

CHINA AND GLOBAL GOVERNANCE: “ONE BELT ONE ROAD”, THE NEW DEVELOPMENT BANK AND THE CONCEPT OF MARKET STATE¹

1. INTRODUCTION

When it was announced in 2013, China’s Silk Road Economic Belt resembled one of Rorschach’s inkblots: highly suggestive but of mysterious meaning.

President Xi’s speech evoked dream and steel: the old Silk Road(s), a reminder of religious diversity, civilizational exchange, trade and archaeological riches would be brought to life by means of the construction of infrastructure connecting, by land and sea, East and West. This “One Belt, One Road” (OBOR) would then allow increased flow of capital, goods, people and ideas contributing further to the development of peaceful ties among the nations involved. China is adamant in promoting the scheme as a “win-win” cooperation deal².

The vision remained imprecise in as much as it didn’t specify at all how the goals were to be achieved beyond vague appeals to cooperation and dialogue. Would China build new institutions with the partner states? Would it sponsor a multilateral legal framework or rely on bilateral agreements? What would the content of the (legal) instruments be? Commercial Contracts? Currency and labour standards agreements? Arrangements to create OBOR-specific dispute resolution mechanisms? Visa policies and new Belt-citizenship? Security policies and organizations?

As with Rorschach’s work, the perception/imagination divide was quickly exploited³. An outpour of journalistic and academic articles aimed at discerning the true intentions of China (is it genuine or merely a disguise to access untapped markets and cheap energy sources while part of a broader “charm offensive” or even part of a new security and neighbourhood policy?) and keeping track of the latest commercial, industrial and production bilateral contracts signed between China and other Belt States (see Vilaça, 2018, for sources). Simultaneously, though, aca-

¹ The author is grateful to Gabrièle Escoffier and Walter Rech for discussions and comments on an earlier draft.

² See the speech at https://eng.yidaiyilu.gov.cn/info/iList.jsp?tm_id=139&cat_id=10060&info_id=1849.

³ Rorschach himself spent a lifetime insisting that the inkblots evaluated perception not imagination. As a contemporary biographer put it, “In keeping with his emphasis on perception over imagination, he asked people not what they *found*, or *imagined*, or *could* see, but what they *did* see. His question was ‘What is this?’ or ‘What might this be?’ With images as suggestive as his, there were things that they actually might be.” See Searls (2017, 118, emphasis in the original).

demics tried to fill in the gaps of the new Silk Road engendering many normative proposals⁴ and designs as well as tapping into new opportunities for legal practice and future predictable legal issues. This is perhaps the only reason why we are witnessing a growing number of legal writings on the subject even though there is almost no specifically legal structure yet within the OBOR⁵.

Be that as it may, the fact is that these last four years make it now much more appropriate to speak of a veritable Belt and Road *Initiative* (BRI) rather than the isolated program Silk Road Economic Belt.⁶ Indeed, and especially for anyone living in China and following its daily news, it became obvious that the discourse thickened over time and the Silk Road Economic Belt could no longer be interpreted outside of a much broader discursive, ideological and institutional foreign (and national) policy vision that aims at pushing China to the forefront of global governance⁷ as a responsible superpower (Foot, 2013).

In terms of ideas, it seems patent that it is being linked to Xi’s coined “China’s dream” as well as the broader visions of an “(Asian) community of shared destiny” (Zeng, 2016) and the promotion of the BRICS as a distinctive “diplomatic project” (Cooper, 2016, 13). Institutionally, the Silk Road Economic Belt now appears next to regional institutional design such as the Asian Infrastructure Investment Bank (AIIB), the Contingent Reserve Agreement as well as the New Development Bank (NDB) and the Silk Road Fund⁸. As a leading author on Chinese international relations and thought, William Callahan (2016, 228), has put it,

The grand strategy is ambitious: to use economic leverage to build a Sino-centric community of shared destiny in Asia, which in turn will make China a normative power that sets the rules of the game for global governance.

⁴ See Lostal & Vilaça (2015) arguing that China ought to spearhead the international protection of cultural heritage along (but not only) the Belt given intrinsic and instrumental goals (e.g. fight against terrorism; importance of heritage for tourism and other economic activities). Vilaça (*forthcoming* 2018) claims, after a comparison with the historical Colombo Plan, that China should develop a more genuine cultural exchange stance within the OBOR agenda.

⁵ On the scarcity of legal material on the OBOR, see Zeng (2016). For an edited volume on the legal aspects of the OBOR see Wolff et al. (2016). The Chinese Journal of Comparative Law has also published two special issues on the topic and a forthcoming issue is due in the Transnational Dispute Management journal.

⁶ I will use interchangeably OBOR and BRI to speak of the original Silk Road Economic Belt because they became the most commonly used formulations in Chinese official discourse.

⁷ For a more comprehensive articulation of this point including work on Chinese sources, see Callahan (2016).

⁸ See the official document “Vision and Actions on Jointly Building Silk Road Economic Belt and 21st Century Maritime Silk Road” (2015), produced by the National Development and Reform Commission, Ministry of Foreign Affairs, and Ministry of Commerce of the People’s Republic of China, with State Council authorization.

