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International Trade: A Justice Approach

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INTERNATIONAL TRADE: A JUSTICE APPROACH

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INTRODUCTION

The current international trade regime is flawed, unjust, and in need of redress. It largely ignores concerns for global economic justice, and fails those most in need of a strategy to help them move out of extreme poverty; it exacerbates inequalities, both between states on the world stage and within individual countries, and it creates a competitive pressure on producers to use the differing legal standards and enforcement between countries to externalize important environmental, social, human rights and cultural costs that harm others now, or in the future.

There are two models, which have generally been presented as ideal alternatives to the present system. The first of these is a move towards eliminating all barriers to free trade in a self-regulating free-market approach to trade. This is a model that has had a strong influence on international trade policy over the past thirty years, and has shaped many features of the current system. The other main model has a strong state-centric focus that favors unilateral protectionism as a tool to advance individual state interest, and develop or protect domestic industry. This model has been a strong influence on trade policy since the development of the modern state.

Both these models, while having their strengths, fall short of addressing the important concerns of global justice. What is needed is a model that focuses on regulating and facilitating international trade in the best interests of all participants.
The model I propose is one that is influenced by John Rawls’ conception of social justice, the idea that achieving a just society is dependent on ensuring the institutions and basic social structures of a society are based on embedded principles of justice. Rawls argues that a fair background framework for a society, permits individuals to pursue their own ends as they see fit, under conditions that in most cases, support maintenance of a just society.

This proposal is intended as the basis of a new, more just approach to international trade, and it is intended as a proposal that could be implemented in global society as it actually exists. The project takes a cosmopolitan approach to obligations of justice, in that it accepts that obligations of justice extend between all members of global society, but it is not necessarily part of a larger project of global justice, and thus the principles are limited to those that are relevant specifically to international trade. The project will be based around principles of justice, but although influenced by Rawls’ conception of justice, Rawls’ principles are not adopted directly.

Rawls suggests principles for justice in international society, in *The Law of Peoples*. There justice is seen to be very different in international society than is his conception in *A Theory of Justice* for a single self-contained society. In *A Theory of Justice* Rawls carefully outlines his conceptions of the economic institutions that would be required in society to support his principles of justice. In *The Law of Peoples* Rawls claims that a fair background framework for trade would need to be worked out using
the concept of the *original position* with the *veil of ignorance*,
but, unlike *A Theory of Justice*, he does not work out what it would look like. Rawls argues that his liberty principle and difference principle do not make sense in the context of international society, he argues against a cosmopolitan conception of the obligations of justice in international society, and his principles of justice, which he calls the “Law of Peoples,” are arguably a much thinner and less comprehensive conception.

There are several important commentators on global justice who critique Rawls’ conception of global justice in *The Law of Peoples*, but claim that his principles of justice stated in *A Theory of Justice*, which he developed for a single, mostly self-sufficient society (really a single country or state), ought to be applied to global society. The principles of justice in international trade defended here should be considered, in a sense, to be similar to criteria that Rawls uses in constructing his economic institutional order in *A Theory of Justice*, in that they are meant to apply to a society committed to justice for all its members, but they are created in response to the need for criteria, for a fair background framework for international trade, which, Rawls argues, would emerge from the 2nd original position, in *The Law of Peoples*.

I will propose a model of trade that would be structured according to principles of justice in international trade. These principles would focus on addressing the key justice critiques of the current international trade system. The principles are these:

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1 See Chapter 1 for detail.
1) Reduction of extreme poverty and satisfaction of basic needs for all people should be the most important goal of international trade regulation, in a world where resources exist to do this.

2) Trade regulation ought to work towards limiting and reducing harmful inequality at all levels (both between states and within populations).

3) Trade regulations should ensure that negative externalities of trade are compensated for fairly. The poorer countries or the poor within countries should not bear a disproportionate share of the negative consequences of international trade.

A more just conception of international trade would be one that respected the interests of all those with a stake in its regulation and facilitation. Although I will argue that international trade needs to be an active part of ending the most extreme global poverty and limiting inequalities that lead to injustice, I will also defend the idea that to do this, trade policy needs to move beyond the rigid ideological positions that have often tended to dominate trade theory. There is likely no simple solution for all situations; instead a just conception of international trade would be based on principles that would guide decision making and policy relative to the particular issues and concerns of particular situations.

The principles of just international trade that I propose are not proposed with the assumption that they are part of a larger ideal-world system (perhaps non-capitalist). I assume a world order that is substantially similar to the current situation.
The important condition that this proposal does assume, however, is a disposition towards achieving justice in relations of international trade.

**Narrative Description of Chapters**

**Chapter One**

The first chapter looks at how Rawls derives his principles of justice in *A Theory of Justice*, and his argument for how they ought to apply to the economic institutions of a just society. Then I examine Rawls’ argument in *The Law of Peoples* for his principles of justice in international society and also for his process of deriving them. I look at Rawls’ consideration of international trade in *The Law of Peoples*, and consider the fair background framework he suggests would be chosen in the 2nd original position to support it. I point out relevant differences between the two positions, which apply to a proposal for a just international trade regime.

I also consider my proposed principles of justice in trade in relation to Rawls’ principles of justice, and discussion of economic institutions in society in both *A Theory of Justice*, and *The Law of Peoples*. This chapter finishes with an examination of the positions of both Charles Beitz and Iris Marion Young, who support the argument that Rawls’ restriction of strong obligations of justice to the boundaries of states is arbitrary and would facilitate injustice at the international level.

**Chapter Two**

Chapter Two explores Peter Singer’s utilitarian critique of the current international trade regime, including the particular critiques that directly relate to my
proposed principles of justice in international trade. I also consider his argument for cosmopolitan obligations of global justice, and his critical discussion of positions which consider that citizens of the same states have obligations to each other which take precedence over obligations to others in the global society. The treatment of Singer’s position finishes by outlining his criticisms of Rawls’ position in *The Law of Peoples* in relation to his positions on justice in *A Theory of Justice*, particularly as they relate to trade.

I then examine Thomas Pogge’s argument for global justice based human rights. I outline his argument that the current world order is responsible for causing much of the suffering and death that directly results from extreme poverty, and explain several of his arguments for how and why. Thomas Pogge has made extensive arguments for why Rawls conception of justice in *The Law of Peoples* is flawed and for how it is illogical from the perspective of the positions Rawls supports in *A Theory of Justice*, and throughout his body of work on justice, I examine some of those arguments which are most relevant to international trade. Finally chapter two finishes with a presentation of Pogge’s proposal to end extreme poverty, which is particularly relevant to international trade.

**Chapter Three**

Chapter Three examines the two main economic models for international trade, the free trade model, and the protectionist model. It covers briefly the historical roots of both models, and examines their theoretical basis, outlining Adam Smith’s theory of
absolute advantage and David Ricardo’s theory of comparative advantage. In this chapter, I present the positions of economists who argue in favor of each of the models (free trade model and protectionist model). I also present critiques of both models, made by economists. These include Milton Friedman and Jagdish Bhagwati, supporting the free trade model, and William Gomory, Andre Gunder Frank, Ha Joon Chang, Joseph Stiglitz and Herman Daly with critiques of it. By the end of the chapter it should be clear that both of the traditional models have strengths and weaknesses, and that neither model is completely satisfactory alone.

Chapter Four

In Chapter Four I evaluate several proposals for reforming the international trade regime that do not embrace free trade as a trump concern; most are from economists, but they all take fairly strong normative positions on how international trade should be structured. Proposals considered are those of Ian Fletcher, Joseph Stiglitz, David Schweickart, and Herman Daly. Each of the proposals has important strengths, which contribute to my own proposal, but none of the proposals, considered individually, meets all the criteria of the three principles of justice in international trade.

Chapter Five

In Chapter Five I present my own proposal for an alternative system of international trade based on the three principles of justice. I explain the principles and why each is of value for trade in global society, and the basic concerns for each. I introduce the idea of a reformed institution for international trade (Global Trade
Organization) and outline the main concerns of each of the branches of the institution, and how it will act to address them. I then consider how decision making in the institution will be structured, and how members of international society will be represented in it. Finally, I consider how some parts of the proposal, implemented alone, could be quite effective at improving the fairness of the current international trade regime, even if it is not possible to immediately move forward with the entire reform.

**Is There A Value In Theorizing About International Trade?**

An important question to consider before wading too far into the problem of international trade, is whether or not, there is any point to a philosopher’s working through the problems of international trade? This question seems to be handled best if it is broken down into two distinct parts. The first part is, whether there is any point in theorizing about justice in international trade at all, given that almost all countries approach international trade at least partially as “international relations realists”, and that it is a fairly common claim (particularly among economists) that economics is not an area where justice applies, but is simply governed by scientific rules. The second part of the question is, whether or not, there are actual philosophical problems to address in international trade.

The first part of the question is concerned with the problem of whether the de facto “realist” orientation of much current trade policy makes it pointless to discuss trade theory in relation to justice. The Realist position is based on a belief that each
actor (in this case normally states) in international relations will act completely in their own interest, without concern for the interests of other states, as far as it is in their power to do so. This conception of international interaction can be considered to arise from the basic belief that international relations are essentially a zero-sum game. (A zero-sum game is best understood as a situation analogous to a pie of fixed size, where the only part of the situation that is variable is how big a slice each player will get. There is basically no value in “cooperation,” unless it allows you, with your allies, to garner a larger share of pie.)

There are several reasons why justice should be part of the conversation, the first being that even if it is a zero-sum game, we ought to divide up what is available so that all parties will get a fair share, especially in a world where distribution, not total resources available, is why millions die from the effects of poverty. Realism is an unjust way to approach trade, and simply because people are approaching it that way doesn’t make it right.

The second reason is that we know that international relations are not always zero-sum games; in fact in many situations, it is clearly and demonstrably a positive-sum game, where cooperation between actors ends up being beneficial to all. (A positive-sum game is a situation where cooperation between actors in the game actually increases the sum available to be distributed. Cooperating to work on the pie yields a bigger pie for distribution than the sum of pies that individuals could bake alone.) Economists that support free trade all argue that international trade is not a zero sum
game. So, like Rawls’ explanation in *A Theory of Justice* that a starting point for considering his theory is the requirement of a desire to live in a just nation, I will assume as a starting point, an orientation to international trade that we desire to live in a just world.

The second part of the question of whether or not there is value for a philosopher to work through the problems of international trade, is whether or not there is actually a philosophical question of substance involved. There are several reasons why this is quite clearly the case. The first reason is the fact that there is arguably a strong connection between international trade and other problems of global justice that philosophers have commonly addressed, such as the problem of global poverty, and concerns about the environment, human rights, and the distribution of resources in the world. These concerns are all issues where claims about justice are being made, the assumption being that a philosopher has the tools to “clear away the brush” around these problems, so that what is at stake are made clear. It is also true that issues of political economy have historically been addressed by philosophers, with moral philosophers being generally well equipped to address the normative aspects of questions of political economy.

I feel there is considerable value in focussing on normative issues in international trade, as it is an area that is often considered as a sideline to other problems in global justice commonly addressed by philosophers. International trade has not itself been the focus of much specific attention from philosophers. It has however been a subject of
considerable commentary from economists, much of it at least implicitly normative. I feel that balancing the issues of justice involved with theories of international trade is a philosophical problem worth addressing. In my argument, I will expand and support the defense of issues of justice in international trade, as a valid area for philosophical inquiry.

**Justice Concerns in International Trade**

The current international trade regime is unjust in several ways. I will argue that these injustices fall into three basic categories. The three categories include the failure of international trade to function up to its potential as a tool in ending the problem of extreme poverty, the problems of international trade contributing to inequality both within societies and in the international context between states, and the third major category which is the problem of negative externalities in market exchanges.

The concern that the current system of international trade fails to reach its full potential as a tool in the struggle to end the problem of extreme poverty is a particularly important charge of injustice, for poverty is one of the major causes of human suffering and premature death. It receives much less news coverage than more dramatic events, but it causes some 18 million premature human deaths annually\(^2\), its toll dwarfing that of war and human conflict. What makes it in some ways even more terrible is that it would be reasonably easy to end the worst poverty. The resources are available to

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ensure that everyone has more than enough to satisfy basic necessities. The issue is that the current system fails the most impoverished, because it is not particularly focussed on reaching them.

I will argue that the problems of inequality in international trade should be separated from the problem of extreme poverty, for the pragmatic reason that some commentators insist that poverty is a problem, but inequality is not, making it worth addressing the issues separately. I will argue that inequality could still be an important issue, even in situations where the most extreme poverty is not. Inequality, as a justice issue in the current regime of international trade, emerges as a problem in several ways, all strongly related, because they stem from the connection between economic inequality and political power. The problem shows up both within states, and as a concern in world order between states. In the situation of inequality between states it is a problem which forms a self-reinforcing cycle, with wealthy states using their power in negotiating and bargaining, to set up both the organizing institutions and ground rules governing trade in their favor, and also using that same wealth and power to achieve terms of trade that are highly favorable to them. It is self-reinforcing because, in ensuring that the ground rules and terms of trade favor them, wealthy and powerful states tend to reap the greatest benefit from trade relations, which allows them to further enhance their positions of advantage, controlling the agenda for future terms of trade.
These inequalities sustained, or even increased by the current trade regime, spill out far beyond the realm of trade and affect the abilities of poorer and weaker states, to ensure resources are available for fulfilment of basic needs of citizens, and present their interests effectively in world forums. This situation, can often lead to a situation where it is nearly impossible to address the other two categories of issue, extreme poverty and externalities.

International trade may also contribute to inequalities that exist within countries. In developing countries it may take the form of wealth from trade based economic development, mostly benefiting an elite group, who mediate the trade relationship. This scenario also occurs in wealthy countries, where wealth from trade activities tends to benefit an elite group who control large amounts of financial capital. The problem being in both cases, that wealth generally equals power in dictatorial societies, and often, also in societies understood to be reasonably democratic, so those elites benefiting from particular trade arrangements, predictably use the power that wealth has brought, to influence governance, and ensure their interests are protected and promoted.

The problem of negative externalities in the current international trade system, seems to cover the widest range of issues, some of which are controversial. An externality, in general, is any third-party effect of a market transaction between two individuals. Some are positive. Some are negative. If a set of transactions has significant positive externalities, a case can be made for the public provision of the commodity or
service, since the free market will yield a less-than-optimal supply. (To support creation of an environment that supports economic development, society as a whole, will often shoulder some of the costs of developing infrastructure of which business can take advantage. For example, reliance on private enterprise to construct a road network will result in a less-than-optimal situation, since a private company would have to set up a costly system to ensure that only paying customers could use the network.)

Negative externalities are particularly problematic costs inflicted on third-parties. Environmental costs are an immediate concern, but there are certainly other sorts of costs, including social or human rights costs (such as the lost opportunities to receive education, experienced by children forced by family economic circumstance into child labor,) and even cultural costs, which can often be more difficult to define.

There are two reasons why externalities are such a problem in international trade. First, because a free market system is competitive, based on the cost at which a good or service can be supplied to the market, there is a strong competitive pressure to lower costs of production. If a supplier of a good or service, can somehow avoid paying some of the production costs, they will increase their ability to compete successfully in the market. Thus, there is a very strong incentive to externalize as many costs as possible. Secondly, international trade, by definition, involves supplying to international markets, markets that are not confined by national borders. In wealthy developed countries there are usually laws, which are reasonably effective at limiting the ability of suppliers of goods, to compete by externalizing harmful costs onto others. But
international law has not, for the most part, developed a realistic capacity to limit the externalizing of harmful costs. Because of this, at least two problematic situations arise. One, there is the concern that, in an international market, there may be an incentive in less developed countries, without well-developed legal protective regulation, for suppliers to compete by offloading harmful costs on others. This creates a situation where the demand for products at competitive prices, in wealthy developed countries, ends up causing harm in other countries, without protective regulation. The second is that there is the pressure on industries in countries with developed legal regulation, to relocate operations to countries where the externalizing of the costs they incur, is still permitted. This may even be to the extent of creating situations, where very wealthy corporations are able to influence the regulatory law, in developing countries that desperately need economic development.
CHAPTER ONE
JUSTICE CONCERNS IN INTERNATIONAL TRADE

John Rawls: A Theory of Justice

John Rawls, a professor of Philosophy at Harvard University, transformed the field of political and social philosophy when, in 1971, he published A Theory of Justice. A Theory of Justice (ATOJ) brought social justice as a philosophical issue into the philosophical mainstream and legitimized distributive justice as an area to be studied and debated by political philosophers. It is hard to consider most issues of justice philosophically without some reference to Rawls’ work.

Rawls suggests that his goal in producing ATOJ is to provide an alternative theoretical approach to justice for social institutions and societies from Utilitarianism.¹ Thomas Pogge, in his biography of Rawls, explains that it is possible to think of Rawls’ work in ATOJ as an effort to demonstrate that, a worthwhile collective human life is possible and that, because it is possible, we can find motivation to work for positive change and recognize value in the life we live in the world, as it is currently.

By modeling a realistic utopia as a final moral goal for our collective life, political philosophy can provide an inspiration that can banish the dangers of resignation and cynicism and can enhance the value of our lives even today.²

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While this seems like a big claim for a book on political philosophy many have people found ATOJ to be a strong influence either in a decision to study political philosophy or as a motivation to look more closely at questions of social justice.

The basic argument of ATOJ is quite simple, but it has several key elements, which Rawls spends considerable effort elaborating. Rawls first suggests, “justice is the first virtue of social institutions,” and explains that, social institutions are a social structure occurring within societies. His definition of a society and the function of principles of justice within it are a strong basis for understanding the foundation of social justice:

[A]society is a more or less self-sufficient association of persons who in their relationships to one another recognize certain rules of conduct as binding and who for the most part act in accordance with them. Suppose further that these rules specify a system of cooperation designed to advance the good of those taking part in it. Then although a society is a cooperative venture for mutual advantage, it is typically marked by conflict as well as by an identity of interests. There is an identity of interests since social cooperation makes possible a better life for all than any would have if each were to live solely by his own efforts. There is a conflict of interests since persons are not indifferent as to how the greater benefits of their collaboration are distributed, for in order to pursue their own ends they each prefer a larger share to a lesser share. A set of principles is required for choosing among the various social arrangements which determine this division of advantages and for underwriting an agreement on the proper distributive shares. These principles are the principles of social justice: they provide a way of assigning rights and duties in the basic institutions of society and they define the appropriate distribution of the benefits and burdens of social cooperation.4

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3 Rawls, A Theory, 3.

4 Rawls, A Theory, 4.
The idea that Rawls puts forth in this section is that, the very foundation of social justice is the conception that, a society exists because in the aggregate, the benefit of coming together as a society is enormous in comparison to many individuals living in social isolation. The benefits however are not distributed equally, and realistically no individual can be said to have the alternative of opting out of society. Even escaping to the wilderness will not free one of the effects of society. Since society in the aggregate, produces huge benefits which are not distributed equally, it seems only reasonable, that we as a society ensure there is concern for fairness in how the benefits, and burdens of society are shared. (Imagine how useful Bill Gates’ or Carlos Slim’s skills would be, foraging on their own in the forest. Every tremendously successful individual in our society owes their success to the environment and structure of society as well as to their own efforts.)

Rawls’ definition of a society is important, both the idea that it is “more or less self-sufficient” and the idea that members of the society recognize certain rules as binding and for the most part act in accordance with them. The “more or less self-sufficient” part is interesting, in that, Rawls explicitly states that his theory of justice is not to be applied to international society or global society. In ATOJ he suggests different principles and process might apply to a society of nations,⁵ and in *The Law of Peoples* (TLOP) he takes the position that justice applied to global society has an entirely different character, and he abandons his basic ethical focus in ATOJ on liberal ethical

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individualism in his discussion of a law of peoples. The “more or less self-sufficient” part becomes extremely problematic if Rawls is aiming his theory at the society of the United States because it is hard to argue that it fulfills the requirement for self-sufficiency, whereas countries that have turned their backs on global society and global economic interdependence, seem to be furthest from Rawls’ vision of a just society.

Rawls suggests that what justice really applies to is social institutions; of which he has a fairly specific definition:

Now by an institution I shall understand a public system of rules which defines offices and positions with their rights and duties, powers and immunities, and the like. These rules specify certain forms of action as permissible, others as forbidden: and they provide for certain penalties and defenses, and so on, when violations occur. As examples of institutions, or more generally social practices, we may think of games and rituals, trials and parliaments, markets and systems of property.

Thomas Pogge, when commenting on Rawls’ definition of institutions suggests it is a somewhat particular way of understanding social institutions. It differs from the way in which social institutions, such as the particular schools or banks of a society, are

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6 Rawls’ discussion of “the law of nations” in ATOJ is brief (pp. 331-333)--and done in the context of the question of civil disobedience--but it would seem to be possible, in the the Original Position for the Law of Nations that the representatives, who are, he explains, individuals, but who do not know their position even in their own societies, would choose something very different from a society of sovereign states with weak obligations to one another. Since the majority of people in the majority of societies are poor, and a very important minority are highly impoverished (40% approximately live under the $2/Day PPP poverty line), it seems highly likely that given the opportunity to choose principles of justice, and given the moderately high possibility that they would end up very impoverished, the representatives at the 2nd Original Position negotiations would choose some type of global difference principal. The idea that the negotiators would all gamble that they would end up in the top 10 or 15% wealth and income wise of global society and be allowed to keep their unequally large share seems out of step with what Rawls suggests is rational for the representatives at the first Original Position. (More on this below.)

7 Rawls, A Theory, 47-48.

8 Pogge, John Rawls, 28.
generally conceived. Rawls seems to be getting at the function of these institutions rather than particular instances. He is looking at the roles and effects of institutions in society and the ways they actually shape the society, and the lives of its members. It seems likely that he does this, because he does not want to presuppose a particular set of institutions, given that his theory may apply to a property owning democracy or a liberal socialist regime.\(^9\) The care Rawls takes with his discussion of institutions is worth considering in relation to principles of justice in International Trade, for effective institutions are crucial in turning principles of justice into just practices in society.\(^{10}\)

Liberalism

In *ATOJ* Rawls considers liberalism, the political understanding that society should be structured in such a way as to maximize individual freedom for all its members, as the ideal starting place for a just society. Rawls takes the position that being free to shape one’s own life in the way that one sees fit, to take advantage of opportunities to which the individual feels most attracted, and pursue whichever ends one values, with as little limitation as possible, is a very high value. He has been criticized on this point, with the suggestion this is a cultural value, which is not universal. It seems hard from within,\(^{11}\) to see why it would not be considered valuable or desirable.

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\(^{10}\) This is Rawls’ position, but also the argument that I will support throughout the dissertation.

\(^{11}\) I mean from within a socialized vision of what is valuable, possessed by someone raised in North American society.
Utilitarianism

A large part of Rawls’ purpose in *ATOJ* is to provide an alternative theory of justice to utilitarianism that can be applied to the institutions that shape a society. Rawls explains that while utilitarianism has had since the beginning of the 19th century, some very strong thinkers supporting it, there is something basically wrong with the conception, which Rawls (and many others) considers basic to utilitarianism: that it is ethically acceptable or correct to sacrifice the interests of a minority in order to create an aggregate benefit to the group as a whole. Rawls finds it perfectly acceptable for an individual to govern herself in such a way, sacrificing in some interests, for what one considers a larger overall benefit, but thinks it is a completely unacceptable manner, in which, to govern a society. It doesn’t seem acceptable to Rawls, that the life chances of some, should be sacrificed for a benefit, that will only accrue to others.

Rawls explains his alternative to utilitarianism comes from the contractarian tradition of Locke, Rousseau and Kant.\(^\text{12}\) A contractarian understanding of justice in society is based on the idea of a hypothetical (usually) pre-society (a state of nature) where all individuals are interacting in an anarchic system, in which there are no effective formal organizations to regulate the interactions between individuals. The conception of this state of nature was a variable. Hobbes described it as the “war of all against all.” Locke considered that much of the time it would be in the interest of individuals to more or less respect one another’s rights, but that the individual alone

had difficult recourse when it was not the case. All of them felt that at a certain point
the aggregate of individuals would find it in their interest to come together and agree to
a structure of governance; basically agree to a set of social institutions and formal
understandings of how they would operate. Rawls considers that understanding society
as a group of individuals, that have made a contract to abide by specific rules and social
structures was the best way to conceptualize his theory of justice. From there he set out
to explain what the particular principles of justice would be that form the basis of a just
society.

Rawls’ Principles of Justice

Rawls also utilizes the State of Nature approach of the contractarian tradition in
how he justifies the choice of the principles of justice he believes ought to be chosen as
the organizing principles of a just society. His state of nature is hypothetical and, in a
sense, takes the form of a thought experiment. Rawls calls his state of nature “The
Original Position.” The main feature of the “Original Position” is that those who we
imagine as selecting the principles of justice that will govern the society, are doing it
blind; in the sense that they do not know anything about their society or their position
within it. They are also blind to their own interests within the society, Rawls places the
persons who will select the principles of justice in a hypothetical situation where they
do not know what specific personal interests and attributes they will have, whether they
will be able bodied and strong or disabled and at the mercy of others, whether they will
be intelligent and a quick learner or someone who is less intelligent and struggles with
intellectual tasks. The persons imagined in the original position, do not know if they will
come from a strong family background prepared for success, or whether they come from a broken home, without many good examples to socialize youth into successful choices, there is no knowledge of whether the negotiator will be a religious believer or an atheist, or from a particular cultural background or race. Obviously as noted it is hypothetical. Rawls named the situation in which the persons in the Original Position knew nothing of their own characteristics, or that of their society as “The Veil of Ignorance.”

Rawls argued that in the Original Position with the Veil of Ignorance free from the influence of personal interest, the negotiators would choose out of rational self-interest principles of justice on which to found their society, giving them the best chance at access to a fair share of the goods and opportunities available in their society, regardless of what characteristics they might possess as a person, ensuring whatever their position within the society turned out to be, they would still have a fair share of the benefits of living in the society and not be burdened with an unfair share of the costs.

Rawls claims that in the end the principles that would be agreed to would be something like the following:

**First Principle**
Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

**Second Principle**
Social and Economic inequalities are to be arranged so that they are both:
(a) To the greatest benefit of the least advantaged, consistent with the just savings principle, and
(b) Attached to offices and positions open to all under the conditions of fair equality of opportunity.\textsuperscript{13}

He states and restates these two principals several times, as he develops his argument in order to construct what he feels is a solid case, so that when the situation is considered thoroughly, these principles would be the rational choice, upon which to organize the institutions of a just society.

The first principle, known as the Liberty Principle, is a fairly straightforward expression of the basic idea of liberalism; each individual should be permitted freedom, to act as they see fit, in their own interests, as far as they can do so, without interfering with the right to liberty of others. Most commentators accept this principle, expressed this way, without much argument. In Rawls’ principle, he is particularly clear about the concept of equal liberty, and is very firm in giving equal liberty priority, in his scheme of principles. This makes it different than many understandings, and he explains that, he does not necessarily include a right to hold all types of property, nor a freedom of contract. It is explicitly different from what Rawls terms “Laissez Faire” conceptions of basic rights.\textsuperscript{14} It seems likely, or at least plausible, he does this to keep options open, regarding the actual structure of economic system a just society could organize around.

The second principle is known as the Difference Principle. The Difference Principle, is the principal that is a more radical claim for justice, than is generally accepted in wealthy developed democracies. Rawls starts out stating this principle as,

\textsuperscript{13} Rawls, A Theory, 266 .

\textsuperscript{14} Rawls, A Theory, 54.
Social and Economic inequalities are to be arranged so they are both reasonably expected to be to everyone’s advantage, and attached to positions and offices open to all. His concern about this first statement, is based on the concern that, while everyone would include the least well off, it would be more clear to make it explicit that any inequality would need to be focussed on improving the situation of those who would end up being least well off, in the resulting deviation from absolute equality.

Rawls explains that, it might be the case that effective entrepreneurs, might, in some economic organizations of society, create a situation where everyone would be better off, and it also could be the case, that they will, because of the need for incentive, end up with a larger than equal share of the economic benefits of society. However Rawls takes the position that, if there is inequality, according to the Difference Principle, the test of whether it could be considered just, would be, if it benefitted most, those who received the least share in the resulting unequal distribution. Rawls discusses the concern for efficiency in the economy in relation to the Difference Principle, using the concept of Pareto Optimality. He takes the position that, economic actions or differing distributions could be acceptable, if they increased efficiency, and led to those who received the least share getting the greatest benefit from the inequality.

The Just Savings Principle is included in the final statement of the Difference Principle, because it calls for intergenerational justice, and limits the common human

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15 Rawls, A Theory, 53.

16 Pareto Optimality is a situation of economic efficiency, where use or distribution of available resources is such that no one’s position can be made any better, without worsening the position of someone else.
propensity to discount future costs. It requires a distribution of economic benefits to be
sustainable in the long term, and requires the current generation to manage resources
in such a way, that they will not make future generations less well off. It is one of quite a
few examples of Rawls’ understanding and engagement with both classical and neo-
classical economics, and alternative economics, focussed on sustainable practices in
managing economies. The Just Savings Principle, or something like it, supported by
effective institutions, would be an effective basis for beginning to address currently
intractable problems, such as climate change.

The Difference Principle contains the caveat, that any social or economic
inequalities be attached to positions that are open to all. Rawls makes it very clear, that
this is not in place to solely, promote a meritocratic focus on efficiency. He suggests, it
may be possible to have situations in which some people are effectively barred from
some offices, which actually makes it more likely that the most talented persons will
hold the office. This could end up benefitting everyone with some increase in efficiency,
however in the interests of justice, the offices should remain open to all, because there
is a kind of good which inheres to the role and duties of these offices, which must not be
categorically denied to any member of a just society.

It is also worth considering, especially in the context of principles of just trade in
global society, that Rawls argues that, one of the reasons he supports a contractarian
approach to justice in a society, is because he feels that a utilitarian approach to justice,
can be understood as being maximization of satisfaction of particular desires. Rawls is
committed to a liberal understanding of the importance of the individual being free to
pursue their own interests, or their own conception of the good, and therefore is looking for an approach that separates what is right, from particular understandings of the good. He argues that a deontological theory does this. Rawls explains, he understands deontological theories, as those that, do not specify any particular good independent of the right. He is careful to point out, that he believes that all reasonable ethical theories must in a sense be consequentialist, as it would be irrational not to take consequences into account. This is of particular value in a global context because although some states are moderately culturally homogenous, (although not really the US,) global society requires a theory of justice that does not specify the individual good.

How the Principles Apply

Rawls makes the Liberty Principle prior to the Difference Principle, because, although he is concerned for ensuring a level of aggregate social welfare, in the sense of ensuring that the needs of all members of the society are satisfied to a level that allows the society to function effectively, he is also concerned about the problem he sees with utilitarian understandings of justice in society, where it is acceptable that the interests or rights of individuals, could trumped, in situations where this was strongly beneficial to the majority. By making the Liberty Principle prior, Rawls is ensuring that rights of individuals will not be sacrificed to increase the general material lifestyle of the society.

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17 Rawls, A Theory, 26-27.

18 Rawls, A Theory, 24-25.
The principles are conceived of as applying to institutions of society, rather than being specifically applied to individuals, and are not meant to designate what any one particular person ought to receive, but rather, provide a formal structure for justice in the society.

The essential point is that despite the individualistic features of justice as fairness, the two principles of justice are not contingent on existing desires or present social conditions. Thus we are able to derive a conception of a just basic structure, and an ideal of the person compatible with it, that can serve as a standard for appraising institutions.[19]

Rawls understands the parts of the social structure of a society that apply to securing basic liberties, and the parts that apply to social and economic inequalities as separate. He deals with the principles serially, first discussing what would be required in the sense of institutions to support the Liberty Principle, then discussing the institutions necessary to support the Difference Principle.

Institutions and the Liberty Principle

Rawls sees the Liberty Principle as leading to a list of basic liberties, that are considered valuable, and considers that a society organized under the requirements of the Liberty Principle will take the form of a constitutional democracy. The constitution would combine the list of basic liberties, with a format for the structures and roles or positions necessary to support them. A democracy would be the reasonable choice, to permit individuals to pursue to the greatest extent possible, their own conceptions of

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the good. requiring it to be a constitutional democracy, would ensure that, no individual’s basic rights would sacrificed, in pursuit of the interests of the majority.

Institutions and the Difference Principle

The institutions that Rawls outlines as necessary to support the Difference Principle, are more directly relevant to understanding Rawls’ principles of justice in relation to trade, and are in some ways more controversial than his conception of constitutional democracy. He notes that, his principles of justice can be understood to be a part of a doctrine of political economy. Rawls very explicitly, explains that, his principles of justice can apply across a spectrum of economic systems, from one where the means of production is almost exclusively privately owned, to one where the means of production is owned, or controlled, almost exclusively, by the society in general.

Rawls considers several important ideas in relation to the creation of institutions to support the principles of justice. He suggests that, the structure and dynamics of social interaction, fostered by the economic organization of a society, shapes the understanding of what is of value in a society. He explains that, economic thinkers from a wide variety of perspectives have accepted this. He argues that, because of this, the design of the economic institutions of a society must operate in such a way that they foster respect for and engagement with the principles of justice. Rawls suggests

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20 Rawls, A Theory, 228.

21 Rawls, A Theory, 229. “How men work together now to satisfy their present desires affects the desires they will have later on and the kind of persons they will be.”
economic efficiency ought not to be a complete trump on the design of the institutions, which must also address political and ethical concerns in the society.\textsuperscript{22}

Rawls goes to the trouble, of laying out the plan, of the actual regulative institutions for the economy of a society, organized according to his principles of justice. He suggests four main branches for the economic institutions of a just society: the allocation branch, the stabilization branch, the transfer branch and the distribution branch.\textsuperscript{23}

Rawls points out that, the principles of justice relate, to an important extent, to the provision of public goods; that is, goods, services or conditions that require the pooling of the resources of society to achieve. The concern about public goods for a society is that once they have been put in place they benefit everyone regardless of whether or not they have contributed to them. This concern is known as the free rider effect and is a considerable problem in political economy because it can be very difficult to get citizens who are willing to pay for the provision of a public good to do so until they are sure arrangements are in place to ensure that others will not be able to shirk their responsibility. Rawls explains that the institutions will need coercive power to ensure there is confidence within the society that members will not be made worse off by contributing to provision of public goods that others make use of without paying for.\textsuperscript{24}

\textsuperscript{22} Rawls, \textit{A Theory}, 229.

\textsuperscript{23} Rawls, \textit{A Theory}, 244-5.

