for political dominance, history has not ended. The State has not run its course and, like Hegel, Fukuyama was mistaken in his claim for the end of history. Far from dying, the State (and not for the first time) is in a process of change – a metamorphosis. The nature of the State is changing, in a manner that permits the transformation of the notions of control and sovereignty that we have broached.⁸ Identifying these changes, gauging their significance, and evaluating their relationship with respect to other features of the relations between states is central to understanding how and why the State continues to evolve. Once we understand how and why the State is evolving, we can explore the relationship between the State, the constitutional order of states, and the trade order.

There can be little doubt that the current form of the State, the nation-state, is undergoing serious and, likely, permanent change. We agree with those who claim that the nation-state is eroding. But we think that is the easy part of the analysis. The more difficult aspect of the analysis is imagining what the nation-state will become and what impact that will have on the global trading order. Our claim is that we are entering a new era of Statecraft. As with prior iterations of the State, the current elements of Statecraft dictate the contours of the internal constitution of

states, their external constitutional order, and the policies and regulatory regimes that are enacted in order to effectuate the constitutional theoretical apparatus. We also claim that the victors of war design external systems that accord with their inner Statecraft. In other words, Statecraft is not a uniform proposition across the globe, and the strategic victors will develop an internal system that accords with their internal Statecraft structure.

We believe that as the twenty-first century dawns, a new era of Statecraft is upon us. Our focus in this book is the implications of this Statecraft evolution for the international trading system. In this chapter, we outline the contours of Statecraft, and we introduce some of the trade and commercial concepts that will be explored in depth in subsequent chapters.

STATECRAFT

In this book, we argue that the State goes through successive iterations, and that “Statecraft,” a term which we explain below, transforms itself in each era. The story never ends and, in fact, each iteration of the State contains the seeds of its own future transformation. No doubt, changes in Statecraft always look clear in hindsight. Things look less evident when the State is in the throes of a transition from one form of Statecraft to another. This is where we think we stand now.

The conventional wisdom is that “the State” was created in the middle of the fifteenth century. Over the course of the last 500 years, the State has gone through a number of iterations. Importantly, history teaches us that states relate to one another as a society of states in the sense that states share a form or organizing structure. Since the sixteenth century, each particular form of the State comprises what we call a “constitutional order of states.” For example, the current form of the State – the nation-state – is the product of unique historical forces that have shaped the configuration of states over the course of the last century. A world comprised of nation-states is a “constitutional” order of states in the sense that the world of states is comprised of nations each exhibiting foundational, common features and shared modes of interaction. The “Statecraft” of modern states (i.e., nation-states) is those features and the modalities of interaction for the society of states.

Statecraft is a term that captures both the inner structure of the State and the constitutional “order” of states, or the international society of states. As we discuss below and in subsequent chapters, the inner and the outer faces of states interact with each other, and produce dynamic patterns of change that, over time, usher in successive epochal

manifestations of the State. Following Cooper, we have classified the last three iterations of the State as pre-modern, modern, and post-modern. Our contention is that the nature of Statecraft in each era dictates its inner constitutional order, and the transformative patterns of activity that are bound to bring about the next Statecraft epoch.

In the pre-modern era, for example, the coalescing of the state-nations of Western Europe brought about new patterns of economic activity that destroyed the economic and social orders that had prevailed in the earlier, Kingly states.⁹ The ethos of pre-modern Statecraft was to unleash the power of the State to solidify and consolidate itself. The Industrial Revolution, as we will discuss in later chapters, was a natural corollary of the pre-modern solidification process. At the same time, the abandonment of the rigidly regulated feudal system brought about a new phenomenon, economic cycles of boom and bust that left the economic actors of the state-nation vulnerable to wide swings in already unfriendly markets. Yet, the State could not concern itself with providing its subjects a safety net or a minimum level of economic security because its focus was on solidifying itself: this was its ethos. Not only did the State refrain from extending the kind of welfare protection that later became the hallmark of the modern nation-state, it responded to the challenge of solidification by enacting a wide array of regulation intended to consolidate a single, unitary market within its borders, shelter its territories from external economic and strategic threats and, in the process, ensured that there would be no welfare regulation to impede economic expansion.

The mechanics of Statecraft in the pre-modern age planted the seeds of the transformation of the State that would lead to the rise of the modern age. The first element of the modern age, the nation, was a likely outcome of the solidification process of the state-nation.¹⁰ The state-nation building process resulted in the creation of several classes dedicated to accomplishing the solidification of Statecraft in the pre-modern era. The upshot of the inner order of the State was the establishment of industries associated with the State, and the coalescence of its industrial actors into a cohesive nation. The same forces created a national working class that was later absorbed into the middle classes that shored up the modern nation-states. Ultimately, a nation was created and, when the State concluded its solidification process, its legitimating basis became the well-being of the nation on which it rested. The very classes who were purposefully left relatively unregulated during the pre-modern era became the subject of intense regulatory protection in the modern welfare state. Modern liberal democracies began to compete with marxism and fascism as alternative forms of Statecraft, thereby forcing the liberal democracies to institute strong welfare systems to compete for Statecraft dominance.