Taking these developments as a starting point, this article aims to inquire on *the nature of the contribution to global governance* made by China's OBOR and its institutional prong, namely through the creation of the BRICS New Development Bank. After all, both initiatives are said to signal China's contribution towards creating a fairer, more inclusive and more pro-Asian and Global South international order. At the same time, they also evoke China's new position as the champion of free trade as desirable and conducive to peace amongst Trump's US self-professed derivation towards economic protectionism and the UK's nationalist stance, visible from Brexit, based on closed borders.

To pursue my research question, I employ Dennis Patterson and Ari Afilalo's work (2008) on the global trade order suggesting that the Bretton Woods institutions of trade and development are inadequate to deal with a landscape in which states can no longer exercise control over their territories and economic activities as before. Thus, they argue, in the context of *market states*, the world needs a new constitutional norm for trade and a new global institution if we are to keep reaping the benefits of a global trade order. As we shall see, the validity of their predictive claim may be contested, but their conceptual work provides an interesting benchmark against which to gauge the actual transformative power of China's OBOR and its institutional prong. Incidentally, China also provides a good test case for the authors' conceptualization given that when their work *The New Global Trading Order: The Evolving State and the Future of Trade* appeared, China did not figure yet as a superpower and an active player in international law and foreign policy.

The article proceeds as follows. I start by briefly discussing China's Belt & Road Initiative and the New Development Bank stressing their main values and professed contributions to shaping global governance (section 2). Then, I distil the gist of Patterson and Afilalo's position highlighting its conceptual, empirical and normative tenets (section 3). Finally, I offer some tentative conclusions stemming from the comparative exercise (section 4).

2 CHINA'S DESIGNS FOR THE INTERNATIONAL ORDER

As already pointed out China is gradually assuming a much more active role in global affairs. Particularly evident pieces of this shift are the OBOR and the New Development Bank.

The BRI aims to create a single corridor of means of transportation, communication and circulation of goods, capital and people between the East and the West. It includes both land and sea routes and is not circumscribed to the original geographical boundaries of the Silk Road as participation is open to any state. By now the initiative has secured the involvement of more than 60 states representing around 4.4 billion people. China has pledged to contribute initially more

than USD 50 billion (with extra USD113 billion announced in the *Belt & Road Forum* earlier this year) not to mention the announced economic support of the Asian Infrastructure Investment Bank, the Silk Road Fund as, the New Development Bank well as a myriad of domestic investments. Expected economic impact of the initiative is in the range of USD 21 trillion.

The ideology of the program is quite straightforward. China believes that liberalization of trade markets and currencies along the OBOR will make everyone better off. Simultaneously, it maintains that if markets and trade are to thicken, the OBOR needs serious investment in infrastructure. This is exactly what China is doing by signing bilateral deals with different countries (especially in Central Asia and Africa) which have China building the necessary transport infrastructure in exchange for energy sources, access to markets and capital-flow and currency agreements (Vilaça, 2018).

The OBOR appears to be premised on the *classical liberal ideas* that trade (i) is good for all trading partners (because states can focus on trading whatever they have a *comparative advantage* on)⁹ and, (ii) it ensures peace¹⁰. Indeed, these are the values of the Bretton Woods liberal monetary and trade order built after WWII in the form of the IMF, the WB and the GATT¹¹. But the values are also at the centre of the Marshall Plan in which the US recognized candidly that the economic health of the world required the economic recovery of Europe; that the latter goal demanded help to rebuild lost infrastructure and productive capacity and that combined both efforts would be the strongest remedy against future wars¹².

⁹ This expression, at the core of the liberal international trade order, is often said to be coined by David Ricardo albeit it reflects thoughts voiced by other authors such as Adam Smith. For a history of the concept applied to international trade, see Maneschi (1998). For a critical account of the concept’s historical illiberal roots, see Watson (2017).

¹⁰ The link between trade and peace was at the centre of the Schuman Declaration which proved crucial to the European Union project. Original text available at https://europa.eu/european-union/about-eu/symbols/europe-day/schuman-declaration_en.

¹¹ Bordo (1993) and Kirshner (1996) provide useful historical narratives, appraisals, and future thinking of the Bretton Woods Order and its institutions.

¹² The speech reads “The remedy lies in breaking the vicious circle and restoring the confidence of the European people in the economic future of their own countries and of Europe as a whole. The manufacturer and the farmer throughout wide areas must be able and willing to exchange their products for currencies the continuing value of which is not open to question. Aside from the demoralizing effect on the world at large and the possibilities of disturbances arising as a result of the desperation of the people concerned, the consequences to the economy of the United States should be apparent to all. It is logical that the United States should do whatever it is able to do to assist in the return of normal economic health in the world, without which there can be no political stability and no assured peace.” Available at <http://marshallfoundation.org/marshall/the-marshall-plan/marshall-plan-speech/>.

Importantly, though, China claims that contrary to the established Western international legal order, its OBOR actions are not subject to any form of conditionality programs or packages of institutional and legal reform that target countries have to undergo if they want to sign up. Thus, it is patent from the available documents and communications on the OBOR that China leaves to each “partner state” the choice of how to invest domestically the future trade benefits as well as the freedom to choose its political form of government and ideology¹³. Unequivocally, this is the reason why China has officially rejected comparisons between the OBOR and the Marshall plan as the latter I still seen today in China as a project to spread liberalism and contain communism (Vilaça, 2018).