\textsuperscript{24} Rawls, \textit{A Theory}, 236.
The allocation branch is focussed on maintaining fair and competitive market conditions, working to avoid over-concentration of market power and to address “obvious departures from efficiency caused by the failure of prices to measure accurately social benefits and costs” (market externalities). In general it would be an institution with a largely microeconomic focus, although it would also be addressing macroeconomic issues in the case of strategic legislation and policy. It is role is to minimize negative externalities.

This is another area where Rawls expresses concern about the ability of the institutions to have sufficient coercive power.

Of course, there are the striking cases of public harms, as when industries sully and erode the natural environment. These costs are not normally reckoned with by the market, so that the commodities produced are sold at much less than their marginal social costs. There is a divergence between private and social accounting that the market fails to register. One essential task of law and government is to institute the necessary corrections.

It is interesting how concerned Rawls is about this situation, which has been a strong concern in thinking about environmental issues and the economy. At the time Rawls was formulating his theory of justice, it was an emerging issue, it has now become a standard justice issue in economics and is considered particularly problematic in international trade. In this role it is extremely non-controversial, even very orthodox.

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25 Rawls, A Theory, 244. I think it is really interesting how Rawls shows a familiarity with the ideas of economists working in environmental sustainability such as Pigou and Coase here (also Garret Hardin who also grabs these ideas). This shows up again in TLOP.

26 Rawls, A Theory, 237. This is a very important point in considering international trade, the current regime is spectacularly ineffective at achieving this and permits extremely harmful environmental and social negative externalities.
classical liberal thinkers in economics agree it is unjust to permit the externalization of costs or harmful effects onto persons who are not voluntary participants in a transaction. Internationally the World Trade Organization (WTO) is responsible to some extent for mediating disputes between sovereign states that arise in this area but, as will be discussed, later it has weaknesses in both administrative structure and effective coercive power making it fall short as an economic institution supporting justice in global society.

The other role of the allocation branch is to restrict over-concentrations of market power, which distort the function of markets. By this Rawls means the operation of monopolies, partial or effective monopolies, and cartels. In a sense this is, again, a fairly orthodox role. Many countries have or have had legislation which attempts to address this situation (with variable success), because these types of market conditions are perceived in general as being in the interest of the producer who holds the monopoly, but in general against the interests of other actors in the economy and those generally of society. There are situations where monopolies are considered useful to society, including natural monopolies and in the development of new industries where there are very important returns to scale, and Rawls is aware of these (at least of natural monopolies). Any scheme of national emissions trading to reduce greenhouse gas emissions, would likely fall under the purview of the allocation branch.

The stabilization branch has the macroeconomic focus of working towards full employment. Rawls says this should be understood as employment opportunity and
choice.\textsuperscript{27} He also suggests this would include ensuring “the deployment of finance was supported by strong effective demand.”\textsuperscript{28} The concept of full employment as a goal of an economic system is worth discussing. Particularly since the second half of the 20\textsuperscript{th} century, there has been a belief that full employment in a country’s economy, while a nice idea in the sense that no one must suffer the indignity of being unable to find employment when they want it, is not entirely desirable. This is because it is conceived full employment would tend to lead to high inflation in an economy because of the upward pressure placed on wages by competition between employers to secure relatively scarce employees. It is easy to understand why Rawls takes the position he does, as he is strongly committed to principles of justice which do not permit the sacrifice of the interests of a minority of individuals to serve even the greater good of society. Maintaining a pool of reserve labor for which as a group (individuals may move in and out of it) there will never be satisfactory employment, in order to serve the end of economic efficiency, can never be acceptable to Rawls who explicitly commits to fairness over efficiency in the economy.\textsuperscript{29}

The other goal of strong effective demand is very closely related to employment. Here it seems Rawls is referencing the concern for the level of wages in the economy or possibly more accurately the ratio of returns to labor from production. This position likely reflects a belief in the importance of effective demand in flattening out the down-

\textsuperscript{27} Rawls, \textit{A Theory}, 244.

\textsuperscript{28} Rawls, \textit{A Theory}, 244.

\textsuperscript{29} Rawls, \textit{A Theory}, 229-30.
sides of business cycles or even economic recessions, which are normally not seen as positive from either a social or economic perspective.\textsuperscript{30} The way in which Keynesian demand side policies made a comeback during the 2007/8 economic crisis, after years of a supply side focus, lends a certain renewed validation to the inclusion. Joseph Stiglitz, ex–Chief Whitehouse Economist and past Chief Economist of the World Bank, makes an argument, which is discussed later on, that an important factor in the 2007–2008 global crisis was the shrinking share of returns to labor from production in wages and the resulting complications of effective demand. In many contemporary states there are economic institutions which fulfil some of the roles Rawls is envisioning for this branch. Central banks manipulate interest rates and therefore the cost of using capital in order to affect relations of economic growth to levels of employment in a variety of ways, sometimes not entirely successfully. Most states also have programs supported by government that work to train and encourage workers to enter fields which suit the opportunities of the current economy and goals for future economic development. Internationally it could be argued the World Bank and the IMF (International Monetary Fund) act in this way to some extent, although their policies have in general shifted away from the demand side economic thinking that characterized their creation at the Bretton Woods conferences of 1944, to be more in line with a supply side consensus.

\textsuperscript{30} Obviously there are exceptions such as Schumpeter, but even he understood the negative social welfare implications.
which has largely come to fore since Rawls’ publication of ATOJ (their goals now certainly are not full employment nor ensuring effective demand\textsuperscript{31}).

The transfer branch is designed to ensure the needs of the society are being effectively met using the product of the economy; its job is to ensure a certain level of well-being for all members. In a sense the focus of the transfer branch is microeconomic.

\textit{[G]overnment guarantees a social minimum either by family allowances and special payment for sickness and employment, or more systematically by such devices as a graded income supplement (a so-called negative income tax).}\textsuperscript{32}

The transfer branch according to Rawls has the job of making sure the incomes of all members of the society are sufficient to meet needs, but it is different than the stabilization branch in this sense. While the stabilization branch focuses on ensuring employment and arranging wages from work to put enough money in the hands of enough of the population to support a vibrant economy, the transfer branch focuses on redistributing the product of the economy to ensure that no member of the society is allowed to fall below an agreed upon threshold which permits them to be active participants in the society and allows them freedom of opportunity to shift their position in society. All wealthy developed countries have institutions with this function, only the level of support provided to members of the society through redistribution is,

\textsuperscript{31} Supply side economics assumes that providing tax and financial conditions which facilitate high after tax returns to capital will stimulate holders of capital to engage in production which in turn will create employment.

\textsuperscript{32} Rawls, \textit{A Theory}, 243.
in general, contested.\textsuperscript{33} For Rawls this would be decided by the function of the difference principal and calculations of what level would most benefit the least well off when the overall economy is taken into account. At the international level there is really no equivalent to Rawls’ transfer branch. The United Nations (UN), starting with a General Assembly Resolution in 1970, has attempted to have wealthy developed countries transfer 0.7\% of their GDP to a fund for financing development in poor developing countries. Most wealthy developed countries have made commitments to do so, but none of the G8 countries have actually carried through on their commitment.\textsuperscript{34} The UN lacks the coercive power that Rawls suggests is necessary to ensure confidence in the compliance of others required of an institution which is involved in the provision of public goods.

The fourth branch is the distribution branch, which is focused on the long term concern of distribution of wealth and preventing the development of large entrenched inequalities which Rawls argues consistently are obstacles to effective equal political liberty and equality of opportunity.\textsuperscript{35} He claims it is possible to distinguish between two major areas in which this branch operates. The first of these is a scheme of inheritance taxes and progressive taxes on income, and in some cases limits on property rights.

\textsuperscript{33} There are those that contest any redistribution at all, but they have, in the last 100 years, in most developed states, had the political power to influence the level but not the concept.

\textsuperscript{34} Although Denmark, Sweden, Norway, Netherlands and Luxembourg have fulfilled the .7\% commitment. See UN Millenium Development Project accessed at: http://www.unmillenniumproject.org/press/07.htm (July 10, 2014)

\textsuperscript{35} Rawls, \textit{A theory}, 245.
The purpose of these levies and regulations is not to raise revenue (release resources to the government) but gradually and continually to correct the distributions of wealth and to prevent concentrations of power detrimental to the fair value of political liberty and fair equality of opportunity.  

The second area of responsibility for the distribution branch is the creation and management of a taxation regime that will raise the revenue that is required for operation of the system of institutions and their policies that have been created to support the principals of justice.

Social resources must be released to the government so that it can provide for the public goods and make transfer payments necessary to satisfy the difference principle. This problem belongs to the distribution branch since the burden of taxation is to be justly shared and it aims at establishing just arrangements.

Rawls suggests a proportional tax on expenditures or income, is likely the best method, of raising the revenue required to support the institutions required by the principles of justice because it maintains an incentive to be productive, although he is careful to mention this is in ideal theory and wouldn’t make even steeply progressive taxes unjust in non-ideal institutions.

Rawls summarizes the discussion of the distribution tax by making clear that inheritance taxes, progressive taxes on income and definitions of private property rights are specifically focussed on supporting the Liberty principle through restricting the growth of economic inequality to below the point where it would jeopardize political equality. On the other hand the proportional tax on expenditure or income is put in

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36 Rawls, A Theory, 245.

37 Rawls, The Law, 246.
place to ensure sufficient resources to support the institutions which uphold the Difference Principle.

Taxes of the second sort proposed by Rawls, those used to support public goods and public institutions of a society are commonplace in most states. How the costs are divided among members of society and the extent of provision of public goods as well as the particular institutions that ought to be public rather than private is often contested, but despite the existence of libertarian arguments condemning any form of taxation, the role of states in levying taxes to support agreed upon public goods is non-controversial. However, the first function of Rawls’ proposed distribution branch, forms of taxation specifically aimed at reducing concentrations of wealth in society are for the most part politically unacceptable in most wealthy developed countries. Inheritance taxes exist and to some extent have the role of reducing the concentrations of wealth passed between generations, but they do not achieve this goal to any great extent, and it is unlikely that there will be a discussion of how to make them more effective in this respect in the near future, especially because of the power of the interests of concentrated wealth in the political system. Internationally there are really no institutions which have the function of Rawls’ distributive branch. In some senses this is really so much worse for political equality and justice in global society. Public institutions which exist at the level of international society are International Government Organizations (IGOs) of which the United Nations (UN), the WTO, the IMF and the World Bank Group are important examples. They are all institutions that were founded with the conception they would provide public goods in global society. They all
suffer in one way or another from the problem that there is no effective analog to the second part of Rawls’ distribution branch. The IMF and World Bank are directed by the states which make the greatest contributions to them, and therefore fairly consistently operate in ways that have been categorized as being in the national interest of the wealthy developed states that fund them rather than the poorer developing states that in general make use of the services they provide. The UN is also funded by states based proportionally on their wealth, and faces criticism from its biggest contributors (with and without reason) when its organs that are not administrated according to proportional contribution fail to act in the national interest of the largest contributors.\(^{38}\) This weakens the UN, and also is less well administrated in some cases, as wealthy powerful states dismiss it rather than work within it.

**Just Savings Principle**

Rawls is concerned about justice between generations, and he addresses it with what he calls the Just Savings Principle. Rawls suggests that in some ways obligations of justice to future persons are difficult in a contractarian understanding of ethics because there is no possibility of reciprocity between generations. It is a problem in contemporary society as our legal conception of the rights of individuals functions for the most part on the ability of individuals to make a rights claim in defense of their interests, or at very least be capable of presenting one’s interests. In the case of future generations it is obvious that they will not be able to express those interests. Historically

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in our society while important attention has often been paid to securing for the long

term the institutions that support political liberties as they have been achieved, at least

in effective constitutional democracies, there has been considerably less attention

focussed on the concern for the economic wellbeing of, and availability of resources for

future generations. This may be because in general the material lifestyle has improved

markedly for each generation for the last 250 years or so, and it may have been

contributed to by a single minded focus on economic growth and expansion of

economies during that same period. It is difficult to ascertain with certainty the cause.

Rawls approaches the concern for justice between generations using his

conception of the original position with the veil of ignorance. He suggests that even

though the persons in the Original Position would be contemporaries generationally,

they would have to negotiate a principle such that, they wish all earlier generations,

would have followed it.\textsuperscript{39} They would in effect be obliged to extend the Difference

Principle to include the advantage of the least well off through subsequent generations.

Rawls considers that this would likely shift the social minimum in order to ensure

sufficient savings and capital of various forms to support at least that minimum for the

next generation.

\textbf{[P]ersons in different generations have duties and obligations to one another

just as contemporaries do. The present generation cannot do as it pleases but is

bound by the principles that would be chosen in the original position to define

justice between persons at different moments in time.}\textsuperscript{40}

\textsuperscript{39} Rawls, \textit{A Theory}, 256-7.

\textsuperscript{40} Rawls, \textit{A Theory}, 258.
Rawls doesn’t consider specifically the use of resources in his Just Savings Principle, or mention at all the concern for environmental degradation imposed on future generations in his discussion of the obligations of justice between generations. This however has become a larger issue since the publication of ATOJ and Rawls engages with it in his later work *The Law of People (TLOP)*. It seems significant and relevant that he considers the topic of the obligations of justice between generations in a society in the context of the institutions a just society would need to develop.

In ATOJ it is clear that Rawls is strongly committed to the idea that fair/just background conditions are necessary for a fair / just economic system. Rawls in no way leaves the design of the institutions which control the background fairness of the society up to the vagaries of individual negotiation, but rather suggests the basic parameters of the institutions and explains that in actual conduct their effectiveness would be appraised according to how well they support his principals of justice.

**The Law of Peoples and Justice in International Trade**

In *The Law of Peoples* (TLOP) Rawls tries to develop a plausible, theoretical conception of how a global society made up of cooperating societies that all ensured basic human rights for all of their citizens could be possible. This concept develops from the discussion of the law of nations briefly outlined in *ATOJ*. He uses the concept of the Original Position with the Veil of Ignorance to consider principles for the Law of Peoples, but he will use it differently than he uses it in the domestic society context of

The use of the Original Position is different in two ways that are worth considering. The representatives who specify the principles of justice, in the case of TLOP are representatives of peoples (which Rawls uses as his main actors in the society of peoples) rather than individuals. It is worth noting as well, that in TLOP, individuals have only a very minimal role, as the subjects of human rights. The second way in which the Original Position as conceived in TLOP is very different than ATOJ, is that while within the original position in ATOJ the parties select from among a variety of possible principles, in TLOP Rawls chooses 8 principles that are traditional in international law and takes the position that the role of the parties in the second original position is to accept them.\footnote{Rawls continues to consider that justice in society is achieved by ensuring a framework of just institutions and policies. He structures interactions in society so that they are for, the most part, consistent with justice and ensuring that they will remain so in the long term.}

Two main ideas motivate the Law of Peoples. One is that the great evils of human history unjust war and oppression, religious persecution and the denial of liberty of conscience, starvation and poverty, not to mention genocide and mass murder—follow from political injustice, with its own cruelties and callousness. The other main idea, obviously connected with the first, is that, once the gravest forms of political injustice are eliminated by following just (or at least decent) social policies and establishing just (or at least decent) basic institutions, these great evils will eventually disappear.\footnote{He also suggests that they will develop principles behind cooperative associations/institutions needed in the society of peoples, but does not develop those principles extensively.}
Rawls suggests many of the causes of injustice in world society require equal political participation, religious freedom, political freedom, freedom of conscience and equal justice for women to be resolved. It seems somewhat contradictory though that, when he actually specifies the set of basic human rights that is supported in the law of peoples, it falls far short of this.\textsuperscript{44}

Rawls explains in \textit{TLOP}, he is working out a conception of the foreign policy of a reasonably just, liberal people, such as that he outlines principles for in \textit{A Theory of Justice} (or the conceptions he suggests in \textit{Political Liberalism}). The principles are those that, the liberal society, will use to conduct its foreign policy, but are not being proposed with the idea they are actually being adopted by all peoples in a just international society. They are the rules a society like those he has previously proposed, (such as in \textit{ATOJ}) could adopt in order to conduct itself justly, in the actual, not particularly just, world order, as it exists. He explains that, when he considers the point of view of peoples, who are not organized as reasonably just liberal societies, he is only doing so in order that, we can assure ourselves as liberal peoples, that that the principles would be acceptable from a decent non-liberal point of view.\textsuperscript{45}

\textsuperscript{44} Rawls, \textit{The Law}, 9. His position on human rights is below, in the section on decent societies. He takes a very minimal position on human rights because he is considering it as a basis for intervention in other countries’ domestic affairs. I consider it problematic that he acknowledges that a fairly strong set of human rights is required to address many issues that he considers important, (he calls them “great evils”) but he seems to be willing to sacrifice these in order to minimize obligations to individuals in the international order. I think it is a major sacrifice.

\textsuperscript{45} Rawls, \textit{The Law}, 9-10.
Rawls outlines five categories of societies, which he calls peoples, that he will work with in his Law of Peoples. He starts with the liberal peoples who he uses to derive the set of principles he will use. The second category of societies he calls decent hierarchical peoples, which he describes as having a decent consultation hierarchy. He includes liberal and decent hierarchical peoples in what he describes as “well-ordered peoples.” He also names, outlaw states, and burdened societies (societies burdened with unfavorable conditions). The fifth category of society is described as benevolent absolutisms, which Rawls says, honor human rights but members do not participate in political decisions.

He begins with the social contract conception, of a constitutionally democratic society, and extends this conception with the introduction of a second Original Position, at what he describes as a second level. In this second Original Position, the representatives of liberal peoples make an agreement with other liberal peoples. A second, separate agreement is made with non-liberal decent peoples. He explains the agreements are hypothetical, and non-historical, and are entered into by peoples who are equal, and are positioned equally in the Original Position, behind a Veil of Ignorance. Rawls describes his position as being derived from the process suggested by Kant in *Perpetual Peace*. Rawls explains that, it is Kant who suggests that establishing a just and effective civil constitution, is not easily possible without first ensuring that international

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46 Rawls, The Law, 4. Rawls discusses the idea of decent hierarchical peoples and decent peoples. He holds the concept of decent peoples in reserve. The criteria for both types of decent people are discussed in the section covering the 3rd Original position. In many cases he uses the term decent peoples to mean both decent peoples and decent hierarchical peoples. The use of the term peoples is discussed further on.
society will also be governed by law. It is important to keep in mind, that when Rawls discusses the principles agreed to by persons in the original position, he is always considering this as a tool for thinking about what a just policy would look like, not an actual negotiated agreement.

Rawls describes several conditions that, he argues, make his conception of a Law of Peoples a realistic utopia. First he explains that it is realistic, in that, it views peoples as they are, and a society of peoples, as it might be, the 2nd original position allows it to do this. He claims it is also realistic in the sense that it is workable, and can be applied to ongoing cooperative political arrangements. He describes his conception of the Law of Peoples as utopian, in the sense that it uses political ideals, principles and concepts to specify right and just political and social arrangements for the society of peoples.

Why Peoples (Not States)?

Rawls explains he chooses the term “peoples” to describe the actors in the society of peoples, because states do not fit all the criteria he considers important for peoples. Rawls explains there are three basic features that define liberal peoples: a reasonably just constitutional democratic government that serves their fundamental interests, citizens united by “common sympathies,” and a moral nature. He describes

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49 Rawls explains that he gets the concept from Mill, and it is used by Mill to mean what we call nationality. Rawls, The Law, 23.
these as having, in order, an institutional nature, a cultural nature, and the moral
nature, coming from a commitment to a political conception of right and justice.\textsuperscript{50}

Rawls suggests the “common sympathies” can be problematic. He is aware that,
many possible societies united under a single government, will not share language,
history or a common understanding of the political meaning of that history. He feels this
is necessary as a starting place, and that we will be able to work out political principles
to deal with the hard cases. He explains, it is possible in a reasonably just polity, to
satisfy the reasonable, cultural interests of diverse ethnic backgrounds. Rawls sees that
he has created a conflict but doesn’t feel that it is crucial to his position.\textsuperscript{51}

The moral character criteria is important, Rawls explains it means that peoples
offer fair terms of cooperation to one another, in the same sense as he has detailed for
domestic societies. People will offer fair terms of cooperation and honor them, when
they are assured that other peoples will do so as well.

It is also important to note that Rawls chooses peoples rather than states
because he will not accept all the traditional terms of state sovereignty. He wants to
challenge the right to go to war in pursuit of the self-interested, political ends of the
state. He very explicitly wants to restrict the states internal sovereignty, meaning he will
not accept, a state’s right to do as it wills with its own people. Government powers are

\textsuperscript{50} Rawls, The Law, 23-4. Interestingly Rawls explains that the terms of a reasonably just constitutional
government include that it not be directed in the interests of large concentrations of private economic
and corporate power veiled from public knowledge.

\textsuperscript{51} This might be true, but it seems problematic to start out requiring common sympathies, and have to
immediately explain that in the majority of cases, this won’t be the case in the way he has defined them.
This is not a simple area to more or less ignore.
to be limited, to those acceptable under a reasonable law of peoples. One of the ways in which they are to be limited, is to be defined by human rights. Rawls notes, he is aware of the difficulties in interpreting rights in various situations, but he says “their general meaning and tendency is clear enough.”

Rawls then explains that the difference between states and peoples, is mostly a function of the relationship between the rational, and reasonable in a state’s actions. He suggests, if the conception of a state is that of being mostly governed by the rational ability to maximize its interests, based on the power to do so, then peoples are very unlike states. Rawls explains that, liberal peoples limit their interests by what is reasonable (in the sense of being negotiable with others in an environment of fairness) and act in accord, with an acceptance of the Law of Peoples. Rawls opens the door, to the way in which the concept of state sovereignty can be limited by justice, and makes clear that, the Law of Peoples is a liberal, rather than a realist conception of international relations. He doesn’t want to debate the historical legitimacy of the realist position, as its tenets don’t make sense in a conception of just global society.

In the end, Rawls chooses the concept of peoples, to be the actor in his society of peoples, for very strong reasons. It is clear he is not taking a fully cosmopolitan position on global society, but also apparent, that he is going to limit, or rework some of the traditional understandings of state sovereignty. It seems particularly important that, 

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52 Rawls, *The Law*, 27. This is interesting because it seems like Rawls ends up taking a very minimalist conception of human rights, below what actually would be necessary to fulfill his requirements of justice in TLOP. See footnote 4.
some of the basis for the legitimacy of the actions of peoples, in the society of peoples, 
derives from their participation in a Law of Peoples.

Two Original Positions

In *TLOP*, Rawls uses the concept of the Original Position, with the Veil of 
ignorance, three times. The first original position is the original position of *ATOJ*, where 
representative are members of a single society selecting the organizing principles of 
justice for their society. They choose the same liberal principles, chosen in *ATOJ* (or 
interpretations discussed in *Political Liberalism*).\(^{53}\)

There are five essential features of Rawls’ original position:

1. Models the parties as representing citizens fairly
2. Models the parties as rational
3. Models the parties as selecting from among available principles of justice those 
   that apply to the appropriate structure, in this case basic structure.
4. Models parties as making the selections for appropriate reasons
5. As selecting reasons related to the fundamental interests of citizens as 
   reasonable and rational.\(^{54}\)

Rawls suggests the original position possesses these five features because 
behind the veil of ignorance, parties must be rational in order to ensure that their 
interests are maximized as much as possible, and the situation makes them all equal, as 
they do not know their specific interests, and so must negotiate rationally for principles 
that would be fair regardless of the position they end up in. The veil of ignorance 
assures that the principles chosen will be chosen for appropriate reasons, because the


parties have no knowledge of their own interests to bias them. Rawls explains that, putting citizen’s comprehensive doctrines behind the veil of ignorance ensures that the political principles will be those that support reasonable pluralism in the society.

In order to find principles of justice that will apply in the society of peoples, Rawls uses concept of a 2\textsuperscript{nd} Original Position. Again, it is a model of representation of fair conditions, this time though, the parties are representatives of liberal peoples, who will specify The Law of Peoples. Rawls notes that, both the parties as representatives, and the peoples they represent, are represented fairly as equals. It is important that the peoples do not know where they fit in the society of peoples (except that they are liberal). And it seems the representatives also do not know where they will fit in within the domestic society. They are behind the veil of ignorance, as far as territory, population, and relative power of the people they represent. They know that conditions are sufficiently favorable among their people to support constitutional democracy, but they do not know the extent of their natural resources, or level of development.

He explains that, the 2\textsuperscript{nd} Original Position functions in exactly the same way as the first original position, in that it suggests terms we would actually accept as fair, for specifying the basic terms of cooperation between us and other liberal peoples. It satisfies the same 5 essential features as the 1\textsuperscript{st} original position. He explains that in the 1\textsuperscript{st} original position the veil of ignorance hid the citizens comprehensive conception of the good, whereas in the 2\textsuperscript{nd} the representatives know they represent liberal peoples, but the comprehensive conception of the good is still absent, because the political constitution of a liberal people, must not have a comprehensive conception of the good.
Rawls explains that, what comes out of this is a respect and recognition for each other as peoples, but not necessarily that they will not accept inequalities of certain kinds, in the institutions of the society of peoples. Rawls gives the example of the United Nations, ideally conceived, as an institution where it could be reasonable to accept a certain level of inequality. He explains that these inequalities parallel the inequalities accepted in their own societies. In the third criteria of the 1st Original Position, Rawls has the parties “selecting from among available principles of justice,” whereas in the 2nd Original Position, Rawls explains that the parties simply reflect on the advantages of the positions he has selected from traditional understanding of international law. Rawls has the representatives in the 2nd Original Position accept a series of eight principles, as the basis of the Law of Peoples:

1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples.
2. Peoples are to observe treaties and undertakings.
3. Peoples are equal and are parties to the agreements that bind them.
4. Peoples are to observe a duty of non-intervention.
5. Peoples have the right of self-defense but no right to instigate war for reasons other than self-defense.
6. Peoples are to honor human rights.

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\[56\] Rawls, *The Law*, 41. Rawls discussion of the difference in the actual process of selection of principles between 1st and 2nd Original Positions:

A large part of the argument in the original position in the domestic case concerns selecting among the various formulations of the two principles of justice (when the view adopted is liberal), and between liberal principles and alternatives as the classical, or the average, principle of utilitarianism, and various forms of rational intuitionism and moral perfectionism. By contrast, the only alternatives for the parties to pick from in the second-level original position are formulations of the Law of Peoples.  

Thus, in the argument in the original position at the second level I consider the merits of only the eight principles of the Law of Peoples listed in §4.1. These familiar and largely traditional principles I take from the history and usages of international law and practice. The parties are not given a menu of alternative principles and ideals from which to select, as they are in *Political Liberalism*, or in *A Theory of Justice*. Rather, the representatives of well-ordered peoples simply reflect on the advantages of these principles of equality among peoples and see no reason to depart from them or to propose alternatives.
7. Peoples are to observe certain specified restrictions in the conduct of war.
8. Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime.  

Rawls takes the position that, in the 2nd Original Position the parties (conceived as representatives of liberal peoples) will decide to found three specific organizations. Rawls calls these “cooperative organizations,” he likely calls them this to ensure that he is not calling for the creation of a world government, but realistically they are social structures, created to regulate the behaviour of peoples in the society of peoples. He specifically states that, the guidelines for creating them are formulated behind the veil of ignorance, to ensure fairness. He suggests one of the institutions would be analogous to the United Nations, but because of the concern to avoid both the traditional understandings of sovereignty, and traditions of realist state politics inherent in the terms states, and nations, he calls it the Confederation of Peoples. The other two institutions, he explains are analogous to the GATT, and the World Bank. He clearly and specifically at this point, explains that the trade organization would be “framed to ensure fair trade,” so it is interesting that in the following paragraph, he defaults to free trade as the assumption.

In the working of organizations and loose confederations of peoples, inequalities are designed to serve the many ends that peoples share. In this case the larger

57 Rawls, The Law, 37.
58 In this paragraph he calls them organizations, but further up when discussing their scope he uses institutions.
59 The original Law of Peoples was presented in 1993, before the WTO, so it is not likely a preference for the structure of the GATT (General Agreement on Tariffs and Trade) over the WTO.
60 Rawls, The Law, 42.
and smaller peoples will be ready to make larger and smaller contributions and to accept proportionately larger and smaller returns.\(^{61}\)

This is a very different conception of how economic institutions will operate than that which Rawls argued for in \textit{ATOJ}. In \textit{ATOJ}, Rawls proposed institutions which limited the growth of inequality within society, and even worked to ensure that equality (or the limits to inequality) would be secured over the long term. In the 2\textsuperscript{nd} Original Position model, it seems that institutions will be, very much, like the status quo in international society, where wealthy powerful countries run most of the economic institutions, arranging policies to benefit themselves, and maintain their positions of power.\(^{62}\) It is possible Rawls takes this position, because it is the status quo in the current international institutional order, but it is an area where \textit{TLOP} seems to contradict his earlier positions, (such as discussed above in \textit{ATOJ}) where he structures the institutions of society to limit this type of compounding inequality, because he fears its detrimental effects on political equality.\(^{63}\) He is still concerned about political equality in \textit{TLOP}.

The 3\textsuperscript{rd} Original Position

Rawls suggests once a Law of Peoples has been decided upon for liberal peoples, a third Original Position will be used to consider, whether the same principles chosen in the 2\textsuperscript{nd} Original Position for relations between liberal peoples, can apply to relations

\(^{61}\) Rawls, \textit{The Law}, 41.

\(^{62}\) Rawls holds the position in \textit{ATOJ} that the institutions of society must work to preserve a basic economic equality, to protect political equality and fairness in agreements, as discussed earlier in this chapter. He also holds the position in “Basic Structure as Subject,” and \textit{Political Liberalism}.

\(^{63}\) This seems to be where \textit{TLOP} falls down for me, it doesn’t make sense to sacrifice justice in the global institutional order for national interest (or the interest of peoples).
with decent peoples. In the 2\textsuperscript{nd} Original position, he did not include decent hierarchical peoples, even though he makes room for them in his scheme of well-ordered peoples. His explanation is that, he needed to first derive the principles of the Law of Peoples, then to consider under what conditions, and to what extent non-liberal peoples, would be tolerated by liberal peoples.\textsuperscript{64} Rawls left all non-liberal societies out of the 2\textsuperscript{nd} Original Position, as he felt there was a concern that, since non-liberal societies do not support liberal conceptions of justice for their people, they would not be acceptable in the society of peoples, and could be subject to various forms of sanction, with the goal of forcing them towards liberalism. Rawls decides that, it would be respectful, and more productive than alienating the peoples, to include them in the Society of Peoples if possible. He explains that it would be possible to include a non-liberal society, if that society conforms to standards of decency in the way it treats its members, and they could be considered to be likely to support the principles of the Law of Peoples, which were spelled out in the 2\textsuperscript{nd} Original Position.\textsuperscript{65} He then considers the characteristics of a decent society that ought to be tolerated by liberal peoples.

Decent peoples as defined by Rawls are non-liberal peoples, in the sense that they do not have a society founded on principles of effective political equality for all members, or they lack a commitment to organizing society, in such a way, as to ensure each individual member is free to pursue their own individual conception of the good as

\textsuperscript{64} Rawls, \textit{The Law}, 59.

\textsuperscript{65} Note: Rawls explains this when he is formulating the 2\textsuperscript{nd} Original Position, discusses the principles, then goes back to work out what decent people might look like.
they see fit, within a context of all others having similar liberty. Simplifying, they are societies which are organized around a particular comprehensive conception of the good. This comprehensive conception could be religious or secular, Rawls gives the example of hypothetical Islamic Kazanistan, but it seems likely that some forms of communist societies could fit this category, at least ideally. Rawls calls them “decent hierarchical peoples”\(^\text{66}\) because he describes them as having a “decent consultation hierarchy,”\(^\text{67}\) by which he means that the society is governed by rule of law, dissent is permitted, and rulers give respectful reply to dissent, addressing issues of rule of law expressed in it.\(^\text{68}\) He explains that he considers that, there might be other types of decent peoples, who would not fit the hierarchical label. In general, Rawls uses the term decent peoples to indicate both decent and decent hierarchical peoples.

Rawls discusses several other criteria that would make a non-liberal society a decent society: The first is that the society is not aggressive in the society of peoples, it respects the political and social order of other peoples, and does not advance its interests through coercion or force. The second set of criteria is more complex. A decent hierarchical people, must have a system of law, which is focussed on the common good of the society, and which secures basic human rights for all members of the society. Interestingly Rawls requires that it includes a conception of formal equality, that like cases be treated equally. He also requires that, a decent hierarchical people’s system of

\(^{66}\) Rawls, The Law, 58.

\(^{67}\) Rawls, The Law, 61.

\(^{68}\) Rawls, The Law, 61.
law, be based on the conception, meaning that, all of the society’s members are considered persons capable of understanding, and complying with, moral duties, and duties of justice in the society. He does not however, ask for legal equality. Rawls also requires that for a society to be considered decent, the judges and public officials of that society, must sincerely believe, that the system of law is in the interests of the common good.  

Rawls explains that representatives of decent peoples can be reasonably represented in the 3rd Original Position as equal parties, even though their societies may not be internally egalitarian, because they can be understood to desire equal standing in a society of peoples. He explains that, the representatives of the decent peoples are decent and rational (as opposed to reasonable and rational\(^70\)), and that decent peoples would accept the Law of Peoples adopted by their representatives as fair terms of political cooperation between peoples. Recall that Rawls uses the term reasonable, in the sense of being open to persuasion by the reasons of others, according to a conception of justice. He explains, “I think of decency as a normative idea of the same kind as reasonableness, though weaker (that is, it covers less than reasonableness does).”\(^71\)

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Human Rights in The Law of Peoples

For Rawls in TLOP, human rights are very minimal, much less extensive than the set of human rights established by the UN UDHR\textsuperscript{72}, and even more minimal than those in the International Covenant on Civil and Political Rights,\textsuperscript{73} (which contains a considerably less ambitious, stringent and extensive understanding of human rights than the UN UDHR). The International Covenant on Civil and Political Rights, at a minimum, bans discrimination in the allocation, of the political rights it does offer, on the basis of religion, race or gender. Rawls does not do this, and explicitly allows discrimination, concerning political and civil liberties, based on gender and religion.\textsuperscript{74} Rawls explains that, human rights in the Law of Peoples, are not the same set of rights that persons hold in “a reasonable constitutional democratic regime.”\textsuperscript{75}

Human rights in the Law of Peoples, by contrast, express a special class of urgent rights, such as freedom from slavery and serfdom, liberty (but not equal liberty) of conscience, and security of ethnic groups from mass murder and genocide.\textsuperscript{76}

Rawls argues for this very restricted sense of human rights, as they are related to his conception of justified reasons for intervening in a society’s domestic affairs, and engaging in war. He calls them a necessary, but not sufficient, standard for the decency


\textsuperscript{73} International Covenant on Civil and Political Rights: http://www1.umn.edu/humanrts/instree/b3ccpr.htm

\textsuperscript{74} Rawls, The Law, 77-8. In his discussion of the fictional decent hierarchical Kazanistan Rawls discusses the idea that accepting the Kazani’s into the society of well-ordered Peoples occurs even though they allow different levels of political participation based on religion and gender.

