

Book Review

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**THE DISCOURSE WITH CHINESE CHARACTERISTICS:
AN CHEN ON INTERNATIONAL ECONOMIC LAW**
[中国特色话语：陈安论国际经济法学]
AN CHEN (ED.)
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1. The Hedgehog and the Fox

Ancient Greek poet Archilochus of Paros is believed to be the one who coined the intriguing line: “The fox knows many things, but the hedgehog knows one big thing.”¹ In *The Hedgehog and the Fox*, Isaiah Berlin further explained that, hedgehogs “relate everything to a single central vision” through which “all that they say and do has significance,” while foxes, in contrast, “pursue many ends, often unrelated and even contradictory, connected, if at all, only in some *de facto* way.”²

As proved by his life-long academic writing and legal practice, Prof. AN CHEN, an esteemed 90-year-old international economic law scholar and practitioner in China, for sure should be categorized as the hedgehog type. In his most recent masterpiece published in 2018 by Peking University Press—THE DISCOURSE WITH CHINESE CHARACTERISTICS: AN CHEN ON INTERNATIONAL ECONOMIC LAW,³ the “one big thing” and the “single central vision” that Prof. CHEN advances is clear. Undoubtedly, the pursuit and preservation of economic sovereignty, especially from the standpoint of the non-hegemonic states, is commonly acknowledged to be Prof. CHEN’s ultimate academic ideal. This theme is repeatedly present throughout the book series, as the foundation for his theoretical reasoning or

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practical suggestions for international economic law.

Since other review articles on Prof. CHEN's works abound,⁴ and a full coverage of 4-volume panorama-style monograph in a short article would be "mission impossible," this review wishes to dissect Prof. CHEN's 2018 masterpiece on the issue of "the one big thing that the hedgehog knows."

2. The Hedgehog's One Big Thing

Threads with regard to this major issue are scattered in different Parts and Chapters throughout the 4-volume series. To lay a solid theoretical foundation for sovereignty doctrine, Chapter 16⁵ and Chapter 22⁶ of Volume I, *inter alia*, provide a systematic retrospective of Lenin's proposed sovereignty doctrine for weak nations and thoroughly rebut opportunistic and nihilistic viewpoints on this issue. It is admitted that under the wave of self-determination and political independence in the post-WWII era, national sovereignty was quickly ushered into and established in a lot of former-colonies. But for Prof. CHEN, sovereignty is like an onion that has many layers. Without sufficient economic sovereignty, he argues, these newborn states, often small and weak at the same time, would still be in a subordinate position and dependent on their economic masters. In this case, their newly acquired political sovereignty would inevitably become fragile, if not meaningless.

It is based on such judgment that Chapter 17 of Volume I strongly proposes that the principle of economic sovereignty should be the fundamental norm in today's research and practice of international economic law.⁷ Once established, such norm could serve and benefit the weak nations, as it will provide solid legal basis for them to assert administrative power to regulate domestic and foreign-related economic activities, and to strive for a more equal status and equitable treatment in international economic negotiations.

For Prof. CHEN, the pursuit and preservation of economic sovereignty also set the path for the strategic positioning of China. His key proposals in this regard are densely reflected in Chapter 10 to Chapter 15 of Volume 1, in a consistent but also evolving manner.⁸ Prof. CHEN judges that China should, as a large developing country, align its interest with vast Third World people, cherish economic sovereignty in their participation of world economic affairs, and be alert to misleading assertions such as neo-liberalistic extremism or bragging WTO legal system as the "model rules" for international economic law. The implication in

these chapters is two-fold: firstly, the existing international economic order is not perfect; it is in many ways detrimental or at least discriminatory to weak states' interests. Secondly, with economic sovereignty as a key value, the law-abiding tendency – preserving the Old International Economic Order (“OIEO”) – should be balanced with the law-reforming requirement, demanding a New International Economic Order (“NIEO”). He further advocates for a way-forward for the globe to march from OIEO to NIEO in Chapter 26 to 30 of Volume I.⁹ Solid south-south coalition combined with necessary south-north cooperation are the suggested answer.