In parallel to the BRI that sees China taking the reins of acting for the good of the world, China is also engaging in a deep move of institutional design. Representative here are the creation of the Asian Infrastructure Investment Bank and the New Development Bank. Both signal the shift in the nature of China’s attempt to interact with the status quo development order. If in a first moment China looked to change existing institutions such as the World Bank, recently it has decided to create a parallel set of new institutions that seemingly will compete, complement and cooperate with the existing ones.

I shall focus on the New Development because its narrow membership and origin better attest to the role China is playing in international affairs¹⁴. The New Development Bank, with the seat in Shanghai, is a product of the BRICS branded as an alternative to the IMF and the WB¹⁵. It is essentially a financial institution devoted to financing and providing expertise to projects pursuing sustainable development¹⁶. With an initial authorized capital of USD50 billion, it is presented by its president, KV Kamath, as a “South-South cooperation initiative with a clear aspiration to stand on our own feet”. In other words, it is a bank that shall focus on the infrastructure needs of the South (exceeding trillions of dollars) while promoting sustainable development.

¹³ This is line with China’s now classical “five principles of peaceful co-existence” which emphasize state independence and sovereignty together with non-interference in domestic affairs. For historical background, see Shu (2007).

¹⁴ For the AIIB and China, see Ren (2016). See Wu (2017) for a comparison between the Asian Infrastructure Investment Bank and the Bretton Woods institutions proposing a relationship of “friendly competition”.

¹⁵ On the BRICS and the creation of the NDB, see Liu (2016) and Cooper (2016, chap. 5).

¹⁶ Whereas the BRICS have focused so far on issues of finance and liquidity, China has been pushing actively towards a BRICS FTA even if the other BRICS have opposed the idea (last in the Goa meeting) on the grounds of China using it to flood the markets threatening their economic growth.

In addition to its distinctive founding membership (the BRICS) that signals the rise of a multipolar world with a new strong regional block; the New Development Bank also challenges the existing institutions and their mindset by granting *equal voting rights* to all the five founding members who own *equal* shares. As it is well-known, both the IMF and the WB assign voting rights in proportion to the capital invested. This has been used among other things to make the reform of these institutions so as to more fully represent rising non-Western powers and developing countries virtually impossible (Wu, 2017, 14ff).

It is also important to highlight that the NDB relies on *strong country systems* to put in place and enforce the contracts/loans granted to given actors¹⁷. The bank’s “Environment and Social Framework Policy” describes country systems as follows:

“NDB promotes the use of strong country and corporate systems in the management of environment and social risks and impacts. NDB also assists in further strengthening the country systems through a variety of mechanisms in both the public and private sector, including by (i) favoring use of country systems, with adequate support, at the operational level as it also fosters greater accountability and ownership; (ii) coordinating closely with other multilateral development banks, international financial institutions and relevant centers of expertise; and (iii) maintaining a risk based and outcome focused approach through measures aligned with the core principles;” (New Development Bank, 2016, 4)

The other crucial feature of the NDB (and the Asian Infrastructure Investment Bank) *modus operandi* is the eschewal of the now infamous IMF and WB’s “conditionality” practice subjecting loans to harsh and coercive measures that often imply massive adjustments at the domestic level. These may include the rearrangement of economic activities as well as the adoption of a Washington-consensus style package of reforms typically requiring liberalizing labour markets, fiscal austerity, tax reform, privatizations and de-regulation to ensure effective access to markets by newcomers...¹⁸

If the BRI can be seen as a contribution to global governance aiming at fuelling the growth of global trade; China’s creation of the NDB with the BRICS aims to pursue other, more explicitly political goals. Notably, to (i) cater for specific South and developing countries infrastructure needs; (ii) create institutions that give due power and representation to developing, rising, or al-

¹⁷ According to the NDB’s website, in 2016, seven projects on renewable energy were approved.

¹⁸ For the original list as well as a history by the author of the “Washington Consensus” expression in which he upholds his original views but also documents the misappropriations and distortions they suffered, see Williamson (2004). For a critique of the neo-liberal focus of the agenda, see Chang & Grabel (2004).

ready major non-Western economic powers; and, (iii) all of it without imposing political and economic models upon the intervened countries.

Put shortly, China seems to be exercising a distinctive style of international leadership spearheading the construction of an international legal order that acknowledges the value and role of trade, is fairer based on state equality and recognizant of national sovereignty, cultural and civilizational differences¹⁹.

To probe deeper such a claim, I suggest we turn to the work of Patterson and Afilalo on the nature of the global trade order as being intrinsically tied to conceptions of State and Statecraft that are everchanging. I believe that their theoretical and conceptual work can help to show that the perspective one has on the *distinctiveness* and *reach* of China's contribution to global governance largely depends on deeper narratives of the norms underpinning the international trade order and the capabilities of states in the context of a world society.

3. UNDERSTANDING THE EVOLUTION OF STATECRAFT & TRADE ORDER: PATTERSON AND AFILALO'S ACCOUNT

Patterson and Afilalo argue that the State undergoes different *iterations* and that we are now leaving the nation-state towards a new form: the market state²⁰. Importantly, they add that in each iteration different conditions of *statecraft* apply. As they put it, “[s]tatecraft is a term that captures both the inner structure of the State and the constitutional ‘order’ of states, or the international society of states”²¹. Statecraft includes both an inner and an outer dimension. Internally, statecraft comprises law and welfare. Externally, it includes strategy and trade. In other words, different forms of the State enable different norms of international relations and varied exercise of domestic sovereignty.