\textsuperscript{75} Rawls, The Law, 78.

\textsuperscript{76} Rawls, The Law, 78-9.
of political and social institutions.\textsuperscript{77} And he explains that, fulfilling this minimal conception of human rights, is sufficient to exclude justified intervention by other peoples, in the form of diplomatic and economic sanctions or military force.

Rawls explains, the criteria for the basic conception of human rights is based on, the minimal lowest common threshold of rights, accepted by all liberal and decent peoples, and that, these peoples will not tolerate outlaw states, which allow, or cause situations falling below the minimal rights criteria. He suggests that human rights, in the limited form he conceives of them, are separate in a sense from political institutions, in that rather than emanating from a particular institution, they are a standard which particular institutions must meet, to be admissible to good standing, in a reasonably just society of peoples.\textsuperscript{78} However, Rawls says they are binding on all societies, and outlaw states which violate them, are subject to condemnation, and in very serious cases, forceful sanctions.\textsuperscript{79}

Why Peoples, Not Individuals, in a Second Original Position?

Rawls explains that taking up a cosmopolitan position, where all individuals in global society were considered to possess the “two moral powers,”\textsuperscript{80} a capacity for a sense of justice, and a capacity for a conception of the good, as the basis of political equality in comprehensive liberalism as described by Kant, Mill or in his own \textit{Political Liberalism}, and starting from a global original position, which considers, all persons to

\textsuperscript{77} Rawls, \textit{The Law}, 80.

\textsuperscript{78} Rawls, \textit{The Law}, 80.

\textsuperscript{80} Rawls, \textit{The Law}, 82.
have equal basic rights and liberties, would be problematic, and inappropriate in TLOP, where his goal is to elaborate a just foreign policy for a liberal society.

The key point to consider in this, is that Rawls is not actually arguing for the structure of a just society of peoples, but rather what a just foreign policy would be for a liberal society, in light of, something like, the actual structure of world society. The point is somewhat complex, in that he is using the tool of a society of peoples, to consider what would be reasonable for a liberal society to expect of other independent societies. This takes into consideration, what is considered just, but is also, framed within the idea, that a liberal society could not expect other societies to give up their independence lightly, for conceptions of justice they did not necessarily share. Once he is confident about standards that would be agreed to by societies a liberal society would respect, he can also decide what cannot be tolerated as well. The approach can be confusing, because much of the time Rawls seems to be suggesting the basis for realistic utopian society of peoples, when he is actually using the society of peoples as a thought experiment, or mental tool to think about formulating a reasonably just foreign policy for a single society. The difference is subtle, because he does posit what he considers, a just basis for the Law of Peoples, but he is doing it in a context that rules out some possibilities in considering global justice. Within the parameters he has set out, there is, in a sense, less reason to consider that, many people in the world would choose to do something other than the status quo.81

81 With less than 40% of the population of global society living in states or members of “peoples” which are free, (Source: Freedom House Population Trends 1980-2014, accessed at:
Rawls Conception of Trade in *The Law of Peoples*.

Rawls does not discuss international trade extensively in *TLOP*, which is unfortunate, since it is a powerful concern in any conception of a global society. He claims there will be standards for trade, but does not specify anything about them other than to suggest he believes a free trade model is in everyone’s long term advantage, and that a fair background framework is necessary but gives no principles or even suggestions as to what this might look like.

Consider fair trade: suppose that liberal peoples assume that, when suitably regulated by a fair background framework, a free competitive trading scheme is to everyone’s mutual advantage, at least in the longer run. A further assumption is that the larger nations with wealthier economies will not try to monopolize the market, or aspire to form a cartel, or act as an oligopoly. With these assumptions, and knowing as before that the veil of ignorance holds, so that no people knows whether its economy is large or small, standards can be specified, followed, and enforced.) Should these cooperative organizations have unjustified distributive effects between peoples, these would have to be corrected and taken into account by the duty of assistance.[82]

Although it is limited, this passage seems to contain some of the most important ideas in *TLOP*, at least in regard to constructing something like, a Rawlsian approach to international trade. What is important here seems to be, that the principles which

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establish the background framework for justice as fairness in international trade, are to be worked out in the Original Position with the Veil of Ignorance.

Rawls does not go into detail on what would constitute a fair background framework for international trade, but it seems sensible to extrapolate a reasonable conception that Rawls might have agreed with. Rawls has said categorically, he does not feel the Difference Principle he develops in ATOJ, can reasonably be applied in a global context, so it is clear he would not consider it to arise in the context of international trade.

It in ATOJ, Rawls considers it problematic to specifically commit to a particular economic model, suggesting the exact details of the institutions would shift depending upon the economic model the society was operating on, but that in general, there would be a need for effective economic institutions to maintain basic fairness in the economy, that would apply regardless of whether, the economy was largely based on a free market model, or a model where most of the productive property was publicly owned, whereas in the TLOP, he is prepared to claim that a free trade model would be in everyone’s interest, in the long term. I find that interesting, and a bit contradictory, since in ATOJ, he is very clear that sacrificing a few, for the good of the majority is wrong, and that it is important to balance, ensuring a decent social minimum for everybody in the present, with ensuring the same in the future. He considers both to be quite important.\textsuperscript{83} When he says free trade is, “to everyone’s mutual advantage at least

\textsuperscript{83} Rawls, A Theory, 255-257.
in the longer run,“\textsuperscript{84} it seems somewhat problematic. It is not consistent with his earlier positions on free exchange and free market economics, and very few people that support international free trade, consider that it is to everyone’s advantage. Most supporters consider that the aggregate advantage is so great, that it justifies the costs for those who will not benefit.

In ATOJ Rawls is clear that economic efficiency ought not, always be the highest goal in managing an economy, and that social concerns should also have bearing. Keynes, who Rawls quotes,\textsuperscript{85}in his discussion of acceptable inequality in an economic system, was quite concerned that supporters of free market economic models often failed to take into account the concept and possible extent of frictional unemployment in their argument for economic efficiency.\textsuperscript{86}

It seems reasonable to suppose that, in the selection of a background framework for fairness in international trade, in the Original Position behind the Veil of Ignorance, a principle, that international trade be in the interests, as much as reasonably possible, of reducing absolute poverty in global society would be selected.\textsuperscript{87}Trade practices which tended to increase absolute poverty would be strictly unacceptable, and trade with peoples that were so impoverished as to fall under the obligations of the duty of

\textsuperscript{84}Rawls, The Law, 42.

\textsuperscript{85}Rawls, A Theory, 263.

\textsuperscript{86}Keynes, John, M. General Theory of Employment, Interest and Money. (Atlantic: 2008),6-8 See Chapter 2, Section I & II.

\textsuperscript{87}Here it is appropriate to include the qualifier ‘as much as reasonably possible’ as not all trade would involve states with absolutely impoverished members, and in some cases it would be unfeasible or irrelevant.
assistance would be required to ensure that they resulted in a positive effect on the level of impoverishment. This principle seems in accordance with Rawls’ position, that a duty to assist impoverished others in global society, requires a clear cut off point, and also with his belief that free trade would be in everyone’s long term interest.

Another principle that seems to be necessary for the conception of a fair background framework is that trade, in general, needs to take into account inequalities between the participants. The terms of trade would need to be arranged in such a way, as to work towards decreasing the inequalities to the greatest extent possible, while still maintaining terms of trade beneficial to both. Terms of trade or trade agreements that increased inequalities between parties would be, except in exceptional circumstances, unacceptable.

While this may appear to be derived from the Difference Principle, it is actually based on Rawls’ discussion of trade in TLOP. Rawls explains that inequality in itself is not a problem, so long as each society has sufficient resources to provide its members with enough to support a well-organized society. The problem is, that Rawls expects the regulation of fairness in trade will be managed by cooperative agreements, and negotiation between peoples. In TLOP he argues the fair background will ensure wealthy powerful societies will not use their power to shift market conditions and terms of trade to their advantage, but Rawls also consistently makes the case that extremes of inequality impact effective political participation, and make democratic political systems, democratic in name only. It seems likely, that in order to preserve free and fair trade, the representatives in the Original Position, not knowing their society’s actual
wealth and position, will opt for a principle of fairness in trade that helps to preserve the long term fairness of trade for all societies. Suggesting this principle may seem problematic when it is clear Rawls does not believe peoples in the Original Position would choose the Difference Principle, but it actually makes sense in relation to his consistent position on inequality in political systems; that beyond a certain point they make effective participation in a democratic system highly problematic. As he suggests when inequalities of wealth exceed a certain limit, “... political liberty likewise tends to lose its value, and representative government to become such in name only.”

I suggest, a principle would be chosen that outlined the concern that, trade would not be acceptable, when it placed unacceptable negative costs on those who were not consenting participants in the exchange. This would include social and environmental costs for others in global society, and would also include costs imposed on future members of global society. In this case the principal seems reasonable for negotiators in the Original Position, as they would have no knowledge of their societies wealth and power to effectively redress wrongs in international situations, but they would know they were negotiating principles to apply in international society, where it would be difficult to seek redress in courts, making it important to have the principle of avoiding harm to others enshrined in the background structure of fair trade.

It is definitely possible Rawls would have suggested other principles, but these seem to support the concern for a fair background structure in international economics. An

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88 Rawls, A Theory, 246.
important difference however, is the role of institutions in international economics, compared with Rawls’ discussion of the role of institutions in a just society. Rawls relies on institutions to realize procedural justice in society, where the social structures are arranged in such a way as to guide the actions and interactions of members of the society in line with the principles of justice.

Without an appropriate scheme of these background institutions the outcome of the distributive process will not be just. Background fairness is lacking.  

Rawls suggests that this is necessary for the institutions to structure the society in line with the principles of justice as its members will have differing ends and conceptions of the good. He explains that a society where all members had the same ends and conceptions of the good would not need effective institutions but it would also be in a sense beyond justice. The Society of Peoples cannot be expected to be beyond justice in this respect, and is highly likely to need effective institutions in order to structure the activities of its members in line with justice (any conception of justice).

The idea of justice as fairness is to use the notion of pure procedural justice to handle the contingencies of particular situations. The social system is to be designed so that the resulting distribution is just however things turn out. To achieve this end it is necessary to set the social and economic process within the surroundings of suitable political and legal institutions.

Rawls conception of “cooperative organizations” as the institutional structure which supports a system of fair and free trade, appears to conflict with his position that,

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89 Rawls, A Theory, 243.


91 Rawls, A Theory, 243.
inequalities of participation in supporting these institutions, and inequality of benefits received from them would be acceptable in the 2nd Original Position. If Rawls believes a fair background framework for trade is important (as he claims it is), it will, according to his own explanation of justice as fairness, require institutions that create a fair procedural structure for international economic processes and agreements. An institution with a structure similar to the current IMF and World Bank, will not achieve this, as is apparent from the extensive criticism they receive concerning their activities. Rawls’ concern to protect a conception of the special value of “peoples” or state societies ruled by a sovereign government, ends up contradicting his position on the importance of institutions in a just society. While defending his conception of basic social structure as the subject of justice, he takes the position that without effective institutions structuring interactions, it will not be possible to sustain the conditions that permit self-interested actors to negotiate free agreements that are reasonably just or fair.

[S]uppose we begin with the initially attractive idea that society should develop over time in accordance with free agreements fairly arrived at and fully honored. Straightway we need an account of when agreements are free and the social circumstances under which they are reached are fair. In addition, while these conditions may be fair at an earlier time, the accumulated results of many separate ostensibly fair agreements, together with social and historical

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92 See Peter Singer and Thomas Pogge in chapter two as well as Joseph Stiglitz, Ha Joon Chang and Herman Daly in chapter three of this dissertation. I don’t mention the WTO, not because I believe it is structurally fair, but it is more equal in its decision-making structures than the IMF or the World Bank (or the Security Council of the UN). The GATT process is a fairly good example of an international cooperative association that wealthy developed countries could put more into and get more out of, and it has contributed to a good portion of the unfairness of the current WTO.
contingencies, are likely as time passes to alter institutions and opportunities so that the conditions for free and fair agreements no longer hold.\footnote{Rawls, John. “The Basic Structure as Subject,” \textit{American Philosophical Quarterly} 14, no.2 (1977): 159-60.}

It is a serious concern for Rawls’ position, that a fair set of background principals for trade, combined with the cooperation of members of international society, will ensure a mostly free and fair international trade regime. To remain consistent, he must either consider his background framework for fair trade, to amount to a basic structure of global society created in support of principles of justice for trade, or consider that international trade would not be consistently free and fair at all, under his scheme of a society of peoples. If he adopts this second position, then his whole scheme of justice in TLOP ends up being invalidated, if unjust international trade regimes and international economic institutions are proven to violate basic human rights.

I think Rawls is making a mistake, relevant to fair international trade, in making the representatives in the Original Position, as described in \textit{TLOP}, representatives of Peoples, instead of actual individuals. The concern is, that he ends up creating a situation where principles for fair international trade, would be chosen by a single representative of the entire society. A single representative, knowing they would likely be in the majority, could agree to principles that would permit the interests of a minority of members of society, in having access to a decent social minimum, to be sacrificed to a perceived utilitarian greater good of the society, or even to the benefit of a hierarchical elite. He is very opposed to sacrificing the individual for economic efficiency in \textit{ATOJ}, and it is hard to accept that he is willing to abandon this concern. It is
also a problem understanding how, a hierarchical society could be justly represented in the original position by a single individual.

Many commentators have argued the WTO, and trade agreements in general, tend to reflect negotiations, which end up producing more benefit for those in positions of power.\textsuperscript{94} The problem with this is that, Rawls’ approach in \textit{TLOP} is highly unlikely to address and provide solutions for the problems, which exist in international trade, or work towards international trade becoming the poverty fighting tool it could be, if its potential was put to use effectively.

Thomas Pogge takes the position that, Rawls’ vision of global economic order in \textit{TLOP}, is remarkably similar to the conditions which, exist in the current international economic order, where wealthy powerful states use their advantages in information and bargaining power, to negotiate agreements, which while freely agreed to, in the end consolidate and amplify international inequalities.\textsuperscript{95}

On the other hand, David Reidy feels that, Rawls principle of commitment to free and fair trade is actually much richer and powerful than it seems at first. He explains:

Rawls clearly states that well-ordered peoples are to refrain from monopolizing markets, forming cartels, acting as oligopolies or otherwise frustrating free and fair international or global trade and economic relations.\textsuperscript{96}

\textsuperscript{94} In this paper Pogge, Singer, Stiglitz, Chang and Bhagwati (to some extent) are noted as taking this position and explaining why they hold it.

\textsuperscript{95} Pogge, “The Incoherence between Rawls’ Theories of Justice.” Fordham Law Review 72 (2004), 1749. Pogge’s argument is discussed at length in chapter 2.

Reidy takes the position that, Rawls’ limited position on trade, nevertheless sets out the important basic conditions for just international trade. He explains that Rawls’ description of the fairness rule being worked out behind the veil of ignorance, in the 2nd Original Position, should allow Rawls to assume the agreements are fair. This is a problematic claim, as the activities of monopolizing markets and acting as oligopolies are entirely consistent with the free trade model for international trade, (which Rawls specifies). This is actually how enterprises function in free market economies. No large corporations ever enter a market, without the idea that they are going to have some strategic advantage of information, technology or supply that will help them avoid competing in a cutthroat race to the bottom on prices. The free trade model simply stops countries from creating a barrier to foreign competition. True, free trade would limit a very powerful country’s legal ability to create conditions where a business had a legal international monopoly on a specific type of business, but this is really not what occurs in international trade, (it is more consistent with mercantilism HBC or East India Company or the like). The free trade model is entirely consistent with oligopoly, which is very common in the current international trade regime. It would actually be very difficult to limit oligopoly, without actual intervention in markets, either domestically, or internationally. Claiming that, a free trade model for international trade is related to preventing the formation of oligopolies, doesn’t make sense.

Although Reidy supports Rawls’ conception of international justice in TLOP, he ends up taking the position that, there are some concerns with how Rawls approaches
international trade. He suggests that although Rawls does not discuss it, the possibility of fair trade with what Rawls calls “Burdened Societies” is very problematic.

Burdened societies are not able to sustain a well-ordered domestic legal and political order on their own. Property rights and the rule of law are thus unlikely to be secure in burdened societies, rendering problematic informational transparency and thus the genuine voluntariness of trade and the presumption of mutual advantage in trade with or between them. Further, trade with or between burdened societies will likely often involve duress on one or both sides as well as radically unequal bargaining positions, since so many burdened societies are desperately poor.97

Reidy explains trade with burdened societies, in general, would fall under the “Duty of Assistance,” rather than be considered part of free and fair trade agreements, considered by Rawls under international trade. Reidy considers the concern that, even between what Rawls describes as “Well ordered Peoples,” there can definitely be situations where inequalities in wealth and power in a transaction, can lead to injustice in trade. He makes the claim that, “Rawls’s position is simply that mutually advantageous trade between well-ordered peoples is presumptively just, and that international economic justice requires no more than the long-term preservation of such trade relations.”98

Although Reidy admits injustices can occur, he asserts that, in spite of this, Rawls really does not need to articulate a more elaborate position on trade, and Rawls presumption that a background agreement to support mutually beneficial free and fair trade is a reasonable way to address the issue.


Here a charitable reading of Rawls’s position would allow that while great economic or material inequalities between well-ordered peoples are not per se objectionable, and while the well-orderedness of trading partners is sufficient, despite great economic or material inequalities, to generate a presumption that trade relations are voluntary and thus mutually advantageous, such inequalities may nevertheless prove objectionable in particular transactions. There is nothing inconsistent in this position. It is perfectly consistent to hold that very great inequalities between peoples (a) do not matter in themselves as a matter of global economic justice (assuming that the global social/economic minimum at which the duty of assistance is aimed is universally realized), (b) do not constitute in themselves a reason to reject the presumption of voluntariness and mutual advantage in trade relations between well-ordered peoples, yet (c) may still matter a great deal as a matter of transactional justice between particular parties in particular contexts for particular reasons.99

In some of his other work Rawls himself critiques the position he takes in TLOP on the idea that fair trade in international society is achievable without institutions similar to those he feels necessary to support economic fairness in ATOJ. In Political Liberalism Rawls clearly takes the position that the type of methodology for regulating trade he is promoting in TLOP, as a just way of maintain background fairness in trade, will over time lead to a deterioration of the conditions of background justice and the promotion of the oligopolistic market power and skewed distribution of the benefits accruing to trade he suggests that he wants to avoid even in TLOP.

[S]uppose we begin with the initially attractive idea that social circumstances and people’s relationships to one another should develop over time in accordance with free agreements fairly arrived at and fully honored. Straightaway we need an account of when agreements are free and the social circumstances under which they are reached are fair. In addition, while these conditions may be fair at an earlier time, the accumulated results of many separate and ostensibly fair agreements, together with social trends and historical contingencies, are likely in the course of time to alter citizens’

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relationships and opportunities so that the conditions for free and fair agreements no longer hold.\textsuperscript{100}

[The tendency... for background justice to be eroded even when individuals act fairly: the overall result of separate and independent transactions is away from and not toward background justice. We might say: in this case the invisible hand guides things in the wrong direction and favors an oligopolistic configuration of accumulations that succeeds in maintaining unjustified inequalities and restrictions on fair opportunity.\textsuperscript{101}

Rawls also suggests in his work on economic institutions in \textit{ATOJ} that in order for the economic system and market exchange not to follow a tendency to produce unjust inequalities particular institutions would need to be constructed in order to counteract these forces of inequality.\textsuperscript{102}

\textbf{The Law of Peoples and Principles of Just International Trade}

Careful reading of TLOP and consideration of what various commentators have made of it, allows a discussion of how to relate Rawls’ conception of justice in international society, to the principals I have considered as a basis of a just international trade regime. I make the claim above that, if Rawls had actually worked out the principles of a fair background structure of international trade in the 2\textsuperscript{nd} Original Position, the principals would be quite similar to those I propose.\textsuperscript{103} I will develop my argument for them in relation to positions Rawls takes in TLOP.


\textsuperscript{101} Rawls, \textit{Political Liberalism}, 267.

\textsuperscript{102} Rawls, \textit{A Theory}, 243.

\textsuperscript{103} I originally conceived of them trying to apply the idea of something like Rawls’ Original Position to international trade, so it is not surprising.
Commentators have said quite a bit, both positive and negative, about Rawls’ “duty of assistance” in TLOP. There seem to be both weaknesses and strengths to his approach, and it is a topic worth discussing in relation to international trade. In this section I will discuss how Rawls’ conception of justice in international society, fits with the principals I suggest for a just international trade regime, and I will attempt to explain how the “duty of assistance” fits into the discussion.

The first principle I suggest for a just international trade regime, is that international trade should be regulated in such a way, as to be as effective as possible, at reducing absolute poverty in the world. Most of the people who support increasing international trade (as opposed to those who support creating barriers to it) claim that, it produces economic growth, in the sense of more effectively turning available resources into goods and services that people need. It makes sense that, if we can use international trade to reduce the number of people suffering from extreme poverty, we ought to do so. Obviously, this needs to be well thought out, as trade must benefit all participants to be practical, but it seems if there is an economic benefit produced by trade, some of it should go to improving the lot of the worst off.

From the point of view of ATOJ, there is little doubt Rawls would have supported this within his conception of justice, however his conception of justice for international society, is not nearly as clear on this point. This is where the “duty of assistance” comes into play in TLOP. It is listed in the statement of principles of the Law of Peoples as
“Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime.” 104

The duty of assistance is a general principle that, “well ordered” societies have an obligation to assist “burdened” societies, in becoming well ordered societies. The assistance could mean a variety of things according to Rawls, including some assistance in developing just institutions, but he is concerned about stepping over the bounds of respect between peoples. 105 Rawls notes that, the duty of assistance may require some extent of redistribution, (in the form of development aid, from wealthy peoples to poor peoples), in order to support the development of basic institutions and social structures that are needed for a well ordered society, but he also says the duty of assistance has a cut-off point, at the level at which a society is able to support the institutions and social structures of a well ordered society. Rawls is very clear about the cut-off point, and suggests that poverty or wealth beyond a basic level, has little to do with whether a society should be considered well ordered or not. 106 On this interpretation, Rawls would likely be in favor of a principle of trade, focussed on alleviating severe absolute poverty. However Rawls is also very clear, it is not the responsibility of well ordered societies to compensate burdened or disordered societies for the results of their own poor decisions, either currently or historically.

I believe that the causes of wealth of a people and the forms it takes lie in their political culture and in the religious, philosophical and moral traditions that

104 Rawls, The Law, 37.

105 Rawls, The Law, 111, 37.

106 Rawls, The Law, 106.
support the basic structure of their political and social institutions, as well as in the industriousness and cooperative talents of its members, all supported by their political virtues.\textsuperscript{107}

Rawls takes the position that, a large part of the economic success or failure of a society is based on domestic social and political structures and attitudes, and that, other societies ought not to be forced to give up the benefits accruing to them through their own industriousness and positive political culture, to support societies which have chosen different less successful paths. Basically Rawls’ position is that countries in serious poverty or experiencing serious economic problems generally have brought it upon themselves through the structure and character of the society. This seems very much like what Thomas Pogge calls “explanatory nationalism,” in \textit{World Poverty and Human Rights}, which he describes as a strategy used to justify ignoring the impact of serious poverty in other countries. Pogge specifically addresses this claim made in Rawls’ \textit{TLOP}, and he describes Rawls’ position as the “Purely Domestic Poverty Thesis.”\textsuperscript{108} Rawls also takes the position that, although national borders might be considered to be of arbitrary historical origin, this does not take away from their importance in contemporary international society, where they take on a crucial role of denoting which resources and land belong to which states. Rawls explains, this makes resources explicitly, the property of one state, and assigns responsibility for its use, protection, and maintenance to that state. Rawls makes a tragedy of the commons

\textsuperscript{107} Rawls, \textit{The Law}. 108.

\textsuperscript{108} Pogge, “The Incoherence,” 1753.
argument that, if it were not for the role of borders in assigning resources as assets to particular peoples, the resource assets would deteriorate.\textsuperscript{109} It also ensures clear responsibility for the consequences, when mismanagement occurs.

Rawls would likely disagree with solutions to make trade work to reduce poverty, that are like Stiglitz’s market openness principle,\textsuperscript{110} which suggests an effective way to make trade work in the interests of developing countries, would be to have all countries open their markets, generally, to countries with GDPs smaller than their own. Rawls might consider this too open ended, for his duty of assistance in TLOP, as it has no cut-off point. It is also likely, that in light of his concern, that well-ordered societies ought not be forced to pay for the mistakes of burdened societies, and his concern for the promotion of good institutions and policies, rather than redistribution, that he would want to make a principle such as Stiglitz’s, contingent on adoption of particular policies and institutional structures. Rawls might accept that trade ought to be regulated to benefit countries generally in serious need, but likely he would not want to accept this as a general principle, as it conflicts with his belief, that societies are in general responsible for their own situation, and his desire to avoid imposing on well-ordered societies, the general duty, to make up for the bad decisions of burdened societies. He could probably reconcile a cut-off point in the duty of assistance, with a principle of justice in trade focussed on reduction of severe poverty.

\textsuperscript{109} Rawls, The Law, 39.

\textsuperscript{110} Discussed at length in chapter 4; see J. Stiglitz and A. Charlton, Fair Trade for All (New York: Oxford, 2005).
The second principle I propose, is that international trade would be just only when it either worked actively to limit inequality, both between states and within countries, or at very least, was conducted in such a way as to avoid increasing inequality. On this issue Rawls comments:

Equality among Peoples. There are two views about this. One holds that equality is just, or a good in itself. The Law of Peoples on the other hand, holds that inequalities are not always unjust, and that when they are, it is because of their unjust effects on the basic structure of the Society of Peoples, and on relations among peoples and between their members.111

Rawls notes three reasons why one might be concerned about inequality. One is a concern for alleviating the sufferings of the poor. But Rawls maintains here that equality is not important, that, what matters are consequences. If all members have sufficient resources to participate effectively in the society, there is no need to be concerned about inequality. Rawls explains that in the society of peoples, the duty of assistance only applies until a society is capable of forming liberal or decent governing institutions, and after that point there is no need to be concerned about inequality.

The second reason, regards feelings of inferiority or stigmatization, the poor may feel in relation to other members of society. Rawls suggests that, here it is important to avoid conventions that establish ranks or social deference based on wealth within a domestic society, but within the society of peoples, this is not a good reason to focus on inequalities, since feeling of inferiority and stigmatization derive overwhelmingly from comparisons with one’s compatriots, not with those of other societies.

The final reason concerns fairness in political processes. Rawls is concerned that, inequality may affect the ability to effectively participate in political processes. He argues that public financing of elections is useful in addressing this, but also that equality of opportunity in a domestic economy, must be more than simple legal equality. And also that fairness in educational opportunities, and consideration of background situations is needed. In the society of peoples, Rawls suggests that fairness is built into the peoples being represented equally in the second original position, behind the veil of ignorance.\(^{112}\) “Basic fairness among peoples is given by their being represented equally in the second original position with its veil of ignorance.”\(^ {113}\)

In *TLOP* Rawls accepts that inequalities can lead to issues of justice, but his concern is much greater in *ATOJ*. In *TLOP* Rawls addresses this in two ways. First he says that to a large extent basic fairness is settled, because it would be covered in the second original position, and second, he takes the position that inequality is not particularly important for fairness, at the level of international society, because to some extent inequalities support the different ends that societies might have. In the first case, the claim that the second original position takes care of most of the concerns for inequality, seems inconsistent with his position in *ATOJ*, where equality emerges as an important guiding principle of justice, and Rawls explicitly explains how a society would need to

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design institutions that continually functioned to support it.\textsuperscript{114} In relation to the second claim, that inequalities reflect the different ends of societies, he seems to ignore quite a lot of evidence that inequality reinforces inequality, in the politics of negotiating the relations between states in international society.

Rawls may have good reasons for not pushing for economic distributive equality at the international level. It is fair to argue that, Rawls is aware of arguments from the point of view of sustainable environmental practice, that bringing the global population up to a level of material lifestyle similar to developed western countries, would be an environmental disaster, and likely is not even possible.\textsuperscript{115} If this is his argument though, rather than just throwing out equality, an argument could be made that, it would be more reasonable to outline a scheme where sustainable development could be part of a just conception of international society.

Rawls’ position that inequality is only important when it impacts fairness, seems to be a very reasonable position in many ways. However, it is not clear Rawls proves the

\textsuperscript{114} Here I am not criticizing the position Rawls takes not to be concerned for inequality in other domestic societies, it is clear once he has explained that decent hierarchical societies will be tolerated by liberal peoples that he is not trying to achieve this in any way. He does claim that fairness is an important feature in international trade. His previous positions in \textit{ATOJ}, consistently support the need for institutions which maintain fair bargaining conditions in agreements and exchange in the long term, or they are eroded by inequalities which are the natural consequences of free exchange over time. He may not be concerned about inequalities within societies, but it is unreasonable to think that most people in the 2\textsuperscript{nd} or 3\textsuperscript{rd} Original Position would decide to accept the status quo in fairness of international economic institutions, knowing there is a very good chance their society will not be in the wealthy minority that control them.

\textsuperscript{115} Rawls, \textit{The Law}, 107-8. He quotes Mill on the need for a Steady State economy rather than economic growth and he is clearly familiar with the argument Daly makes as well as Hardin.
inequalities in international society he accepts, will not lead, as many others claim, to considerable unfairness and unjust conditions in international society.\footnote{In this paper see below: Singer, Pogge, Stiglitz.}

It is clear Rawls would not, in general, consider that a principal for regulation of international trade ought to concern itself with intra-state inequalities, or inequalities within the societies that make up the larger society of peoples. Rawls makes it quite clear that, his conception of justice within TLOP is for justice between societies, and that it would not take individuals into consideration, in the international context.

The third principle I suggested for a just international trade regime, is that trade ought to be regulated in such a way, that the ability to compete unfairly in trade through negative externalities is limited, that is, to restrict as effectively as possible, the ability of producers to use differing international standards and enforcement, to avoid paying, or to download social, environmental and economic costs of the production process, on those not party to the transaction. Although Rawls addresses this concern directly in \textit{ATOJ}, and suggests a specific institution would need to be created to address it, in \textit{TLOP} Rawls addresses this concern much less directly, than the first two principles, on which he makes considerable applicable commentary. Negative externalities are an important source of injustice in international trade, because international law and international institutions, as they stand, are not sufficient to address them. They are a problem, because of fragmented nature of regulation, and control of labor laws, environmental degradation, and pollution controls, as well as variations in property,
contract and tax law between countries. Treaties address these issues, and function to some extent, but a restructured international institutional approach, of some kind, is probably necessary to address them.

Rawls is aware of both environmental issues, and issues around international institutions, but it seems like there is not enough in *TLOP*, to interpret Rawls’ position on this. He specifically explains there is a responsibility to future generations not to deplete required resources or cause harmful environmental degradation, however he does not address the concern directly in the *TLOP*.\(^{117}\)

In many cases, social costs of negative externalities might be considered by Rawls, to fall outside the purview of the law of peoples, in the sense that, it is not concerned with the internal domestic structure of societies beyond basic obligations of human rights. This would mean that, domestic social conditions would not be relevant to international trade concerns; very similar in a way to the product versus process distinction has been applied within the WTO.\(^{118}\) This could be a particular problem, in the relation between well-ordered states and burdened states, or other states without well ordered, or decent, domestic arrangements. The Law of Peoples covering interaction in the society of peoples, really doesn’t cover trade interactions with societies that fall outside of the society of peoples. David Reidy, who generally defends


\(^{118}\) Discussed below by both Peter Singer and Jagdish Baghwati. For further background see *Understanding the WTO, The Environment: a specific concern*. At http://www.wto.org/english/thewto_e/whatis_e/tif_e/bey2_e.htm
Rawls’ position on international justice, suggests that under Rawls’ conception trade relations with and between burdened societies would be a concern.\textsuperscript{119}

Reidy claims that trade relations between well-ordered societies and burdened societies would be something well-ordered societies would be obligated to address in a fair way because the duty of assistance would apply, but TLOP rejects nearly all ethical individualism. The domestic order beyond human rights is beyond the realm of the Law of Peoples, so many types of negative externalities occurring within domestic societies, would not seem to create obligations under the Law of Peoples (although some would as human rights concerns). In general there is a duty of non-intervention.\textsuperscript{120} It would have been interesting to ask the question to Rawls, who notes that, certain types of institutions would need to be developed to support human rights, as well as to support treaties and agreements, but is non-specific about them in TLOP.

Rawls suggests that, fair background structures for trade would be developed in the Original position in TLOP, and it is reasonable to consider that with the extent of concern for the subject in ATOJ, a concern for restricting negative externalities in international trade would be part of that fair background structure.

His focus on group or collective rights of peoples, and complete dismissal of ethical individualism in TLOP, creates a situation where, from Rawls perspective, it would seem many of the concerns for justice in international trade that are most

\textsuperscript{119} Reidy, “In Defense of Rawls,” 201.

\textsuperscript{120} Rawls, The Law, 37.
discussed in normative literature on trade and globalization, would be concerns which apply only within domestic societies. Rawls dismissal of ethical individualism in the context of justice in international relations, puts him in a very different category than both Thomas Pogge and Peter Singer.

The differences between, the position that Rawls takes on justice, in his influential *ATOJ* and the position he takes in *TLOP*, are extensive, and the reaction of many who are familiar with both, suggests, there are enough problems with the differences to make TLOP unsatisfactory in many ways. This makes it worthwhile to consider, what can be drawn from ATOJ in relation to justice in international trade, even though Rawls explained that, ATOJ was meant to apply only within a domestic society.

In *ATOJ* Rawls has a strong focus on equality; both of the basic principles he defends are based upon it. In *ATOJ* equality is not simply valued for itself. Rawls argues there, that equality is important, because it promotes a society where everyone has the opportunity to pursue their conception of what is valuable in human life, to the fullest extent of their potential. Basically, the idea that, equality supports fairness in a society, and that in a situation where we don’t know everybody’s individual conception of the good, fairness and the ability to pursue ones ends, are a reasonable approach to a just society.

