

A Theory of Fairness in Trade

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A theory of fairness in international trade should answer at least three questions. What, at the basic level, are we to assess as fair or unfair in the trade context? What sort of fairness issue does this basic subject of assessment raise? And, what moral principles must be fulfilled if trade is to be fair in the relevant sense? In this paper, I offer answers to these questions which derive from a broadly Rawlsian “constructivist” methodology. My proposals are as follows.

The Subject of Fairness: The basic subject of fairness in trade is an *international social practice of market reliance*, a practice whereby countries mutually rely on common markets (in goods, services, or capital) for the sake of the “gains of trade.” This basic practice is to be distinguished from particular market transactions, transactional flows across borders, as well as particular trade or trade-related policies (tariffs, quotas, safeguards, subsidies, etc.) that influence transactional flows. A chief function of the practice is to regulate such trade and trade-related policies according to international rules, including formal trade law (e.g. World Trade Organization (WTO) rules) and informal understandings of how the balance between market and state is to be struck (e.g. the post-war “embedded liberalism” compromise).¹ Such rules or understandings represent substantial market reliance expectations, the terms of participation in the larger market reliance practice. The practice itself, and the basic subject of fairness, is the underlying social fact that countries do comply, more or less, with some such system of market reliance expectations, for the sake of larger, mutually shared ends.

¹ See John G. Ruggie, “International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order,” *International Organization* 38, no. 2 (1982) and Robert Howse, “From Politics to Technocracy--and Back Again: The Fate of the Multilateral Trading Regime,” *The American Journal of International Law* 96, no. 1 (2002).

The Fairness Issue: Any such market reliance practice can be organized in various different ways, with varying consequences for different countries and their respective classes. The collective choice of organization, through negotiated agreements or trend-setting unilateral action, is therefore subject to basic moral constraints. Chief among them are requirements of *structural equity*, which concern how a given system distributes the benefits and burdens it creates, among different countries, and among their respective classes. To say that the international market reliance practice has an equitable structure, or is structurally equitable, is to say that it distributes the benefits and burdens it creates according to a pattern that is reasonably acceptable to every country and class affected. To judge the practice as inequitable is to judge that it is or would be reasonable for some not to accept the organization of the practice, given the available institutional alternatives.

Concern with structural equity is more basic than, and helps to explain, a variety of other issues of fairness that arise in the global economy—including “fair trade,” “fair bargaining,” “fair play,” “fair competition,” “level playing fields,” “equitable growth,” “fair wages,” and “exploitation.”² Other moral issues are wholly independent of structural equity in the first instance—including humanitarian concerns with poverty, questions of global justice or human rights external to the global economy, and concerns of rectificatory justice for innumerable past wrongs (e.g. of colonialism). My thesis is that structural equity generates substantial principles in its own right, without relying on moral claims of any of these other (perhaps equally or more

² I develop this theme in my “Global Economic Fairness: Internal Principles,” (forthcoming, available at my UCI philosophy department website). A social contract account of the international trading system can thus be the centerpiece of a wide-ranging account of fairness in the global economy. I am currently working on a book project which advances this general thesis. See also my “When International Intellectual ‘Piracy’ is Fair,” and “How to Defend Sweatshop Labor: Fairness in the Global Economy.” (Unpublished manuscripts, available from my UC Irvine departmental website.) In the present paper I develop some aspects of the account also presented in my “Equality in a Realistic Utopia,” and “Distributive Justice without Sovereign Rule,” both in *Social Theory and Practice* [reference]. This paper adds substantial normative argument missing in those treatments.

important) kinds. How such issues relate to structural equity can be taken up as a secondary matter.³

Fairness Principles: The basic requirements of (socio-economic) structural equity can be expressed by the following three (lexically ordered?) principles. The first principle concerns the harms of trade, such as unemployment, wage suppression, and income volatility that diminishes lifetime savings. According to

Collective Due Care: trading nations are to protect people against the harms of trade (either by temporary trade barriers or “safeguards,” etc., or, under “free trade,” by direct compensation or social insurance schemes). Specifically, no person’s life prospects are to be worse than they would have been had his or her society of origin been a closed society.

The second and third principles concern the “gains of trade,” as specified by classical trade theory. These chiefly include the national income gains due to greater allocative efficiency in the division of labor, due to economies of scale, and due to the spread of technology and ideas. According to

Domestic Relative Gains: gains to a given trading society are to be distributed equally among its affected members, unless inequality of gain is reasonably acceptable to them all (e.g. according to domestic distributional principles).

And according to

³ Thus past wrongful expropriation (through colonialism, or a dictator’s theft of a country’s resources) can upset the legitimacy of initial holdings in a way that changes what structural equity requires. My argument assumes only that the issue of structure equity is in principle separable from rectificatory and other moral issues.

International Relative Gains: gains to trading societies, as adjusted according to the relevant endowments of each (e.g. population size and level of development), are to be distributed equally, unless unequal gains flow (e.g. via special trade privileges) to poor countries.

Those are my main claims. A crucial feature of the account is that it is *international* in a qualified yet particularly strong sense: it provides no scope for comparing levels of gain for any two individuals of the world. The first principle does consider harm to individuals as such, whether or not they live within the trading system. But as far as the *gains* of the system are concerned, comparisons between individuals are only allowed (under the second principle) *within* a single society. Assuming no one is harmed, the distribution of gains across societies is evaluated (under the third principle) at the level of whole countries. This is despite the fact that we can easily imagine a further, specifically “global” or “cosmopolitan” fairness principle that directly limits the relative gains of any two individuals of the world. But why not directly compare how, say, a particular American and a particular Brazilian fare? Given globalization, are they not both part of the same global economic scheme?

In brief, my answer is “no,” at least not in the sense required. In general, mere economic interdependence between people or countries is not sufficient to give rise to the distinctive issue of fairness which is chiefly at issue in trade. What does raise the distinctive issue is the special kind of *social relationship* that embeds market relations, that is, the international market reliance practice that allows and regulates economic interdependence.⁴ In that case, the relation the American and the Brazilian share by way of their economic interdependence is indirect; the basic parties to the organizing social relationship are their respective countries. Individuals, as such,

⁴ [cite North and the institutional economics literature. My claim is analogous.]

can lay claim to protection against the harms of the trading system, including trade-related domestic policies. But any egalitarian claims, concerned with *relative* gains or losses, are held by their respective countries. For such claims are essentially tied to *the type of good the trade relation is intended to create*, and the ultimate aim of international market reliance is for *countries* to mutually increase national income (via productivity-enhancing specialization). Principles of distributional fairness therefore properly have an international rather than “global” or “cosmopolitan” form.

