

Book Review: Trade Barriers to the Public Good

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Review of *Trade Barriers to the Public Good: Free Trade and Environmental Protection* by Alex Michalos (McGill-Queen's University Press, 2008). ISBN 978-0773533523 (cloth); 978-0773533806 (paper). \$30, paperback.

I once wrote about law as an instrument of technology assessment (Byrne, 1982) but questioned government's capacity to regulate technology (Byrne, 1983). What Alex Michalos shows with persuasive rigor is that those concerns barely scratched the surface, for they did not take into account the seemingly uncontainable influence of corporate prerogatives. A distinguished scholar and prolific author, Michalos has now produced a book of singular importance to anyone concerned about the tendency of corporate power and profit to determine what technologies are fostered and what harmful side-effects are legally disregarded. Stating his objective as to show that "the pursuit of commercial trade over every other value can destroy opportunities for achieving the broader public good" (p. 2), in this book he demonstrates convincingly how a commodified technology can have very detrimental consequences and still surmount regulation and continue to amass profits for its manufacturer.

The technology he chooses to illustrate this thesis is internal combustion octane enhancement via MMT, a product of the Ethyl Corporation, now known as Afton Chemicals. Ethyl introduced this product – its full technical name: Methylcyclopentadienyl manganese tricarbonyl – as a gasoline additive to facilitate a higher octane without engine knocking. It did so (in the 1970s) to offset an emerging ban on lead-based additives, the harmful effects of which had been established. In the US this ban was embodied in the 1973 Clean Air Act that called for a gradual phase-out of leaded gasoline; and Canada gradually followed suit. Lead remains an additive in some parts of the world, e.g., China; and the use of MMT is restricted in some places, e.g., parts of the United States and the European Union. It is no longer banned outright in Canada, however, for reasons that Michalos spells out and critiques with meticulous logical and ethical analyses. How the Canadian government, after banning MMT, was soon forced to relent constitutes the master plot of this book. In spinning out this plot Michalos raises fundamental questions about economic constraints on impartial scientific research and about the survivability of national sovereignty now that trade agreements not only restructure international law but limit the ability of national and local government to intervene on behalf of the public good.

In preparatory chapters Michalos lays out: "Philosophical Foundations and Method"; "Globalization, Democracy, and Federalism"; and "Motor Vehicle Technology." Then he describes US Environmental Protection Agency procedures and processes and the goal of cross-border "harmonization" of regulatory standards of the US, EU, and Canada. Next are two chapters showing how the Canadian government came to legislate against MMT. Then, after describing the legal process of arbitration he devotes six chapters to showing how complainants used arbitration to win damages against the Canadian government. Two chapters tell how under the North American Free Trade Agreement (NAFTA) the Ethyl Corporation won substantial damages against the Canadian government for banning importation of MMT, and four chapters tell how several provinces used the Canadian Agreement on Internal Trade (AIT) to win damages as well.

Michalos proceeds with logical finesse to critique the procedures followed in each case. Logic as

used here, though, is a tool in the service of ethical analysis. This latter he bases on a “broad-based moral consequentialism,” which says “one ought to try to act such that one’s actions tend to improve the quality of life [one of the author’s major interests] of all those affected by one’s actions (p. 22). Thus he faults NAFTA because it benefits corporations, adds few jobs anywhere, and undercuts governmental powers via a “quiet constitutionalism” that establishes “supraconstitutional norms” (Ch. 3). This, in brief, is what the MMT cases produced, thanks to panels prioritizing the international trade rules standard of (corporate) autonomy over that of judicial scrutiny (p. 176). They should not have, says Michalos, because these cases involved “inherent national concern” (p. 56).