In *ATOJ* Rawls seems to be defending a conception of justice that would be compatible with both the unrestricted free trade model for international trade, as well as protectionist models of trade, in this regard his main concern would be, that trade was regulated by institutions, which function to support principles of justice in society.
There doesn’t seem to be an obvious argument for why the reasoning behind the conception of justice, and how it applies to economic institutions in ATOJ, would not also apply to international society, particularly as we see, that in many ways, it is hard to understand any one country, as an isolated entity, functioning independently, outside of the economic (and social) interdependence of contemporary international society.

Rawls claims the theory from ATOJ does not apply to global society, but it is hard to see a reasonable and convincing argument for excluding ethical individualism completely, from a highly interdependent society where individual people carry on relations, and create obligations across international boundaries, outside of the structure of the nation state. It is a tough argument, that the only way individuals have moral standing in global society, is as citizens of states, and it is hard to see how Rawls can argue in one case that the accident of your social position at birth should, in a just society, have no bearing on your chances for success in life, and then take the position that, individuals have no moral standing in international society. Although Rawls didn't agree, it seems that much of the work done by Rawls in ATOJ, around the role that institutions need to take on in a just economic system, can be applied quite reasonably to international trade.

**Charles Beitz and Iris Young: Building from Rawls**

Charles Beitz: A Critique of Traditional Models of Obligations of Justice in International Relations

Charles Beitz wrote *Political Theory and International Relations* as a proposal for a normative approach to political theory in international relations. Beitz supports the conception that the principles of justice, and much of their application in developing
institutions that structure society, in a way that supports just interactions between its members, which were developed by Rawls in *A Theory of Justice*, reasonably, ought to be applied to global society. In *Political Theory and International Relations*, he argues for this, suggesting many aspects of global society to which it would apply. I think there are several lines of argument specifically worth considering, in relation to the question of whether or not principles from *ATOJ*, can be appropriately applied to international trade.

Beitz lays out two of the traditional positions for understanding the role of justice and morality in international relations. The first of these, moral skepticism, is the position that international relations is an area where justice or morality, as such, doesn’t really hold. This position, associated with international relations realism, has been an influential position historically, and continues to have a strong influence on the foreign policy of many states in the 21st century. An important feature of the realist position of moral skepticism, is the conception that global society is analogous to a Hobbesian state of nature. In the analogy, states are considered analogous to the individual persons in the Hobbesian state of nature, each possessing unlimited liberty, to act in their own interest to the extent of their capability to do so; the sovereignty of states being analogous to individual freedom. Hobbes described this position as “The war of all against all”, in which concerns of morality or justice are irrelevant entirely.\(^{121}\) Moral

\(^{121}\) Hobbes, Thomas. *The Leviathan*. Chapter XIII.
Skeptics see justice and morality, as irrelevant to international relations, because of the anarchic nature of global society.

Beitz explains that the second position is based on modern natural law theory, and holds that morality and justice are appropriate in international relations, but it is a moral system where states are considered to be, both the agents and subjects of morality, and the obligations of justice are held to be much weaker than those that exist within states. Beitz calls this position a “Morality of States” conception of international affairs, which understands global society as anarchic, but still recognizes an obligation to respect the basic rights of others, although the obligation is weakened considerably by the nature of the society. This is a form of international relations liberalism; Beitz describes Rawls’ position in international relations as social liberalism.

Beitz argues for an alternative to both of these, one that would see the obligations of justice and conception of morality at the level of global society, as being similar to what Rawls argues in favor of in ATOJ. His argument for this alternative is based on a rejection of the arguments for both realist moral skepticism, and more importantly, the morality of states, in global society.

He begins his argument with realist moral skepticism, although some of the arguments also apply to morality of states. Beitz claims that the analogy of global society as a Hobbesian state of nature, where each state can be conceived as a person with an unlimited liberty to act in their own interest, is wrong in several senses.\(^{122}\)

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Firstly, states are not the only actors in global society. A wide variety of actors including, IGOS (International Government Organizations), INGOS (International Non-Government Organizations), transnational corporations, and even individuals, all interact in global society. Secondly the power or strength of actors in global society is radically unequal, unlike the Hobbesian state, where none can dominate the rest effectively. The states in international society are also unlike Hobbesian individuals, in the sense that, in many ways, they are not self-sufficient, but are in fact, highly interdependent economically, and for security. Beitz also makes the claim that in the Hobbesian state of nature, individuals are not able to rely on reciprocal cooperation, as there is no authority to ensure compliance, but in global society, states regularly and reliably cooperate in shared projects, and that, non-compliance is the exception, rather than the norm.

Beitz explains that in Hobbes’ state of nature individual persons are, in a sense, subject to natural law, but because reciprocal enforcement does not exist, the only natural law that individuals are bound to follow, is not to do anything that would jeopardize their ability to preserve their own life. This is understood as, a right of states (in realist conceptions of international relations,) to act in national self-interest, or national survival. Beitz considers this understanding flawed, as even the survival, of a state, is a categorically different thing than survival of individual persons. His position is that, the cultural or economic interests of a state, ought to have a different moral weight for the leaders of states, than the lives of persons. In situations where the
leaders must act to protect the lives of individuals, different moral principles are involved, than situations where national economic or cultural interest, is at stake.\textsuperscript{123}

Beitz then, wants to address the \textit{morality of states} position, that there are obligations of justice, that exist at the level of global society but, because of the different nature of global society, the principles of justice that apply would be thinner and weaker, than that of a state unified under a constitution. He explains that, this is the position Rawls holds, and that, he wants to use some of the arguments Rawls gives to support justice within a society, to illustrate the problems of drawing a categorical distinction, between societies within a state and global society. He points out, that Rawls assumes for the sake of his theory, that states are mostly self-contained. Justice governs the relations within states, because states are conceived as a cooperative venture, where members consent to participate in order to benefit from the cooperation. Principles of justice regulate the cooperative venture, so the distributions of the benefits of cooperation are shared fairly. Beitz says, this assumption of self-sufficiency is problematic for Rawls’ position, in the sense that, if states interacted in cooperative enterprise, by definition, justice would be appropriate in governing the distribution of the benefits of the cooperation. Beitz makes the claim that in many ways Rawls’ description of states as being mostly self-sufficient, seems not to fit well the actual situation of international relations, and that if we take Rawls’ argument about

\textsuperscript{123} Beitz, \textit{Political Theory}, 55.
how obligations of justice are created in society seriously, we need to reconsider the limits of justice.\textsuperscript{124}

Beitz argues that, there is a high level of economic interdependence in global society, and that, it is tending to increase over time. He argues that, international economic cooperation, and interdependence, create aggregate benefits, in the same manner that Rawls uses to support his argument for principles of justice in ATOJ, but in the absence of social structures and institutions which promote fairness, the results can be unjust.

The main features of contemporary economic interdependence relevant to questions of justice are the results of the growth of international investment and trade. Capital surpluses are not confined to reinvestment in the societies where they are produced, but instead are reinvested wherever conditions promise the highest yield without unacceptable risks.\textsuperscript{125}

There are several reasons for thinking that interdependence widens the income gap between rich and poor countries even though it produces absolute gains for almost all of them. Because states have different factor endowments and varying access to technology, even “free” trade can lead to increasing international distributive inequalities (and, on some views, to absolute as relative declines in the well-being of the poorest classes) in the absence of continuing transfers to those least advantaged by international trade.\textsuperscript{126}

Beitz notes, there is still considerable controversy, about exactly how the benefits and costs of international economic interdependence are divided, but he claims

\textsuperscript{124} Particularly it would be problematic in relation to the claims that the level of involvement of international trade has a strong correlation with which countries experience the most economic growth. (See Baghwati, \textit{In Defence} and World Bank).

\textsuperscript{125} Beitz, \textit{Political Theory}, 144.

\textsuperscript{126} Beitz, \textit{Political Theory}, 144-5. To support this claim Beitz references Ronald Findlay, \textit{Trade and Specialization} pp 118-22 and Michael Barrat Brown, \textit{The Economics of Imperialism} pp 96-126.
that it is beyond dispute, that there are both benefits and costs, and therefore the social cooperation that creates them entails an obligation for justice in their distribution, in the same way as those support Rawls’ argument accept obligations justice in a domestic society. He goes on to suggest that a “just” domestic society, that ignored possible obligations to less well-off peoples, could in some senses, justify ignoring obligations to less well-off peoples, in order to create a more just domestic society, if they were economically self-sufficient, but if some part of their wealth resulted from a relationship with that less well-off society, principles of justice that are limited to a domestic society, fail to make sense, and could even be considered exploitative.

International interdependence involves a complex and substantial pattern of social interaction, which produces benefits and burdens that would not exist if national economies were autarkic. In view of these considerations, Rawls’ passing concern for the law of nations seems to miss the point of international justice altogether. In an interdependent world confining principles of social justice to domestic societies has the effect of taxing poor nations so that others may benefit from living in “just” regimes.127

Beitz considers that, there is no basic difference in the social cooperation, between the domestic society within a state and global society, that would reasonably justify ignoring the obligations of justice, created by economic interdependence, between states. He quotes from ATOJ128 to support his contention that, Rawls argues for, the establishment of institutions to support justice in a society, and makes the claim

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127 Beitz, Political Theory, 149.

that, there is an obligation for individuals, to work towards establishing institutions to support justice, in societies where they don’t exist.

Beitz takes the position that, the method and principles of ATOJ, make sense in considering justice in global society. He suggests an expansion of the Original Position, rather than a second one as Rawls outlines in TLOP. He considers that, this would readily be accomplished by extending the Veil of Ignorance, to include ignorance of citizenship or nationality, in an interdependent society.\(^{129}\) Beitz feels that, a global difference principle would make sense, as a result of the deliberations in this situation. Individual persons in the Original Position, would be aware that, there would be winners and losers in global economic interactions, and would want to be sure, that if they ended up among the least advantaged, which in global society is a fairly high proportion, their lives would be as good as possible. He suggests many of the advantages and disadvantages of wealth and economic success in global society, can be understood to be arbitrary.\(^{130}\) (This is very different than Rawls’ position that most of the success and failure in international society is a result of a society’s good or bad choices.)

The parties would view the distribution of natural resources much as Rawls says the parties to the domestic original-position deliberations view the distribution of natural talents. In that context he says that natural endowments are, “neither just nor unjust; nor is it unjust that men are born into society at any particular position. These are simply natural facts. What is just or unjust is the way that institutions deal with these facts.\(^{131}\)

\(^{129}\) Beitz, *Political Theory*, 151.

\(^{130}\) This is in regard to resources, but also in development and structure.

\(^{131}\) Beitz, *Political Theory*, 137.
Beitz suggests the argument for a “global difference principle,” ought not to be based so much on the extent of interaction, as instead, above a threshold where it becomes an important economic factor, it should be based on the non-voluntary nature of the economic integration. In this sense, a situation is implied, where a particular trade relationship is conducted on unfavorable terms, which create economic hardship for one of the participants, but the alternative of not participating is worse. Thomas Pogge supports this point in *World Poverty and Human Rights*, when he suggests defenses of the WTO based on the argument that developing countries are better off with it than they would be without, are problematic because, for while this may be true prima facie, developing countries could have been much better off, with a different WTO regime. Another way of thinking about this sense of involuntariness is to consider the states that have turned their backs on international economic integration. It is hard to argue that autarky has been a great choice, for countries suggested by Beitz such as Cambodia or Albania or others such as North Korea.

A strength of Beitz’s argument is that he is not arguing any particular existing distribution is unjust, but that the cooperative social activity of international trade, is the type of cooperative activity in human society, that ought to be subject to principles of justice.

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132 Pogge, *Politics as*, location 1080-1100.

Beitz then critiques the *morality of states* position, that in global considerations of justice, the state is both the only appropriate agent, and the only appropriate subject of normative concerns. He considers that, it doesn’t make sense to take states, as the basis of a global difference principle, for it is highly unlikely, that the entire population of a state will be identical with the particular persons receiving the most benefit, or suffering the highest costs of an economic relationship. This is easily noted in actual practice, as in many cases international trade, or international capital flows benefit some members of a society immensely, while negatively impacting other sections. The situation appears to hold, more or less, equally true, for both wealthy developed countries, and poorer developing countries.

It is important to be clear who are the subjects of a global difference principle, especially because it has been questioned whether such a principle should apply to states rather than persons. It seems obvious that an international difference principal applies to persons in the sense that it is the globally least advantaged representative person (or group of persons) whose advantage is to be maximized....[T]here is no a priori reason to think that the membership of this group will be coextensive with that of any existing state.\(^{134}\)

Beitz explains that, a global difference principle would not, necessarily, require transfers from rich to poor countries; although some sort of inter-country redistribution would be likely, there would also need to be a focus on intra-state inequalities, and redistribution. Beitz explains that, any international obligation of states would be derivative of obligations acquired by persons participating in global society.\(^{135}\)

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\(^{134}\) Beitz, *Political Theory*, 152.

\(^{135}\) Beitz, *Political Theory*, 153. I would say in a sense you could understand it as obligations back and forth between levels of a federal state, for example provision of medical services in Canada. It is a federal
In the afterword to the 1999 edition of *Political Theory and International Relations*, Beitz explains that he understands the argument that there is a particular value in the ability of a self-governing community of persons, to live under institutions they create, in a society structured according to the values they embrace. This is an argument that Rawls accepts in *TLPO*, when he is defending his position, that justice in global society, must necessarily reject the individual focus of the conception of justice in *ATOJ*, and consider Peoples to be relevant focus of justice in global society. Beitz discusses Michael Walzer’s communitarian opposition to the violation of sovereignty, involved in any interference with the domestic order of a society. He critiques the position taken by Walzer, that benevolent intervention in the domestic affairs of a political community in the interests of addressing a perceived injustice in the society may be wrong or unjust, in cases where it ignores a consensus of members of that community, that the institutions and political structure, are a fit with the values and traditions of the society. Beitz accepts that there are cases where this is a concern, and that political communities that are organized justly, according to an actual consensus of their citizens, would have a very strong right to non-interference in their domestic affairs. However, he explains the actual number of situations, where there was a reasonable case for intervention, in a political community with a population in consensus that, its institutions were just, would be extremely small.\(^ {136} \) For purposes of

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justice in global society, it would likely make more sense to recognize, and work with exceptions, than to abandon the individual completely, as an agent or subject of justice.

Beitz suggests that, if needed, some sort of redistribution in international society, could be achieved fairly reasonably, through eliminating tariffs, and non-tariff barriers to trade for poor-country products, as well as creating a system of special drawing rights from the IMF for very impoverished countries. He feels these would be more effective mechanisms of redistribution, than relying on direct transfers between states.137 Almost all arguments in favor of free trade, are based on the idea that trade produces a net benefit over not engaging in trade, be it through comparative advantage, absolute advantage or simply the relative efficiency of market mechanisms. If international trade is a positive sum game, which all its supporters (excepting the mercantilists) make the case that it is, then it would seem to be reasonable to argue that the net gains ought to be divided, at least somewhat fairly, between the participants. On the other hand, if trade, or particular types of trade, are in fact zero sum games, where some of the participants use various types of power, to induce the others to participate in a scheme which simply redistributes the inputs, in a way that favors themselves, then a just institution of trade, would attempt to eliminate this sort of activity.

It is important to bear in mind that, Beitz is not taking the position, that the state is irrelevant to justice, but rather the scope of the state is smaller than the scope of

human social cooperative projects, which make individuals who are involved in them better or worse off, and generate obligations of justice. The state continues to be of importance, but is no longer the trump interest in international relations.

Iris Young and a Social Connection Model

Iris Young makes a case for a model of justice in global society that, she argues, responds to difficulties she perceives, in both the utilitarian model, and what she calls a contractarian model, for justice in global society. She explains that Rawls’ conception of justice in global society, that he develops in TLOP, is an example of the contractarian model, but she also discusses David Miller, who also has a conception of justice in global society, that is similar to Rawls, in the sense of differentiating between the obligations of justice within a state ,and those of global society.\footnote{David Miller has continued to maintain a position that obligations of justice, in anything except a very thin sense, make no sense, in a global context. See Miller, David. Justice for Earthlings (Cambridge, 2013).} She uses Singer (discussed in the next chapter) and Peter Unger, as her examples of Utilitarian models.

Young’s position on justice in global society, is what she describes as, a “social connection model of responsibility,” where moral obligations stem from shared involvement in social processes.

The social connection model of responsibility says that all agents who contribute by their actions to the structural processes that produce injustice have responsibilities to work to remedy these injustices.\footnote{Young, Iris, M. Global Challenges: War, Self-Determination and Responsibility for Justice. (Maiden, MA: Polity, 2006) 159-60.}

Young begins by briefly examining the contractarian and utilitarian models, and explaining their basic features. She explains that, both David Miller and John Rawls
consider that, the scope of obligations of justice is based on membership in a political community. Young explains that, Miller particularly (but Rawls also to a large extent) understands obligations of justice, to come from living together under a common constitution. She understands Miller, as recognizing the obligation to create institutions to support conceptions of justice, as only occurring within a nation state under those conditions.

As I understand the logic of this position, it holds that obligations of justice presuppose the existence of shared political institutions. It is incoherent to say that relations between people are unjust or just on this interpretation, in the absence of shared institutions for adjudicating such claims or regulating their relations. Some more or less stringent obligations obtain between persons across political jurisdictions because they are human but they are not obligations of justice.¹⁴⁰

This would mean that, although some normative obligations would exist for how we treat each other in global society, they would be categorically different from those that someone like Rawls conceives in ATOJ.

She then looks at the utilitarian position. Young explains that, she understands that the contractarian position, stands in opposition to the cosmopolitan / utilitarian position. For cosmopolitan utilitarians, no particular relationship, can change the obligations of justice that exist for all moral agents. The scope of the obligations for utilitarians is universal, and comprised of an obligation to limit all suffering. Young

¹⁴⁰ Young, Global Challenges, 161.
explains, in this conception, political membership is really only relevant instrumentally, in the logistics of how the obligations can be met.141

Young feels that, both of these conceptions of justice have some important problems. She feels the criticisms often made of the utilitarian position, that, its obligations are too demanding, have some validity, and this is compounded by the fact that, the obligations do not seem to differentiate between those that you interact with, and may be involved in affecting their background conditions of justice, and those that you have no interaction with.142

Against the cosmopolitan-utilitarian position, I believe some account must be give of the nature of social relationships that ground claims that people have obligations to one another. It is not enough to say that people are human.143

Young explains that she also agrees with the critiques of the contractarian position, that the conception that obligations of justice are limited in scope to members of a political community (because obligations of justice can only be derived from membership in a political community,) is too arbitrary, and doesn’t effectively address the reality of contemporary global interactions.

Political Communities have evolved in contingent and arbitrary ways more connected with power than moral right. People often stand in dense relationships with others prior to, apart from, or outside political communities. These relationships may be such that their actions affect one another in ways that tend to produce conflict. Or they could cooperate with numbers of others in

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141 Young, Global Challenges, 161.

142 Young, Global Challenges, 161.

143 Young, Global Challenges, 162.
ongoing practises and institutions that meet some shared objectives. In such social relations we expect fair terms of conflict resolution and cooperation.”

Young suggests a problem with the view that the existence of the nation-state creates the obligations of justice, is that, the social connection creates the moral basis for the political institution, rather than the opposite.

A social contract theory like that of John Locke argues the need and desire for political institutions arises because socially connected persons with multiple and sometimes conflicting institutional commitments recognize that their relationships are liable to conflict and inequalities of power that can lead to mistrust, violence, exploitation and domination. The moral status of political institutions arises from the obligations of justice generated by social connection, as some of the instruments through which these obligations can be discharged.

Young claims that, the position Rawls and Miller hold on the relation between political institutions and moral obligation, is misconceived. Miller feels it is the agreement to create the institutions that creates obligations of justice. Young on the other hand, argues it is, the fact that, people already have a dense web of obligations to each other that, motivates the formation of political institutions in order to manage the social obligations effectively. This is fairly interesting to argue from Locke. It is hard to say if it would be best to understand Locke, as considering that there is only a very thin

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144 Young, *Global Challenges*, 161-2.

145 Young, *Global Challenges*, 162. “The nation-state position however, makes prior what is posterior, from a moral point of view. Ontologically and morally speaking, though not necessarily temporally, social connection is prior to political institutions...”

146 Young, *Global Challenges*, 162-3.

147 It seems less obvious for Rawls, as he discusses the concern that justice is required by the cooperative enterprise of society, and fair distribution of its costs and benefits. In the international sense, he sees his theory of justice being necessitated by agreement with Kant’s suggestion that, effective international law is a pre-requisite of a just state.
obligation in the state of nature, that becomes a thick and comprehensive understanding of justice, when the individuals come together as a commonwealth, or whether the social connections existing in the state of nature, already create a thick conception of justice, that coming together as a commonwealth structures, and provides a framework for fulfilling.

Young agrees with Beitz’s position that, an international society exists, even though there is no comprehensive political constitution regulating it. Because there are economic relations that operate across international borders, as well as, a huge variety of institutional structures of various types, that entail social interactions that affect people’s lives for the better or for the worse, there is, in fact an existing international society, even though it lacks regulation by a comprehensive political structure. She explains that her model of justice in global society is also shaped by Onora O’Neill’s conception of the scope of obligations of justice, as being defined by, the extent of the interactions that a particular moral agent has with others.

Young claims, that the best way to understand obligations of justice, is to think of them in terms of social structures. Young explains that social structures have been defined in many different and complex ways by different social theorists, but that, she is going to take a fairly simple definition. She quotes Peter Blau, defining social structure as:

[M]ultidimensional space of differentiated social positions among which the population is distributed. The social associations of people provide both the

148 Young, *Global Challenges*, 162.
criterion for distinguishing social positions and the connections among them that make them elements of a single social structure.\textsuperscript{149}

For Young, social structures can be understood as the background organization of societies that positions persons in relation to each other, in the sense of, both status and the links and types of linkages they have with others. The types of linkages and statuses that people hold in social structures, largely determine the opportunities, possible actions, and relationships (and the types of relationships) they will have with others, within the social system.

Young says that, she takes the same position she outlines for Beitz, and O’Neill, and also suggests for Pogge, that transnational social structures do exist, and that, these structures can generate injustices.\textsuperscript{150} Her definition of structural injustice makes clear, the foundation of her argument for the scope of obligations of justice in global society.

Structural Injustice exists when social processes put large categories of persons under a systematic threat of domination or deprivation of means to develop and exercise their capacities, at the same time as they allow others to dominate or have a wide range of opportunities for developing and exercising their capacities. Structural injustice is a kind of moral wrong distinct from the wrongful action of an individual moral agent or the willfully repressive policies of a state. Structural injustice occurs as a consequence of many individuals and institutions acting in pursuit of their particular goals and interests, within given institutional rules and accepted norms. All the persons who participate by their actions in the ongoing schemes of cooperation that constitute these structures are responsible for them, in the sense that they are part of the process that causes them. They are not responsible in the sense of having directed the process or intended its outcomes.\textsuperscript{151}

\textsuperscript{149} Young, \textit{Global Challenges}, 168. Young also quotes Pierre Bourdieu, who according to Young understands “social structures as “fields” on which individuals stand in relation to one another offering possibilities for interpretation and action,” which seems effectively similar (168).

\textsuperscript{150} Young, \textit{Global Challenges}, 163.

\textsuperscript{151} Young, \textit{Global Challenges}, 170.
Young explains that, structural injustice occurring in social structures results from constraints and enabling factors, that are not simply a result of the rules or norms enforced by the institutions, but also, and very importantly, incentive structures. These incentive structures, according to Young, may make particular actions attractive and of little cost to some, while at the same time, have high costs or constrain the options for others. Because these are complex relationships, mediated through a variety of structures and institutions, it is often not immediately or directly noticeable for those making choices, what the results of particular actions may be for others also affected by the system.152

Young contrasts the social connection model for justice with what she describes as the liability model, which she explains, is a very commonly understood model for justice, because it is the court litigation model. It is an adversarial model, and finds one party to blame (liable) and the other party largely free of blame, in cases of injustice. She feels that in many cases, this is not an appropriate or effective model for addressing issues of justice in global society. Young explains that, in the case of structural injustice, it is not enough when a particular injustice is identified, to consider the wrongs that individual actors have contributed to the injustice. The example she uses to illustrate this, is mean bosses, working workers to exhaustion. The bosses have a responsibility to treat employees according to certain standards, but finding the boss to blame may not address the larger situation that causes a boss to make the decision to treat employees

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152 Young, *Global Challenges*, 170.
exploitatively. More than likely, there is a background structure of conditions and
relations that contribute to the situation. Young says that, in the complex social
processes that typify global economic interactions, the responsibility for injustice may
involve actors distant, or only indirectly connected, to the process, and even those
suffering from injustice, may not be free from some involvement in the forces that
create it. An explanation of the structural social processes that encourage the injustice,
and a consideration of how all those with a stake, or influence in the processes, can act
to change the situation, may end up being a more effective solution.153 Young describes
power, privilege, interest and collective ability as the factors relevant to determining,
who needs to take action, and who will likely be able to take action; who will want to
take action, or avoid it; and how action can and needs to be collective.

After explaining the social connection model of responsibility for justice in global
society, Young addresses, two of the main positions, she understands as attempts to
justify the frontiers of states, countries, or peoples as the reasonable limits of
obligations of justice. She begins with an account, as to why, she feels the approach of
limiting justice to the borders of states is flawed.

Political actors often wish to define political jurisdictions that include some and
exclude others; when they have the power to implement their will, they claim
that those who have been made jurisdictional outsiders have no claims of justice
on the insider state or its subjects. Since the definition of jurisdictions is so often
a result of victor’s spoils or expedient resolution of conflict, it cannot be a basis
for the moral justification of the scope of obligations of justice.154

153 Young, Global Challenges, 170-72.

An interesting point that Young makes in relation to the problematic nature of defining obligations of justice by political jurisdiction, concerns the past actions of the government of South Africa. The South African government allocated marginal territories to various groups of designated black citizens, and then declared those territories as independent states, with no claim on the white government, of the country of South Africa. Almost everyone outside South Africa (and a large number within,) considered the actions illegitimate, and grossly unjust, but as Young points out, they are not outrageously unjust, as far as examples in the history of the formation of states go. And under a conception of justice, that saw countries united under a constitution, or based on national or ethnic groups, as having a special status for justice, have been fairly reasonable.

Young gives a definition of her understanding of a *nationalist* understanding, regarding the limits of justice in global society, which is very similar to the understanding expressed by Rawls, of the limits of justice for peoples in TLOP.

Members of a nation have some moral obligations to outsiders—obligations of hospitality, to keep agreements made, or to respect the autonomy of other nations. However miserable and needy outsiders may be, though, and however much insiders have for themselves, they have no obligations of redistributive justice to those outsiders. Other nations have a moral obligation to take care of their own. If the members of other nations fail in their obligation to take care of their own, then we have no obligation to make up for that failure, and outsiders have no claim of justice upon us; we may owe them obligations of charity only if it is strictly impossible for the members of the other nations to take care of their own.\(^{155}\)

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\(^{155}\) Young, *Inclusion and*, 240.
Young is concerned with the problem of how to make reasonable sense of nationalism, as a foundation for the moral basis of responsibility to others. She suggests that it suffers from problems, both because the historical social process of formation of national identity does not necessarily entail any particular moral status, and because, in many states, there may be several identifiable national groups. She explains that, it can also be the case that, there is no strong force of national identity separating a particular state from other states.

The claim that members of national groups have obligations of justice only to fellow nationals, however, appears to be based on contingent psychological and historical circumstances rather than moral principle. That claim runs into the difficult problem of multicultural societies, moreover, where a single common national identity is weak or where national and cultural minorities are suppressed in order to promote the unified national identities.  

Young explains that, defending nationalism as the basis for obligations of justice, relies on the argument that, people having feelings of identification with specific others, is a reasonable basis, on which to make judgments about your responsibilities to treat others justly. Her claim is that obligations of justice are in fact more important generally when people do not recognize shared identity or have a feeling of some type of cultural or social connection. Young says, moral obligations for justice must have a more solid foundation, than familiarity or shared cultural identity.  

Young describes those who take the nationalist approach, as having two different positions in regard to, how to manage the obligations of justice in a

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156 Young, *Inclusion and*, 241.

157 Young, *Inclusion and*, 241-2. Peter Singer also addresses this argument in chapter 2.
multicultural state, partition or assimilation, and she considers neither particularly satisfactory. The partitionist option means separating each cultural group into its own state. This is obviously problematic, even in the fairly simple cases, but in many cases, the groups have a long history of living in dense social connection, and also in interspersion with one another, making it, even more, confusing and difficult to reasonably separate them into states. The situation itself may even be the result, of earlier historical attempts at exclusion, separation or partition. Assimilation also has serious concerns for justice, as it may mean denial of the legitimacy of cultural forms, and loss of the right to support culturally valuable institutions. It can be a position that, supports domination of legitimate minority cultural values.

Young describes the associationist position, (which is to a large extent Rawls’ position) as being that, those living together under a common constitution have obligations of justice to each other, based on the conception, that this creates a framework, (the state) under which they can pursue their ends as persons and as a society. The obligation of justice, stems from the fact that, they live together within the framework and to some extent the society rises, or falls together. Young acknowledges, there are very likely some obligations, that people living together in this way, have to each other, that they do not have to outsiders, such as supporting the framework, so that, it enables all members to flourish. However, she maintains, (similarly to Beitz) there is really nothing in the obligations to the shared political community, that shows

\(^{158}\) Young, Inclusion and, 244.
those within it have no relations with others outside it, that would not also generate obligations of justice.\textsuperscript{159}

Young works to describe how her alternative model for relations of justice in global society could function. She explains that, economic and environmental interactions often involve connections and effects, which are in a variety of ways, unrestrained by international borders.

The operations of trade, finance, investment, and production are global in their implications, and within those processes some people benefit more than others. In this sense there exists a global society spanned by issues and obligations of justice. In such a world as this the borders of state jurisdictions sometimes function to allow some people wrongly to ignore the interests of others whose lives their actions affect, simply because they lie outside those borders.\textsuperscript{160}

Young claims that the situation in which many forms of social interaction, that have important consequences for people being better or worse off in their lives, occur in a transnational or global context, can mean in some cases that state borders allow us to ignore, or separate ourselves from, the moral consequences of these interactions. Again, particularly as a concern for international trade, and the ability to limit unaccounted environmental or social costs to international economic activity, the conception of the state as the limit of obligations of justice, makes it particularly difficult to promote just interaction.

Perhaps even more challenging to principles of democracy and the rule of law, the activities of some international actors, such as transnational corporations,
sometimes escape the regulatory net of any state because they can shift jurisdictions.\textsuperscript{161}

Young claims that, although social relations of the types to which justice ought to apply, are often global in scope, she does not mean to claim, that all persons in the world have exactly the same obligations of justice to all others. She explains that, the density and scope of social and economic ties are the factors that, influence the strength of obligations of justice. She suggests that, in many situations it will be the case, that those social and economic ties are densest within state communities.

Young also explains that, although obligations of justice extend globally, it doesn’t mean that every individual must consider all other individuals globally, in each of their decisions. This is because Young, in the same way as Rawls, considers that, in many senses the obligations of justice are really obligations concerning the organization of institutions, rather than those of individuals. This is similar to the idea Rawls argues for, that justice in societies, should be understood as procedural.

Obligations of social justice are not primarily owed by individuals to individuals... Instead, they concern primarily the organization of institutions. Individuals usually cannot act alone to promote justice; they must act collectively to adjust the terms of their relationships and rectify the unjust consequences of past and present social structures, whether intended or not. They need authoritative institutions through which to act collectively.\textsuperscript{162}

Young feels that the scope of political institutions ought to reflect the scope of obligations of justice. Therefore, if the scope of obligations of justice is in fact global, as

\textsuperscript{161} Young, \textit{Inclusion and}, 249.

\textsuperscript{162} Young, \textit{Inclusion and}, 249.
Young argues, then the institutions ought also to be global in scope. Here Young is aware of the concern to protect rights of distinct peoples to self-determination.

The concept of relational autonomy is put forward by Young, as a way of thinking about how effective political institutions might exist in a global context, while still maintaining self-determination for peoples, and regional and state based political communities. She suggests that, the concept of relational autonomy can be used, to move the principle of self-determination away from independence, in the sense of a lack of obligations to others, to autonomy, in the context of interdependent relationships.\textsuperscript{163}

Young suggests that, a useful way of thinking of this is as freedom conceived of as non-domination, rather than non-interference, with interference meaning that, one agent limits or stops another’s action, limiting or worsening their options.\textsuperscript{164} Domination would be the situation, when one agent has the power available to interfere with another arbitrarily, or without consideration of the interests, or concerns of those affected. Interference would not be arbitrary, when it is designed to reduce domination, and occurs in consultation with the interests and opinions, of the affected. Non-domination would be understood, as a situation where, social structures and institutions are in place to ensure freedom from domination, in the sense of, the ability of others to interfere arbitrarily with the agent’s ability to pursue their ends.\textsuperscript{165}

\textsuperscript{163} Young, \textit{Inclusion and}, 258.

\textsuperscript{164} She refers to Phillip Pettit, \textit{Republicanism} (Oxford: Oxford University Press, 1997).

\textsuperscript{165} Young, \textit{Inclusion and}, 259.
Young considers this a reasonable way of thinking about, how to balance obligations of justice, that are global, with a desire for self-determination of individual communities and societies.

On such an interpretation, self-determination for peoples means that they have a right to their own governance institutions through which they decide on their goals and interpret their way of life. Other people ought not to constrain, dominate, or interfere with those decisions and interpretations for the sake of their own ends, or according to their judgement of what way of life is best, or in order to subordinate a people to a larger ‘national’ unit. Peoples, that is, ought to be free from domination. Because a people stands in interdependent relations with others, however a people cannot ignore the claims and interests of those others when the former’s actions potentially affect the latter. In so far as outsiders are affected by the activities of self-determining people, those others have a legitimate claim to have their interests and needs taken into account even though they are outside the government jurisdiction.  

Young feels that self-determination for states, in the interests of justice on several levels, (global and regarding the rights of groups within states), ought to actually mean non-domination. And that, states ought to have no more right to non-interference, than indigenous or ethnic groups, that desire self-determination. There is a presumption of non-interference, but the presumption would be open to review, in situations required to prevent harmful domination, or to enlist cooperation for projects, which could not be achieved, other than collectively.  

Here Young takes a very similar position to Rawls’, that promoting freedom for individuals requires effective institutions that will work to support the freedoms. Young

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166 Young, *Inclusion and*, 259.