I mention the international character of my account in order to highlight one of its central features and to suggest why it may be of interest: if my proposed three principles can be defended, this shows that the Rawlsian social contract approach I favor can make a lot from modest means. If I am right, fairness in trade generates limited but significant egalitarian requirements of distribution provided only relatively plausible assumptions—assumptions which, as we will see, are quite separable from humanitarian, human rights, or global distributive justice requirements. To make my case, I first say more about the social contract framework I favor and how I take it to apply in the trade context. I then argue that, *given* this framework, my three proposed principles are more defensible than less demanding principles. The reasons for my proposed three principles will emerge from the objections to weaker alternatives.

THE SOCIAL CONTRACT FRAMEWORK

In the broadest terms, my proposed principles are intended to specify “what we owe to each other” in the trade context, in the sense of Scanlon’s contractualism: the principles are those no one could reasonably reject, given our relevant generic interests in both the benefits of life in an open society and in protection against its insecurities.⁵ Being primarily devised for interpersonal morality, however, Scanlon’s theory does not directly tell us how to address the

⁵ *What We Owe to Each Other* [reference]

large-scale patterns of economic interdependence we find in the current global economy. Such patterns are beyond any individual person's control, and so largely beyond the scope of interpersonal morality. Yet they cannot be regarded merely as the workings of fate; the patterns are both created and substantially shaped by domestic and international social institutions, which include the trading system.

A central concern of Rawlsian theory is precisely of this sort: the special concern of *social* justice is the justifiability of collectively sustained social institutions and practices, in light of their large-scale distributive consequences. (If Scanlon's concern is with what we each owe each other as so many individuals, the Rawlsian concern is with what a given organized collective "we" owes to all those involved.) Specifically, a central Rawlsian preoccupation is with structural equity—the concern that a governed social practice treats all those it affects equitably, given the way it distributes the benefits and burdens it creates among them. This is already a broadly egalitarian concern, in the sense that differences in treatment under the common structure are assumed to be arbitrary unless they can be justified as acceptable (not reasonably rejectable) to everyone affected. While this is not yet to place substantial limits on inequality, it does indirectly support a presumption in favor of equality of distribution. Insofar as participants in the practice can be said to have the same presumptive claim to greater rather than lesser shares of the goods their participation helps to create, according to the practice's generally understood purpose, equality of distribution is the default: unless special reasons can be given why inequality is acceptable to all, anything short of equality would arbitrarily discriminate against those who receive lesser shares. (Non-participants would lack this special claim, having had no hand in creating the cooperatively produced goods, yet could still raise other potentially reasonable objections, for instance, against harm done to them or their exclusion from the practice.)

The question then is how, if at all, this applies in the global economy.⁶ It is tempting but premature to ask what principles would reflect a fair agreement, say, under fair circumstances specified by a suitable Rawlsian original position. Assuming people have an interest in both the benefits of life in an open society, as well as in protection against its insecurities, we might ask what system of international trade people would agree to live under not knowing facts about their actual social position, such as whether they are a low-skilled or high-skilled worker, or whether their country of origin is rich or poor. But this question is premature; it assumes too much that is properly controversial about how the original position thought experiment is best run. Why not pose the question in a different way, with different interests or levels of ignorance? Why assume an international system, instead of being open to arrangements less like the status quo? As I understand Rawlsian methodology, these questions need to be answered in part by an independent characterization of the nature of the social structure at issue, in light of its basic aims and organizational form, and a specified set of relevant interests and claims. The proper methodology, in the first instance, is a constructivist blend of morally informed “constructive interpretation” of the organization and aims of the social reality in question, of substantial moral explication of the morally relevant interests at stake, and of reasoning about what organization, if any, is reasonably acceptable to each person affected, in light of those relevant interests. Then, but only then, can we consider with any confidence how the original position representation of reasonable acceptability might go.⁷

(Note, however, that the issue of design need not ultimately turn on whether we represent countries or individuals behind the veil of ignorance. A country’s interest in national income gains might be represented as an interest of any of its members: each person may have an interest in living in a richer rather than a poorer society. Conversely, a person’s interest in economic

⁶ [Quote Rawls’s passing comments about trade in *The Law of Peoples*.]

⁷ For details, see my “Constructing Justice for Existing Practice: Rawls and the Status Quo,” *Philosophy and Public Affairs* 3, 33 (2005)

security might be represented as a country's interest in providing security to each of its members. The ultimate question is what interests are relevant and how they are balanced, not their general form.)

My basic thesis of social interpretation is that the global marketplace is (and for the foreseeable future will be) fundamentally organized and shaped by an international market reliance practice, for the sake of mutual national income gains. My basic moralized interpretive thesis is that this practice is of the appropriate sort to trigger the egalitarian considerations of structural equity which animate Rawlsian theory. I will also defend my proposed three principles on the basis of substantial moral considerations (about what people can reasonably accept). But I should first say more about the first two interpretive/moral theses.

THE TRADE RELATION

Is trade best seen as an international market reliance practice? It is clear enough that a global economy simply would not exist to the degree that it does if countries did not routinely choose to allow market transactions and competition between their respective people and firms. It is a reflection of this fact that, despite the increasing significance of transnational relations, borders still dramatically shape trade flows, even among relatively open industrialized economies. As the point is sometimes put, there is still more trade between any two provinces of Canada than between those provinces and equidistant states within the United States.⁸ But does the choice of market reliance reflect a truly *common* practice, as opposed to a coincidence of purely unilateral decisions? It does in the sense that the choice of reliance is made and sustained based on expectations of similar reliance by other countries, for the sake of mutually understood and shared purposes. The multilateral trading system, for example, is a historical social contract in just this sense.

⁸ [reference]

To be sure, economists sometimes emphasize that the basic argument for free trade is unilateral. The value of trade lies in imports, which allow greater productive efficiency and introduce new embedded technologies. Exports simply pay for imports. So, the reasoning goes, there is no need to wait for export market access in order gain from trade: a country benefits by dropping trade barriers of its own accord. In theory, then, no general practice of *mutual* market reliance is required. As Paul Krugman puts the point, “If economists ruled the world, there would be no need for a World Trade Organization. (...) [G]lobal free trade would emerge spontaneously from the unrestricted pursuit of national interest.”⁹ Here it matters how exactly the imagined world is described. If we are to imagine a true coincidence of unilateral action, this would not necessarily display the sort of mutuality needed for a common practice. But it would not necessarily raise issues of fairness, either. Perhaps we are imagining each country’s move to free trade as wholly insensitive to potential affects on others, much like a choice of how to manage good or bad weather. In that case, the policy choice itself might be unfair to the “losers” within each society (assuming compensation is not arranged), but there is no unfairness in the trade relation with outsiders, such as it is. On the other hand, if a unilateral choice to free trade is taken in full awareness of the similar choices of other countries, perhaps based in a common understanding of its benefits, and this (perhaps implicitly) becomes an established arrangement which all in turn rely on, and are known to rely on, then we *do* have mutuality of the right kind. The organization and consequences of the resulting social practice can then be assessed on their own terms, according to structural equity principles.¹⁰

⁹ Paul Krugman, "What Should Trade Negotiators Negotiate About?," *Journal of Economic Literature* 35, no. 1 (1977), p. 113.