Exemplifying, under the nation-state iteration, states upheld the norms of balance of power in strategy and *comparative advantage* in trade. At the same time, domestically, states' legitimacy depended on them being able to provide law & order as well as welfare to their citizens. Following the argument all the way, we have that the international order that was built during the nation-state iteration fully embodied these statecraft commitments. We have monetary, trade and development institutions after the Bretton Woods Conference in 1944, the General Agreement on

¹⁹ For China's official discursive emphasis on preserving cultural and civilizational differences, see Lostal & Vilaça (2015). Vilaça (2018) discusses ways in which China can (and should) deepen the content of its international normative leadership.

²⁰ Patterson & Afilalo (2008, 3). They acknowledge that the theories of the State they used come from the work of Robert Cooper and Philip Bobbitt.

²¹ *Idem*, at 14.

Tariffs and Trade (GATT), International Monetary Fund (IMF) and the World Bank (WB, originally called International Bank for Reconstruction and Development), that were premised upon the idea that the external role of the state was to expand the size of the pie available to its citizens, i.e. either through trade or through loans for development projects. However, the redistribution of the pie domestically was left entirely to the sovereign power of each state.

The challenge these authors identify, however, is that for several reasons we are now transitioning towards a new form of the state: the *market state*. In this last iteration the norms that guided inner and outer statecraft no longer apply mostly because states have lost some of their traditional sovereign powers namely in what respects the tools deployed to ensure the provision of welfare and law to their domestic constituencies. It is enough to think of the rise of transnational private lawmakers in the fields of finance, banking, production of goods and supply of services²² as well as to consider the loss of control over monetary policy (made into a commodity that can be traded and held by foreign agents) or even the ever-present threat of companies voting with their feet to avoid severe national tax burdens²³.

But we shouldn't forget either how GATT's (now the World Trade Organization) general rejection of protectionism also contributed to expose national economies to crushing pressures from countries producing at much lower costs. In practice, this philosophy of opening borders to trade and flow of capitals meant in the long-run a loss of state control over the regulation of economic activities. Patterson and Afilalo further argue that such a system already contained the seeds for its own challenge. This is because the outlawing of protectionism first interpreted in the form of tariffs and quotas was afterwards updated to include regulatory standards that could effectively restrict trade.

This was further compounded by the spread of international investment law which by means of: (i) BITs that often attract foreign direct investment by exempting them from applicable national laws on tax, labour and environmental standards; and, (ii) reliance on arbitration that ends up deciding questions of domestic policy in insulated fora; effectively compromises the capacity to adapt national policies and laws to new conditions (Stiglitz, 2007).

A second key transformation scrutinized by Patterson and Afilalo concerns the structure of international society. They argue that the Bretton Woods Order crystallized the war's victorious states' preferences and values. However, this too has changed as international society is now

²² For a survey of transnational law, see Vilaça (2017). For an in-depth critical analysis of the relationship between transnational legal authority and the sociological thesis of social functional differentiation, see Vilaça (2015).

²³ Though the tide may be changing after this June's signature by 70 states of the OECD-led Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting.

much more multipolar than before with countries such as China, India, South Korea or until recently Brazil becoming global economic centres and claiming more international relevance (Patterson & Afilalo, 2008, 5). In any case, the fact is that trade has become global and largely transcended ideological barriers (the liberal/socialist divide) as epitomized by China's accession to the WTO.

In turn this state of affairs raises another challenge to the State and the global trade order because under the superficial fact that all states engage in international trade, the benefits of such trade liberalization may not (i) be fairly distributed because institutions reflect an outdated makeup of international society;²⁴ and, (ii) trickle down to all domestic constituencies. Deploying once again the state iterations theory, the authors suggest that pre-modern states or nation-states are not guided by a concern towards the welfare of their citizens (as nation-states are) but to the “well-being of the State itself” (Patterson; Afilalo, 2008, 22). Mexico and China are given as examples of states that jumped directly from the pre-modern to the post-modern state and thus suffer equally from the lack of a social contract tying the legitimacy of the state to strong welfare provisions (Patterson; Afilalo, 2008, 138ff).

In such cases, and as the argument goes, if we insist on maintaining the status quo and keep relying on international trade laws that give the responsibility to carry out welfare redistribution to each domestic state, we will fail to integrate the excluded or pre-modern economic forces from the benefits of trade. This is because the combined effect of the volatile and fast-paced economic global landscape, the liberalization of trade and the fragmented regulatory frameworks makes low-skilled workers very vulnerable and virtually unprotected to the emergence of cheaper-producing countries or cut-throat regulatory competition. As the authors write

“[i]n today's post-modern world, comparative advantage results in the transplantation of industries to zones like the maquiladoras. This economic phenomenon is post-modern, in that it results in the movement of actual means of production more than the movement of goods or services. It occurs not at a time when the nation rose and the State legitimized itself by assuring welfare of the nation, but at a time when the post-modern diffuseness of the means of production, traditional policy tools, and the subjects of regulation, make it impossible for a state to create, apply, or achieve any meaningful results with traditional approaches to welfare (e.g., regulation)”²⁵

²⁴ See Patterson & Afilalo (2008, 103ff) for the argument that this was one of the reasons why the Doha round failed to bear fruits.

²⁵ *Idem* at 176.