167 I interpret this as in situations such as those of public goods in global society, an example of this might be limiting environmental degradation in situations where the pollutant was harmful to all regardless of where it was emitted and the effects were distributed globally (or very widely) as well.
takes the same position at the global level; that only effective institutions can
reasonably support non-domination in global society. Young is concerned that these
regulating institutions be inclusively democratic, in much the same way as Rawls is
corrected about ensuring that all interests can be represented in his just society.

Young sees the institutions as separate and based on function,\textsuperscript{168} and sees them
as, global, but within a federated type of system, where only specifically global issues,
would be dealt with at the global level. She explains that a very important purpose, for
the global institutions would be to create conditions that protected local autonomous
units (peoples, ethnic groups, regional communities...) from domination. These
institutions would also be able to protect both individuals and groups from harm caused
by powerful private economic actors. While under the current regime, weak or
vulnerable state actors often lack the power to protect their citizens from these types of
harm, and wealthy powerful states with the power to act, will either not have an
interest in intervening, or consider it an internal matter of the another sovereign
state.\textsuperscript{169}

Young sees global institutions, in the sense of their closeness to the concerns of
individuals and communities they may be working with, as being little different than the
current state system, within which, it is very common, for local and regional interests to

\textsuperscript{168} Young separates trade and finance, which is interesting as the current regime has been working to
have trade in international capital included under the same regime as trade in products (it does fall under
WTO) while even some pro-free trade economists such as Baghwati would like to see it regulated
separately.

\textsuperscript{169} Young, \textit{Inclusion and}, 269.
end up seeing their concerns sacrificed in the melee of national politics. She sees a principle of subsidiarity, which is a commitment to dealing with issues at the most local level that encompasses all those who have a stake in the particular issue, as a key issue in effective democracy, for states and global institutions.

A global environmental regulatory decision-making body, for example, would not need to be any more removed from ordinary citizens than many national regulatory bodies currently are. Once we move beyond a local level, any polity is an ‘imagined community’ whose interests and problems must be discursively constructed as affecting everyone, because people do not experience most of the others in the polity. I believe that this problem is no bigger for transnational and global regulation than it is for large nation-states.¹⁷⁰

Young is very concerned that, these institutions be required to ensure their activities and decision making processes be transparent and public. She argues that many of the institutions currently charged with regulating international economic activity, including the IMF and WTO, are not transparent, and their leaders are not accountable to the public for their decisions.¹⁷¹ Young explains that, there is already a fairly well developed public sphere of global civil society, and this, along with effective communication technology, can support effectively democratic global institutions. Young makes the argument that, contract theory is a window into thinking about the obligation or necessity of creating political institutions. That the necessity of creating institutions in a society, is based on conditions under which people are interacting, and the ways their lives are affected by their relations with others. She

¹⁷⁰ Young, Inclusion and, 270.
¹⁷¹ Young, Inclusion and, 270.
argues that a global society exists, but that it is not effectively regulated by political institutions that ensure justice for its members. Locke’s state of nature is actually surprisingly similar to international order, in the sense that, there is a conception of the existence of liberties and rights in international relations, but in the current regime it is the job of each state, to ensure enforcement of those rights.\textsuperscript{172} (In the same way as each individual is responsible for this in Locke’s state of nature.) Hobbes posited a much less hopeful state of nature, but in a sense his state of nature might be understood to present the same message: social interactions that are sufficiently comprehensive to affect people’s lives in important ways, suggest the need for effective political institutions.

[O]ntologically and morally, though not necessarily temporally, social connection is prior to political institutions. This is the great insight of social contract theory. The social connections of civil society may exist without political institutions to govern them. A society consists in connected or mutually influencing institutions and practices through which people enact their projects and seek their happiness, and in doing so they affect the conditions under which others act, often profoundly. A social contract theory like that of John Locke argues that the need and desire for political institutions arises because socially connected persons with multiple and sometimes conflicting institutional commitments recognize that their relationships are liable to conflict and that inequalities of power can lead to mistrust, violence, exploitation, and domination. It is these structural relationships and vulnerabilities that generate obligations of justice. They create the need for public regulation and strong institutions to implement such regulation, so that people can maximize their ability to act jointly and minimize violent conflict among them.\textsuperscript{173}

\textsuperscript{172} Locke, John. Second Treatise on Civil Government (Hackett; 2011) Chap II, Sec 4-8.

\textsuperscript{173} Young, Responsibility for,139
CHAPTER TWO

UTILITARIAN AND HUMAN RIGHTS APPROACHES TO JUSTICE IN INTERNATIONAL TRADE

Peter Singer’s utilitarian position is an alternative to Rawls’ contractarian approach to justice. In *A Theory of Justice* (ATOJ), Rawls specifically outlines why he rejects a Utilitarian conception of justice for society. Interestingly, Singer’s discussion of trade and international economic institutions avoids most of Rawls’ concerns, as he is mainly focussed on how particular functions of the international economic order, particularly the WTO potentially harm the worst off in global society. Singer supports a much more stringent duty of assistance than he feels Rawls allows for in *The Law of Peoples (TLOP)*, but similar to Rawls, it would be focussed on those who were extremely impoverished. Many commentators have noted that Singer’s utilitarian obligation for individuals living in wealthy developed states makes good logical sense, but requires so much of individuals that they reject it. Singer does definitely call for aid both from states and from individuals, but he also has some very valuable conceptions for institutional reform in order to create a more just international economic order.

Thomas Pogge has a human rights based position on global justice, structured to counter some of the problems he sees with Utilitarian positions such as Singer’s which he feels is not unreasonable, but fails to motivate action. Pogge is also building a position that he feels defeats the positions of those like Rawls who hold that the
obligations of justice between states are different in type than those within states. His position is what Young describes as a liability model, placing blame on the citizens and governments of wealthy developed countries, for their responsibility in causing unnecessary death and suffering of millions of impoverished people in poor countries. His position is that spelling out the responsibility for harm destroys the claim that national borders are a reasonable limit for obligations of justice. He takes the position that a global society does indeed exist, and its institutions are unjust and in need of reform. He sees obligations as existing directly between individuals in global society, and understands benefitting from the unjust structures of international economic institutions as being complicit in harming the world’s worst off.

**Singer: The Utilitarian Position**

Peter Singer is a well-known philosopher who has been active in the area of ethics and global justice for 40 years, since the publication of *Famine, Affluence and Morality* in 1971. Singer is a Utilitarian and is his work has been very influential in bringing some issues which were not considered subjects for debate out into public discussion. Much of Singer’s work in global justice reflects a focus on the question of our obligations to others who we don’t know, never encounter personally, and are citizens of other countries. In general Singer has always held the position that ethical obligations between persons are not limited by state boundaries.

Singer is a fairly straightforward classical Utilitarian, holding the position, that when we address ethical issues we should evaluate the possible alternatives, and have a
moral obligation to undertake the action which will produce the greatest good for the greatest number (or the least suffering). When Singer addresses ethical issues, he normally does not spend very much time worrying about how we can identify what the greatest good or happiness is, as most of the issues he addresses concern mainly the mitigation of suffering. The exception to some extent is his work around the ethics of human interactions with animals, where he spends considerable effort building a case that animal suffering is pain, which is relevantly similar or identical to human pain.¹ Singer often considers life, as free from avoidable pain as possible, and not lacking in basic necessities, to be a relevant good; the happiness or pleasure of classical Utilitarianism. As a committed Utilitarian, Singer in general, is willing to sacrifice a smaller loss for a great gain. He does not base his ethical thinking on rights, and considers life a value like all others. He is willing, at least in his thought, to sacrifice life if the possible benefit is very great. He does not consider life to have an absolute value, but rather considers its value to be greater or lesser depending upon the quality and quantity of pains and pleasures it is capable of experiencing.² He has been heavily criticized in some cases for the conclusions he has reached as a result.

Although he has often written on obligations of global justice, in One World Singer works through concerns about globalization, and takes a particular critical focus

on the role of international trade and the WTO in international economic order.³ He also weighs in on some problems with Rawls’ TLOP, both from a Utilitarian perspective and in relation to his perspective on ATOJ. Singer, in much of his argument, focuses on his position of an obligation for individuals in wealthy societies to act to provide aid, through government and non-government agencies to the worst off in global society. However, he also provides a Utilitarian take on what reforms would be necessary to produce a more just global society and international trade regime.

In *One World* Singer’s topic is globalization generally, and he is concerned with global environmental issues and international law, particularly as it relates to humanitarian intervention as well as international economics and trade. He focuses on the WTO and trade in one chapter but other sections of his argument are also relevant for conceiving of how a just regime of international trade could be structured.

Singer takes the creation of the WTO to be evidence of the great extent of global economic interdependence, in fact he describes it as a single global economy.

The increasing degree to which there is a single world economy is reflected in the development of new forms of global governance, the most controversial of which is has been the WTO, but the WTO is not itself the creator of the world economy.⁴

While still introducing the topic of globalization, Singer discusses the issue of trade in international capital and the effect it has on restricting the economic policy options of national governments. He uses Thomas Friedman’s conception of the

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³ Singer, Peter, *One World* (Newhaven: Yale University, 2004).

“Golden Straitjacket” and the Electronic Herd\(^5\) to explain the way in which the mobility of global capital restricts the possible economic policy options for the governments of states. At this point Singer really doesn’t consider whether this is on the whole a positive or negative situation. In fact, while he brings up Friedman’s idea of the Golden Straitjacket and the Electronic Herd several times he doesn’t really include trade in financial capital in his concerns about international trade. Singer doesn’t discuss concerns over the free trade in financial capital to any great extent, which is a bit unfortunate, since his presentation of the main argument in favor of the WTO is based partially on comparative advantage, and right from the beginning of his discussion of globalization he refers to Friedman’s electronic herd.

Singer’s discussion of international trade focuses on the WTO, its role in the global economy and the effects its particular structure and policies have on different segments of global society. This is well worthwhile, because he addresses many of the important critiques of the WTO and its policies. He introduces the topic by noting that according to the Polaris institute, the WTO is a mechanism for accelerating and extending transfer of sovereignty from states to corporations.\(^6\)

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\(^5\) Friedman, Thomas. *The Lexus and the Olive Tree* (New York: Anchor, 2000). According to Friedman the “Golden Straightjacket” is the package of policies that make a country attractive to very mobile international capital. These include low inflation rate, low taxes (corporate), privatizing public sector services and free markets for both foreign goods and capital. These are very much the main characteristics of the Washington Consensus (See Williamson, 2004). The electronic herd according to Friedman is mobile global capital, that will move from place to place seeking the highest rate of return.

\(^6\) Singer, *One World*, 51.
He explains that his goal is to consider four charges that have been repeatedly
brought against the WTO by its opponents and protestors at its meetings in various sites
around the world. The four charges are:

1. That the WTO place economic considerations ahead of concerns for the
   environmental, animal welfare and even human rights
2. That the WTO erodes national sovereignty
3. That it is undemocratic
4. That the WTO increases inequality; or (a stronger charge) it makes the rich richer
   and leaves the world’s poorest people even worse off than they would have
   been.7

Singer explains that the rationale behind the creation of the WTO and its policies is a
belief in the efficiency of free market approaches to international trade. He explains
that there is an economic theoretical foundation for the approach. Combining the
assumption that voluntary exchange must always improve the position of all parties or
they wouldn’t participate and the theories of comparative and absolute advantage in
international trade, he explains that according to well accepted theory the WTO policy
should benefit the worst off.

The belief is based on the usual rationale of the market, that if two people have
different abilities to make products that they both desire, they will do better if
they each work in the areas of production where they are most efficient (or least
inefficient) relative to the other person, and then exchange, rather than if they
both try to make the full range of products they want.

...Moreover this exchange should be particularly good for countries with
low labor costs, because they will be able to produce goods more cheaply than
countries with high labor costs. Hence we can expect the demand for labor in
these countries to rise, and once the supply of labor begins to tighten, wages

7 Singer, One World, 55.
should ride too. Thus a free market should have the effect of making the world as a whole more prosperous, but specifically of assisting the poorest nations.\(^8\)

Singer takes the position that if a focus on free trade as primary concern of the WTO functions as it is claimed, it should benefit everyone who participates, and particularly it should be of greatest benefit to countries where people are poor and wages are low. Free trade should give them a competitive advantage which will specifically help poor countries while increasing the aggregate benefit to all. As a utilitarian, Singer has a strong interest in increasing aggregate benefit, and has often argued that most people living in wealthy countries have an obligation to make considerable sacrifices to assist people living in poverty in least developed countries, so he would understand economic redistribution involving a leveling down of global wages to assist the worst off, especially if accompanied by overall aggregate economic benefit, as a positive development.

**1\(^{st}\) Charge:**

The WTO Places Economic Considerations Ahead of Concerns for the Environmental, Animal Welfare and Human Rights.

Singer looks at whether the charge that WTO places economic considerations ahead of concerns for the environmental, animal welfare and even human rights is reasonable. He argues that it is. His argument is based on an examination of decisions of the appellate body of the WTO and GATT 1994 Article XX which concerns general exceptions to the terms of the agreement (Singer mostly considers the section (b))

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\(^8\) Singer, *One World*, 56.
relating to human, animal or plant life or health). He explains that while the WTO claims that Article XX means that accusing it of valuing free trade over human rights, and environmental and animal welfare concerns is unreasonable, the reality is that in most cases it has done just that.9

Singer explains that how this normally occurs is through a product versus process rule.10 This rule means that it would be legitimate to ban a particular product that can be proven to be harmful to the environment, animal welfare or human rights, under the condition that the product is also under the same restriction in the country doing so. However, it would not be permissible to ban a product that was in effect the same as one which is not banned in the country applying the ban on the basis that the imported product is produced in a way that is against the regulations or laws of the country banning it. Singer gives to specific examples; the banning of fur imports from countries which allow leg hold traps to be used in trapping furs which was attempted by the European Union, and the banning of tuna which has been caught in nets which also capture dolphins. In both cases the Apellate Body of the WTO decided that the bans were unfairly protectionist, and would result in sanction if maintained. The WTO argues that discriminating on the basis that the process by which a product is produced violates regulations of the country making the import ban, could allow countries to use environmental, animal welfare, or other regulations to unfairly protect their own

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9 Singer, One World, 57.

10 Singer, One World, 60.
industries. Singer concludes that the charge that the WTO places economic
considerations ahead of concerns for the environmental, animal welfare and human
rights is a valid criticism, and a source of injustice in the current global economic order.

2nd Charge:

The WTO Erodes National Sovereignty.

Singer looks at the charge that the WTO erodes national sovereignty. The WTO
maintains that this makes little sense as signing on to the WTO agreements is voluntary
and a country can choose to leave the agreement at any time. Singer explains that
while in a sense the membership is voluntary, countries sign on because the economic
cost of being shut out of the main trade agreement in the world is very high. There are
tradeoffs, but being completely shut out is worse. Singer also suggests that once signed
on, it is hard to leave the WTO for poor countries particularly, because the decision
might cause disruption of developing sectors of the economy reliant on trade, but also
because of the possible flight of foreign capital.

Singer explains the loss of sovereignty using the example of the desire of South
Africa to manufacture generic versions of patented HIV/ AIDS drugs to supply its citizens
at about 1-3% of the $10,000 USD/ year cost of the patented versions. When it
suggested it would do this, South Africa was threatened by the US, that it would apply
trade sanctions to make up the prospective damages. Singer explains that the US was
backed up on this by the WTO, and only extremely negative reactions around the world

11 Singer, One World, 70-71.
stopped the US from taking action.\textsuperscript{12} He explains that South Africa would be restricted in its ability to deal with its most serious crisis because of its membership in the WTO.

Singer ends up taking the position that the WTO does erode national sovereignty to some extent. His concern is that this can be problematic, when it lessens a country’s ability to address health and economic development issues, or at least the options available to do so.\textsuperscript{13}

Singer’s position on this seems to be that while there are concerns with the limitations to sovereignty, some of the concerns are more about in what ways sovereignty is being limited. In some cases where health and development policy is restricted in ways that harm or restrict efforts to minimize harm to poor people in less developed countries this is extremely negative. While if the impositions on national sovereignty caused by the trade organization were based on environmental, animal welfare and human rights concerns, it would actually be a positive feature, if membership was sufficiently valuable that governments would be motivated to bring national environmental and social regulations in line with the expectations. The concern

\textsuperscript{12} Singer suggests the Clinton government was taking action against South Africa, but the main country the WTO was permitting them to punish was Brazil (or India) who were supplying the drugs. Singer comments on the WTO ministerial statement in 2001 protecting the right of countries to grant compulsory licenses for pharmaceuticals under the TRIPS agreement in protection of public health. Singer is quite skeptical about it, but recently the WTO upheld India’s right to grant licences for some cancer drugs. The US is taking independent action against an Indian pharmaceutical company in the US and putting India on a priority watch list for countries that violate IPR. Uma Purushothamam, “Trade Issues hot up between New Delhi and Washington” (\textit{Indian Review of Global Affairs}, Feb 2014) accessed at http://www.irmag.com/topics1/economy-watch/item/7626-trade-issues-hot-up-between-new-delhi-and-washington.

\textsuperscript{13} Singer, \textit{One World}, 90.
in this case is more if the policies and decision-making structures are fair and just, than whether it erodes national sovereignty.

3rd Charge:

The WTO Is Undemocratic.

Singer explains that the concern for loss of sovereignty leads him on to the 3rd charge; that the WTO is undemocratic. Singer notes that the WTO explains on its website that far from being undemocratic, it is democratic to the greatest extent possible, in that it does almost all of its decision—making on the basis of consensus of its membership, meaning that all members are basically equal. And in fact, this is true; most decisions within the WTO are based on consensus of all members. The Appellate Body does not operate in this way, but could not be expected to, since it is in a sense an adversarial process between states. Singer explains the problem of this decision-making style is that in effect it is rule by veto, with any member being able to halt a decision for whatever reason they see fit.

Singer doesn’t spend a lot of time discussing why this is a problem at the WTO, although he does comment that it tends to favor the status quo. He moves on to discuss another concern, which is that much of the organizing and negotiating of the content of agreements, goes on in back rooms between the wealthy developed countries, with little opportunity for input from developing countries. Singer also touches on the

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14 Singer, *One World*, 75.

15 Stiglitz and Charlton. *Fair Trade*. Stiglitz in 2005, explains it is called “Green Rooming” and the WTO has officially enacted policies against it. Stiglitz remarks that there have been moves to reduce this officially, but that it still goes on unofficially.
ability of developing countries to afford effective delegations which allow real participation in negotiation. He notes that Geneva, as one of the most expensive cities in the world, is a very costly place for highly impoverished countries to maintain effective delegations even if they have access to people with the training and experience. He explains that the backroom deals, and the great imbalance in capacity at the WTO make it undemocratic regardless of the official structure.

It’s worth considering, that the effective “rule by veto” decision-making structure has actually had the effect of paralyzing the negotiating process. The WTO has been stalled in negotiating any real change to agreements for a decade, because entrenched oppositional positions over the situation of developing countries mean nothing can proceed.\(^{16}\) Decision-making by consensus requires reasonableness on the part of the decision makers to each other’s positions on all sides. In general this is not a feature of international trade negotiations which are traditionally heavily focused on rational self-interest. Singer feels that the charge that the WTO is undemocratic is fairly well supported and the situation justifies measures to reform it.\(^{17}\)

4\(^{th}\) Charge:

The WTO Takes from the Poor to Give to the Rich.

Singer points out that really there are two different questions: Has inequality increased during the period of global economic liberalization? And, have the poor

\(^{16}\) The Bali Agreement, which is the first time any agreement has even reached the point of a vote since 2008 will be voted on by members in July 2014.

\(^{17}\) Singer, *One World*, 90.
become worse off? Singer starts by looking at the situation of the worst off. He cites commonly used World Bank figures of approximately 1.2 billion people, or about 20% of the global human population, living on an income of $1/ day, and about 2.8 billion living on less than $2/ day. Singer explains that living under the $1/day poverty line is truly a terrible situation, where people can’t regularly access food that fills basic nutrition requirements, safe water supplies, even basic medical care, or education.

This is absolute poverty, which has been described as a condition of life so characterized by malnutrition, illiteracy, disease, squalid surroundings, high infant mortality and low life expectancy as to be beneath any reasonable definition of human decency.

Singer explains that according to the World Bank, the number of people living below the world poverty lines has slightly risen since 1987 as a total number, but has decreased as a portion of the world’s total population. Singer is of the opinion that it is a grave problem that anyone is living under the conditions of extreme poverty. He suggests that it is a good thing, from a utilitarian position, that a higher proportion of persons, are living, at least minimally decent, human lives, than in the past, but on the other hand, he is very concerned that there are still many people living in extreme poverty.

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18 Singer, One World, 80. Singer actually uses figures of $ 1.28 USD PPP, the current World Bank cut off for extreme poverty is $1.25 USD PPP. (the shock is when you look at the figures and realize that half of Sub-Saharan Africa is under that, and 1/3 of South Asia [India, Bangladesh]). Almost all the countries of Africa that are seriously politically unstable, have well over 50% of their population under the extreme poverty line.


20 Singer, One World, 87.
It is easier to evaluate Singer’s position on absolute poverty after considering his position on increasing inequality. Singer states that for a Utilitarian Inequality is not significant in itself. It matters because of its impact on welfare.21 His concern is not the gap between rich and poor, but people’s welfare. Singer says sometimes greater inequality will create a decrease in overall welfare, which may be linked to slower economic growth, and it may hamper people’s self-esteem. However, in situations where people are struggling to meet basic needs, inequality is less of a concern. He claims that a small increase in the wealth of someone who is extremely impoverished may mean an important difference in welfare, and it will not matter that the neighbor has received more.22

Singer is also interested in trying to compare how the level of inequality between states compares with the level of inequality within states and also individually in the world. Is inequality rising between individuals in a similar way, to the way, it is rising between societies. He speculates that it may well be even higher when considered by individuals or household, as poor people in wealthy societies and wealth people in poorer societies would tend to even the difference out. He notes if you were to look at the top quintile of individuals versus the bottom quintile of individuals globally the inequality might be even more pronounced.23

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21 Singer, One World, 84.

22 Singer, One World, 85.

23 Singer, One World, 82-4. Singer suggests the data is not easily available to determine this. There is data on Gini Coefficients by country, but the GINI index tables available through the World Bank are not really
Singer also looks at other indicators of quality of life in order to evaluate the situation. He suggests that life expectancy and nutrition are likely also good indicators of whether the situation of the worst off has been made better or worse. Singer quotes UN figures that show life expectancy increasing in developing countries, and the number of those suffering from malnutrition decreasing since the 1960s. He also notes the UN human development index has been slowly but steadily increasing for least developed countries since 1963.\(^{24}\)

In the end, Singer decides that it is very difficult to ascertain whether the fourth charge is true. Singer explains that it is obvious from statistics that economic inequality is increasing between wealthy and poor societies, particularly at the extremes of wealth and poverty. He takes the position though, that in some senses economic inequality may be less important than whether the poor are actually worse off, and it is difficult to discern whether the poor are actually made worse off by the WTO than they would be without, and while the number of persons living in extreme poverty has stayed fairly consistent, the proportion of the world population living in that condition has diminished considerably.

Room for Improvement

One of the areas where Singer definitely feels the international economic order could function better is in the control of negative externalities, unaccounted negative

\(^{24}\) Singer, One World, 86-7
3rd party effects of all types including, environmental, social, and animal welfare. He claims that the current international trade regime facilitated by the approach of the WTO, has created, what he describes as a ‘tragedy of the commons’ effect in the global environment. He explains within states (at least “well governed” states) government regulation for the most part creates a situation where producers are made accountable for either assuring they do not incur, or paying for the remediation of, most environmental (and social) costs.

In international trade generally, many individual countries are not particularly interested in stopping their producers from externalizing costs which will not be directly paid by their own citizens. Even worse, it is not uncommon for the ruling elites of some countries to be unconcerned about negative externalities that affect less favored or less powerful sectors of their own population. Singer quotes Herman Daly in the claim that in a trade regime where there is little focus on these issues, much of global production shifts to societies where little attention is paid to accounting for these costs, and in the long term this will be very negative for efficiency of the global economy.

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25 Singer, One World, 92.

26 Singer is making reference to the problem of managing an open access commons, where there is an incentive for each individual not to manage for conservation, if they cannot be sure all others will conserve. The individual will reap all the benefit of the exploitation and the cost will be spread among the users of the commons. Garret Hardin, “The Tragedy of the Commons” Science 162 no. 3859 (1968): 1243 Accessed at: http://www.sciencemag.org/content/162/3859/1243.full.

27 Singer, One World, 92.

28 Singer, One World, 93.
Singer feels that in the interests of a fairer and more just trade regime, the WTO needs to be reformed in favor of ensuring the reduction of the ability of producers to profit from differing environmental, social and animal welfare regulation between countries. Rather than actively trying to block countries attempting to restricting these types of harms, the WTO either needs to take on the work of ensuring regulation is in place to limit them, or work closely with another organization created for the task. Singer suggests there is some difference of opinion on this between rich and poor countries, with poor countries being concerned they will be held accountable to standards set by wealthy developed countries that make it difficult for them to compete.  

Singer also explicitly supports Pogge’s position on the problems of both the International Resource Privilege and the International Borrowing Privilege. He considers that a process of recognition of legitimate governance and effective democratic governance, would be an important part of creating a more just trade regime. He explains there is some work going on in this area and he contrasts the Summit of the Americas agreement on democracy, and the European Union, with the WTO. He suggests these types of agreements put strong pressure on governments to meet

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29 Singer, One World, 94-5.
30 Singer, One World, 96-7. He explains that Thomas Pogge pointed them out to him.
31 These are very different types of agreements, the Summit of the Americas is a very loose association which is working towards a free trade zone in the Americas, while the European Union is much more comprehensive agreement.
standards for democratic legitimacy and human rights, whereas the WTO tends to erode this pressure with a focus on free markets at almost any cost.

Singer brings up Article 36 of the GATT 1994 agreement, which sets out, that the partners in the agreement agree that positive measures are required to ensure less developed members can share in the benefits of international trade in a manner that reflects their need for economic development.\textsuperscript{32} It is his opinion that WTO needs to be refocused on fulfilling this part of its mandate, rather than being strictly focussed on market liberalization. Singer says currently the words sound nice, but have no effect on policy.

**Global Justice Requires a New Understanding of Sovereignty.**

Singer reaches the conclusion, to a large extent as a result of his consideration of the tradition and practice of international law in relation to humanitarian intervention, but also after considering many of the problems of negative externalities and problems with the democratic structure of international institutions, in particular the WTO, that global justice in a highly interdependent world will require rethinking our traditional thinking concerning the sovereignty of states. He sees a strong need for a shift in the understanding of national sovereignty from non-intervention to an understanding of a duty to protect regardless of state boundaries.\textsuperscript{33}

\textsuperscript{32} Singer, *One World*, 94-5.

\textsuperscript{33} Singer, *One World*, 148.
Singer considers a variety of arguments, that he claims, have been used to create a separation between the moral obligations that are owed between individuals who are citizens of the same state and a lesser, weaker obligation across national borders. After looking at the arguments, he fails to find a valid conception of why states have a special status that global society would not. He defines the arguments he finds most relevant, then suggests why he finds that they do not compel him to change his position.

*Compatriots as extended kin:* Singer suggests this that this is to a certain extent Walzer’s argument, that members of a state are in some way almost like family, you have a different obligation to them because we recognize the relationship as an important part of our society.\(^{34}\) Singer rejects this as being similar to feeling you have an obligation on the basis of race. He suggests it is in some ways the same sort of thing as the “White Australia” policy on immigration.

*Community of Reciprocity:* Singer explains that this position entails citizens having special obligations to one another, because they are involved in a collective enterprise for the common good, living according to specific standards and making sacrifices to benefit one another. Singer doesn’t mention it, but the collective action of a group of people to govern themselves in the interests of the group is also Walzer’s argument. There is some strength in this argument. Singer addresses this in a way that seems quite effective. He argues that, membership in the community of reciprocity is arbitrary; people are born into it, and do nothing to deserve or not deserve

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\(^{34}\) Singer, *One World*, 168.
membership. Some members do very little to support these obligations, or even actively subvert them. He explains that when we consider the wealthy developed countries, there are huge numbers of outsiders that arbitrarily were born outside the community, but would do almost anything to become a member. Many of them would be at least equal to the actual members in their reciprocal contribution and sacrifice to the community if included. Singer suggests there is no good reason why in light of the arbitrary nature of membership, that something special is owed to members, and not to those excluded.35

_The Efficiency of Nations:_ Singer also examines the argument that the state has a particular value because it is an efficient way of complying with our obligations to others. He explains that the argument is that the state has the virtue of being able to provide the structures that facilitate just relations in a society. There is definitely some truth to this position, a just society requires the social structures be set up in a way that we can satisfy the obligations to each other that come out of enjoying the benefits of living in a society. Singer points out that if that was as far as it went, it would make sense but the problem is that the allocation of resources between states is such that some will completely lack the ability to discharge these obligations, so it may work for some people, but it is extremely inefficient from a global perspective.

While it may, other things being equal, be more efficient for states to look after their own citizens, this is not the case if wealth is so unequally distributed that a typical affluent couple in one country spends more on going to the theater than many in other countries have to live on for a full year. In these circumstances,

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35 Singer, _One World_, 168-170
the argument from efficiency, understood in terms of gaining the maximum efficiency from each available dollar, far from being a defense of duties toward our compatriots, provides grounds for holding that any such duties are overwhelmed by the much greater good that we can do abroad. 36

_The Imagined Community:_ Singer suggests that the imagined community adds something to the reciprocity argument. He explains that he gets this understanding from Benedict Anderson’s “imagined political communities” conception of nationalism. 37 The conception is that even though the citizens do not for the most part know each other they feel a bond between them resulting from sharing and upholding common institutions and values (The values suggested by Singer are the values of political liberalism, but they could feasibly be other values.) Singer suggests that the argument is valuable as a description of the rise of nationalism in modern states, but is descriptive rather than normatively prescriptive. He sees no reason why it would not apply in a very similar way to an imagined global community, with appropriate institutions and values. Singer’s comment is that imagining ourselves as part of a national community is fine when it means broadening our perspective to include others, but it is less attractive if it narrows our conceptions.38

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36 Singer, _One World_, 171-2.

37 Singer, _One World_, 170.

38 This is a particularly useful section of Singer’s argument, in many places he appears to be covering ground others had covered previously, whose influences he acknowledges, but breaking down the traditional arguments for the “special” position of the state as an actor in global society helps make it clear that many of the arguments that commentators who deny strong normative obligations at the global level are flawed as a basis to restrict our obligations to others outside that border.
Singer and The Law of Peoples

Singer refers to *A Theory of Justice* as the most influential work written on justice in 20th Century America, but he sees serious problems with Rawls’ *TLOP*. Interestingly, one of the things that strikes Singer as problematic in *TLOP* is that they don’t even get the chance to consider classical utilitarianism as a principle in the Original Position, whereas in *ATOJ* it was one of the theories on the table. Singer suggests that choosing classical utilitarianism could be a possibility in the Original Position, in a way in which is not in the current state of international relations, where it is not even close to being on the table for leaders of wealthy developed countries. His point makes some sense. If it’s on the table for the 1st Original Position, it would seem to be a principle that might be considered for the 2nd.

Singer also critiques the position on redistribution that Rawls takes in *TLOP*. He argues that Rawls objection to redistribution in TLOP is based on an argument that most of the differences in economic success in societies, are based on decisions made by the societies internally, and that this is exactly the same objection used within societies to deny redistribution to assist the less economically successful members. Singer considers this highly flawed thinking, for someone who was so concerned about addressing this situation in *ATOJ*.

Singer supports the “duty of assistance,” but is concerned about the focus of the assistance on changing the culture and political institutions of burdened societies, so

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that they may reorganize and become liberal or decent societies. His concern is that the duty of assistance does not make addressing the poverty and suffering of individual people a clear concern. He explains that, Rawls may have meant for a very strong focus on relieving severe poverty to be part of the duty of assistance, but it is not clearly spelled out as such.\footnote{Singer, \textit{One World}, 179.}

He claims that the issue of a billion people living in extreme, life threatening, poverty, and what the citizens of wealthy developed countries ought to do about it, seems to completely escape Rawls attention in \textit{TLOP}.  

\textbf{Singer: On the Institutions of a Just Trade Regime}

Singer takes the position that global institutions are a key to a more ethical future in global society. He feels that we are almost inevitably looking towards an era of a coming world community. He explains that there is considerable resistance to this on several fronts. He suggests that there is self-interested resistance on the part of wealthy developed states that don’t wish to compromise their privileged position. However he also suggests there are larger concerns that a full world government would be at best an unmanageable bureaucracy and at worst an unchallengeable tyranny.\footnote{Singer, \textit{One World}, 199. Rawls, \textit{The Law}, 36: “Here I follow Kant’s lead in Perpetual Peace (1795) in thinking that a world government—by which I mean a unified political regime with the legal powers normally exercised by central governments—would either be a global despotism or else would rule over a fragile empire torn by frequent civil strife as various regions and peoples tried to gain their political freedom and autonomy.”}

Singer suggests the approach that might be preferable is reform of the current international institutions to make them more focused on justice in global society. He gives the example of the discussion between the ILO and the WTO about the

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development of global labor standards.\textsuperscript{42} Singer sees a possibility in bringing some of the institutions of the international economic order, which are currently tied closely to the concerns of wealthy developed countries, closer to relevant areas of the UN, which already have expertise and are in some ways more democratic.\textsuperscript{43}

Singer’s utilitarian approach to justice in international trade starts with the position that the free trade model of international trade may be the best model for trade if it functions as advertised, although his opinion is, that the results are not totally clear, as to whether or not the focus on unrestricted free trade has actually been effective in reducing extreme poverty. The proportion of people living in poverty has decreased as the human population has increased, but the absolute number of very poor people has not decreased. Singer mentions several times that as a utilitarian he does not have a problem with inequality as such, concerns only arise when it somehow causes actual harm. For the most part this is nearly a universal position on inequality, and the concern for the relation between economic inequality and diminished ability to take advantage of political freedoms and educational, social and economic opportunities is commonly held,\textsuperscript{44} (although there is also a concern that inequality may cause envy or shame, and this is less universally considered held to be a harm). Singer supports his argument, that the WTO has consistently allowed its position in favor of

\textsuperscript{42} Singer, \textit{One World}, 200. This likely looked more promising in 2000-2001, very little has come of this as it meets with resistance from both developed and developing countries for different reasons.