¹⁰ Relevant here are a range of specifically political, broadly Hobbesian considerations concerned with levels of assurance and the role of bargaining. I discuss them further in my “Distributive Justice without Sovereign Rule: the Case of Trade,” *Social Theory and Practice* [reference]. I assume there is no longer a serious debate about whether the trading system and other international regimes count as broadly cooperative relationships despite the absence of a Hobbesian, assurance-providing global sovereign. Neo-realists have conceded this. As one leading neo-realist, Joseph Grieco, explains, the issue is now a matter of degree: “In general, realists have argued that cooperation is possible under anarchy, but that it is harder to achieve, more difficult to maintain, and more dependent on state power than is appreciated by the institutionalist tradition.” Grieco, J. (1993). *Understanding the*

Indeed, the standard economic case for free trade itself suggests that trade is an ongoing cooperative relationship. Free trade is not, even in theory, a straightforward matter of national self-interest. Under the appropriate conditions, market barriers can be optimal (according to both “terms of trade” and “strategic trade” theory, for example). When this is noted, the standard reply is that free trade is nevertheless good political-economic practice. Since the optimal trade barrier is usually quite difficult to set in practice, the costs of regularly getting it wrong outweigh the modest benefits of occasional success. And in any case, it is sometimes added, self-interested optimizing invites retaliation from other countries, and perhaps mutually destructive trade war. Hence it is best to forgo temporary gains for the sake of mutually beneficial cooperation over the longer haul.¹¹ In fact, it is precisely such reasoning that led countries to establish a system of legal reliance expectations (the General Agreement on Tariffs and Trade (GATT)) in the wake of the mutually destructive interwar years. Trade as we know it is a cooperative practice of market reliance, and so utterly unlike a world of spontaneous free trade.

If this is correct, then market reliance is a form of *participation*. At the minimum, countries participate by maintaining trade policies (whether tariffs and quotas or “behind the border” measures such as subsidies, internal taxes, or preferential rules) that allow a common market to exist; if trade barriers are high enough, cross-border business will (aside from the occasional “black market”) all but cease. Beyond the minimum, participation involves compliance with established market reliance expectations, including both treaty rules and informal understandings of what it takes for the common market relations to be beneficial in the

Problem of International Cooperation: the Limits of Neoliberal Institutionalism and the Future of Realist Theory. *Neorealism and Neoliberalism: the Current Debate*. D. A. Baldwin. New York, Columbia University Press, p. 302.

¹¹ As Douglas Irwin explains in his history of the free trade debate, “The analysis of strategic trade policy, like the terms of trade argument, illustrated the possible unilateral advantages of deviating from free trade to exploit one’s trading partners... But the real implication...is not so much that...trade interventions can be potentially beneficial. Rather, these theories reinforce the notion that trade is a form of economic interdependence. If each country ignored others and pursued policies that were apparently to its unilateral advantage, most countries would likely be worse off in the end. Cooperative agreements between countries, in which all agree to forgo the use of such policies, could potentially make each of them better off.” Douglas A. Irwin, *Against the Tide: An Intellectual History of Free Trade* (Princeton: Princeton University Press, 1996), p. 216.

intended ways. Once a country meets a basic set of such expectations, it counts as full participant in the practice, thus enjoying the presumptive claim of every co-creator to a greater rather than a lesser share of the cooperative practice's intended fruit. (Full participation is otherwise not a matter of degree, not, for instance, a matter of relative contribution—of which more below.)

If trade is a practice, what is its point? The answer, in short, is: national income gains. The basic, presumptively legitimate and generally understood aim of mutual market reliance, as first specified by Adam Smith and as refined by David Ricardo, Robert Torrens, and James Mill, is mutual augmentation of national income. As each country trades to its respective “comparative advantage”—specializing in what it produces best, relative to its productive options, and exchanging for the rest from abroad—each country does better overall than it could in a condition of isolation. Economies of scale and the spread of technology and ideas further amplify national income gains, by reducing production costs and increasing productivity. The resulting gains in turn contribute (indirectly, and in conjunction with factors such as geography and institutional quality) to economic growth.¹²

Welfare economists sometimes misleadingly suggest that the aim of trade is to promote mutually beneficial transactions, for the sake of human welfare. While this is perhaps one possible normative justification of international trade, it is not its basic presumptively legitimate and assumed aim. As both Smith and Ricardo understood it, the aim of trade is neither welfare benefits nor exchange per se, but rather to allow countries to further refine their respective divisions of labor, in order to allocate their resources more productively and thereby increase national (average or aggregate) income. Exchange is merely a *means* to such specialization: the possibility of exchanging for what was previously produced allows ever further refinement, ever greater overall production, and ever greater national-level income gains. National-level income

¹² [cite growth literature]

gains may or may not translate into welfare, for countries overall or for individuals. As for countries overall, whether national income gains lead to overall welfare depends on how the gains are distributed. A net welfare loss might result if all the gains go to a few people, while enough “losers” suffer dearly. As for individuals, trade may or may not benefit a person, if only because trade simply changes “relative prices”: as some prices fall, other prices rise. Whether one is better off overall will depend on what is in one’s overall consumption basket. Even if some prices fall, the price of what one needs most may go up to a degree not covered by savings elsewhere, leaving one a net loser.

If all this is right, the bare existence of the market reliance relationship suffices by itself to generate a collective responsibility of fairness in the Rawlsian sense outlined above. Each country involved is obligated to offer, negotiate toward, and abide by the terms required for a structurally equitable practice. The benefits and burdens that trade creates, across countries and within their respective classes, must be distributed in a way that no one can reasonably complain of. In particular, levels of *relative* loss or gain are crucial. If countries really are jointly creating goods that would not otherwise exist—goods that would not exist under universal autarky—then each such participant has a presumptive claim to greater rather than lesser shares. Perhaps special reasons for inequality of shares can be given, as particular cases require. The crucial point is that such special reasons *have* to be available if the shared practice is to be regarded as a reasonably acceptable, structurally equitable practice.