Ultimately this also means that insisting on trade liberalization as such will not address these issues. The consequence of which is a threat both to the stability and growth of the trade system as well as the fuelling of discontentment in those areas that cannot take part of the current trade order because they did not go through the nation-state iteration.

We are led then to a third and final major point of Patterson and Afilalo’s account. On the one hand, they recognize the claims (largely ignored) of developing nations and the Global South towards a fairer global trade order and are concerned with the fact that market states that did not undergo the nation-state iteration are particularly lacking in terms of a robust welfare system (failing thus to protect economic well-being of their citizens and making them confidently partake in the benefits of trade). On the other hand, however, they maintain that *per se* both logics would still fail to work because they are stuck with the nation-state iteration mindset and its constitutional norms: provision of welfare through entitlements (domestically) and comparative advantage requiring no barriers to trade (internationally).

Instead they argue that the only norm compatible with the market state iteration and capable of both increasing trade benefits and their fairer redistribution (which is needed to the stability and higher performance of the trade order) is a constitutional norm upholding the “enablement of global economic opportunity”, that is, “replacing a regime of regulation with one driven by incentives” (Patterson; Afilalo, 2008, 147)²⁶. Indeed, for them, it is the only principle that can empower those citizens, with or without welfare benefits, that are equally excluded from post-modern market life for lack of opportunities. It is also the way to make sure that regulation is not sidestepped simply by moving factors of production to a more permissive jurisdiction or shifting capital and infrastructure assets across countries to avoid liabilities. In order to achieve this goal while meeting the conditions of an international society no longer composed by discrete states as its single actors, Patterson and Afilalo propose the creation of a new institution.

The Trade Council as they call it would amount to a partnership between states representing the main regions of the world, industry members and regional organizations (Patterson; Afilalo, 2008, 121ff). In addition to trade, it would also operate specific *ad hoc* Marshall plans (*idem* at 124ff) to provide both transitioning states and/or excluded populations the necessary conditions for them to access fully the market and its economic opportunities. However, the Trade Council would do that both in a more top-down way and avoiding leaving the conditions of implementation freely to states. As such, Patterson and Afilalo devise what they call “social contracts” be-

²⁶. Notice though that the argument that domestic welfare state-like policies in current times necessarily lead to a run to the bottom is criticized by Steinmo (2010) analysing welfare policies and economic performance in Sweden, Japan and the US.

tween the Trade Council, states and companies that give incentives to the latter to invest in foreign countries while committing to contribute to the local economy by means of different contractual schemes exchanging tax breaks, IP rights and subsidies for obligations to train local workforce, locate assets in the host country and so on. And this would be done along a sliding scale rewarding the companies that better protect local economy and enable economic opportunities. By the same token, in order to align incentives of developing countries, environmental protection and the need to build infrastructure, the Trade Council could negotiate loans from international banks or more innovatively grant preferential treatment in attracting foreign companies' investment subject to meeting certain environmental standards.

Whereas this may sound too familiar there are two points of this proposal that deserve to be reasserted. First, the Trade Council would decide from a *global* perspective on which areas of the globe and which projects would better be funded. Thus, there is an assumption that we need a *central platform* to ensure that all states and populations can access the benefits of trade. At the same time, this platform would gather representatives from very different constituencies providing a flexible but more integrated form of supra-national guidance. Second, and relatedly, the Trade Council would apply a *holistic vision* that integrates different social concerns (e.g. trade, need for credit, local development and the protection of environment) and devises incentives' schemes to achieve the designed goals. Yet, the latter will sidestep the State in making sure that investment and trade enable the opportunities of citizens and do not fall prey to weak domestic regulatory and enforcement apparatuses.

How can this way of framing the evolution of the world of trade, states and statecraft help us looking anew into China's initiatives?

4. CHINA'S INTERNATIONAL LEADERSHIP RELOADED

Patterson and Afilalo make big claims in their work. Whereas most authors probably agree on the erosion of state powers and the transnationalization of core regulatory powers and functions, it is hard to know what kind of evidence would be needed to show that they are right in arguing that without a new animating constitutional norm — the enabling of economic opportunity — the global trade order and its benefits may well collapse. For these two authors, this may take place because we are threatening the welfare of those that are excluded from or losers in trade practices and are not given opportunities to access them. Which of course only fuels more resentment towards our existing institutions both domestic and transnational. In turn, this will fuel both terrorism (an attack on peace and trade) and economic protectionism (a reversion to the mercantilist logic of colonial exploitation and trade wars). However, if they are right, there is

little that states can do to appease their citizens even if they decide to engage in protectionist policies (due to the transnationalization of regulation, capital, people and production).

Either way, their work and the categories they provide helps us to see some hidden aspects in China’s new stance on global governance.

First, it is striking that China’s Belt & Road Initiative endorses so clearly the prevailing liberal conception of trade and its norm of comparative advantage according to which trade increases total welfare that then is to be distributed domestically without external interference. This is hardly disrupting or revolutionary and speaks volumes about China’s highly idiosyncratic form of state capitalism, mixing liberal and socialist elements, in which it is often hard to understand what exactly is the Chinese model.²⁷ But more importantly, while China likes to emphasize that such a stance respects national sovereignty and domestic political choices in distributing trade benefits, Patterson and Afilalo’s work suggest a danger lurking beneath.