\textsuperscript{43} Singer, \textit{One World}, 200-201.

\textsuperscript{44} In this dissertation see: Rawls, Young, Beitz, Pogge, Schweickart and Daly.
free trade to trump the ability of individual countries to address negative externalities, which are causing harm to people animals or the environment, with specific examples. It is particularly damning that this is occurring, even as it seems that there is little clear evidence that the free trade policy focus is delivering poverty reduction for the worst off in an effective way. Singer’s position on institutional reform in the current international trade regime is consistent with Rawls’ position on the role of institutions in a society in *ATOJ*. However his utilitarian orientation motivates him to take a cosmopolitan position on justice in international society. Similar to Beitz and Young, he rejects the argument for limiting obligations of justice to co-citizens of a country. Singer feels the very strong obligation to take effective action against extreme poverty requires the creation of international economic institutions that will focus on ensuring the benefit of the worst off, and will act to limit opportunities to profit from externalities based on nonexistent, or unenforced environmental, animal welfare and labor regulations.

**Pogge: The Rights Model and Reaction to The Law of Peoples**

The Human Rights Model

Thomas Pogge has a well-developed model for global justice, which seems to have been developed in part to address problems that he sees with both Rawls’ position on justice in global society and that of the utilitarian position. His model is largely, a rights based conception, of justice, where liability from damages that one is responsible for causing is the driving force behind the argument for obligations of justice. The rights based, liability model addresses weaknesses in both Rawls’ argument and the Utilitarian argument of Singer. The strength of Pogge’s model in relation to the project of applying
the ATOJ institutional model of justice to international trade, is that Pogge is critical of Rawls’ decision to limit his theory of justice to domestic societies, and disputes the position Rawls takes on the special status of states or peoples in the international order. Rawls takes the position that liberal individualist obligations of justice exist only within states, Pogge takes Rawls’ claim in TLOP that peoples have an obligation to protect human rights seriously and clearly shows that Rawls position on international justice fails. His approach at the same time deals with some of the problems that Singer’s position faces. The obligation to act in order to alleviate the suffering from extreme poverty, in Singer’s model, derives from the fact that there is a very grave problem that we can assist in resolving without very great cost to ourselves, so we therefore have a duty to act. Singer has used the analogy of a child drowning in a shallow pond. If you can act save that child by wading into the pond with very little risk to yourself, then almost anyone would consider that the right thing to do. Singer suggests, that you would still do so, if you were wearing expensive new shoes that would be ruined, and you would consider it immoral to allow the child to drown to save even a $1000 pair of shoes. Singer likens this to those of us living comfortable lives in wealthy countries allowing children, who could be saved with only a small sacrifice, to die from the effects of poverty. Many people dismiss the obligation, with the claim that they have no responsibility, as they have not contributed to the problem. Pogge effectively addresses why this position is mistaken.

A rights model of justice, at its most basic, takes a conception of human rights, that is the basic entitlements all persons are considered to have on the basis of being human (there are rights approaches using rights other than human rights, but Pogge uses basic human rights), and considers the duties required of all others to ensure that all persons are able to enjoy those rights. Rights are in a very real sense, an agreement, they only exist when we acknowledge both the idea of persons possessing the right, and an obligation on the part of all others with whom they interact, to act in accordance with a duty to support that right. Making a claim that an individual has a right entails duties for others. Pogge sticks specifically to rights with negative duties, or the so-called “negative rights.” Negative rights are called this because the duty they entail is a duty to refrain from something. As far as they are conceived of as negative rights, the right to liberty entails a duty to refrain from actions that restrict that individual’s liberty (usually within the limit that they not restrict the liberty of others). A negative right to life entails a duty not to cause someone’s death. Pogge carefully chooses a very basic conception of negative rights, one that even a fairly strongly committed libertarian would accept, because his argument for global justice, will be built from a position that no one, accepting any type of human rights commitment will be able to deny. Pogge’s argument sticks to the most basic and widely accepted human rights, which entail negative duties,

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46 Henry Shue, in *Basic Rights*, presents a very strong argument that is quite similar to Rawls and Pogge that even very stripped down conceptions of negative rights in a society realistically require positive duties (institutions really) to create conditions in a society (global or domestic) where the norm is that individuals may actually enjoy the right.
a right to liberty,\textsuperscript{47} and a right to life, these are based on a “harm to others”\textsuperscript{48} argument that is not a controversial. Pogge actually tends to focus most directly in building his case on a right to life.

Pogge argues that in the case of current international society, important obligations of justice exist across international borders, because actions undertaken by states and individuals cause harm that violates basic human rights of other individuals in a global context. His argument is that we have a duty to act to end suffering and death from severe poverty in global society based on the fact that citizens of wealthy developed countries are to blame for this, as a result of actions our governments take in our name. We have an obligation to force our governments to change the conditions that are causing harm, and repair, as much as is feasible, the harm caused. This part of his argument is especially important as this approach effectively negates arguments that make the claim that there is something special about the bond between members of a state political community, which creates dense obligations of justice between them, and which do not extend to members of other states. Rawls makes the case that the difference principle would not apply to international relations, but does accept that human rights definitely do. Pogge’s position is that it is basic human rights which obligate us to act for economic justice in global society. Particular bonds between citizens of a state, do not permit them to systematically violate human rights of others

\textsuperscript{47} Which Rawls accepts only in a very weakened form in TLOP.

on a massive scale, which is what he argues the current global economic order is doing. And it is not accidental, or unavoidable that global economic order is structured this way.

Pogge argues that the harm wealthy developed countries are liable for is extreme poverty, and that this harm causes illness, suffering and death. His claim is that about 18 million persons die each year as a result of the effects of extreme poverty, and 360 million in the last 20 years. He notes that this is more than died in all wars and all types of government repression during the 20th century.49 This is a statistic he has used several times. It makes his point clearly; globally, poverty is a very serious harm.

Pogge makes the claim that wealthy powerful developed countries50 have used their wealth and power to organize the international economic order in their own favor, so that the benefits of international economic activity accrue in a highly skewed manner, to wealthy developed countries at the expense of poor developing countries. He makes the case that it is historically true that colonialism and imperialism created a highly unfair world order, and it is also the case that the current international world order is unjust and harms poor persons.

Whether the historical injustices of colonialism and imperialism have created an unjust world order, is an important question, as it could be considered a direct harm in itself, that merits correcting. It also bears very powerfully on the present, as far as the

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50 Western Industrialized Countries, G7, North America and Western Europe.
unequal bargaining position of poorer less developed countries in the current world economic order. Many commentators who take the position that the obligations of justice are very limited between sovereign states take the position that, for states, most of differences in wealth and position in the international economic order are a result of internal, domestic factors, attitudes and decisions made by a people and their rulers over time. Pogge calls this position *explanatory nationalism*, and he considers it to be largely in error.\(^{51}\) He argues that people who hold this position seriously underestimate the influence of world order on the internal structure of domestic societies, and the role of international interactions in shaping their character and institutions.

This introduces two of Pogge’s influential conceptions of injustices that occur in developing societies as a result of the structure and legal understandings of the current international economic order, the “international resource privilege” and the “international borrowing privilege.” Pogge believes that there are powerful negative interactions between the practices of international economics and the incentives for good government, just institutions, and continuing poverty that result from the current international economic order. The first of these involves the sale of natural resources. Pogge points out that one would think there should be a correlation between a country possessing a natural endowment of valuable resources and the level of wealth in the society, as there is constant demand in international markets for supplies of energy and mineral resources. He argues that the correlation is in fact somewhat negative, and that

many developing countries with endowments of resources are actually poorer, and in
general less democratic, than those that have little.\textsuperscript{52}

Our cross-country regression confirms our theoretical insights. We find that a one percentage increase in the size of the natural resource sector [relative to GDP] generates a decrease by a half percentage point in the probability of survival of democratic regimes.\textsuperscript{53}

The current structure of international trade relations accepts that any government that has the power to exert control over the population of a country and maintain, at least for the most part, power over the apparatus of government, can legitimately authorize the sale of the resources of that country on the international market. That government may be maintaining itself in power by force, and in no way represent the interests of the majority of citizens, but in our current legal conception of international trade it is perfectly legitimate for that government to sell, or authorize the sale of the resources of that country. If this transaction were to happen inside a country, even one with very poor law enforcement, if someone took by force or simply without consent, the property of others, or the property of a community and sold it to a third party, the third party would be considered to be accepting stolen property. They might get away with it, but they would never be able to legitimately make the claim that it had been acquired justly. Pogge explains that this feature of the international trade in resources creates an incentive to bad and undemocratic government in developing countries with large resource endowments. It creates a situation where prospective

\textsuperscript{52} Pogge’s position can be found in \textit{Politics As Usual, World Poverty & Human Rights,} and \textit{Real World Justice.}

\textsuperscript{53} Pogge, \textit{Politics as Usual}, location 1224-8.
dictators are aware that if they seize power and can hold onto it, even if it requires dominating the population with violence, that they will have access to a revenue stream from the sale of resources on the international market.\textsuperscript{54} They can use the proceeds to enrich themselves and to finance the militaries they require to hold onto power.

All petrostates or resource-dependent countries in Africa fail to initiate meaningful political reforms. … Besides South Africa, transition to democracy has been successful only in resource-poor countries.\textsuperscript{55}

Pogge also suggests that this situation also pushes down the prices of resources on world markets, as the concern for these types of governments is to get the money quick, rather than to extract maximum possible benefit for the society from their use.\textsuperscript{56}

The low prices of natural resources on world markets are heavily influenced by the “international resource privilege.” The true significance in natural resources is their use value for all people, including future persons. Pogge sees the low prices of resources on world markets as being reflective of a negative externality, imposed by powerful wealthy states, in collusion with wealthy and often corrupt elites of developing countries, on the populations of countries with these resources.\textsuperscript{57}

\textsuperscript{54} Pogge, \textit{World Poverty}, 152-3.

\textsuperscript{55} Pogge, \textit{Politics as Usual}, location 1224-8.

\textsuperscript{56} Unfortunately, this seems very similar to what is occurring with oil and gas in Canada and the US right now.

\textsuperscript{57} Pogge, Thomas. “Economic Justice and National Borders,” ReVision 22 (1999): 27. Pogge doesn’t expand on this angle, but it is very likely worth pointing out that artificially lower resource prices on the global market quite probably also cause environmental harm by dis-incentivizing conservation, (and could also be skewing perspectives of the relative scarcity of resources, when they are based on the price tendencies in markets).
The second, related, situation in the international economic order, which Pogge argues is harming less developed countries and their citizens, is the ability of any rulers, who can maintain control over the structures of government, to take loans from finance institutions in the international community, regardless of whether they legitimately represent the interests of the population, and almost regardless of how they achieved control over the reins of power.\textsuperscript{58} He points out that governments that do not represent the interests of their citizens in any legitimate manner, can borrow huge sums from banks in developed countries, and spend the money in any way they wish with no accountability for where it goes or what it is used for. The citizens of these countries are left with the debt, which Pogge claims, they cannot default on without seriously worsening their position in the economic order.\textsuperscript{59} When the dictatorships are thrown off, and new democratic governments try to put in place policies and structures that will support economic development and pull citizens out of poverty, their ability to do so is often severely limited by obligations to service the interest on massive debt loads accumulated by previous governments. This situation ends up being not only an incentive for prospective dictators to seize power and to remain in power, but also a huge impediment to rising out of poverty, when a sizeable part of the GDP, of most developing countries is eaten up by the cost of interest payments to the financial institutions of wealthy developed countries.


\textsuperscript{59} Pogge, \textit{World Poverty}, 114. This is sort of an interesting situation, because there are few examples of countries which have actually defaulted, and those that exist are not entirely negative for the countries involved. But this is a well-accepted position that Pogge takes.
Pogge argues that the structure and activities of international economic institutions is heavily skewed in favor of wealthy developed countries at the expense of poor countries. He comments on the WTO, and its TRIPS (trade related aspects of intellectual property rights) and TRIMs (Trade-Related Investment Measures) agreements, which are a part of it, and he suggests, reflect the design of global institutions to favor wealthy developing countries.

TRIPS and TRIMs and the WTO are actually an interesting case in relation to arguments that international economic institutions favor wealthy developed countries. At least partially in response to critiques of the structure of the World Bank and the IMF, which give the greatest administrative control to the countries that contribute the most to them, thus leaving countries which actually use them with virtually no input into their policies or operating principles, the WTO, which did not come into existence until 1995, has what was argued to be, a more democratic structure. The WTO is based on all members having representation in a consensus based decision-making structure. In a sense it is much more egalitarian. The problem for fairness, is the fact that the WTO came into existence, already carrying 50 years of trade agreements, negotiated almost exclusively by wealthy developed countries. The body of agreements that made up the GATT, (General Agreement on Tariffs and Trade) was consolidated by GATT members who were in the process of creating the WTO, as GATT 1994, and became the basis of the WTO. TRIPS and TRIMs were both negotiated into GATT 1994 for inclusion in the

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60 These are discussed in more detail in chapters three and four.
WTO. Poorer developing countries had mostly not been involved in GATT negotiations throughout its history, and its agreements represented (in general) the interests of wealthy developed countries, in trade between themselves. They had established the basis of protection for many sectors considered to be of strategic importance, such as agriculture. Since the creation of the WTO, very little has shifted in the basic trade agreements. The structure of the decision-making makes it so that any member can veto a decision, so almost no negotiations have ended in ratified agreements. In a sense that would seem like at least a level playing field, but the background agreements are heavily weighted towards the interests of wealthy developed countries, so inability to effect change is in fact strongly in the favor of wealthy developed countries.

Pogge admits that many people make the claim, that, even though there are problems with the global institutional order generally, and the WTO specifically, it is still the case that those living in poverty are better off under the current order, than they would be without them. The concern is that it is unfair to blame the WTO, and the current global order, for the millions of deaths that occur from poverty, because without the WTO there would be even more. For Pogge’s position it is important, that the chosen structure of the WTO actually be to blame for causing harm that could be prevented. (For my own position, the blame is not particularly the issue, but rather the argument that the international economic order could be arranged in a way that resulted in much less harm.) He has three separate lines of argument that he uses to fortify his position his claims against the WTO and the international economic order.
Pogge starts by addressing the argument that the poverty rate, and the rate of deaths from extreme poverty under the current international economic regime, are lower than they have been historically, and thus the WTO can hardly be blamed for what poverty exists. He points out that even if the poverty rate is lower now than it would have been had the WTO not replaced the previous regime, and even if the rate of deaths from poverty is lower than it would be without an organized system of international trade, in some sort of hypothetical state of nature, this can’t ever justify the current regime which causes harm in ways that are reasonably avoidable.\(^1\) His argument is very convincing on this point, suggesting that these types of strategies take the position, that anything you do to people is ok as long as they are better off than they were at some historical, or even hypothetical time.

He examines the claim that because membership in the WTO is voluntary, and developing countries, where the vast majority of the global poor live, have willingly become members of the WTO under conditions that are available to evaluate before joining, and that countries are free to leave the WTO if they perceive it to be harmful to their interests, it is wrong to call the WTO unjust. Pogge calls this the position of “\textit{volenti non fit iniuria},”\(^2\) which is the conception that no injustice can be done to the consenting. He claims that this position fails, as no one can consent to give up basic rights, the argument being, that people who are desperate can be manipulated into a

\(^1\) Pogge, \textit{Politics as Usual}, location 996.

\(^2\) Pogge, \textit{Politics as Usual}, location 1047.
position where they will consent to anything, which is why basic human rights must be inalienable. This is a very reasonable argument and is analogous to Locke’s position, that any agreement to sell oneself into slavery must be invalid, which is accepted even by libertarians.63

Pogge continues his argument by explaining, that it is obviously wrong, to think that the leaders of developing countries, can legitimately consent to giving up the human right not to be harmed or killed for their citizens. He uses the analogy of children not being able to give up their rights, and anyone who permits children to do so, could not be said to be legitimately acting in their interest. Making this point even stronger, is the situation that many of the worst off countries are in no way effective democracies. Pogge suggests that when people consent to cooperating with schemes that harm their interests, they often do so because they are being forced into situations where the options are extremely limited. He makes the claim that poor countries do not get fairness from the WTO, but a country that didn’t sign up would be worse off. Pogge quotes a World Bank World Development Report64 in his discussion of why developed countries have so much power to negotiate trade agreements and terms of trade in their favor. He explains that they have the biggest, most valuable, markets even though they have only 16% of world population, and produce 75% of products. Access to their capital, technology and markets allow them to negotiate hard, as the costs are very high

63 Locke, 2nd Treatise, Chapter 4, section 23.

of being shut out, and generally they also have negotiating expertise and capacity that less well-off states do not.\textsuperscript{65} He makes an analogy to the situation of small continental European states being better off cooperating with a fascist regime in 1940 than not, which he explains, really doesn’t prove much about what their choices would have been, or their situation like, if there had been other options.\textsuperscript{66}

Pogge also addresses the claim, that it is wrong to blame the WTO and the structure of the current international economic order for causing harm to the poor, because much of the poverty and resulting harm, is a result of bad decision-making by poor country rulers, and flawed institutions within these poor countries. He has already addressed this claim, with his discussion of \textit{explanatory nationalism}, and arguments against the thesis that the causes of poverty are mostly domestic. The concern is that the argument develops into a claim, that if some countries, such as the Asian tigers, have been able to pull themselves out of poverty under the WTO regime, then it stands to reason, that other countries should also be able to overcome harmful poverty, under the existing order. There are problems with this claim, as these countries can’t really be understood to have achieved their economic success under conditions typical of the current regime, but Pogge does develop his own argument in response. He introduces the concept of synergistic harm, in which two factors combine to make something much worse. He suggests that the global order, combined with problems of institutions and

\textsuperscript{65} Pogge, \textit{Politics as Usual}, location 937.

\textsuperscript{66} Pogge, \textit{Politics as Usual}, location 1093.
governance in many poor countries, are synergistic in this sense, so that even if it is the case that the government and institutions of a country hurt the ability of its citizens to satisfy their needs effectively, when this combines with the conditions created by the WTO and the structure of international economic order, the problems are powerfully exacerbated. Examples of this are the resource privileges and borrowing privileges of corrupt and undemocratic governments, already discussed. Pogge argues that while the institutional arrangements and governance of in poor countries have almost no effect on global order, global institutions can have powerful effects on the structures of poor countries.67 This seems to be a very strong argument for an obligation to create just economic institutions for trade in global society, even aside from any other concerns about unfairness in the current order.

Global Justice and *The Law of Peoples*

Thomas Pogge, in general, supports the application of a conception of justice similar to Rawls' domestic theory of justice presented in *A Theory of Justice (ATOJ)* at the global level.68 Like many who are familiar with both *ATOJ* and *The Law of Peoples (TLOP)*, Pogge feels there is a fairly strong disconnect between the conception of justice defended in *ATOJ* and that proposed in *TLOP*. Rawls explains in the argument for the difference, between them, that *A Theory of Justice* is meant to apply to a single society. In *The Law of Peoples* he explains that the conception of justice he put forward for a

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67 Pogge, *Politics as Usual*, location 1153.
single society cannot make sense in the international context, for what he calls “The Society of Peoples.”

Pogge observes in *World Poverty and Human Rights*, that he in some senses supports the moral contextualism he attributes to David Miller and to Rawls. He notes that he agrees that a critical moral contextualism is appropriate, that the same moral principles or principles of justice, do not necessarily apply in all circumstances, contrary to what a moral universalist position would hold. In this case, Pogge accepts Rawls’ position in *ATOJ*, in which the difference principle is an organizing principal for basic structure of society, explaining that it is put in place so that individuals can pursue their own interests with a fair framework of institutions structuring their activities. Pogge argues that moral universalists, who claim that, if it makes sense as a principle of justice in society, it should also make sense as a principle of moral conduct for the individual, have it wrong. He explains that the difference principle in society, frees individuals from strict individual moral concern, in order that they may realize their own conception of the good. The idea being, that Rawls’ principles would set up a framework, which could support a just society, whose members did not necessarily share comprehensive moral doctrines. Pogge’s claim is that Rawls (and Miller) just have their contexts wrong

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69 Discussed in chapter one, in the explanation of the principles coming from Rawls’ 2nd Original Position.

70 Pogge, *World Poverty*, 102-4. Pogge deals with both Miller and Rawls together as do Young, and Beitz, as Miller continues to support a position that thick conceptions of justice make no sense at the international level. See: David Miller, *Justice for Earthlings* (New York: Cambridge, 2013).

71 Pogge, *World Poverty*, 105. Rawls position in *ATOJ* is that the same principles that make sense for individuals to govern themselves do not make sense as principles to govern society. He is particularly referring to utilitarianism.
in their understanding of justice in global society. This grounds much of Pogge’s consideration of Rawls’ position on global justice in *TLOP*.

In *ATOJ* the conception of justice is strongly based on liberal individualism, where the basic unit of moral concern is the individual. Rawls is concerned that good institutions will function to form a good society, but he is clearly focussed on the moral value of each individual being free to reach their potential within society, with each individual being assured a true equal opportunity to do so. In *TLOP* he abandons liberal moral individualism completely, it just does not seem to fit in his conception of justice at the international level, and it doesn’t make it into his “Realistic Utopia” of a society of peoples. In *TLOP* the concerns of the individual have no weight in the 2nd Original Position, the negotiators who participate in this behind the Veil of Ignorance are Peoples are conceived of as putting the independence of their society as the highest value. Rawls defends this by only allowing representatives of well-ordered societies to be represented, but this also seems problematic.

Pogge writes, “While Rawls’s domestic theory gives weight only to individuals and their interests, his international theory gives no weight to individuals and their interests.”\(^72\) That is, Pogge claims that in his domestic theory of justice Rawls gives absolutely no weight to the interests of collectives or associations; he makes no allowance for them to have a moral standing at all in his system, aside from their value

for individuals who choose them.\textsuperscript{73} Whereas in the international system he gives them all the moral weight, allowing almost none at all for the individual. At the same time he excludes states that are not what he describes as liberal or decent, from both the process of choosing the Law of Peoples, and from the actual rules governing relations between peoples in the Society of Peoples. Pogge explains that Rawls’ Law of Peoples conception of justice leaves out most of the people who most strongly need justice. It just doesn’t make sense in relation to the positions Rawls took in ATOJ.

Pogge explains that Rawls’ does make an attempt to justify it saying that to include decent hierarchical peoples, (who are also governed with common good in mind) he must include only peoples not individuals.\textsuperscript{74} Pogge says that this justification fails, and he does not understand how the conception of justice in TLOP can make any sense in relation to that which Rawls put forward in ATOJ. His argument is that, it is hard to accept that in international society liberal conceptions must be discarded to respect non-liberal positions.

[Why should the appropriate mutual accommodation between those who endorse and those who reject normative individualism be a theory that rejects it? Seeing how Rawls's international theory of justice disregards the basic liberties of persons outside well-ordered societies, truncates the basic liberties of persons in decent societies, and tolerates poverty and huge inequalities worldwide, why should liberals find it appealing?\textsuperscript{75}]

\textsuperscript{73} Pogge, Thomas. “The Incoherence,” 1744.

\textsuperscript{74} Pogge, “The Incoherence,” 1744-5.

\textsuperscript{75} Pogge, “The Incoherence,” 1756.
Pogge is also straight out skeptical, of Rawls concern for not violating the sovereignty of non-liberal (decent or otherwise) states in the name of imposing principles calling for more equality. He points out that, in the actual world, non-liberal states are normally the poorer, economically less well-off countries, and are likely to be open to global economic reform in the interests of greater equality, while liberal states resist it.\footnote{Pogge, \textit{World Poverty}, 106-7.} Pogge feels that many persons living in impoverished countries, with bad government, would consider interventions in good conscience, focussed on improving their economic situation, or assuring their political rights, to be a positive thing.

However, Pogge acknowledges that some commentators feel there is serious validity to Rawls’ argument. Stephen Macedo defends Rawls’ much thinner and smaller conception of justice in \textit{TLOP}, by considering that there is a moral standing that self-governing collectives owe to each other. Claiming that a self-governing collective has a moral right to organize itself in a certain way, and that other moral self-governing collectives ought to respect the decision about how the society will operate.\footnote{Macedo, Stephen. “What Self Governing Peoples Owe to One Another” \textit{Fordham Law Review} 72, no. 5 (2004): 1721.} Macedo’s basic argument is that a liberal individualism forced onto the highly diverse forms of collective self-governing society internationally would not be just, but rather would violate respect owed between peoples.

This is definitely worth considering but it seems actually hard to argue that there is a very strong difference between international society and a multicultural liberal
nation-state in this. Pogge suggests that in many ways international society fits very well with Rawls' definition of a society made in ATOJ.

Since the world at large seems to fit Rawls's stipulations, (being self-contained, more or less self-sufficient, and a closed system isolated from other societies)—certainly better than any national societies do—how about structuring it in accordance with the public criterion of social justice Rawls proposes in his domestic theory? Rawls not only denies that we ought to do this, but even insists that we ought not. But what reasons can he offer?78

He argues, the reality of contemporary global society is, that interdependence, economic and otherwise, creates moral obligations, not dissimilar in nature from those that exist within states, across international borders. Pogge continues with another related point that others such as Beitz have touched on. In his domestic theory of justice, Rawls has argued that his theory is meant to apply to the situation of a closed system, which he feels must exist at some level. He explains that Rawls describes it as self-sufficient and self-contained.79 Pogge takes the position that the world as a whole fits the description Rawls is using better than any state, that it is really the more appropriate level to apply his domestic theory of justice to. He accepts that Rawls has clearly stated his opposition to a world state, but also considers that Rawls use of Kant to support his contention that a world state could not be just and effective, might not be seen as the most convincing evidence of the contemporary infeasibility of the project. Pogge suggests that even if a world government is infeasible that would not invalidate the application of the domestic theory of justice to international society, as

78 Pogge, “The Incoherence,” 1755.
the domestic theory does not specify the exact institutions, but rather the principles behind them. He argues that it might require the creation of an effective global institutional order that acted to secure basic liberties and construct a just economic order.

Pogge also suggests that Rawls, according to the positions he takes in *TLOP*, would consider it wrong even if the majority of the world’s people wanted to design an institutional world order according to Rawls’ domestic theory because they would be imposing the liberal order on decent peoples. In this case it seems Pogge might be off-base somewhat, as this situation is totally different from what Rawls considers in *TLOP*. There he is considering a just foreign policy for a liberal society in a world that has not accepted the domestic theory, with the idea that it would be the type of foreign policy that, when adopted by liberal societies would work towards ending injustices regardless of what else occurred. In the case Pogge is suggesting, Rawls problems with a world state would probably continue, but it seems likely that he would not object to some type of global institutional order if it was the case that the majority of persons were working towards it.  

Pogge considers, that a variety of commentators have pointed out it is never extremely clear what “peoples” are and how to tell one from another.  

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80 In fact Rawls explains in *The Law of Peoples* that if a group of countries were to decide together to form an organization like the European Union, then it would be perfectly reasonable to choose the Liberty and Difference principles.

completely within one? What about when individuals may have more than one affiliation (aboriginal person living in Canada)? In any event there are some serious problems trying to understand how Rawls gets from his position in *ATOJ* to his position in *TLOP*.

Thomas Pogge explains that even if he supported the claim that Rawls makes in *TLOP*, that a strictly liberal individualist conception of justice was too problematic in a culturally diverse international society, and that it required compromise to respect the right of collectives to govern themselves in a way they see as appropriate, he still feels like far too much has been given up and the compromise that results abandons much that was of value most that would support the sort of liberal principles outlined in *ATOJ* or any conception of liberal rights at all.

Reforms for a Just International Economic Order

Pogge has a well-developed conception of what he believes would be required to respond to the harms caused by the current international order, and reform it to create a more just global economic order. It has been developing over time and consists of several different sections.

The first area of Pogge’s proposal for a more just economic order is a concern with shifting institutional moral analysis beyond the state, as he doesn’t feel that the state is the appropriate level of concern for moral analysis in global society. Pogge’s position is that our concern ought to be not so much an international economic regime

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82 Pogge, *Politics as Usual*, loc 604.
may hurt states but how it treats individuals. This is important because we know that most arguments that support the state as the basis of moral analysis in world order, do so because they believe the state has some sort of crucial or irreplaceable role in justice for the individual. Pogge makes a strong case that there is a widespread failure to assure individual rights in this way under the current international economic order.

Pogge also makes the argument that the current international institutional order also fails, because it does not allow individuals to pursue their own interests within a framework that will allow them to do so without generally harming others. He explains that partiality of concern, is acceptable and accepted in many situations where the setting is at least minimally fair, but in the current world order the world’s worst off, are harmed by the partiality of the wealthy and powerful states that are able to undermine the conditions of background fairness and shift the structure of the economic institutions so that outcomes are in their favor at the expense of the poor.

Pogge favors institutional reform over other possible approaches to addressing the harm done to those suffering the effects of avoidable poverty. He considers this approach to be more effective and in a sense less demanding than approaches such as Singer’s call for the wealthy, both countries and persons, to provide aid which would alleviate the suffering of the worst off.\textsuperscript{83} He argues that rule changes are preferable to

\textsuperscript{83} Singer also sees institutional reform as a key focus (at least in One World), but it has often been overshadowed by his constant position over the last 40 years arguing for the obligation to give personally to others suffering from extreme poverty).
changes in particular conduct, as it is easier to predict the results and it is easier to maintain in the long term.\textsuperscript{84}

Pogge also argues that the amount of development aid required to end the worst suffering from poverty (about 300bn) is so far from what is actually being contributed by wealthy developed countries, that institutional reform seems a much more plausible project. Pogge explains the opportunity cost of the reform for citizens of affluent countries is considerably lower, and the benefit for citizens of poor countries is much higher, than attempting to achieve elimination of severe poverty through aid while maintaining the current international economic order.\textsuperscript{85}

Strengthening this, Pogge also sees a negative duty to avoid contributing to maintenance of an unjust global institutional order that harms the poor. If you are profiting from the maintenance of such a global order, (which Pogge has argued the citizens of wealthy developed countries are), then he claims you have violated your duty not to harm others, and have an obligation to work to end the harm.\textsuperscript{86}

In the modern world, the rules governing economic transactions—both nationally and internationally—are the most important causal determinants of the extent and depth of severe poverty and other human-rights deficits. They are most important because of their great impact on the economic distribution within the jurisdiction to which they apply.\textsuperscript{87}

\textsuperscript{84} Pogge, \textit{Politics as Usual}, loc 1314.

\textsuperscript{85} Pogge, \textit{Politics as Usual}, loc 1357.

\textsuperscript{86} Pogge, \textit{World Poverty}, 171-2.

\textsuperscript{87} Pogge, \textit{Politics as Usual}, loc 1307.
Pogge argues for a reform to the WTO, particularly in the area of Intellectual Property Rights, which favor corporations based in wealthy countries, over the ability of poor countries to assist their citizens in satisfying basic needs. He also pushes for assistance for developing countries in effective participation at the WTO, considering assistance in maintaining effective delegations at the WTO, and measures to ensure that poor countries have access to expertise in complex trade negotiations and are assisted in developing their own capacity, vital. Pogge is also very concerned that the WTO put in place accounting for negative externalities in international trade.

One of the major reforms to the global institutional order that Pogge has been arguing for is the creation of a reasonably neutral Democracy Panel, to arbitrate over when a country can legitimately considered to be governed democratically in the interests of its people. Pogge conceives the Democracy Panel as a permanent establishment of the United Nations, with sufficient staff to monitor elections and verify developments within countries. A part of the process of creating it would include the task of formulating a basic general criterion, regarding what constitutes a legitimate representative democracy, with additional specific criteria being developed as needed. Pogge considers the permanent general background criteria as being an important safety feature, which would help the Democracy Panel, avoid having its basic effectiveness eroded by members of the panel shifting, or attempting to shift, the criteria to suit various national interests. The Democracy Panel is Pogge’s strategy for

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halting the international borrowing privilege, which facilitates non-democratic
governments (that do not represent citizens), staying in power, and also ends up
creating a heavy debt burden, that limits the ability of poor countries, to develop
successful economies, even after government in the interest of the citizens is restored.
The strategy would require governments to put in place a constitutional amendment
which gave notice that in the event that the situation arose, through a military coup or
other means, that the country ceased to be governed under the parameters set out by
the democratic constitution, that it would be illegal for the government to allow the
public to serve any debt taken on by a government ruling outside the parameters of the
democratic constitution. The constitutional amendment would set out the neutral UN
Democracy Panel as the arbiter of what would be required of a constitution to be
considered legitimately democratic and when in fact a government would be considered
to be a legitimate democratic government governing within the parameters of the
accepted constitution and when it would not be. The Democracy Panel would only
monitor countries which had signed on to be monitored, and would only affirm whether
or not a government was ruling in accordance with its constitution, if the constitution
was judged within the parameters of the criteria set out by the panel.

Pogge considers that because it has been such an accepted and profitable
practice for so long, the constitutional amendment might not immediately stop banks
from wealthy powerful countries from lending to dictators and non-democratic
governments. Dictators could simply declare the constitution or the constitutional
amendment invalid. However he feels, that wealthy developed countries would feel
strong international condemnation for intervening on behalf of their banks, to make poor, weak fledgling democracies pay debts, that banks had allowed to be incurred, knowing that it was unlawful. The Democracy Panel would bring neutrality and legitimacy to the process, and banks that were concerned that they would not want to lend to illegitimate government borrowers, would be able to make a quick check, that a loan they were considering was not going to a government that was considered illegitimate, with a legal constitutional amendment on record making the loans illegal in the country they were dealing with. It would make the process clear for banks and reasonably standardized.

Pogge considers that the effect of this might be, that governments that came to power by force, would see little benefit in continuing to service existing debts, as they would, for the most part, be themselves shut out of international borrowing. This in turn would make financial institutions very concerned about the risk involved in loans to democracies that were weak or newly established, as if they were to fail, it would be likely that a non-democratic government that pushed them out would refuse to pay the loans. The result of this would be that loans would be difficult to arrange, and carry even higher interest for these countries, which in many cases would already be among the most needy. Pogge’s solution is a Democracy Fund which would serve as insurance against failure to pay. Countries would pay into the insurance scheme, and in the situation that a democratic government was to fail and be replaced by a non-democratic government that refused to make payments on the loans, the insurance would cover the banks losses. Pogge argues that with the ability to take international loans to
support their activities curtailed, the actual incentive to seize power by force would be reduced.