Notice that this basic form of argument requires no reference to moral principles independent of those justified specifically for the trade relation, in the manner just suggested. Human rights and humanitarian principles presumably do bear on what trade policies are fair. They generate still *further* demands, but they are not the only and perhaps not the most central issues of fairness in trade. Requirements of socio-economic structural equity arise without any assumption of such further principles. Even if we reject them across the board, we can still raise

fairness questions about the benefits and burdens the trade relation creates, and the various ways they are or would be distributed among countries and their classes under different feasible arrangements. Simply by comparing relevant distributions, we can make a judgment of what overall scheme of institutions is reasonably acceptable to all affected. Structural equity can thus generate requirements of socio-economic distribution in its own right.¹³ (And we can of course add in independently justified moral requirements separately.)

Before turning to principles of structural equity, I should pause to further delineate the scope of structural equity concerns. For one thing, the structure of a practice of mutual market reliance should be distinguished from the *political* procedures by which specific laws or expectations are set. Such procedures can of course be fair or unfair in their own right. Political fairness requires, for its own sake, that negotiations be transparent, that all affected parties have voice in setting the negotiation agenda, that technical assistance be available when it is needed. But the fairness of any governance practices also depends on how far they facilitate substantial fairness in what is being negotiated, the *underlying* organization of the market reliance practice itself, especially in light of how it distributes the benefits and burdens it creates.

I have suggested examples of such “benefits and burdens,” but what more generally do they include? Very roughly, they are the benefits and burdens that would not exist under general economic autarky (e.g., in a state system without economic globalization). This is only roughly correct, however, because, as suggested above, they cannot simply reflect de facto economic interdependence, but must be attributable specifically to the international market reliance practice that creates and organizes the fact of interdependence. The question, then, is what this “international market reliance practice” includes. Because this is a delicate issue of social interpretation, I proceed cautiously, by the following two-stage method.

¹³ [Note on circularity in Scanlon’s framework]

At a first stage of inquiry, we identify the most central, clear-cut aspect of the practice and the benefits and burdens most clearly attributable to it. The natural candidate is the multilateral trading system and gains and losses considered by classical trade theory (which has of course historically influenced the system's founding rationales and design). Considerations of structural equity are most clearly applicable here, especially given the system's rule-based nature and judicial and enforcement mechanisms.

At a second stage of inquiry, we consider whether and to what extent other economic arrangements can be seen as aspects of the same underlying market reliance practice. The issue is not then the applicability of structural equity in the global economy (the first stage settles that matter) but rather its scope. Bi-lateral and regional trade agreements should presumably be included; they are partly governed within the multilateral system and (because "trade diverting") influential over where its benefits and burdens flow. Other arrangements—such as capital markets, international lending institutions and practices, and the monetary reserve system—are less straightforward, though there is, for several reasons, a case to be made for including them within the common market reliance practice as well. Trade finance is crucial for goods and services trade; currency valuation directly shapes a country's gains from trade; and an international lender of last resort (the IMF) was crucial to the post-war trading system from its inception (it allowed countries to resolve short-term budget problems without taking short-term, beggar-thy-neighbor trade measures). In this case, along with the benefits and burdens of goods and services trade, the scope of structural equity principles will include any number of benefits and burdens created specifically by capital market reliance, including its affects on growth, standards of living, development, employment, and perhaps much more. (Though this is not to say any single fairness principle applies across the board. Not only am I suggesting the three principles stated above, the special hazards and uncertainties of capital market reliance may require special risk-sensitive fairness principles, which I will not consider here.)

For our purposes, we can limit our attention to the multilateral system of goods and services trade and treat further aspects of the underlying practice as secondary issues of scope. However the issue of scope is resolved, the essential assumption is that there remains a meaningful difference between the consequences of the assumed international market reliance practice and different domestic economies. Sufficiently radical change in the underlying state system—e.g., easy global labor mobility, combined with deep economic and regulatory integration, over enough time—could in theory obliterate any meaningful benchmark of comparison for identifying the benefits and burdens that the trade relation creates. For the reasons suggested above, I assume that our politically decentralized and partly integrated world is, and for the foreseeable future will be, safely short of this obliterating line. It is by no means clear that globalization will gradually take us in the direction of full integration of the requisite kind. Even if it does, our present question of international structural equity will be applicable and important for world politics for at least a century or two.

COMPENSATING THE “LOSERS”

I now turn to consider reasons why the three principles of structural equity proposed above are more defensible (as reasonably acceptable) than weaker, less demanding alternative principles. My own view is that *no* weaker principles are equally defensible, but here I will confine my discussion to some general types of alternative: opportunity principles, utilitarianism, Pareto efficiency, libertarianism, and principles of fair division. I develop my argument by considering two basic fairness issues, issues of harm and issues of relative gain.

Although the standard economic case for free trade is concerned with national income gains, it is usually assumed that something must be said about how the gains of trade are distributed. A standard suggestion is that, insofar as a society cares about distribution, it can of course choose to compensate the “losers” from trade with some part of the “winners” gains (e.g.,

via a tax and transfer scheme, or domestically funded social insurance institutions). As the point is often put, the mere *possibility* of providing such compensation implies that free trade is “better for the nation” than market protection.¹⁴ Whatever we say about efficiency or welfare, this is not very plausible as a view about what is fair. Freer trade could be fair only when compensation is *actually provided*.¹⁵ Otherwise, some people will in fact be made worse off, and there is no general reason to think mere aggregate or average gains should fall out in a way that makes this seem fair. The injury to some might be quite significant, while the gains to any one person are small and simply distributed across a large number of people. For example: workers in an import-oriented industry might face unemployment and destitution, while millions of consumers see small savings on slightly cheaper goods. If nothing else, the losers can reasonably insist that their losses be mitigated by any number of feasible compensatory schemes. The complaint is especially strong if the disaggregated cost of compensation amounts to a small or moderate part of each winner’s gains.

This objection is forceful but incomplete. Not everyone who suffers a loss as a result of trade would seem to have a claim of fairness to compensation. Consider the oligarch whose monopoly is undermined by foreign competition, or the rich owner, manager, or shareholder in threatened import-oriented industry firms. These people may lose as a result of freer trade but remain rich and secure. But who then is a “loser” of the right sort, and on what grounds? I will suggest three relevant grounds: reasons of harm to lifetime prospects, of acceptable risk, and of burden sharing. The first two reflect the principle of (Collective) Due Care, the third consideration the principle of Relative National Gains.