Recall that the decoupling between production, territory and regulatory authority makes it very difficult for transitioning states to avoid opening their borders to trade in conditions that are fair, sustainable and empower citizens. After all, capital, industry and investment can always move somewhere where costs are lower and many transitioning states lack official apparatuses and normative cultures that ensure trade benefits reach the hands of their citizens. The promotion of trade and comparative advantage as the leitmotifs of the OBOR would then be masking China’s entrenchment as an economic superpower by opening new markets where to dump its excess goods and its infrastructure industry overcapacity. While accessing cheap energy sources in the process (basically the reasons behind the talk of a “new scramble for Africa”). This is highlighted by the fact that even if Chinese loans are not attached to “structural adjustments” and therefore they are often heralded not to be political; they are according to Reddy (2015, 277)

“attached agreements to source inputs and labour from Chinese companies. China gets a double deal — interest payments and the biggest share of the economic activity generated by the loan.”

This problem is compounded given the model pursued so far by China to operationalize the BRI: bilateral contracts which allow much room for the exploitation of asymmetries of power. Opening the markets of goods and currencies to a colossus of production like China may well hinder the development of national industry and do little to enhance the economic op-

²⁷ Wu (2016: 110ff) proposes indeed that the “China model” is always defined in the negative, giving as example Hu Jintao’s definition as “neither the ‘old path’ (*laolu*), nor the ‘evil path’ (*xiehu*)”.

portunity of individuals of target countries. This helps to explain why in Central Asia, the OBOR and Chinese FDI is applauded by the elites and politicians (since they desperately need money) and feared and despised by the masses, sceptical of both the direct benefits to them and the structural effects in their countries' economies (Burkhanov & Chen Y-W, 2016, for the case of Kazakhstan).

Ultimately, the ugly face of the comparative advantage norm (and the mercantilist principle of the pre-modern state iteration) and its effects as elaborated by Patterson and Afilalo show here and it is no wonder that China's BRI has been met and decried as another form of neo-colonial behaviour or trade-generated path-dependencies (Vilaça 2018). In short, it brings about all the problems implicit in nation-state thinking and no solutions to the challenges of market states (because this thinking doesn't even see the former). For some authors (Bond & Garcia 2015), this is particularly intelligible if one pays attention to the fact that the BRICS are actually among the group of countries that resist the most both to policies addressing climate change and concerns for the social welfare of workers.

Second, it could be said that through the New Development Bank and in representing the Global South, China is trying to create a fairer international order that is not skewed towards the incumbent Western powers. That is, by changing the rules of the game in new institutions, China would be defusing sources of dissatisfaction with the present international trade and development institutions. This is particularly clear with the concern in assigning equal voting and shareholding rights to all member states to the NDB. But equipped with state iterations thinking, this may fail to do the trick at least on its own.

Indeed, it is unclear in which way do the BRICS, including China, represent the Global South. While it is true that they present themselves as challengers of the existing international order (as the Global South), they are both much wealthier than the average "Southern State" and China is endorsing the liberalization of trade that has been used by the Global North to create a path-dependent trajectory in Global South economies. In simpler words, there is nothing preventing powerful countries like the BRICS from using the trade liberal principles and values — comparative advantage — to cement their influence over the Global South too²⁸.

Put differently, what Patterson and Afilalo's framework raises attention to is the fact that we can't assume that just because international financial and trade institutions start working based on equal voting rights, the inequalities, path-dependencies and the other structural effects of a trade

²⁸ Cooper (2016) discusses at length the disparate composition of BRICS and the possibility they are becoming just another exclusive club of wealthy states. An edited volume by Bond & Garcia (2015) explores critically the BRICS as "sub-imperialist" and "inter-imperialist" reinforcing and further entrenching global capitalism.

order based on comparative advantage will disappear. It is revealing, as already mentioned, that the BRICS partners have so far vigorously rejected China’s proposal for a BRICS Free Trade Area. A further telling example is given by the “Contingent Reserve Arrangement”. This is a USD100 billion liquidity mechanism for the BRICS countries, established in 2014 in Fortaleza and having entered into force in 2016, that would arguably overcome the IMF conditionality requirements. Paradoxically, one reads in the founding treaty that, for each party to access more than 30% of its maximum access, there needs to be evidence of the existence of an on-track arrangement between the IMF and the Requesting Party that involves a commitment of the *IMF to provide financing to the Requesting Party based on conditionality*, and the compliance of the Requesting Party with the terms and conditions of the arrangement. (Art. 5/d/ii, emphasis added)²⁹.

And because most of the states in the Global South have pockets of their population completely excluded from the markets and the states have enduring state provision issues, an approach to trade and development that leaves the latter as well as welfare and economic opportunities in the hands of states themselves, will probably do little to empower those excluded from the markets and those highly vulnerable to the contemporary features of trade order.

Third, one could think that China’s OBOR is a sort of Marshall Plan in Patterson and Afilalo’s sense of a complementary development strategy to trade necessary to enable global economic opportunity. But here, once again, their analysis suggests that this will be insufficient in so far as it doesn’t adopt a regulation by incentives rather than performance requirements that rely on states to monitor and enforce them. The issue is China’s reliance on state sovereignty to tackle all issues internal to a given country. This may well have resulted in China especially in the last 30 years but has failed to convince in many other developing countries such as in South America and Africa where governments capture the benefits of foreign aid and development and the projects succumb to generalized corruption and weak state apparatuses.

