

## Book reviews

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doi:10.1017/S1474745615000087

### The Electronic Silk Road: How the Web Binds the World Together in Commerce

by Anupam Chander

*New Haven, CT: Yale University Press, 2013*

#### 1. Introduction

In this important book marking new patterns of international trade, Anupam Chander evokes the Electronic Silk Road. The book lays down the challenge to revisualize the essential forms of contemporary international commerce, and the dominant role of digital trade. Chander is well suited to the task – he is an active and astute scholar working in international trade, intellectual property, and information law. The Electronic Silk Road is a digital route. It refers to both the infrastructure of the Road, as well as the units of economic value that pass over it. The book begins with the ‘new global division of labor’ on the Electronic Silk Road: the various stages in the production of information can now be distributed over many countries, in a manner that emulates global patterns of manufacturing industrial goods. He then turns to questions of regulatory design: Who can control the ‘pirates’ of cyberspace? Which country can stand up to the immense power of ‘Facebookistan? Chander celebrates the freedom for innovation the digital world presents – yet, in the final chapters of the book, turns to argue a place for robust law to preserve these freedoms, most particularly in China.

#### 2. The valency of international trade

I saw a caravan once, in Afghanistan. It was a little caravan: three camels and a small family. But it was enough of a caravan to invoke the Old Silk Road. I wondered as I watched (until a French officer ordered me to leave the area) where these travelers came from and where they were headed. All I could observe was their direction of travel: Eastward.

In *The Electronic Silk Road*, Anupam Chander describes digital trade routes. The new international trade proceeds along electronic pathways; it is fiber and cable and not camels that transmit value across great distances. But the Electronic Silk Road that Chander studies has a marked geography; place still matters. We find Silicon Valley and Bangalore and (as before) China, marking the major stops and starts along the way (Chander likes the word *entrepôt*). And the poles of the Electronic Silk Road, like those of the Old Silk Road, have valency.

It is easy to lose sight of the inherent valency of most international commerce. Our dominant ideology (drawn from Ricardo) stresses symmetry: the exchange of Portuguese wine for English cloth. Ricardo presumes both comparative advantage in production and the presence of a complementary appetite abroad – the English delight with Portuguese wine is inexplicably endogenous. Yet then and now, much international trade is valent.

Chinese goods have seduced the West for centuries: spices and trade goods and the silk that gave name to the trading route. The problem for the West has always been China's notorious indifference to Western goods – the West has not produced much the Chinese wished to have. (Opium worked momentarily, of course.) Money was only a partial solution. It could pay for Chinese goods, but money, even in the days of gold and silver, was effectively a future claim on the West to be stockpiled by China. The Old Silk Road did not fit the mercantilist design of offsetting streams of exchanged goods. We see this valency today in the Western United States, as long trains of empty containers race back to Pacific ports in order to be refilled with ever-more imported Chinese manufactures.

Valency involves the specificity of the goods traded and the specificity of their demand in distant places, as well as the more abstract possibilities of the exchange of goods for future claims. The Electronic Silk Road displays even greater valency than did the Old Silk Road. By depicting the distinctiveness of place, Chander brings a healthy dose of legal realism to international trade discourse.

The Electronic Silk Road's trade patterns (involving many more sites) are more complex. Its flows concentrates wealth in Silicon Valley – where the giants of the new economy (Google and Facebook) are located. But in an odd way, it is somewhat harder to localize the origination of value there. Facebook's or Google's troves of information about consumers in Brazil (their searches, their friendships, their likes) arise in Brazil and not California. Yet this movement of value – the transport of the information harvest from Brazil to California – does not take the form of an exchange or a transaction, and so is hidden. What is seen, along the Electronic Silk Road, is the increasing exaction of payment flows from others (who may themselves be located in Brazil or Germany or Taiwan) who engage the Californian information goliaths.

Bangalore represents the phenomena of offshoring – a central concern of Chander's depiction. Here the Electronic Silk Road serves to provide and maintain its own raw infrastructure (as if the camels could walk to China on their own); the new economy engages the effective employment of high-level service providers halfway around the world (and many time zones distant). Ironically, successful offshoring involves staying put, and not trekking across Southern Asia. The infrastructure enables offshore software engineering and the distance practice of radiology (and the practice of law) – but migration limitations also play a role in the geography of the Electronic Silk Road.

Chander describes these new patterns of exchange. He notes the links that tie the key sites of the new economy together. His first concern is law's response to the trading patterns he describes. Again, Chander is deeply aware of the persistent importance of place; he is no vague globalist. He sees a continuing role for nations and national law – as well as new opportunities for choice and avoidance of national law (there are, of course, tantalizing spaces where law fails to reach).