According to Due Care, the trade relationship is structurally equitable only when compensation is arranged for the harms of trade. Specifically, no person’s life prospects are to

¹⁴ According to the Hicks-Kaldor compensation criterion, only a *possible* Pareto improvement is required. [As a point about the possibilities of consumption, see Krugman and Obstfeld, p. 68-71]

¹⁵ [A few—but only a few—economists do emphasize this as a point about the gains of trade, e.g. Samuelson 1966 and 1950. Krugman and Obstfeld, p. 70. Cite Driskill’s critique of “good for the nation.”]

be worse than they would have been had his or her society of origin been closed to trade. I assume it will rarely be coherent (or relevant) to ask how a person would have fared in the absence of any society whatsoever. Yet in many real-world cases the comparable question about a person's society is all too apt. Many developing country (e.g. cotton or sugar) farmers are arguably net losers for their exposure to lavish rich country agribusiness subsidies, in the sense that they would have been better off had their society never opened its borders. Some are cast into destitution when they otherwise would have continued at subsistence levels. Many do not reap gains they would have seen had domestic markets been open to them and closed to the outside. On the other hand, when the well-off and stable oligarch, owner, manager, and shareholder suffer economic loss, they normally remain net beneficiaries of life in society. Their life prospects are better overall as a result of their society's openness to trade.

To be sure, it is presumably also true that some people who are harmed by trade in this sense would have been even worse off overall had their country never opened its borders. A long history of cumulative gains might have buoyed general prospects of the society and class they were born into. I therefore suggest that the relevant benchmark factors out gains reaped before a person is born. In order to assess the affects of trade on a person's life prospects, we should compare the situation in which that person's society (perhaps gradually) chooses autarky roughly around the person's birthday. (To avoid "non-identity problem" worries, we consider someone born in that person's social class, whether or not it is the numerically same individual.) If the person's expected life prospects would have been better under autarky, then he or she is made worse off by life in an open society.

The unfairness of uncompensated harm is exacerbated by the fact the people harmed are often very poor. Yet it does not depend on conditions of absolute deprivation. Low-skilled rich-country workers (who are rich by global standards) can equally count as worse off as a result of their country's choice to free trade. As trade reallocates resources to high-skilled, export-

oriented industries, low-skilled, uneducated workers commonly find themselves unemployed. They are not readily retrained and reemployed in the industry to which their jobs have moved. They face a difficult and perhaps extended period without stable income, as well as income volatility that hinders long-term savings and prospects for eventual retirement. Although such workers could in principle see compensating benefits from life in an open society, these benefits often do not in sufficient measure flow their way. (Consider, for example, that the US has from 1980-2008 distributed its massive income gains, which are in part due to trade, away from the bottom and lower-middle of the income distribution.)

Due Care is consistent with perfectly free trade so long as special compensatory arrangements are made. In developed countries, feasible arrangements include direct payments and/or social insurance, in the form of unemployment and wage insurance, pensions, education subsidies, job training and job placement, employment-stimulating public investment, and so on. In developing countries, where institutional schemes can be difficult to establish and maintain, appropriate measures include public investment, government purchase of goods and services, temporary, revenue-generating trade barriers, infant industry protection, and so forth. Developing countries often cannot pay for such measures by themselves (from their own gains of trade or otherwise). A crucial implication of Due Care is that the responsibility to fund and establish compensatory measures does not stop at a given country's borders. The international practice of market reliance generates *collective* responsibilities, for all countries involved. When any country cannot afford the necessary compensatory schemes, its trading partners are obligated to help fund the measures needed for the shared market reliance practice to be fair to all. (The appropriate slogan is not "trade not aid" or "trade as aid" but "aid as fair trade.") We may presumably expect countries to be unreliable in providing the necessary support. In that case, structural equity in trade requires the establishment of relatively autonomous international institutions for the maintenance of domestic social safety nets (as enforced, if need be, within the

WTO). If the GATT duly provided policy space for each country to bolster social insurance schemes in the face of increasing openness and external risks,¹⁶ fairness also requires that countries poor and rich stably develop or retain the means for doing so.

Even if *some* level of social protection is thus required for fairness, this is not to say that levels of benefit will be very generous relative to the status quo. One could argue that, because trade is so beneficial, existing rich country schemes are more than sufficient to provide the modest level of compensation required. We could in principle cut back. As a partial reply, it is plausible to add a risk premium in the application of Due Care. Just as someone who wins \$1000 by betting his house in roulette is not clearly better off—his modest gain doesn't justify the high risk of significant loss—a social insurance scheme will not prevent net loss to a person unless the level of benefit is sufficient to justify exposure to significant risks of disruption, instability, and impoverishment. One will not “break even” unless one sees a good measure of gain.

There are weaker, less demanding principles than Due Care. According to opportunity principles, the fairness of the trading system can be assessed in terms of the opportunities available to countries (e.g. within the trading system) and/or their respective market actors (within market relations). The relevant opportunities can be characterized in different ways, depending on the opportunity theory in question. They might include only the absence of formal discrimination in established rules; or rough equality in market access in what rules are established; or even requirements of “fair opportunity” which include, e.g., technological or infrastructural development needed for effective (legal or market) opportunities to be available to all. The common feature of all such views is that there is no basis in fairness either for direct outcome assessment or for regulation (e.g. through compensation schemes) of what market outcomes arise.

¹⁶ [cite Rodrik on the historical correlation between increasing “external risk” and increasing domestic social insurance spending.]

My objection to all such views is that they do not count the harms of trade. It is not permissible to adopt a practice of market reliance, for the sake of its general benefits, without compensating those who will be foreseeably harmed, unless the parties likely to be harmed have an adequate opportunity to avoid the harmful practice. But people rarely have adequate opportunities to avoid the harms of trade, and so can reasonably complain when compensatory arrangements are not made. Few can be reasonably expected to leave their country (to where? another trading society?), and it is not as though the people most vulnerable to global market forces are simply not doing enough to gain from market relations. Developing country farmers, for example, are often doing as well as they reasonably can for themselves, given their limited options. Like domestic institutions, but unlike ordinary games, the international system of trade is not “voluntary” (i.e., reasonably avoidable) in a sense that makes an opportunity principle appropriate.