The same Democracy Panel would also go towards restricting the problem of the International Resource Privilege. In the same way, a country would add an amendment to its constitution to the effect that only a legitimate democratic government can authorize the sale of public property and natural resources. It would function the same way as the borrowing amendment, the government of the country would advise the Democracy Panel of the amendment, and the panel would begin to monitor whether the government of that country was in accordance with its constitution. If a democratic government was replaced by a non-democratic government, or no longer fulfilled the democratic requirements of the constitution, the Democracy Panel would note, that it was no longer a government which, according to its own legitimate constitution, legally possessed the right to authorize the sale of public property and resources of the country. Pogge notes that this process would not likely cause an immediate halt, to all sales of resources by governments that don’t represent the interests of their citizens, as maintaining the cheap flows of natural resources, is a matter of powerful self interest for persons living in wealthy developed countries. He suggests though, that it would bring clarity to the situation. No one could reasonably deny that the purchases were illegal and unethical, and in clear contravention of the actual laws of the country as this would be made transparent by the Democracy Panel, available for consultation, before concluding major resource deals.
Pogge feels these reforms are particularly valuable, because the international borrowing privilege and the international resource privilege contribute powerfully to the inability of many developing countries to succeed economically and lift their citizens out of poverty, but also, he argues, because they are important reforms for achieving democracy in global society. He feels they promote democracy for both developing and developed countries. In developing countries the reforms would undermine the benefits, which would be dictators could expect would accrue to them, lessening in the economic incentives to seize power by force in a weak or newly established democracy. They would also lessen the ability of those that gained power by force to maintain power by denying them access to loans or streams of cash from resource sales to use in maintaining military forces or other tools of domination. It might also mean that newly established democracies might have less crushing debt burdens which diverted resources from social programs and economic development.

Pogge also feels the reforms would improve democracy in wealthy developed societies. He explains that there is, in wealthy developed countries, a democracy deficit around foreign policy, most members of these societies have little understanding of the effects of their foreign policy on developing countries, and have not approved it, in the sense of knowing the options and their impacts, and selecting it. The reforms, would help citizens of wealthy developed countries hold their governments accountable,
helping them to choose not to support a harmful international economic order, once the situation is made more transparent.\textsuperscript{89}

Pogge also considers that ending extreme poverty requires a cosmopolitan understanding of our moral obligations to others in global society. He means that we acknowledge our own duty as individuals to uphold or at least not violate the rights of all others, who are members of our global society. He explains that if a global society did not exist, if we were all members of isolated, separated cultures whose lives had little influence on one another across those boundaries, then those obligations would not exist, but because we live in a global society, where our interactions may have effect on the chances of others, across the boundaries of cultures and states, and are participants in a global institutional order,\textsuperscript{90} all of us are potentially responsible for the rights of all others. He argues that the most effective way to uphold our duties in this case is to reform the global institutional order. For these institutions to be successful in creating a background framework that in general structures economic interactions in international society in a way that supports the rights of all individuals, Pogge argues that, we need to modify the way we conceive state sovereignty. He is arguing for a vertical dispersion of sovereignty.\textsuperscript{91}

From the standpoint of a cosmopolitan morality—which centers on the fundamental needs and interests of individual human beings, and of all human beings—the concentration of sovereignty at one level is no longer defensible.

\textsuperscript{89} Pogge, \textit{World Poverty}, 166-7.

\textsuperscript{90} Pogge, \textit{World Poverty}, 171.

\textsuperscript{91} Pogge, \textit{World Poverty} 177-84.
...the proposal is that governmental authority—or sovereignty—be widely dispersed in the vertical dimension. What we need is **both** centralization and decentralization...And their political allegiance and loyalties should be widely dispersed over these units: neighborhood, town, county, province, state, region, and world at large. 92

Pogge’s position is that we need to move decision-making to the level closest to all those affected by it, but, that also ensures inclusion of all those with a relevant interest in the decision-making process. Some authority in decision-making processes may need to move from the level of states to global institutions, and some can shift to social structures below that level. Pogge feels that the current understanding of state sovereignty allows a justification of competitive self interest to interfere with the duty to ensure that the rights of all individuals are protected.

Pogge takes the position that Rawls took in *ATOJ*, on the role of markets in a society, that self-regulating free markets by their nature produce inequalities, which over time can result in extreme poverty and/or exclusion from effective political participation and medical and educational opportunities. Pogge supports developing an institutional framework, structured to act and react, to skew market results towards equity.93 He argues that this is more stable, and more just, than a system of redistribution, which takes away a surplus accumulated by some individuals (that they understand themselves as entitled to, through participation in the accepted institutional

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system), and redistributing it to others, who have been less successful within the system.

The Global Resource Dividend

A key part of his recipe for creating an achievable just international economic order, is what he calls the Global Resource Dividend (GRD). Pogge argues that because we are complicit in the violation of the rights of the poor, and participate to our benefit, in a system that harms them, we have a duty to support measures that would redress or mitigate this harm. He explains the three grounds he sees as basis for this, that the injustice we are responsible for includes the following: “The effects of shared social institutions”; a result of “Uncompensated exclusion from the use of natural resources”; and “The effects of a common and violent history.”

The proposal is not that we create a system of resources as common property, but that we understand that the poor have a basic interest in how all finite natural resources are used. He explains that he is formulating it in relation to the three grounds that are the basis for our responsibility for injustice, particularly the idea that there has been an uncompensated radical exclusion from the use of the world’s resources. He explains this is justified, because the other grounds would be addressed by virtual any arrangement that addressed the problem of poverty. It will take the form of a dividend that users must pay when they use non-renewable natural resources. The dividend will go into a fund to be used in the reduction and elimination of extreme poverty. “This

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94 Pogge, World Poverty, 199-203.
payment they must make is called a dividend because it is based on the idea that the
global poor own an inalienable stake in all limited natural resources.”

He calls the Global Resource Dividend a modest proposal in the sense Rawls use
“realistic” in his discussion of the idea of realistic utopia, which is that it makes sense,
and could be implementable and sustainable, in the world as we know it. He leaves each
government in control of the use and management of resources within their territories,
and explains the level must be such that it can be reasonably implemented and
sustained.96

Pogge explains that one might think that the amount of the dividend would have
to be very high to be effective in addressing the harm of extreme poverty, but he claims,
in relation to the gravity of the situation, it is actually fairly low. He suggests that about
$312 billion annually or approximately 1% of the global aggregate income would be
appropriate. And he explains that this is a similar amount to what would be needed to
bring the 2.8 billion persons (40% of the global population), who live on incomes below
it, up to the $2/Day poverty line used by the World Bank Group.97 He explains that the
amount is fairly insignificant for wealthy developed countries.98 And it would not be
particularly economically onerous to pay. Pogge suggests $2/barrel GRD on crude oil

95 Pogge, World Poverty, 196.
96 Pogge, World Poverty, 205.
97 Pogge, World Poverty, 205.
98 Pogge explains it is similar to the US Defence budget, but that was in 1998, before the wars in
Afghanistan and Iraq.
extraction would raise 18% of the total required and would cost probably about 
$.05/gallon for the end user. In the long term it might require a lesser GRD to sustain 
much greater equity in the global economic order, and that could be considered when 
the priority of elimination of extreme poverty had been addressed.

Pogge explains that the criteria used to select which resources to apply the GRD 
to, and in what way, would be important. He suggests that it would require 
consideration of what resources could relatively easily be monitored, in their 
consumption, production or discharge into the atmosphere. As well as, how a 
reasonably cost effective accounting and collection, could function (obviously related), 
and how the overall cost of the GRD to consumers of the end products could be kept as 
low as possible, while still satisfying the goals. He argues that the GRD could also be 
heavily focussed on encouraging conservation and minimizing environmental damage.

Pogge points out that disbursement of the fund, to those who will use them to 
satisfy their basic needs, also needs to be structured as efficiently as possible. He 
suggests that specific expertise would be needed to design the details, but that some 
basic ideas seem fairly clear. In many cases it would occur through governments, with 
incentives, (in the form of further funds) to ensure the funds were used effectively in 
poverty reduction. In the cases of governments that failed to distribute the benefits

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99 Interesting claim, but I think a little hard to prove, as speculation and futures markets in oil tend to 
magnify and distort the end user price significantly, in comparison with the costs of producing or acquiring 
oil.
fairly and efficiently to citizens, in response to incentives, the funds could be used by a
variety of organizations to provide services for those people.

Pogge considers that the GRD proposal fits with his concern for institutional
reform and promotion of a just global economic order. He argues that it would be much
less costly for the results received, less difficult to sustain, and probably more likely to
succeed than any scheme of development assistance. Pogge is concerned though that
the GRD would have a higher cost than the millennium development goal target of 0.7%
of GDP, agreed to by wealthy developed countries. And he is also concerned there
would be some resistance, because the transparency in disbursement would make the
GRD less useful as a political tool, than development aid currently is.

Pogge considers that once agreed to and implemented, the GRD would be
reasonably enforceable, in the same way that the WTO enforces sanctions on countries
which violate agreements. The mechanism is through imposition of tariffs, on imports
coming from countries which are in non-compliance. He explains that since the
proportion of GDP related to exports and imports, is quite high in most wealthy
developed countries, the cost of trade sanctions could very quickly add up to the cost of
the GRD, making enforcement relatively simple if a majority of wealthy developed states
are participating.

Pogge makes a very strong case, that the current international order, which was
imposed by wealthy and powerful countries, and is maintained by them, violates the
rights of the poor and weak members of a global society, causing them harm. His
argument that responsibility for causing harm to others, creates an obligation to act in
order to remedy that harm, is powerful and difficult to ignore ethically. Many of both Pogge’s explanations for the mechanisms of harm, and his solutions to the harm, consider a large picture of the international economic order, and it can be difficult to separate trade issues from larger concerns. Pogge’s solutions address unjust issues in trade such as the International Resource Privilege, and International Borrowing Privilege, but also use the interconnection of trade as mechanism to address other issues, such as with the Global Resource Dividend.

Although Pogge’s position is very strong, his model has also been criticized for its limitations. Iris Young considers it to be problematic, in that it focuses blame, holding wealthy developed countries responsible for the problem, and ignoring the complexity of the interactions. Pogge actually does address this with his conception of synergistic harm, but he mostly uses it to point out that even when there is a serious problem in the countries which are extremely impoverished, the actions of wealthy developed countries have made it much worse. It is also the case that there can be an intuitive feeling that blaming and shaming wealthy countries, could generate more defensive resistance, than positive reform. However, Pogge’s argument is strong, and his proposals are comprehensive and in many cases reasonable. If it were a case going to global court, Pogge’s approach would seem to be the model to choose.
CHAPTER THREE
THE SELF-REGULATING FREE MARKET IN FREE TRADE

Mercantilism

In Europe the expansion of trade and the growth of banking systems were accompanied by a new way of understanding wealth. Mercantilism was not so much a full-fledged economic system, as it was a specific way of understanding wealth. Wealth was to be seen as the accumulation of precious metals rather than control of productive land.

The historical model for international economics that has traditionally opposed free market models for trade is the mercantilist orientation to international trade. Laura LaHaye (a GATT research economist) defines it as a form of economic nationalism, in which the goal is to restrain imports while maximizing exports, in order to extract the most benefit from trade for the nation state.¹ Maximizing exports while minimizing imports will cause gold to flow into the country.

Basically mercantilism is protectionism, where domestic markets for most goods that are producible within the country, are protected legally, against all foreign competition. In the early emergence of mercantilism that accompanies colonization of the Americas, generally, the mercantilist protectionism took the form of complete ban

of imports of manufactured goods from foreign competitors (example: New Spain [Mexico and Latin America] in the 16th and 17th C and British American Colonies under the Navigation Acts in the 17th and 18th C). Later in the mercantilist period protectionism began to take the form it has in current discourse, of protecting markets using high tariffs on imported goods to make competition from imports impractical or unprofitable rather than strictly illegal (example: British Corn Laws in the first half of the 19thC).

England began the first large-scale and integrative approach to mercantilism during the Elizabethan Era (1558–1603). An early statement on national balance of trade appeared in *Discourse of the Common Weal of this Realm of England*, 1549: “We must always take heed that we buy no more from strangers than we sell them, for so should we impoverish ourselves and enrich them.”

The mercantilist model is based on the idea that international trade produces no net gain for those participating in it, and that someone wins in international trade only through someone else losing. In mercantilism, trade is understood to be a zero-sum game, in which the outputs exactly equal the inputs, with the only change being the distribution. This perspective ties closely with the realist position in international relations, based on the conception of international relations in general as being a zero-sum game. These approaches to trade and international relations developed side by side in the early modern period. (The idea that international trade must be strictly a zero-

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sum game is generally rejected today, even by those who are fairly strongly protectionist.)

Thomas Mun is generally considered to have stated the doctrine of mercantilism most clearly in his work, *England’s Treasure by Foreign Trade.*\(^3\) The key point of Mun’s conception of successful international trade is his discussion of “balance of trade.”

Certainly there were mercantilists and mercantilist orientation to trade before Mun, but Mun uses the concept of balance of trade to make the tenets of the doctrine explicit. To maintain a positive balance of trade is the central concern in trade and is more important than any other economic policy, monetary, fiscal or otherwise.\(^4\) The trade balance referred to is the ratio of exports to imports. A positive balance of trade would be where the state is able to export a higher value of goods than the value of goods that is imported. The positive balance of trade is achieved both through protectionist measures to avoid foreign competition in domestic markets, and attempting to create captive overseas markets for one’s own products, either through military force or political pressure.

Mun’s position on international trade, in relation to considerations of justice, is obviously problematic. It is clear that a mercantilist position in international trade is a position that does not accept the concept of obligations to protect one’s trading partners from poverty, and clearly it would be working against equality, at least in


\(^4\) Ibid.
balance of trade. However, it was also the case that early capitalism or proto-capitalism was explosively far ahead of the moral thought of the day, which was just beginning to consider the problematic nature of genocide and slavery, associated with the colonial economic expansion of the period. So it not really surprising, that trade practices based on creating economic inequalities were adopted without much reflection on their fairness.

Mercantilism can be understood to belong to the pre-capitalist state (although it is not a complete either/or situation in England), where there are often strong social structural ties between resources and official status or position within society. Free markets, in the capitalist sense, are still developing. Although markets existed in various forms from very early times, the “market mechanism,” which controls prices via supply and demand, is still not the main model for distribution of resources, particularly labor and other factors of production. In international trade in the mercantilist model, there is little distinction between the state and business.

The East India Company, for example, is almost identical with the state, acting basically as the foreign policy arm of the state (or at least acting with the understanding of close support of the military). It attempts to structure its relations with colonies in such a way as to create a dependence, that supports a favorable balance of trade at the expense of the colony. The trade relationship itself, even when undertaken in private interest, is not separate from government.
The Free Trade Model

In international trade there are two main branches of support for the free trade model, that arose in opposition to mercantilism. The first of these is based on Adam Smith’s conception of a free market economy being “led by an invisible hand” towards the best results for society as a whole. If everyone involved in a competitive market is allowed to freely make economic decisions in their own self interest, not only will participants in the exchange benefit, but resources will be allocated efficiently to the overall benefit of society. The concept of “society” is simply expanded from the nation to the global market. The second branch consists of the theories that arise in the late 18th and early 19th centuries. This branch divides into two sub-arguments, absolute and comparative advantage, in support of the free trade model for international trade.

An important consideration in discussing the free trade model or self-regulating free market model for international trade, is what exactly, is being allowed to be exchanged freely when we discuss free trade. Through much of the history of trade the actual exchange consisted of finished goods or products, although it was also fairly common for natural resources to be exchanged, in some circumstances. In general, capital and labor were not considered to be subject to trade across international borders for a variety of reasons (although immigration has definitely been a labor market factor at times). In the contemporary debate on international trade it is certainly the case that, capital is one of the important items being traded across international borders. The trade in capital is different in some ways than the trade in goods or
products in the traditional sense, and has game changing effects on international trade, regarding who benefits under which conditions. There are several contested positions on how trade in capital fits with the argument supporting the free trade model. Trade in capital came into the WTO from GATT under TRIMs (Trade Related Investment Measures) and it is an important feature of international trade today.

It is worth noting that, although protectionism made a comeback in the 1930s, few economists support it today. As Barry Eichengreen and Douglas Irwin note:

While many aspects of the Great Depression continue to be debated, there is all-but-universal agreement that the adoption of restrictive trade policies was destructive and counterproductive and that similarly succumbing to protectionism in our current slump should be avoided at all cost. Lacking other instruments with which to support economic activity, governments erected tariff and nontariff barriers to trade in a desperate effort to direct spending to merchandise produced at home rather than abroad. But with other governments responding in kind, the distribution of demand across countries remained unchanged at the end of this round of global tariff hikes. The main effect was to destroy trade which, despite the economic recovery in most countries after 1933, failed to reach its 1929 peak, as measured by volume, by the end of the decade. The benefits of comparative advantage were lost. Recrimination over beggar-thy-neighbour trade policies made it more difficult to agree on other measures to halt the slump.5

Absolute Competitive Advantage: Adam Smith

Adam Smith challenges the mercantilist view that maintaining a positive balance of trade is of overwhelming importance (thus necessitating that domestic industries be protected). In *The Wealth of Nations*, Smith writes:

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What is prudent in the conduct of every private family can scarce be folly in that of a great kingdom. If a foreign country can supply us with a commodity cheaper than we ourselves can make it, better buy it of them with some part of our industry, employed in a way in which we have some advantage. . . . In every country, it always is and must be in the interest of the great body of the people to buy whatever they want of those who sell it cheapest. The proposition is so very manifest, that it seems ridiculous to take any pains to prove it; nor could it have ever been called into question, had not the interested sophistry of merchants and manufacturers confounded the common sense of mankind. Their interest is, in this respect, directly opposite to that of the great body of the people.⁶

The basic premise of Smith’s model is that all members of society individually, making economic decisions in their own self-interest, will, in the aggregate, produce the best overall result for society as a whole. Any planned intervention in the market to achieve specific results or benefit particular segments of society, at best, yields lowered efficiency and reduced aggregate benefit to society. Smith famously argued for an economy “led by an invisible hand”:

Every individual necessarily labors to render the annual revenue of the society as great as he can. He generally, indeed, neither intends to promote public interest, nor knows how much he is promoting it. By preferring the support of the domestic over foreign industry he intends only his own security; and by directing that industry in such a manner that its produce may be of the greatest value, he intends only his own gain; and he is in this, as in many other cases, led by an invisible hand to promote an end that was no part of his intention. He generally, indeed, neither intends to promote the public interest, nor knows how much he is promoting it.⁷

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⁶ Quoted by Milton Friedman and Rose Friedman, Free to Choose: A Personal Statement, p. 38.

This type of market-based economic system is now commonly known as “laissez faire,” a usefully descriptive term, as the model consists of leaving the participants in the market alone to do what they think is in their own interest (which, according to the theory, will be society’s interest as well). Free markets are known as “self-regulating” because without regulatory input they automatically perform the crucial economic tasks of deciding what the appropriate price for any good or service should be (high enough to motivate producers to supply it, while keeping it sufficiently low that consumers can afford to buy it) and determining the appropriate quantity to be supplied to market.

According to the premises that underlie the case for the self-regulating free market in economics, the only real role for regulative governance in this model, is the enforcement of contract and property law, and those anti-monopoly statutes that keep the economy competitive, since, in a free competitive economy, production and pricing decisions are already being handled in the most efficient manner achievable. It is also claimed to be a just model, for it allows owners of resources the greatest possible liberty with respect to how they will make use of their own resources, and rewards them according to their productive contribution.

Adam Smith formulated the theory of absolute advantage in international trade, which is in accord with his theory of the efficiency of self-regulating free markets. Absolute advantage is the idea that many countries will have some climactic, geographic, or other advantage in producing a specific good or service. Each country ought to, as much as possible, concentrate in producing the product they are the most
efficient at producing, and import those things they produce less efficiently than other
countries. In this way they would use their labor resources as efficiently as possible,
(perhaps even gaining economies of scale as well) and would create more overall value
of products with the same labor input, than would have been possible producing things
that were produced less efficiently, in the country than elsewhere.

If a foreign country can supply us with a commodity cheaper than we ourselves
can make it, better buy it of them with some produce of our own industry,
employed in a way in which we have some advantage.\(^8\)

The theory of absolute advantage should motivate countries to pursue free trade
policies, for any tariffs or quotas in place to protect less efficient industry from foreign
competition, will only make it more expensive to import the needed products, when the
countries concentrate on producing the products where they possess an absolute
advantage. The other side of this would be that, if other countries had barriers in place
against your products, it would tend to negate some of the advantage and make your
product less competitive. According to the theory of absolute advantage, protectionist
measures such as tariffs (or even subsidies to less efficient industries), while protecting
certain producers, end up hurting the countries involved, since the efficiency strengths
that each possess cannot be exploited effectively.

Of course, there are countries that would not possess an absolute advantage in
any product. (One can imagine some of the poorer countries in today’s world being in
this situation.) They would tend not to benefit from trade in Smith’s conception, (except

\(^8\) Smith, *Wealth of Nations*, 313.
for necessary things they might not be able to acquire otherwise) and for these countries absolute advantage is not very useful. They could in fact benefit from putting in place protectionist measures. Smith also, interestingly, suggests that, it is worth deliberating on whether or not it is a good idea to rapidly move to free trade in areas that have been protected and are major sources of employment in a country.⁹

Comparative Advantage: David Ricardo

David Ricardo wrote *On the Principles of Political Economy and Taxation* in 1817. The book has many strengths and is considered one of the founding works of modern economics as a discipline. Its single most lasting contribution is the theory of “comparative advantage” in international trade. The theory was not entirely new, but Ricardo was the first to state it clearly and effectively detail how it would function. It builds upon Adam Smith’s theory of absolute competitive advantage, but it departs importantly in maintaining that, even in situations where a country has no absolute advantage in the production of any good, it can still specialize in production of the goods at which it is relatively more efficient at producing than the other goods it produces and gain a benefit in trade.

Ricardo works with the example of England and Portugal to describe how the comparative advantage functions.

If Portugal had no commercial connection with other countries, instead of employing a great part of her capital and industry in the production of wines, with which she purchases for her own use the cloth and hardware of other

countries, she would be obliged to devote a part of that capital to the manufacture of those commodities, which she would thus obtain probably inferior in quality as well as quantity.10

Ricardo uses the example of cloth and wine, both of which are produced more efficiently in Portugal than in England. In this example Ricardo considers only labor but in theory it works even considering other factors of production. England requires the labor of 100 men for a year to produce a unit of cloth and the labor of 120 men for a year to produce a unit of wine. Portugal requires the labor of 80 men for a year to produce a unit of wine and the labor of 90 men for a year to produce a unit of cloth. Portugal is more efficient than England, in absolute terms, in both cloth and wine. It takes more men to produce a unit of cloth in E than it does in P (100 vs. 80) and more to produce a unit of wine (120 vs. 90).

So, without specialization, these 390 men will produce 2 units of cloth and 2 of wine. But if England specializes in cloth, its 220 men will produce 2.2 units of cloth. (200 men produce 2 units. The extra 20 produces another 0.2.) If P specializes in wine, its 170 men will produce 2.125 (160 men will produce 2. The extra 10 will produce 10 x (1/80)). Clearly more of each product is produced via such specialization, so an exchange could be arranged that would benefit both countries.

And indeed, the free market will arrange such an exchange. Consider the situation of a British importer. Both cloth and wine are produced more efficiently in

Portugal than in Britain. Which should they import? Well, British importers will find it profitable to import wine from Portugal, where they need only exchange \( \frac{8}{9} \) units of cloth to obtain a unit of wine from Portugal (the exchange rate of cloth for wine in Portugal), but that wine that is equal to \( \frac{120}{100} = \frac{6}{5} \) units of cloth in England. That is to say, their outlay of \( \frac{8}{9} \) units of cloth gives them a product worth \( \frac{6}{5} \) units of cloth, a profit of \( \frac{\frac{6}{5} - \frac{8}{9}}{\frac{8}{9}} = 35\% \). (Transportation costs are ignored in the example.)

However, if they chose to import cloth, they would have had to pay \( \frac{9}{8} \) units of wine to the Portuguese to get a unit of cloth (since wine is easier to produce than cloth in Portugal), which is worth only \( \frac{5}{6} \) units of wine in England. That is to say, they would lose money.

So British importers will find it profitable to import wine from Portugal, and, by parity of reasoning, Portuguese importers will find it profitable to import cloth from Britain. To import a unit of cloth, they need only pay \( \frac{5}{6} \) units of wine, but that cloth, in Portugal, is worth \( \frac{9}{8} \) units of wine. They too make a 35\% rate of profit (exactly the same rate as the British importer)—and would lose money trying to import wine.

We can see in Ricardo’s example, that specialization in the production of the most, relatively, efficiently produced product, and allowing Smith’s invisible hand to work its magic, works to the benefit of both countries. Thus, it would seem like it would be a terrible move for anyone concerned about poverty, to resist trade liberalization. Ricardo uses this very simplified example with only two products and two countries, but the theory scales with many products and many countries. Without much difficulty
economists can construct a much more complicated model embracing many products and many countries. However, in recent years there has been a growing concern that some of the conditions (particularly immobility of capital, but also to some extent labor mobility) necessary for comparative advantage to hold in international trade have diminished or disappeared. There is a large division over how to understand this. Some are convinced that this negates the case for free trade, others that comparative advantage does not hold, but that the case for free trade remains, and still others maintain that factor mobility in no way affects the validity of comparative advantage.\footnote{11}

Floating-Exchange-Rate Free Trade: Milton Friedman

Milton Friedman supports free market economics in almost all situations. He argues his case on the basis of the value of freedom and efficiency. The two efficiency concerns are; one, determining what consumers actually want, and two, providing incentives to producers to satisfy those wants, without wasting inputs. He also argues that economic freedom is an essential component of personal freedom. One cannot really be free if one is not free to dispose of one’s property in the manner in which one chooses for oneself. He also argues that inequality is a good thing. Wealthy people provide resources for innovation, a market for new products that, eventually become accessible to the general public, and a counterfoil to the concentration of political power in the hands of charismatic politicians.

\footnote{11} Ralph Gomory and Herman Daly for the first position, Jagdish Bhagwati for the second position and Milton Friedman assumes the third, but does not explicitly explain why.
Friedman’s ideas (along with the similar ideas of his one-time colleague at the University of Chicago, Friedrich von Hayek) were taken up by government leaders at the end of the 1970s and beginning of the 1980s, after spiking world energy costs contributed to economic slowdown and stagnation in the mid 1970s. They became the ruling ideas of the US and Britain, and the main ideological influence of international financial institutions, such as the IMF and the World Bank. The push to transform the General Agreement on Tariffs and Trade (GATT) into the World Trade Organization (WTO) was also animated by these same ideas.

Friedman’s position is actually more “radical” than those calling for global trade agreements that reduce trade barriers. He claims that, the best way to move to free trade is to unilaterally drop one’s own tariffs, regardless of what others do.

Given that we should move to free trade, how should we do so? The method we have tried to adopt is reciprocal negotiation of tariff reductions with other countries. This seems to me the wrong procedure. In the first place it ensures a slow pace. He who moves fastest moves alone. In the second place it fosters an erroneous view of the basic problem. It makes it appear as if tariffs help the country imposing them but hurt other countries, as if when we reduce a tariff we give up something good and should get something in return in the form of a reduction of tariffs imposed by other countries. In truth the situation is quite different. Our tariffs hurt us as well as other countries. We would be benefited by dispensing with our tariffs even if other countries did not. We would of course be benefited even more if they reduced theirs but our benefiting does not require that they reduce theirs.12

Friedman admits there may be exceptions to this but, apart from a very few genuine national security concerns (like trade in weapons), he dismisses them as largely theoretical, and of little practical importance.  

For Friedman, a major concern in international trade is international currency convertibility. He argued forcefully that a free-floating, market-based currency exchange rate would be preferable to the international system of fixed exchange rates in effect at the time. He provides an example of why a fixed-rate system of currency exchange is problematic, and in the long term, unsustainable in international trade.

Suppose for simplicity that Japan and the US are the only two countries involved in trade and at some exchange rate, say 1000 yen to the dollar, Japan could produce every single item capable of entering into foreign trade more cheaply than the U.S. At that exchange rate the Japanese could sell much to us, we nothing to them. Suppose we pay them in paper dollars. What would the Japanese exporters do with the dollars? They cannot eat them, wear them or live in them. If they were willing simply to hold them, then the printing industry printing the dollar bills would be a magnificent export industry. Its output would enable us all to have the good things of life provided nearly free by the Japanese.

Friedman argues that this sort of situation is unsustainable, because no one in Japan would choose to buy a dollar with 1000 yen, when a 1000 yen could be used to purchase more of everything than a dollar could. The exporter would need to sell his

13 Friedman, Capitalism and Freedom, 83.

14 During the post–war, fixed-exchange-rate period, protectionists argued their case by warning that without such measures, we would soon lose all our jobs to low-wage parts of the world (like Japan at the time). His example is meant to show that this cannot happen if exchange rates are market-determined, not government-determined.

15 Friedman, Capitalism and Freedom, 65.
dollars for yen, in order to pay his workers, and other for Japanese inputs to produce his export goods, but no one would want to give up yen for dollars, at a price where everything you could buy with a dollar could be purchased more cheaply with 1000 yen. Nothing produced by the US and available for purchase with dollars is competitive in price, with anything produced in Japan and available for purchase in yen. You would always be able to buy more of a product with 1000 yen in Japan than you could buy of the same product with 1 dollar in the US.

Friedman argues that if we are going to be able to access the benefits of free international trade, currencies must be allowed to be bought and sold in a free market without price controls, so that the price reflects the value of what can be bought with it. The exchange rate between any two given currencies, will naturally balance at a level where some products are a better value purchased with each of the currencies, because if there is nothing that would make it worthwhile to sell some of your currency to purchase the other, no currency would be exchanged. For example if there was nothing that holders of yen wanted to purchase with dollars at a particular price, then no yen would be sold for dollars, until those holding dollars offered a low enough price, that there were things that could be bought at a better price with dollars. (If the value of the dollar dropped to, say, 500y, then 1000y would buy $2 worth of American goods, twice as much as it would before.) The argument is simply an application of supply and demand.
A key point Friedman makes is that this argument in no way depends on the incomes or standards of living of the workers in the countries. Friedman says that if the workers in one country, under this system, have a lower standard of living than in another, this is the result of them being less productive than the workers in the better off countries. Friedman uses the (perhaps reasonable at that time) example of US workers being on average four times more productive than the Japanese worker, as a result of factors such as training, and access to capital and land (resources or raw materials). He explains that it would not be a wise use of resources for US workers to produce any product where their efficiency of production is below the average. They would be most productively employed, producing things they were more than four times as productive at producing, and importing those things they would produce less efficiently, from Japan. Friedman’s explanation is taking into account both Smith’s theory of absolute advantage, and Ricardo’s comparative advantage. It would apply whether there were some things the Japanese worker produced more efficiently than the American worker or not, as it would be advantageous to produce whatever could be produced relatively more efficiently, and trade for those things that could only be produced less efficiently, even if the Japanese worker in the example produced everything less efficiently than the US worker. Regardless of the absolute productivity of each side in the exchange, both countries in the example could enjoy a greater quantity of products (produced with the same quantity of inputs) by specializing where they have an advantage.
Ricardo’s theory, invoking hours of labor as the cost of production, implicitly assumes, given the gold standard of his time, that wages are equal in both countries. Friedman shows that free international trade needs to be accompanied by a free international market for money in the contemporary environment, where a better understanding of macroeconomics and monetary policy had convinced mainstream economists that a gold standard for currency was problematic and likely impossible to sustain. Friedman’s argument for free international trade is based on both the claimed efficiency of free markets compared to government direction, manipulation or intervention in the economy and also the theory of comparative advantage which can lead to a better material lifestyle for all countries concerned.

Friedman’s arguments, in general, are focussed only on the ability to produce efficiently the greatest quantity of what is needed in an economy. His prescription is the same for rich and poor countries alike: unrestricted free trade. He does not address the question of inter-state inequality. As noted above, he does not feel that inequality is an important domestic concern. In fact, he argues, it has certain positive benefits.\footnote{Friedman is strongly opposed to any attempts by government to redistribute wealth via progressive taxation, though he does allow that a negative-income-tax safety net is justified, on the grounds that large numbers of impoverished people constitute a negative “neighborhood effect.” As he puts it, it is acceptable for top 90% of us to tax ourselves to aid the bottom 10%, but it \emph{not} acceptable for the bottom 90% to tax the upper 10% at a higher rate so as to decrease their (the 90%) tax burdens. (See \textit{Capitalism and Freedom}, Chapter X and XII.)}

Friedman, as a self-professed classical liberal, agrees that any harm one party does to another in the productive process, unless agreed to by both parties, is problematic. Such externalities, called by him “neighborhood effects,” do permit, in
some circumstances, government intervention. He does not discuss externalities connected to international trade, but his insistence that government intervention itself generates negative externalities would likely make him wary of international agreements that impose, or sanction restrictions on free trade.

Globalization as a Poverty-Reduction Strategy: Jagdish Bhagwati

Jagdish Bhagwati, whose background is that of a development economist from India, a poorer developing economy, takes a strong normative position supporting the free trade model for international trade as a means of addressing the concern for alleviating extreme poverty.

Bhagwati, coming from a country where extreme poverty has been a large long term problem, believes that unrestricted free trade and removal of barriers to international trade are the most appropriate solutions to this problem. He argues that those who protest against free trade, the WTO and rapidly increasing globalization are wrong-headed, for their policy proposals (to the extent that they have any) would actually harm the poor.

Bhagwati starts his argument with the claim, “trade enhances growth, and growth reduces poverty.”\(^{17}\) The claim that trade enhances growth is reasonably non-

controversial, especially if growth is being measured strictly as increasing GDP (although the World Bank claims this is the case even using the UN Quality of Life Index).\(^{18}\)

The second part of Bhagwati’s claim is based on his support for the “trickle down” theory of distribution in economics. He definitely supports “trickle down” economics, claiming that he has researched and found that internationally across countries in very different political and economic situations, there is very little difference in the pattern of the distribution of wealth.\(^{19}\)

Countries seemed to have somewhat similar income distributions regardless of their political and economic cast. So the primary inference I made was that if there was no way to significantly affect the share of the pie going to the bottom 30 percent, the most important thing was to grow the pie.

In this view, growth was not a passive trickle down strategy for helping the poor. It was an active pull-up strategy instead.\(^{20}\)

Bhagwati makes the claim that for India “trickle down” was an active strategy for poverty reduction, in the sense that believing they could not achieve a more equal distribution of resources, they have been trying to increase the total productiveness of the Indian economy, so that even the smallest relative share of it would be larger.