To my mind, this contrast brings to the fore the extent to which China’s unique trajectory of: (i) taming globalization and controlling transnational normative forces (e.g. as with Internet); (ii) disciplining internally social forces and economic activities while subjecting them to the common good as defined by the Communist Party of China; and, (iii) providing legitimacy domestically by means of securing spectacular growth rather than through entitlements, can be exported and be made to work in different contexts and countries. If so, then China provides a test-case for the sort of transition from nation-state to market-state, as described by Patterson and Afilalo,

²⁹ The “Treaty for the Establishment of a BRICS Contingent Reserve Arrangement” is available at <http://www.brics.utoronto.ca/docs/140715-treaty.html>.

since it shows that the latter does not need to come with supra-national regulation of affairs and the erosion of the capabilities of states. It also questions the authors' inbuilt bias towards the liberal democracy model at the core of their global trade order as the one that can bring about a form of regulation by incentives (rather than top down command-and-control regulations) and effectively provide for the welfare (and economic opportunities) of its citizens. China's case would thus seem to prescribe more state rather than less even when it resorts to decentralized and relational forms of governance rather than legality³⁰.

Fourth, the loss of traction of the decoupling markets hypothesis in light of recent empirical developments together with the need to pursue a plurality of values (such as the protection of the environment) seems to point to the need of more integrated global governance structures and institutions. The regionalism proposed by China and the current regional institutional inflation and fragmentation may be of ambiguous value here. On the one hand, in the absence of world consensus to advance towards an institution like the Trade Council or similar, makes regional integration and the competition they trigger with existing institutions appealing and needed to dispute the biases of Western institutions. On the other hand, lack of deep regional political integration may prevent overcoming structural obstacles to a more robust trade system which in the view of Patterson and Afilalo requires empowering those excluded from it and thus has distributive consequences. Once again, it is not easy to say which model is preferable nor is this the goal of the article. But if one wants to investigate better the nature of China's novel foreign policy activism and its impact on global governance one ought then to consider the choice between regional and global institutions as well as the trade-offs they bring about, e.g. one has the feeling that a Trade Council and global trade order along the lines of Patterson and Afilalo does not have space for states as China exhibiting alternative political and economic models.

These four implications could certainly be further developed and analysed. But the point of this article was to provide an alternative vocabulary and narrative of the trade and development order that would help us to look with fresh eyes to China's display of international leadership. One does not have to endorse Patterson and Afilalo's theses but because they connect conceptual, theoretical and empirical work, they make it clear that one cannot take for granted actors' self-descriptions.

³⁰ In Dowdle's opinion (2016), China's regulatory experience and tradition is far more appropriate to deal with the current predicament since it is the only country in the world where the friction between a wealthy core and vulnerable and volatile peripheries has been playing out internally. Which in turn forced China to experiment with different regulatory logics.

China is undoubtedly displaying utopian energies that are lacking in the West concerning peace, trade and global governance. Yet, China’s grand designs are not strictly speaking a utopia that exists in full-shape ready to be discovered in the same way a *Wuling* fisherman found the Peach Blossom Spring in one of the world’s earliest examples of the genre written by Tao Qian³¹. Rather they must be imagined, built and carried out in countless actions. It is precisely because of this constructed nature of social action that China’s (or any other state) display of international normative leadership cannot be assumed or taken for granted. This is particularly important for a country that, in my own view, is combining a Marxist legacy on changing the world with an old sagehood tradition of spiritual transformation in which you follow what is natural (Angle, 2012; Davies). This article tried precisely to denaturalize China’s emphasis on trade, comparative advantage and equal voting rights as norms whose effects are linear and suggested that such a step is necessary if we are to understand deeper the nature of China’s global governance vision.

Literature:

- Angle, Stephen C.; 2005, *Sagehood: The Contemporary Significance of Neo-Confucian Philosophy*, New York: Oxford University Press
- Bond, Patrick; Garcia, Ana (eds.); 2015, *BRICS: An Anti-Capitalist Critique*, London: Pluto Press
- Bordo, Michael D.; 1993, *The Bretton Woods International Monetary System: A Historical Overview*; in: Michael D. Bordo and Barry Eichengreen (eds.), *A Retrospective on the Bretton Woods System: Lessons for International Monetary Reform*, Chicago: University of Chicago Press, pp. 3-108
- Burkhanov, Aziz; Chen, Yu-Wen; 2016, *Kazakh Perspective on China, the Chinese, and Chinese Migration*; in: *Ethnic and Racial Studies*, vol. 39, no. 2, pp. 2129-2148
- Callahan, William A.; 2016, *China’s ‘Asia Dream’: The Belt Road Initiative and the New Regional Order*; in: *Asian Journal of Comparative Politics*, vol. 1, no. 3, pp. 226-243
- Chang, Ha-Joon; Grabel, Ilene; 2004, *Reclaiming Development From The Washington Consensus*; in: *Journal of Post Keynesian Economics*, vol. 27, no. 2, pp. 273-29
- Davies, Gloria; 2016, *Knowing How To Be: The Dangers of Putting (Chinese) Thought in Action*; in: Leigh Jenco (ed.), *Chinese Thought as Global Theory: Diversifying Knowledge Production in the Social Sciences and Humanities*, Albany: State University of New York Press, pp. 29-54
- Dowdle, Michael W.; 2016, *China’s Present as the World’s Future: China and the ‘Rule of Law’ in a Post-Fordist World*; in: Leigh Jenco (ed.), *Chinese Thought as Global Theory*, Albany: State University New York Press, pp. 207-229

³¹ I used Cyril Birch’s translation available at

http://afe.easia.columbia.edu/ps/china/taoqian_peachblossom.pdf.