One might suggest that any *country* can always avoid exposing its people to outside market forces by simply erecting trade barriers. In that case, one might claim, the country alone bears responsibility for compensating its losers when it chooses free trade instead. So long as relevant opportunities for integration are provided, the *international system* is not unfair, whatever outcomes result. But countries already in the system of trade, and subject to its market reliance expectations, cannot usually be reasonably asked to leave. The cost of leaving is often too high. If people are harmed because their country abides by expectations of freed trade, and the country is a participant in the practice in good standing, then all the countries involved remain collectively responsible to see to it that compensatory arrangements are set up in each trading country.¹⁷

A second principle weaker than Due Care is utilitarianism (or any maximizing consequentialist principle, here understood as a fairness requirement). Unlike opportunity views,

¹⁷ [discuss exclusion]

utilitarianism agrees that harms to individuals matter. The familiar problem is that they matter only because of their relation to aggregate welfare. It follows from utilitarianism that it is fair to severely harm producers by reduced trade barriers, so long as sufficiently many consumers see modest or small gains. As suggested above, this does not in many cases seem fair.¹⁸ Those severely harmed can reasonably expect to have their losses mitigated, especially if this merely cuts moderately into consumers' levels of gain—and even if welfare is thereby diminished overall. Or to take a starker case: utilitarianism would in theory allow high poverty-causing trade barriers against most of the developing world if exclusive free trade with a few populous developing countries (such as India and China) could maximize poverty reduction and welfare overall. But this is hardly fairness in trade: it is not fair to substantially worsen the condition of poor people in one part of the world for the sake of gains to poor people elsewhere, even if there is a net reduction in poverty or increase in welfare.

If opportunity principles and utilitarianism are less demanding than Due Care, Pareto efficiency, regarded as a fairness principle, is more demanding. According to this principle, a change in trade policy is fair only if it makes someone better off without making anyone worse off (a “Pareto improvement”). This implies that the rich and stable oligarch, owner, manager, or shareholder who suffers a loss would have to be paid off. But Due Care *does* allow trade policy to make such people worse off, so long as they remain net beneficiaries of life in an open society, as measured by their overall life prospects.

My second proposed principle, Relative Domestic Gains, does demand more than Pareto efficiency, however. Pareto efficiency is indifferent to distribution. So long as no one is made worse off as a result of trade, it allows one or few people to take the lion's share of the national gains. This seems unfair if only because background differences in wealth usually make a large difference to one's vulnerability to foreign market forces. The affluent will have a much easier

¹⁸ [Say something about acceptable aggregation]

time managing disruptions (in employment or in savings) than those in the middle and especially the lower classes. If the less well off bear the burden of a society's overall enrichment, it is not fair for the affluent to enjoy all or most of the gains.

This provides further reason, beyond the suggested risk premium, why fair social insurance schemes would be generous. Indeed, this is arguably the central reason of fairness for social protections. Even if we find few actual cases in which an idea of "harm" is appropriate—perhaps because the rate and depth of integration renders the idea moot—we still have to reckon with the way the benefits and burdens of social cooperation are being distributed. The fact that the relatively less well off bear the chief burden of a society's enjoying the gains of trade gives them an especially weighty claim to greater shares. Here the relevant "losers" are specified in terms of the relative hardships that relatively poor people face as compared to relatively rich people within the same society. So, for example, because income volatility is more likely to diminish the displaced, low-skilled worker's ability to save and ultimately retire, wage insurance, beyond mere unemployment insurance, is arguably only fair. (One is then guaranteed one's previous wage level, in one's next job, as opposed to mere post-employment pay for a period of time.)

THE RELATIVE GAINS OF TRADE

So fairness requires "compensating the losers" for several reasons: reasons of harm to lifetime prospects, of acceptable risk, and of burden sharing. We saw that the Relative National Gains principle stands behind fair burden sharing, but have not yet considered its full force. Among those affected within a given society, gains are to be distributed equally, unless inequality admits of special justification, as reasonably acceptable to all of them. Thus a weaker principle might require that special hardships be compensated, yet place no limit or need of justification upon inequality in levels of gain. The question then is, Why should inequality of

gain require special justification? If everyone is made substantially better off, who could reasonably complain?

One possible answer looks to the nature of the goods created in the trade relationship. From a domestic point of view, the gains of trade chiefly result from a national-level choice of policy. The goal is macro-level change in the allocation of productive resources, for the sake of macro-level (average or aggregate) gains across an economy. People contribute by doing what they would do anyway, except insofar as freer trade creates new incentives. Market actors refine what they produce and sell, perhaps buying and selling with different people and on different terms than before. In each case, they promote their personal prospects. Aside from those who suffer special hardships, no general class of market actors makes any special contribution to the gains of trade for society overall, at least none which gives them any proprietary claim to the gains they see. And if so, then everyone who has had a hand in the social created augmentation of wealth has the same presumptive claim to greater rather than lesser shares. The default distribution, which recognizes every such participant's claim equally, is then equality of gains. Unless further reasons for a difference in treatment can be given, the trade practice would unfairly discriminate between the different claimants.

Libertarians might object that the benefits of voluntary market exchanges are one's property as a matter of natural right, and that an individual's gains from trade are no exception.¹⁹ In good Rawlsian form, I would not grant this view of property: one's moral property rights are to what one gets in a fair scheme of cooperation. If holdings have to be modified through taxation for the sake of structural fairness, then one has no right against this.²⁰ Moreover, the gains of international trade do in any case have an exceptional character. A change in trade policy is not an intervention into any given transaction, but rather a way of changing the circumstances of exchange, especially relative scarcity of goods. Insofar as living standards

¹⁹ Robert Nozick, *Anarchy, State, Utopia* [reference]

²⁰ [Discussion applicability to "legitimate expectations" in the global case.]

rise, no one needs to have voluntarily or even consciously chosen it through market exchange. One gains anyway. Distribution of the gains is thus not a case of taking what someone has made with his own bare hands and giving it to someone else. The more closely analogous situation is that in which a government deposits money into one's bank account and reserves a right of fairness to give notice and take some of it back.

Rawls's difference principle, as applied to gains, represents a further specification of Relative National Gains: inequality of gain would be justified only insofar as it is the greatest possible benefit to the society's least advantaged. If the gains of trade are part and parcel of Rawls's "primary social goods," which include income and wealth, then the application is straightforward. Even if we assume that no principles govern domestic distribution *other* than distribution of the gains of trade, the difference principle might be thought to apply within that restricted range. But I will not pursue this thought further here. I will simply assume that Relative National Gains needs to be further specified in some such way.

What is more important for present purposes is that the domestic distribution of the gains of trade bears on what is fair in the *international* system. For a country's inegalitarian policies can affect the relative gains of other countries and their members. For example, suppose (as I'll suggest below) that developing countries can in fairness ask for special privileges in the trading system (e.g. freedom from intellectual property or investment rules) on grounds of poverty, despite significant costs to rich countries. This argument will be considerably weakened if the affluent in those developing countries gain to a degree which is not necessary to maximize prospects for the worst off. Even if we suppose that everyone in a developing country is made better off, the level of relative gain will matter. Rich countries can reasonably expect limitations on inequality of gain, so that gains flow as much as possible to relatively poor people. It won't be fair to ask rich countries, including their own worst off, to pay for unnecessary gains to relatively rich people.