The statute corporations attacked was a 1997 Canadian government ban on MMT. The Canadian parliament first considered this ban in 1995 and was promptly besieged with pro-MMT documents. Michalos examines in detail both critical and affirmative arguments contained in these documents. Then he turns to a Senate Standing Committee Interim Report (open to a ban) and a Minority Opinion (opposed). The latter drew on a US court decision that found the EPA lacked statutory power to ban MMT (never reaching the substantive issue). The former ignored evidence that MMT is both a health hazard and harmful to the environment, but allowed that it might be a factor in causing a catalytic converter’s on-board diagnostic device (OBD) to malfunction. Health Canada submitted that manganese is not a health hazard but MMT is “highly toxic” (p. 162). The bill (C-29) became law on June 24, 1997. Then supraconstitutionalism took over to produce arbitration rulings that required Canada – a historical first – to reverse its law and compensate a corporation and two provinces for harm done via “expropriation” (pp. 207, 223, 253).

As shown in this book, NAFTA and to a lesser extent AIT give corporate interests a veto power over national public policy. Ethyl Corporation surmounted Canadian government restrictions by persuading a NAFTA panel that there is no evidence sufficient to justify a ban on importing MMT. The Province of Alberta, eventually supported by Quebec, Nova Scotia, and Saskatchewan, persuaded an AIT panel that the Canadian government was exceeding its authority by prohibiting the manufacture and inter-province distribution of MMT without just cause. That the manufacturers involved in these cases could achieve this rout of national governance is due to a variety of causes, among them the hearing officers’ lack of scientific competence, the corporate representatives’ and documents’ presumed veracity, and the distorted priorities of a process minimally interested in non-commercial values. In Michalos’s own words:

the biggest flaws in both [the NAFTA and the AIT] agreements, so far as they are revealed in our two cases, are at least the imprecision or obscurity of certain articles, and at most their logical incoherence or their bias in favour of commercial trade over the prevention of environmental degradation and the protection of human health and consumers (pp. 348-349).

This book is highly systematic in organization and methodology. Each chapter focuses on a particular aspect of the MMT controversy and/or draws upon one or more particular disciplinary approaches, including logic, ethics, technology, political theory, and legal analysis. This methodical layering is essential to the author’s ultimate objective, which is not primarily descriptive or analytical but normative. Its detailed examination of governmental regulatory procedures might not attract some philosophers who focus on technology. But its consecutive use of complementary foci may serve as a model to anyone doing applied philosophy, political philosophy, and/or business ethics. And its normative emphases open the door to critical reexamination of studies that approach commodified technologies phenomenologically.

Trade Barriers is in some respects a takeoff from and response to Albert Borgmann's phenomenological works beginning with *Technology and the Character of Contemporary Life* (1984). In that work Borgmann describes the take-it-for-granted obviousness of technologies that deliver commodities in our everyday lives and are perceived to be instantaneous, ubiquitous, easy and **safe**. Where Borgmann and Michalos part company is in their proposed responses to such "device paradigms." Borgmann recommends a kind of diversionary commitment to a "focal thing or practice" such as music, gardening, or cuisine. Michalos, by contrast, is more in tune with Hans Jonas's imperative of responsibility. On this view, we need to confront the dangers behind our euphemistic perceptions of a technology by taking into account its overall effects on people's lives.

MMT can be considered a device paradigm (or at least a component thereof) as experienced at the gas pump, where a driver chooses a particular octane level without regard to how the chosen octane is obtained or with what collateral damage. For, the driver wants his or her vehicle to be speedy but run quietly; and achieving this via available technical options requires fuel of a certain recommended octane. MMT serves this purpose, as does a lead additive. But as Michalos shows, no one who considers all the evidence without corporate or political interference would call MMT-enhanced gasoline safe. Rather would one so informed endorse the precautionary principle and opt for excluding this device paradigm from his or her lived world. And in fact use of MMT in both Canada and the US has declined (<http://www.aenweb.ca/content/mmt-its-way-out-canada>) and reference standards for concentrations of manganese have been significantly tightened in Canada, California, and Europe (<http://www.theicct.org/2010/09/fuel-additives-mmt/>). So the public policy Michalos recommended is increasingly favored by others in Canada and beyond.

References

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