Prof. CHEN's academic ideal over economic sovereignty runs throughout his many discussions in different branches of international economic law. In several articles regarding international investment law in Volume III, Prof. CHEN first identifies the discretionary power granted by the ICSID Convention and bilateral investment treaty mechanism, including the right to “consent case by case,” “exhaust local remedies,” “apply the host country's laws” and to invoke the “exception for State essential security.” These rights are vividly labelled as “great safeguards” to preserve host states' economic sovereignty. As the overall policy suggestion is quite blunt, safeguards should not be hastily dismantled, especially when the negative correlation between these measures and tentative goals such as the attraction of foreign investment remain unclear.¹⁰ Under the WTO law, the theme of economic sovereignty preservation is emphasized by dissecting a sharp contrast of the US unilateral strategy *vis-à-vis* the intended WTO multilateral value. Several book chapters in Volume I try to reveal that the global powers have little reluctance to unilateralism in achieving its near-term economic gains. Consequently, to stay alert and never let go of one's own economic sovereignty should be the natural response strategy for weak nations.¹¹

In many other miscellaneous articles on either historical retrospective of China's past international economic interactions,¹² or theoretical discussions over international economic legal issues,¹³ or practical questions arising from international arbitration cases, or law suits taking the form of expert opinion,¹⁴ Prof. CHEN's adherence to economic sovereignty proposition is always discernable.

3. The Origin and the Accomplishment

The impetus for Prof. CHEN's forming such hedgehog-type of academic ideal is,

according to the explanation in the preface of these research monographs, deeply rooted in the recent history of his nation as well as his personal experience.¹⁵ Like his peers in the 1930-1940s, young scholar An CHEN was not only motivated the glorious civilization of ancient China, but also educated by the ensued foreign invasion and civil war in China. In this course, his strong sense of national pride and patriotism were nurtured and internalized. He finally determined to fight against international hegemonism, in pursuit of social justice with sharp thoughts.

Prof. CHEN has succeeded in achieving this goal. His academic idealism has become a role model and guidance for younger generations; in it affected and resonated with China's national practice in shaping external economic policies. A Chinese saying can best capture and summarize Prof. CHEN's academic life: "Reward one's home country with knowledge and assist the world's weak with the same (知识报国、兼济天下)." This proverb was later carved into the motto for the Chinese Society of International Economic Law, a nation-wide academic group specifically in the field of international economic law, in which Prof. CHEN chaired for over a decade and still acts as its Honorary Chairman.

4. The Fox and the Lesson

Much resembling I. Berlin's judgment over hedgehog type of thinking, Prof. CHEN's general approach of international economic law is more prone to natural law, as he consistently holds a central value up high, for the legal process to pursue. Such an approach will immediately stand out in sharp contrast to other legal positivism or pragmatism, which has become the undisputable mainstream methodology of international law study for the past decades.

The late American professor John Jackson may be the typical example of "pragmatic approach" of international economic law. One of his most famous propositions is that, in determining international economic affairs, states should be pragmatic and calculate how much economic power should be allocated to which level of decision-making bodies, from municipal district at the bottom, all the way up to international economic organizations such as WTO.¹⁶ Prof. Jackson even creatively coined a specific term "sovereignty-modern" to summarize such proposition. Needless to say, this is quite a Fox-ish type of strategy, as it allows the state to improvise according to its surroundings and adapt to whichever parameters. As the environment changes, the state may have flexible policy

decisions on the allocation of economic power, free from the restrictions arising out of a consistent value such as the preservation of economic sovereignty.

Prof. CHEN has made his critique of such pragmatic approach in these volumes. Such “allocation of power” insight is admitted to have “touched the essence of the issue and was on point.” But “perhaps confined by his social status and position, Prof. Jackson was unable or did not dare to further expose the gigantic inequity of the current allocation of the decision-making power in international affairs between the superpower and the majority of developing countries.”¹⁷ For Prof. CHEN, “sovereignty-modern” is hegemonism disguised in the cloak of pragmatism, and should be answered with idealism, best expressed by a firm stand for economic sovereignty. In short, the hedgehog and the fox have conflicting opinions.

Do we have to choose between the hedgehog and the fox? Or is there a way in the middle? In a book entitled *ON GRAND STRATEGY*,¹⁸ John Gaddis’s interpretation of the hedgehog-fox metaphor in strategic thinking may be thought-provoking. Gaddis concluded that the idea of hedgehog is about setting your goal and strategic vision, while the idea of fox is about evaluating and adjusting your own capacity. A successful grand strategy should be a fine balance between future vision and practical capacity.

For the research and practice of international economic law, it is undisputable that the hedgehog’s “one big thing” remains still important. In this sense, Prof. CHEN’s 2018 masterpiece is worth repeated perusal. On the other hand, a certain extent of fox-type of thinking may be the exact ingredient for states to thrive (or even to survive) in today’s world becoming more complex. Thus, perhaps the most important lesson for us is how to approximate, as F. Scott Fitzgerald put it, the first-rate intelligence, or “the ability to hold opposing ideas in mind at the same time, and still retain the ability to function.”¹⁹

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