How then are gains across trading societies to be assessed? According to International Relative Gains, the default is equality of gain, with two important exceptions. First, gains are to be adjusted according to relevant endowments such as a country's population size, level of development, and any other factor not created by the trade relation which predictably changes how much a country gains from global market integration. (I have no general account of how adjusted gains are to be specified. I do assume this is possible to a reasonable approximation.) Put intuitively, the idea is that, in comparing a large and small country, we cannot simply sum up the total gain from trade and divide it equally. This is to overlook the significant role of prior endowments, which do often dramatically shape how much a country will gain from trade. In domestic society, beneficial personal endowments are by and large a product of the very system of cooperation whose justification is in question. In our politically decentralized and partially integrated world, by contrast, there *is* a meaningful difference between what the trade relation creates and the social cooperation that is there anyway.

Endowments are allowed to make a difference not because they somehow generate independent entitlements which constraint what fairness in trade could require. I take it there are no such entitlements. Rather, endowment-sensitivity simply reflects trade's limited aim, which is precisely to *improve* upon endowments roughly as given (through specialization and exchange), not to redistribute the benefits of those endowments as such. We might still advocate the redistribution of differential endowment-generated benefits, but this would not be a requirement of fairness in trade. Trade is legitimate and fair as long as the associated practice of market reliance is mutually beneficial and the improvements it creates are distributed in a reasonably acceptable way.²¹

The second exception to equality of distribution allowed by International Relative Gains is as follows: inequality of gain is fair if greater benefits flow to people who are worse off in

²¹ [Say something about "arbitrary from a moral point of view" in light of *The Law of Peoples*.]

absolute terms (for instance, because developing countries are exempted from trade law's default norm of non-discrimination, or from specific intellectual property, services, investment, or competition rules). The principle thus reflects a limited form of "priority for the worse off," as applied to levels of gain among trading partners. The idea, in general, is that benefits matter more, from a fairness point of view, the worse off those people are in absolute terms.²² The appeal here is not to general humanitarian concerns with absolute deprivation, but specifically to *fairness in the trade relation*. Thus the present principle does not take into account absolutely poor people outside the trade relationship. And even among trading countries, it does not consider forms of benefit, other than the gains of trade, which might be given to poor people. Poverty is a relevant fairness consideration, but only because it *modifies* the prior and independent claim trading countries have to the fruit of their shared practice.

A principle weaker or less demanding than International Relative Gains would be an entitlement principle. According to one version, countries have *no* claim concerning relative gains, for the reason that any gains already owned. Even if individuals do not have natural libertarian property rights to the gains of market exchanges, a similar claim might be made at the country level: countries have sovereign rights of property to whatever gains are reaped within their borders. I take it this view is simply mistaken about what moral rights of sovereignty entail. For one thing, to sign a trade agreement such as the WTO treaty is to modify one's sovereign powers and to take on any associated obligations of fairness. So if fairness concerns itself with relative gains, there is no moral claim of sovereignty against this. Moreover, the (endowment-adjusted) gains of trade are the joint product of an international social practice, and so not in any conclusive moral sense "owned" before they are fairly distributed. Provided each country participates in good faith, each has the same presumptive claim to greater rather than lesser shares of the fruit of the joint venture. It matters little where the fruit is picked. If you and

²² [Say something about the scale of urgency, and how its interpretation (threshold, or smooth function) bears on which developing countries have special claims. Also connect the issue with acceptable aggregation]

I are neighbors and cooperatively grow apple trees along our common property line, it makes no difference if most of the apples happen to fall on your side. I retain the same presumptive claim to them. Your right of sovereignty over your property means you can exclude me from collecting the apples. But the apples remain mine as much as they are yours, in the sense that we have an equal claim of fairness to our joint creation. Similarly with countries: a sovereign government has no proprietary claim to the jointly produced gains of trade. It may be legally able to prevent other countries from recovering the gains. But this is not to say the resulting distribution and trade practice is fair. Such measures may simply be a form of cheating.

A different principle weaker than International Relative Gains would admit that relative gains matter but deny the benchmark of equal distribution. Consider Gauthier's proposal of rational bargaining theory ("minimax relative concession"), in this case regarded as criterion of fair division (or, as he might put it, of non-exploitation).²³ Fairness then requires maximizing gains to the party that benefits least from cooperation, where benefits of cooperation are measured by comparison to the situation in which that party enjoys the full cooperative surplus. So, insofar as a well-endowed economy such as the US can expect to do well on its own without trade, its relative benefit from trade cooperation is less than a poorly-endowed countries such as Japan, which depend (or at least depended) on trade for prosperity. The US thus gains less than Japan when each is imagined to take the entire cooperative surplus for itself (if not naturally, then by a tax and transfer scheme). So it can fairly expect correspondingly greater gains of trade. What is left for Japan and other countries is only the levels of benefit needed for cooperation to be of some overall gain for them. Equality of distribution can turn out to be required by fairness (when all fare the same in the "non-agreement" situation), but it is not the *initial* presumptive benchmark for fairness.

²³ *Morals by Agreement* (Oxford: Oxford Press, 1986).

I take it the proposed baseline is morally inappropriate. Gauthier imagines each party to a bargaining situation laying initial “claim” to the entire cooperative surplus, which is then modified (by “concessions”) according to rationally self-interested considerations of giving others enough so they accept a cooperative arrangement rather than walk. Otherwise, one exploits one’s superior bargaining position to the hilt. This is more plausible as a model of “threat advantage,” regardless of what is fair, than a model of fair division. For this initial “claim” is simply inadmissible from a moral point of view. Each country has a morally relevant interest in greater rather than lesser shares of the gains of trade, but no *morally relevant* interest in any level of gain inconsistent with the similar morally relevant interest of other countries in also having greater rather than lesser shares. Participating countries in the trading system can be said to have a special claim to its fruit, as compared to countries who are not involved in the joint venture. But so long no further relevant considerations enter, there is then only one initial kind of morally relevant participation-based claim consistent with the morally relevant participation-based claims of all: a claim to equal gains. The claim of each to a greater rather than lesser share can only be a (presumptive) claim to an equal level of gain.