Chander thus poses old questions – which law should apply – to these new structures. In doing so, he remarks on the shifts of power away from (and perhaps also towards) the State, new patterns of regulatory competition and regulatory convergence, and the need for flexible juridic mechanisms to weigh and judge conflicting claims. His solution, which he labels 'glocalization,' mixes a continuing regard for local prerogative with positive and negative global minimum standards.

### 3. Toward a network source of comparative advantage

Chander does not directly invoke network theory in his depiction of the Electronic Silk Road, but his findings are consistent with a networked model. International trade has always been illustrated by trade routes (the Old Silk Road is the paradigm), fixing flows onto geography, linking key nodes. The image of the Old Silk Road is essentially linear: from China, through Central Asia, and on to the Mediterranean Sea. The new *entrepôts* explored by Chander – Silicon Valley and Bangalore – are themselves linked with many other points. They are super-nodes, deploying trade links with many other sites in a complex network.

Recent developments in the economics of networks demonstrate how powerful nodes can capture an outsized share of exchange value from peripheral sites. Dominant nodes enjoy informational advantages (including superior price signals) that peripheral sites lack. The multiplicity of potential counterparties they enjoy permit selectivity and price discrimination; peripheral sites are locked into severely more limited trading possibilities. Major nodes enjoy the benefits of scale. And, from a human capital perspective, Silicon Valley and Bangalore concentrate talent, yet flexibly deploy it among firms, facilitating innovation. It should be no surprise then that the major nodes of the Electronic Silk Road have grown wealthy.

How does an 'electronic trade' node develop? Chander offers a possible explanation in his account of the rise of Bangalore. He eschews a classical Ricardian explanation rooted in recognizable 'endowments' as the source of Bangalore's comparative advantage in the provision of information services. It is not that Bangalore excels as a site for the production of software engineers; other places in the world (Chander names China) produce outstanding engineering graduates. Rather, it is the pre-existing links between the Indian engineers resident in India and the Indian-emigrants resident throughout the world (including the important settlement in Silicon Valley) – the collective Indian diaspora – that creates the possibility for Bangalore to lever its local talent onto the world stage. Bangalore is a primary node in the network of electronic commerce because it had already been a node in a human network – the human network precedes the electronic one. This finding – consistent with anthropological accounts in globalization studies – is one of the delights of Chander's book.

Diasporas are generally regretted – they form from history’s greatest tragedies. But they may condition a peculiar kind of networked success. In order to work, movement of persons must be possible, yet not universally available. There must be some who remain in Bangalore.

#### 4. Glocalization

The grand nodes may be more vulnerable to regulatory oversight than might first be imagined. Silicon Valley is going nowhere – it is hostage to US regulation as it is territorial fixed by its human capital foundations. Indeed Facebook is not going anywhere either (Chander describes Facebook as ‘Facebookistan’ to capture its assertion of place in global governance). But nodal powers enjoy the legal cover of national champions. The US Congress may trade-off the privacy interests of Facebook’s US users in order to equip Facebook in its global ambitions.

To a great extent, *The Electronic Silk Road* is an updated exercise in the global allocation of the reach of national law. Chander sketches out a solution – which he builds around the notion of ‘glocalization’. Chander’s glocalization preserves the possibility for particularized national legal expression reflecting local concerns and values (the ‘local’). Yet the ‘glocalization’ Chander promotes is based on an awareness of the functional necessity of generalized harmonization of national regulation in order to avoid fragmentation and new barriers to cybertrade. The challenge in any program of harmonization is to structure mechanisms to mediate between these two contradictory and competing urges. To be sure, the harmonization Chander proposes resembles the harmonization practiced within the European Union (where Member States enjoy a rarely exercised privilege of impeding trade when justified by national vital interests), but the global legal system lacks the institutional foundation on which EU harmonization is built. There is simply no well-developed theory of international law supremacy (outside of, perhaps, the domain of international human rights), no consensual instruments by which the nations of the world have ceded their sovereignty to global regimes (outside of the WTO system, which hardly touches much of digital trade), and no compulsion.

Here Chander turns soft. He argues (quite sensibly) that each nation should contain itself with regard to idiosyncratic regulation – out of recognition of the needs of the larger system. Comity – a form of sovereign self-abnegation – can do the trick. I think Chander is right that comity (or some more mysterious form of spontaneous cooperation) can in fact create a world where states tread modestly. And the increased ability to slip outside the reach of any particular state may also have an effect of encouraging states to be sensitive and measured in their regulatory choices. But the hard questions remain. Would a government such as China permit access to the internet (a new form of human right Chander supports) when this very freedom might lead to its own downfall?

The greatest strength of *The Electronic Silk Road* is Chander’s identification of the hidden links and patterns that constitute contemporary global cybertrade and his appreciation of the attendant legal challenges. It is filled with insight, delightfully well written and a source for further inquiry.

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