- National Development and Reform Commission et al. (2015) Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road, available at http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1249618.shtml
- Cooper, Andrew F.; 2016, *The Brics: A Very Short Introduction*, Oxford: Oxford University Press
- Foot, Rosemary; 2013, Chinese Power and the Idea of a Responsible Power; in: Yongjin Zhang and Greg Austin (eds.), *Power and Responsibility in Chinese Foreign Policy*, Canberra: ANU E Press, pp. 21-47
- Kirshner, Orin (ed.); 1996, *The Bretton Woods-GATT System: Retrospect and Prospect After Fifty Years*, London; New York: Routledge
- Liu, Ming; 2016, BRICS Development: A Long Way to a Powerful Economic Club and New International Organization; in: *The Pacific Review*, vol. 29, no. 3, pp. 443-453
- Lostal, Marina and Vilaça, Guilherme Vasconcelos; 2015, The Bamiyazation of Cultural Heritage and the Silk Road Economic Belt: Challenges and Opportunities for China; in: *The Chinese Journal of Comparative Law*, vol. 3, no. 2, pp. 1-19
- Maneschi, Andrea; 1998, *Comparative Advantage in International Trade: A Historical Perspective*, Cheltenham: Edward Elgar
- New Development Bank; 2016, *New Development Bank Environment and Social Framework Policy*, available at <http://www.ndb.int/wp-content/themes/ndb/pdf/ndb-environment-social-framework-20160330.pdf>
- Patterson, Dennis and Afilalo, Ari; 2008, *The New Global Trading Order: The Evolving State and the Future of Trade*, New York: Cambridge University Press
- Reddy, Niall; 2015, BRICS After the Durban and Fortaleza Summits; in: Patrick Bond and Ana Garcia (eds.), *BRICS: An Anti-Capitalist Critique*, London: Pluto Press, pp. 274-278
- Ren, Xiao; 2016, China as an Institution-Builder: The Case of the AIIB; in: *The Pacific Review*, vol. 29, no. 3, 435-442
- Shu, Guang Zhang; 2007, Constructing 'Peaceful Coexistence': China's Diplomacy toward the Geneva and Bandung Conferences, 1954–55; in: *Cold War History*, vol. 7, no. 4, pp. 509-528
- Steinmo, Sven; 2010, *The Evolution of Modern States: Sweden, Japan and the United States*, New York: Cambridge University Press
- Stiglitz, Joseph E.; 2007, Regulating Multinational Corporations: Towards Principles of Cross-Border Legal Frameworks in a Globalized World Balancing Rights with Responsibilities; in: *American University International Law Review*, vol. 23, no. 3, pp. 451-558
- Searls, Damion; 2017, *The Inkblots: Hermann Rorschach, His Iconic Test & The Power of Seeing*, London: Simon & Schuster
- Vilaça, Guilherme Vasconcelos; 2018, Strengthening the Cultural and Normative Foundations of the Belt and Road Initiative: The Colombo Plan, Yan Xuetong and Chinese Ancient Thought; in: Shan Wenhua, Kimmo Nuotio, and Zhang Kangle (eds.), *Normative Readings of the Belt and Road Initiative: Road to New Paradigms*, Springer (*forthcoming*)
- Draft available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2887892
- Vilaça, Guilherme Vasconcelos; 2017, Transnational Legal Normativity; in: Mortimer N. S. Sellers and Stephan Kirste (eds.), *Encyclopedia of the Philosophy of Law and Social Philosophy*, Springer & International Association for Philosophy of Law and Social Philosophy Available at <https://link.springer.com/referencework/10.1007/978-94-007-6730-0>

- Vilaça, Guilherme Vasconcelos; 2015, Transnational Law, Functional Differentiation and Evolution; in: E-Pública, vol. 2, no. 3, pp. 40-83
- Watson, Matthew; 2017, Historicising Ricardo’s Comparative Advantage Theory, Challenging The Normative Foundations Of Liberal International Political Economy; in: *New Political Economy*, vol. 22, no. 3, pp. 257-272
- Williamson, John; 2004, The Strange History Of The Washington Consensus; in: *Journal of Post Keynesian Economics*, vol. 27, no. 2, pp. 195-206
- Wolff, Lutz-Christian, Xi, Chao, and Chan, Jenny; 2016, *Legal Dimensions of China’s Belt and Road Initiative*, Hong Kong: Wolters & Kluwer
- Wu, Guanjun; 2016, A (Psycho)Analysis of China’s New Nationalism; in: Leigh Jenco (ed.), *Chinese Thought as Global Theory: Diversifying Knowledge Production in the Social Sciences and Humanities*, Albany: State University of New York Press, pp. 101-132
- Wu, Xiaohui; 2017, Friendly Competition for Co-Progressive Development: The Asian Infrastructure Investment Bank vs. the Bretton Woods Institutions; in: *Chinese Journal of International Law*, vol. 16, no. 1, pp. 41-76
- Zeng, Lingliang; 2016, Conceptual Analysis of China’s Belt and Road Initiative: A Road towards a Regional Community of Common Destiny; in: *Chinese Journal of International Law*, vol. 15, pp. 517-541