To be sure, further relevant considerations can enter the picture. Gauthier might argue, on substantive moral grounds, that cooperation is only fair when those who benefit least from cooperation see the largest share of gains. But this case would have to be made. There is no general moral reason to think that any participant’s morally relevant interest in greater rather than lesser shares somehow terminates at the level of gain at which there is prudential reason to cooperate rather than walk (to prefer trade over autarky). If it is unreasonable for someone to ask for more, there must be a morally relevant reason why. The reason cannot be differential contribution. Those who gain least against Gauthier’s benchmark aren’t necessarily those who contribute the most to the scheme of production. And my proposed account shows that there are

other ways to register the relative contribution of differential endowments. We simply factor these out, leaving a presumptively equal claim to endowment-adjusted gains.

Moreover, Gauthier's assumed concern with relative welfare becomes hard to sustain once we look carefully at what the intended gains of trade are like. The participant's basic presumptive claim, in the first instance, is to the particular types of benefit and burden that trade creates. But, again, the basic economic aim of trade is the creation of certain goods—income gains and, indirectly, economic growth—not individual or aggregate welfare. I have suggested that background conditions of poverty do shape how much countries can expect in terms of levels of gain (of which more momentarily). It is far less plausible to suppose that the background welfare levels of fabulously prosperous people have any similarly general significance for what is fair.²⁴

This suggests an alternative kind of principle weaker than International Relative Gains. According to a principle of strict equality, countries simply divide (endowment-adjusted) gains equally. There is no fairness in greater gains for poor countries—even if this is required for humanitarian or other moral reasons. This view is unduly restrictive, however. There is no fairness in asking someone to pick up a dinner tab (rather, say, than paying an equal share), simply because he is richer than his dining partner. Yet the trade relation is not a one-off interaction of this kind, but rather a cooperative practice which extends indefinitely into the future, and which substantially shapes people's life prospects, including, or especially, the world's poor. Within such an ongoing practice, we do not insist on strict equality when inequality can be expected to be mutually beneficial (or maximally beneficial for the least well off) over time. This is not, one wants to say, to allow *unfairness* for the sake of mutual gain; rather, a practice which so distributes its gains is perfectly fair, because or insofar as the inequality is reasonably acceptable. In much the same way, I claim, departures from the

²⁴ [Say something about the Nash bargaining solution.]

benchmark of equality can be fair, for the reason that developing countries stand in a very different relation to the gains of trade than do rich countries. If rich countries see ever greater wealth, developing countries see gains for large numbers of very poor people and (partial) grounds for hope that widespread poverty will eventually be eradicated. The gains of trade thus have greater significance, from a fairness point of view (though this significance diminishes as relative prospects improve). Even if fairness requires that rich countries do benefit from trade, greater gains to developing countries are perfectly fair.

Thus far I have been considering single principles weaker or less demanding than those I propose. It is worth also mentioning a hybrid approach. A hybrid approach weaker than Relative International Gains would be a modified opportunity principle: fairness might be understood in terms of equality of opportunity and not outcomes (as above), yet an exception might be made for special privileges, and perhaps special compensation, for poor countries. Certain outcomes for poor countries bear on whether the trading system is fair, but not in a way which implies that equality of gain is the default distribution.

Now, if the exceptions are made only for poor countries, this would still not account for the harms of trade to low-skilled workers in rich countries. A more fundamental problem, however, is that this position ignores developing countries' basic claims of fairness as participant in the market reliance practice. Countries do contribute to different degrees, as the endowment-adjustment acknowledges. But developing countries are indeed contributors to the common reliance practice. The doctrine of comparative advantage entails precisely that all countries—even those with an absolute advantage in nothing—can contribute to a mutually beneficial division of labor. Insofar as no country has proprietary claim to the intended (endowment-adjusted) gains, each has a presumptive claim to a greater rather than a lesser share of the joint activity. It is thus not the case that conditions of poverty justify a shift from opportunities to outcomes in exceptional cases. Outcomes are at issue in the first instance: they reflect directly

on whether the common market reliance practice treats everyone it affects in an equitable way. The fact that so many contributors are poor simply justifies special treatment, in the form of greater gains.

This point is especially important given that developing countries have historically advocated for “special and differential treatment” provisions on relevantly similar grounds. Special treatment is said to be provisionally required if developing countries are to ultimately enjoy status equality of a sort which originally motivated trade law’s default non-discrimination norm.²⁵ But this view misconstrues the basic socio-economic fairness issue, which is not equality of status but equality of distribution. More important, it deemphasizes or ignores the role of developing countries as active contributors to the mutually beneficial relationship.

A final objection is that the present hybrid approach ignores relative gains to *developed* countries. Much progress was made in the post war era when countries put concern with *short-term* relative gains aside in favor of the longer-term benefits of a cooperative economic relationship. Still, this is not to say long-term relative gains are irrelevant. In principle, each participating country jointly produces the gains of trade, and so we should have reason to think they are fairly distributed. It may be that developed countries often become similar enough in underlying economic conditions that the endowment-adjusted gains they actually reap within a rules-based system such as the WTO normally fall out in a way that is equal or otherwise acceptable. But this is a substantial empirical proposition, which may or may not turn out to be true. When it is not true, substantial adjustment in the terms of trade might be needed, if trade is to be fair.

[section on lexical priority]

CONCLUSION

²⁵ See Robert E. Hudec, *The GATT Legal System and World Trade Diplomacy* (New York: Praeger Publishers, 1975) on the history of this dialectic. I agree with his view that the stated focus on status equality misrepresents the ultimately *instrumental* justification for the non-discrimination norm. I disagree that this implies a rejection or skepticism about whether fairness has any purchase within the multilateral system.

In conclusion, then, fairness in trade generates limited but significant requirements of socio-economic distribution from modest (or as Rawls would put it) “weak and widely shared” premises. The basic fairness argument need not assume moral principles other than those which arise for the trade relationship, and because of the kind of relationship it is.

I should perhaps emphasize that this conclusion is quite consistent with the importance of poverty, human rights or other moral considerations for trade law and policy. The fairness of the trading system certainly depends on how it handles these and other “trade related” moral issues as well.²⁶ I do mean to suggest that the prominence of such issues should not lead us to overlook central issues of socio-economic structural equity.

It might be objected that I have myself failed to appreciate the force of such issues, as true structural equity must have a fully “global” or “cosmopolitan” form, which is less sensitive to contingent and perhaps passing features of the global order. Nothing I have argued precludes the possibility of justifying such principles when a truly “global” social and economic order has in fact emerged. And I have only briefly suggested why we are not now there, without addressing important but vexing questions about how much and in what ways our world would have to change. My claim has been that egalitarian argument need not wait: the fairness case for significant egalitarian principles of socio-economic distribution can be made for the politically decentralized and partially integrated world we have today.

²⁶ [cite Howse and Trebilcock]