Adopting “trickle down” as a strategy of poverty reduction means that Bhagwati makes reducing poverty a much higher value than reducing or limiting inequality. In fact


\(^{19}\) “Trickle Down” economics is the idea that making the rich richer is an effective way of fighting poverty.

\(^{20}\) Bhagwati. *In Defense*, 54.
Bhagwati’s position is that, inequality is not an important concern in international economics and development. In fact, he considers the efforts of the World Bank to measure inequality within societies, to be silly.

And this lunacy—how else can one describe it?—extends to what the World Bank, with its abundance of economists aid funds, has been doing in recent years, which is to put all households of the world onto one chart to measure inequality of incomes.21

It is pretty much necessary that he take this position on inequality if he is to endorse “trickle down” economics as a poverty reduction strategy. Indeed, I think that a cogent argument could be made that relative inequality is less important than assuring that everyone has their basic needs satisfied. Singer supports this position (that relative inequality is more acceptable than extreme poverty, not trickle-down). Rawls allows inequality (but doesn’t explicitly support trickle-down) in his influential Theory of Justice, if it improves the position of the worst off.22

Bhagwati does address the issue of externalities, at fairly serious length, in his support for a free market model of international trade. His argument takes three different approaches to addressing the concern. While Bhagwati accepts that, there are many concerns expressed by critics of globalization regarding labor exploitation and the social or cultural costs of international competition for labor, his strategy in this


22 Rawls, A Theory. Rawls specifically limits his principles of justice in A Theory of Justice to within a particular economy. This makes sense in relation Bhagwati’s discussion of trickle down and inequality in the Indian economy, but Rawls would not support their application to relations between states as he states clearly in Law of Peoples.
situation is to point out that, those expressing the concern are largely mistaken about
the costs, or misunderstand the true causes of the problems.\textsuperscript{23} His position on many of
the social and human rights costs of the externalities is that, they would be worse
without the removal of barriers to trade, and that increasing trade is actually the
solution, to many of the problems people who are against a self-regulating free market
for international trade, cite as evidence in their support.

Bhagwati takes the position that the problem of externalities in the free market
model of international trade, is generally, not a concern that affects the viability of the
model very strongly, since most of the issues are either misunderstood, misrepresented
or far outweighed by the benefits achieved by the model.

An example of this would be his dismissal of the problems for women that have
been pointed out by anti-globalization activists. Bhagwati takes on the concerns for the
rights of women workers in Export Processing Zones (EPZs).\textsuperscript{24} Bhagwati doesn’t cite
particular sources, but explains that many authors have claimed that young women are
exploited as laborers in these zones, for low wages, in often problematic working
conditions.\textsuperscript{25} He argues that the reality is that, in these situations, these women are

\textsuperscript{23} Bhagwati, \textit{In Defense}, 82.

\textsuperscript{24} An Export Processing Zone is an area usually around a port or adjacent to a border where special
tariff/taxation rules apply, incentives to establish businesses funded by foreign capital are provided, and
in some cases special environmental and/ or labor laws have been put in place to encourage foreign
producers to locate facilities there that produce goods for export markets. For example the
“Maquiladora” Zones in Northern Mexico, where goods and materials can be imported, processed and
exported again without paying tariffs unless they are marketed in Mexico.

\textsuperscript{25} Bhagwati doesn’t cite sources but it is easy to find a variety of sources for this claim, including Klein,
Naomi Klein’s \textit{No Logo} (1999) and Iris Young’s \textit{Global Challenges}, 165-167.
almost always better off than they would be without the option of working in the EPZ industries, and in fact, are normally better off than the standard for labor in the country.\textsuperscript{26} In the case of the very high rate of crime against women in the Mexican Maquiladora zones near the border with the U.S. Bhagwati argues that this is really not a factor associated with the EPZ but rather a background factor which just happens to coincide with the area.\textsuperscript{27}

Bhagwati takes the same sort of position regarding the concern that the WTO ignores issues of environmental and animal welfare. He argues that, most of the environmental concerns are overstated or unproven, and explains that environmental issues are generally not a focus of concern for trade economists.

The environmentalists tend to value the environment over income, whereas trade (and other) economists conventionally tend to value income over environment.

...In fact whereas environmentalists often disdain markets, prescriptions such as the regulatory imposition of “polluter pay” taxes amount to nothing more than demands to create the missing markets.\textsuperscript{28}

He suggests the reality is that, what environmentalists actually want is best achieved, by ensuring environmental values are included in the calculation of costs of doing business. In fact, his position is not so far from Singer’s in the end: that the issue of externalities in international trade is one where, because of weaknesses in the

\textsuperscript{26} Bhagwati, \textit{In Defense}, 83-84.

\textsuperscript{27} In fact the explosion of violent crime accompanying the unofficial move of the Mexican government from quietly permitting specific groups to operate, to a war on drugs seems to corroborate Bhagwati’s position.

\textsuperscript{28} Bhagwati, \textit{In Defense}, 136-137.
international law, the control over the ability of producers to externalize costs in international trade, is much weaker than within territorial states. The most effective approach is to ensure environmental values are effectively assigned value in trade. Bhagwati admits there are some issues with externalities in international trade, but he feels that the value of an unrestricted free trade model for international trade is so strong for alleviating poverty in countries such as India, that these externalities, which he sees as exaggerated, are worth tolerating.  

In summary, Bhagwati argues that the case in favor of the free-trade model for international trade, is both very strong and fairly clear. His position can be understood as being that, free trade promotes economic growth much more effectively than any other trade regime, that economic growth is the only way to effectively fight poverty, and that any of the downsides, such as inequality, or environmental, cultural and human rights concerns are either, not really true, or are heavily outweighed by the benefits of economic growth.

**Critiques of the Free Trade Model**

The self-regulating free market model for international trade has more than two centuries of support, starting with Adam Smith, and has been shown to be a model that in general produces economic growth. However, it has also raised a variety concerns,

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even for ideal situations—and ideal free market conditions have never been achieved, and may well be unachievable.\(^\text{31}\)

In opposition to the free market model stands protectionism. “Protectionism” actually describes several orientations to trade, ranging from isolationism to expansively nationalistic mercantilist and strategic tariff models, and also includes several prominent economic development strategies. The protectionist model was, in the early stages of capitalism, the traditional model for international trade, but protectionism as economic theory (not always as a practice) has been out of fashion for more than thirty years, and economists who supported it have until very recently been considered cranks or backwards socialist holdovers. Recently, however, there has been new support for some sorts of protectionism, mostly in the form of critiques of the efficiency and real sustainability of the free trade model.

One of the key issues with the free-market model is that market solutions tend to create inequality. Those that advocate them have often admitted this, such as Bhagwati who simply dismisses inequality as a problem, or Friedman, who suggests methods for easing the situation for those in the home country who are inevitably less successful in competition. While the economic-growth aspect is important, there are many who regard inequality \textit{per se} a serious issue both within societies and between

\(^{31}\) For example Polanyi, in \textit{The Great Transformation}, argues the economic problems created by the self-regulating market tend to become unbearable for some portions of society, so that governments are forced to intercede before social tensions tear the society apart.
states on the international stage, which indicates that it might be worth considering other options.

Bhagwati’s dismissal of inequality as an important issue in economic justice is problematic. While his position, can derive support from the idea that satisfying basic needs is more important than equality, it seems clear that if it was possible to supply basic needs without worsening the problems associated with very pronounced inequalities, there would be a strong obligation to choose that other option as being much more just than “trickle-down” economics.  

A justice concern when considering the free-trade model, (is actually brought up by Bhagwati, when he argues that effective participation for the poor in democratic systems is an important factor for alleviating poverty and ensuring their voices are heard so their needs can be met.

But the ability of the poor to access the growth process and to share in the prosperity depends at least as much on their ability to get their voices heard in the political process. Without a voice, it is highly unlikely they will get appropriate and effective legislation.

He makes this argument for democratic participation and effective democratic structures as a tool in fighting poverty, almost at the same time as he points out that the democratic structure of the WTO is heavily undermined by disparities of wealth and power.

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32 There are some prominent economists, among them Nobel-laureate Joseph Stiglitz who argue that trickle-down economics has been strongly and repeatedly discredited. We will examine Stiglitz in some detail below.

33 Bhagwati, In Defense, 58.
The United States is protected only by its size and its ability as a hegemon to browbeat other nation-states into not passing such legislation. But that leaves a gaping incoherence and cynicism in the world at the inherent asymmetry and injustice of a WTO Dispute Settlement Mechanism that implicitly, even if perhaps unwittingly, favors the powerful.34

This would seem to be a serious inconsistency in his case, for he also argues that you can effectively fight poverty by increasing inequality.

Another concern about Bhagwati’s argument in support of the free-market model of international trade is that, in the end, his support is based almost completely on the idea that trade will increase GDP, and increasing GDP will alleviate poverty. It certainly is the case that increasing GDP may alleviate poverty (especially in the very weakest economies), but while increasing GDP may be necessary in alleviating poverty, it is not a foregone conclusion that simply increasing GDP will mean that more wealth is available to the most impoverished members of a society. Certainly, the most impoverished countries need their GDP to increase by many times to lift the poorest out of danger, if they retain their extremely unequal distributions of wealth. In fact it is often the case that, countries can create conditions that allow some to amass huge amounts of wealth, while the poorest seem to reap little benefit. (An example of this would be Mexico, which is a middle income country is the home of Carlos Slim, sometimes listed as the world’s richest man, but also a country of grinding poverty, which for many at the bottom has actually shifted very little since the 1980s.)

Comparative Advantage Is Likely False: Ralph Gomory

One of the strongest arguments for protectionism is put forward by economist Ralph Gomory, research professor at Stern School of Business at New York University, and President of the Alfred P Sloan Foundation 1989-2007, who argues effectively that, a complete focus on free trade is not in the national interest of wealthy developed countries. Gomory argues that the theory of comparative advantage has some serious problems when applied to real world economies.

The first problem pointed out by Gomory is that comparative advantage will only function to the extent that all countries involved in the trade, be it bilateral or complex and multilateral, possess a comparative advantage, in some trade good for which there is sufficient demand to support the goods they will import.\(^3\) This is important for the US, as Gomory points out, where this is not currently the case, with manufactured goods being imported from countries with cheap labor. Gomory argued, in *Global Trade and Conflicting National Interests* (2000), that it seemed impossible that the workers of the US and other developed wealthy economies, could continue to create 10 to 100 times more value per unit of labor-input, than countries such as China. And that it is likely to be difficult in the long run, to export enough of anything, to countries with labor costs 10 to 100 times lower, to be able to pay for imports at our current level of

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consumption. He claimed that it would likely lead to a levelling down of standard of
living, in the long term.

Ten years later Gomory is no longer suggesting this as a mere possibility. He now
arguesthathas happened. There is no way produce anything that has demand as an
export comparable with the level of imports, and that our imports are now basically
being paid for with IOUs in the form of Treasury Bills.36

It should be recalled that paying for imports with pieces of paper, is exactly what
Milton Friedman suggested would be a great export industry, if it were possible. Of
course Friedman claimed it wouldn’t be possible. Gomory agrees the practice is
ultimately unsustainable, but argues that, it will drain the resources of the countries
practicing it during the time it is being practiced.37 Friedman claimed that, it wouldn’t be
possible, and the reality is that he was right. Although the Treasury Bill “IOUs” are, in
one sense, just pieces of paper, the reason they are accepted in trade, when we
produce nothing now that the Chinese want to buy from us, is that they could be used
to buy assets in the US comprised of the wealth that has been accumulated over the last
two centuries. The Chinese don’t want much that we produce now, (We might earn
some exchange selling designs of some high technology items to them, but they don’t


37 Canada is also doing this with China and paying for it in Canadian Treasury Bills which are being put to
use in buying rights to resource extraction in Canada—particularly the oil sands reserves in Alberta, a case
I plan to look at in some depth.
need to buy them since they get them when those items are produced in Chinese
factories anyway) but considerable wealth is held in the US in the form of financial
capital, resources and real estate. For the time being Treasury Bills are still attractive, as
they are supported by the accumulated wealth of the US economy. It is a lot of wealth
but it is not infinite, and a huge amount has already been traded off. When it is gone the
trade in pieces of paper for imported manufactured goods will be over.

Each year we make up for the year’s huge trade deficit, not by shipping gold, but
by shipping IOU’s: treasury bills which are essentially promises to pay later. As
Warren Buffet puts it, “we are selling the nation out from under us.” When we
come to pay this enormous accumulation later we will then be poor indeed.38

Related to the concern for the problems with the theory of comparative
advantage, but also an important issue on its own, is the problem of speculative flows of
international capital. International capital speculation may interfere with assumptions
of the theory of comparative advantage (which presumes capital and labor to be
confined within national borders) and has created massive instability in international
economics. While free flows of capital may benefit those who are in a position to
speculate, the instability can damage an economy by producing recessionary
unemployment. Even Bhagwati, who is a strong advocate of the free-trade model, is

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38 Gomory, Ralph. “Manufacturing and the Limits of Comparative Advantage,” Huffington Post
Oct. 2012). The Warren Buffet quote can be found in the Fortune magazine archives:
Friedman argues that without the ability for currency to flow freely between countries the free market model is not sustainable. In *Capitalism and Freedom*, he does not explicitly equate a free market for currency with a free market for capital. (He only discusses the money necessary to pay for goods.) However in practice the two are difficult to separate, and policy that began with the General Agreement on Tariffs and Trade (GATT, predecessor of the WTO) and has continued into the WTO, requires members to make commitments to liberalizing or deregulating financial services within their countries.

Another serious problem with the free-trade model is the assumption of perpetual economic growth in competitive international capitalism and the reality of a world of limited resources, which will be examined in more detail later in the chapter.

The Development of Underdevelopment: Andre Gunder Frank

Free Trade has gained such overwhelming support from economists in recent years, that it is considered shocking when a prominent mainstream economist steps out of the orthodox dogma and questions the assumptions of free trade. Princeton economist Alan Blinder is quoted in the Wall Street Journal:

> Like 99% of economists since the days of Adam Smith, I am a free trader down to my toes.” [However this is shifting to some extent.] Mr. Blinder has changed his

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message -- helping lead a growing band of economists and policy makers who say the downsides of trade in today’s economy are deeper than they once realized.\footnote{As reported in \textit{The Wall Street Journal}, Wednesday 28 March 2007, page A1, in “Pain from Free Trade Spurs Second Thoughts.”}

However, in the immediate post-war period, characterized by decolonization and the rise of independent countries in what was then called the “Third World,” alternative development strategies were often proposed that involved a degree of protectionism. Infant Industry Protection and Import Substitution are closely related models for economic development that, rely on protectionist approaches to international trade. In general, the difference can be understood as, Infant Industry Protection being a targeted protectionism, that allows specific, selected industries to develop behind a protective curtain of tariffs, while Import Substitution is a more generalized effort to make imported products more expensive than domestically produced products across an economy, so that, the domestic industries will develop to produce goods that, were once generally imported.\footnote{An interesting difference is that Infant Industry Protection is almost always a direct-tariff-based policy choice whereas Import Substitution can sometimes be the accidental effect of currency exchange values and international economic conditions. The latter occurred in Mexico starting in the 1930s when devaluation of the peso created an Import Substitution effect that was so positive for most Mexicans from lower and mid income brackets that it was supported by protectionist policy until the end of the 1970s. Canada also experiences this effect when the US dollar climbs to the point that US imports increase strongly in price over an extended period.}

Infant Industry Protection and Import Substitution models of development have two different branches of argument supporting them. The first branch argues that, creating a protected environment where competition with external competitors is
avoided, is an effective way of producing industries that will eventually be international competitive and able to survive without protection, developing an economy that will eventually no longer need protection. The idea here is that, an economic development strategy can be (and has been) used to build poorer underdeveloped economies into wealthy developed countries.

The second branch is more focussed on economic justice for the citizens of the country adopting the policy. It holds that, Import Substitution can be used to foster the growth of industries that will provide high quality employment and good quality of life to the citizens of a country, where most citizens are currently locked into low-skilled, low-paying agriculture and unskilled urban labor employment. Changing this situation is difficult, not only because it is difficult for new start-ups in industry to compete internationally, but also because international competitors have little interest in losing the market they have in that country to domestic competition, and will arrange to slow it as much as is in their power. The focus here is not completely separate from the first position, but it has a much stronger focus on economic justice for citizens.

Andre Gunder Frank has taken an even stronger line regarding this situation. “Underdevelopment,” he argues, is not a static condition from which poor countries have not yet emerged, but is the result of what he calls the “Development of Underdevelopment.”42 The development of underdevelopment is understood as the

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situation, which was in many ways an extension of colonialism, whereby wealthy developed countries created an economic relationship with poor countries, through control over terms-of-trade and control of investment in developing country economies. Developing countries thus developed only in ways that tended to profit the wealthy developed countries, which were able to use the underdeveloped countries as sources of inexpensive raw materials and markets for manufactured goods.

Gunder Frank has argued that it is possible to circumvent this exploitative relationship by cutting off the unequal trade relationship, and focussing on using the countries own resources to satisfy domestic needs and wants that had been previously satisfied by imports, paid for by exporting raw materials.

This argument for Import Substitution protectionism has a strong moral character. The argument in Development of Underdevelopment is that, the underdevelopment of many poor country economies is no accident, but is a result of terms of trade and investment policies of developed countries.

Joseph Stiglitz, ex–White House and World Bank chief economist, and Nobel Laureate in economics, makes the same point (the idea that underdevelopment is planned rather than accidental) when discussing the situation of Korea in the 1960s. International economic advisors and the IMF suggested that the best course for Korea would be to focus on rice agriculture where they possessed a comparative or even absolute advantage.\textsuperscript{43} The Korean government resisted this, because the rate of return

on labor for rice is so much less than for industrial manufactured goods that even very successful rice farming meant poverty for those working in the industry. (Luckily for Korea, it was an important ally during the Cold War period, and was thus supported by the United States in its quest for industrial development, which has, in fact, been stunning.)

The argument for Import Substitution, in the case of Gunder Frank’s “development of underdevelopment,” is a protectionist position on international trade for developing countries, taken on the basis that wealthy developed countries are generally using their wealth and power to create conditions, (terms of trade) that contribute to the underdevelopment of many poor country economies. Import Substitution is often dismissed by many development economists, (such as Bhagwati) because it seems to ignore the efficiencies (and ability to increase everyone’s material well being) provided by comparative advantage. However, Gunder Frank and others who support the theory of Import Substitution, do not generally ignore Comparative Advantage (although some do), but rather judge that the unfair unequal exchange that results from promoting international trade under less than ideal conditions, created by the bargaining power wealthy developed countries have over less developed countries, negates the benefits of it.

Stiglitz, who is very concerned about global social justice, has pointed out that for many countries, particularly in Latin America, the “post-reform” period after import-substitution industrialization policies were discarded in favor of Washington-Consensus-
style free markets and trade liberalization, has in many cases seen less consistent economic growth, and what growth that has occurred has mostly accrued to the wealthiest 10% of Latin American societies.

Indeed, at this juncture, the growth record of the so-called post-reform era looks no better, and in some countries much worse, than in the widely criticized import-substitution period of the 1950s and 1960s when Latin countries tried to industrialize by discouraging imports. Indeed, reform critics point out that the burst of growth in the early 1990s was little more than a “catch-up” that did not even make up for the lost decade of the 1980s.44

**Free Trade and a Race to the Bottom: Joseph Stiglitz**

Joseph Stiglitz also suggests that there is almost certainly another strong argument for some form of protectionism in international trade, or at least the need to take a close look at how trade is regulated. He suggests that international wage competition, based on the fact capital and resources are generally free to move wherever the cheapest labor can be found, while labor is generally bound by the frontiers of territorial states, is leading to a situation where wages for labor are becoming a lower and lower share of the global economy, with the share of the very rich who hold capital ever increasing.45 Since wage earners must spend a much higher percentage of their income just to live day to day than the very rich, increasing concentration of income in the hands of those who are already wealthy, means that

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there is a strong possibility of a reduction in global aggregate effective demand. According to Stiglitz, this can lead to stagnation in economies around the world, if there is no strategy to address it.

In fact, Stiglitz blames the trend towards international labor competition, and hence the reduced aggregate demand, for contributing to the type of monetary policy that led to the 2007-8 financial crisis. Basically his claim is that the strategy was to increase US aggregate demand, by using credit to replace the money many people no longer had, due to the shift to international sources of labor, such as China.

The problem that Keynes recognized was that wages can be too flexible. Indeed, when wages fall, people’s income falls and their ability to demand goods falls as well. Lack of aggregate demand was the problem with the Great Depression, just as lack of aggregate demand is the problem today. 46

Economists such as Stiglitz understand this to be a problem, but the dominant paradigm in economics, beginning in the 1970s, and continuing strong today, has been “supply–side economics,” which focuses on the supply side of the market equation, and how to make the factors of production come together in the most efficient manner. Supply-side economics takes the demand side of the supply-and-demand operation of markets for granted, assuming that if the supply side is functioning as efficiently as possible, there will be sufficient demand for products at a high enough price level to support their production. 47


The concern for those that disagree with supply-side economics is that, if it is the case that international competition on wages tends to bring down the proportion of the value of the economy paid out in wages on a general global scale, we may well be looking at a situation where decreasing effective demand on the part of consumers globally, leads to economic stagnation, and even a global recession.

Environmental and Ecological Economics Critiques

Environmental Economics and Ecological Economics have both become important areas of international economics and trade. The ideas of both are becoming increasingly involved in international environmental and economic discourse, particularly since the Brundtland Commission (World Commission on the Environment and Development) report to the United Nations.48

The Brundtland Commission report was the first official, extensive, description of the links between international trade and environmental problems. The concept of sustainable development comes into common use and is defined in the report. Some of the key concerns noted were the connections between protectionism on the part of industrialized countries against manufactured goods coming from less developed countries, and the need for the least developed countries to sell mineral and energy

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doesn’t consider the demand side to be magic. Rather, the argument is that the cost of the factors of production, paid in wages and to holders of resources, will put money in the hands of consumers.

resources to generate foreign exchange. This is accompanied by an increasing shift from the use of domestic energy and non-renewable resources, to the use of imported energy and non-renewable resources in wealthy developed countries. The problem was that developing countries, which were relying on exports of non-renewable resources, were often doing so, at the expense of environmental preservation, and maintaining a supply of resources for the future. The commission generally took the position that resource use was becoming less intensive per capita in developed countries, with increasing technological development, and that technology increases would likely ease some of the pressures on non-renewable resources caused by economic growth. An important understanding developed by the report, was that environmental concerns were not separable from concerns about trade and development, and that it is necessary to have effective cooperation on both, to address issues of poverty, as well as environmental degradation. Since the Brundtland Commission report, environmental issues have been an issue that arises consistently in international trade, although environmental concerns have often been more visible in protests against the WTO, than in its negotiating agenda.

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Environmental Economics and the Concerns of Resource Scarcity and Environmental Degradation

Environmental economics is considered a separate field from ecological economics, and they approach environmental issues with very different perspectives. In general, environmental economics is a branch of conventional neoclassical economics, which applies the tools and paradigms of neoclassical economics to environmental issues. There are two broad areas Environmental Economics addresses, which are relevant for considering the environmental/ecological concerns for justice in international trade. The areas are usually considered to be resource scarcity, questions about the long term supply of productive resources, and the concern over environmental degradation, pollution and destruction, or damage to desired features of the natural environment.

Concerns about the environment and the resources necessary to maintain a productive economy, capable of satisfying the needs and wants of human beings, are almost as old as the field of economics itself. Thomas Malthus, a contemporary and friend of David Ricardo, wrote *An Essay on the Principle of Population*\(^{50}\) in 1798, which was famously concerned with the different growth rates of human population and human capacity to produce food. He suggested limits on population growth would be required soon, or catastrophic shortages of food would arise. He based his argument on

the idea that, because usable agricultural land was limited (with the best land already in use), there would be diminishing marginal returns to investment in agricultural production. Humans would put more labor and capital into farming, but as the extent of land was limited, this would bring less and less improvement, as the available land was used more intensively (the idea being that beyond a certain point adding more plows and laborers will not increase the yield much on a specific acreage of land).

In the period after the Second World War, the 1950s and early 1960s, there was considerable interest in the academic community, in the harm the massive industrial development occurring in wealthy industrial economies was causing in the environment. Both the concerns regarding possible depletion or impending scarcity of resources, and about pollution and environmental degradation were of interest.

In the area of depletion of resources, the findings of Harold Barnett and Chandler Morse have become an important foundation of environmental economics. Barnett and Morse were interested in the question of whether or not the basic idea of Malthus’ concern for scarcity of natural resources was testable. They understood scarcity in the sense of economic scarcity in a market. They considered, if resources were becoming increasingly scarce, they should be able to see the evidence of increasing scarcity, in a historical rise in prices over time, the idea being that, if

51 There was considerable pollution and degradation observable by this point, more in fact than is visible now in wealthy developed countries. Popular interest in environmental issues, followed academic interest for the most part.

resources were becoming scarce, the cost of extracting the resources and getting them to market should be increasing over time. They examined a wide variety of resources, including agricultural products, lumber, metals, minerals, petroleum and coal from the 1860s to the 1960s. They found the costs for bringing resources to market had decreased rather than increased. They thus claim that the hypothesis of increasing resource scarcity, made by Malthus, seems to fail, as what they found was increasing, rather than diminishing, returns to resource production. It seemed as if, their research showed resources becoming economically more plentiful. They also checked the cost of resource production against other types of production, to control for technology improvements, and found resource production costs were decreasing even in relation to other types of production.

In *Scarcity and Growth*, Barnett and Morse suggest that calls for conservation of natural resources were not the correct approach to ensuring the future viability of the economy. In fact, they claimed it would have a perverse effect, as it would stifle innovation. They argued that, natural resources were a less important component of the assets that we should pass to future generations than the technological development, knowledge and capital, which would lead to substitution of new resources, and would more than make up for any depletion of specific natural resources. Their findings, and the position they developed from them, have become the supporting basis for the conception of unlimited economic growth.
The concern for managing harmful pollution and environmental degradation also has a long history in economic thought. A.C. Pigou is credited with being the first economist to work on the problem of what we now call externalities. In *The Economics of Welfare*, Pigou was concerned with what he called uncompensated services or disservices, experienced by third parties to economic transactions. These were costs or benefits of producing a good or service that were not paid (or compensation received for) by the supplier of a good or service in a market transaction. Pigou accounted for them with a figure he called social net product, which was an expression of the actual benefit of production of any good or service for society, including these uncompensated services and disservices. Uncompensated disservices would lower the “social net product”, and uncompensated services would have the opposite effect. He included the effects of pollution, and other problems caused by production, on others in the environment where it was produced. His solution was for the government to regulate or tax these uncompensated disservices, so as to force the producer to pay the social net cost or refrain from producing the uncompensated disservices. The idea eventually became known as internalizing externalities.

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In 1960, Ronald Coase took Pigou’s idea of the uncompensated 3rd party disservice, known as a negative externality, and applied his concern for achieving maximum efficiency in use of economic resources to the problem. Coase felt that much government regulation and many of the taxes directed at motivating producers to internalize negative externalities into their production costs, or restricting their productive activity to avoid them, are extremely inefficient, in the sense that they are almost never exactly geared to internalizing the accurate cost of the externality into production. Regulation may prohibit an activity altogether, when in fact, there is sufficient demand for the products, that the cost of the negative externality could be included in the production costs, (the damage paid for) and the process would still be profitable. A tax would often be inaccurate in relation to the actual cost of the externality, which might vary from case to case. And if the cost of the tax was too high, it could stop productive activity from occurring in cases where the actual cost of internalizing was less than the tax (but the tax was enough to make it unprofitable). On the other hand if the tax was too low, uncompensated harm would still be generated from the activity (this is the situation when companies consider the fines they get for breaking regulations to be a cost of doing business). In each of these situations there is inefficiency occurring, because either usable resources are not being used in production, or there are harms occurring that are not being compensated for. Coase took the position that the best way to address this efficiently was to give someone the property rights to whatever was being harmed. In Coase’s first example, it is the harm caused
when the cows belonging to a rancher whose property is adjacent to a farmer, wander onto the farmer’s property and destroy the crops. Coase assumes wandering cows are unavoidable without a fence. The crops are obviously the property of the farmer, and he has a legal right to be compensated for the crops the cows destroy. If the rancher had no obligation to compensate the farmer, he would have no motivation to control the cows in any way. Since the crops destroyed belong to the farmer, and the rancher must compensate for their destruction, he must take the cost of doing so into consideration. If the cost of paying the damages is less than the cost of fencing the cows in, and less than his profit from raising the cows, he will compensate the farmer, and not build fencing. If the cost of fencing is less than compensating the farmer, and less than his profit from raising the cows, he will build a fence to keep the cows in. If the profit he will receive from raising the animals is less than the cost of fencing or compensating the farmer, he will decide not to raise cows.⁵⁶

This is a simplification, but illustrates Coase’s position on the efficiency of property rights over regulation. If there is simply a blanket regulation that cows be fenced to avoid damage to crops, it would in many cases be less efficient than the situation where the rancher must pay the costs incurred by the damage to the holder of the property rights. Regulation calling for fencing, would create a situation where the raising of cows was less efficient, because in many cases, fencing would have to be paid for even when it might be less expensive just to compensate the farmer, or the rancher

would abandon ranching altogether, if fencing was more expensive than the profit of raising the cows. Also in a situation where there was no property rights the rancher might elect just to pay the fine for not fencing and allowing the damage to occur, if the fine was less than the cost of fencing (and less than the expected profit).

Coase made the argument that assigning property rights was much more efficient than regulating or taxing, as it allowed the externality to be internalized as a market transaction, which would set the price of the use of the right, at the level of its utility to each of the parties. Interestingly, Coase takes the position that, as far as efficiency is concerned, it really doesn’t matter who owns the property right, whether the person who would experience the cost owns it, and the producer must compensate (or avoid the damage) the owner, or whether the producer owns the right, and the person who experiences the harm decides to pay the holder of the right not to use it. He explains it doesn’t matter for efficiency, if the farmer owns the property the crops grow on and the rancher must compensate or fence, or whether the rancher owns the right to have the cows wander, and the farmer must offer him enough compensation that he doesn’t use the right (fences or doesn’t raise cows). That it doesn’t matter for efficiency (a deal will be made according to the value of the right to both parties) is one thing, but it definitely ends up having a serious impact on distribution.

Coase’s position was very convincing for many neo-classical economists, and has become one of the foundations for environmental economics. It had a surge of popularity from the late 1990s until about 2010, in the form of a drive towards carbon
emissions trading. *The Tragedy of the Commons* by ecologist Garret Hardin in 1968, did quite a lot to focus Coase`s conception with respect to environmental issues. *The Problem of Social Cost* considers environmental issues only as they apply to specific harms to individuals, whereas Hardin`s *The Tragedy of the Commons* deals directly with the issue of overexploitation of natural resources.\textsuperscript{57} The actual tragedy of commons is Hardin`s explanation of the individual incentives to overexploit open access common resources, in a way that ends up harming the interests of all, in the long term. Hardin sees two ways to stop the incentive to overexploit: breaking the commons up with individual property rights or regulation by a central authority (similar to Coase vs. Pigou). In general those that favor market approaches have seized on the economic efficiency of the private property approach as being preferable because of its perceived efficiency. This is important for international trade, because the conception that free markets and growth are the best way to address poverty often carries with it the concern that, attempting central regulation of externalities breeds inefficiency.

In general, environmental economics, which applies the paradigms of orthodox neoclassical economics to environmental issues, has been the main, but not only, approach taken by international economic institutions to environmental issues and their relation to trade and development. This has meant that the assumption of unlimited

\textsuperscript{57} Much of Hardin`s work reflects a concern about human overpopulation. To get a sense of how his position on human overpopulation affects his views on global justice and extreme poverty, see: *Lifeboat Ethics: The Case Against Helping the Poor*. (The Garret Hardin Society) accessed at: http://www.garretthardinsociety.org/articles/art_lifeboat_ethics_case_against_helping_poor.html
economic growth (and unlimited resources) has often been applied to international trade. The application of the assumption of unlimited growth (and unlimited resources) to international trade, can lead to a lack of concern regarding whether, economic growth is based on the trade in non-renewable energy resources that involves serious externalities in the production process, and often promotes concentration of wealth in a few economically powerful and politically connected hands,\(^{58}\) or whether this is trade that uses resources efficiently, and creates wealth that is shared widely in the society.

**Herman Daly and the Ecological Economic Critique of Free Trade Model**

Herman Daly is an economist at the School of Public Policy of the University of Maryland. He was senior environmental economist at the World Bank from 1988 to 1994. It seems fair to say he was a voice of dissent during his time at the World Bank. Daly has been influential in making ecological economics into a recognized field of economics, he has made some serious critiques of orthodox economic thinking about problems of poverty and the environment, and he has a well thought out position on international trade and global economic integration. To simplify Daly’s position, his understanding of economics is different from orthodox neo-classical conceptions of economics, because Daly conceives the economy as existing inside the ecosystem that supports life on the planet, and considers the economy to be bounded, or limited by the ability of the earth’s ecosystem to provide the resources we need to survive and thrive.

\(^{58}\) An example of the first, is the Canadian oil and gas industry which has a production process with massive negative environmental externalities, some of which cause direct short term harm (health effects to some of the least powerful members of Canadian society (aboriginal people who live near the projects).
Daly believes there is a human carrying capacity for the planet, and that we must live within that, or like any other species, run out of resources.

Daly is very concerned about the concepts of economic growth and development. He argues that contemporary mainstream economists, neo-classical economists, in general use the terms growth and development interchangeably in economics, while they should in fact be separate concepts. Daly takes the position that we should understand economic growth as an increase in the overall size of the economy in relation to the ecosystem that contains it, or growth as increasing throughput of resources to produce more goods and services, while on the other hand, we should understand development, as improvements in process in the economy, that allow us to use resources more efficiently, producing more goods and services, without increasing the input of resources and output of waste. He argues that the idea of sustainable development has been co-opted into the phrase sustainable growth. Daly critiques this because, it ignores the reality that economic growth is constrained by the limits of the environment. Growth achieved through increasing the throughput of resources is growth at the expense of the future. Daly argues that trickle-down theories of fighting poverty, which suggest that wealthy developed countries must focus on growth to support the growth of impoverished developing countries with markets, capital and technology, are problematic, because they assume unlimited growth. He
argues that the issue is, we do not actually know how big the subset of the economy can get inside the larger ecosystem before it cannot be sustained.\textsuperscript{59}

Daly considers that the assumption of unlimited growth, based on the assumption of infinite resources, illustrates some of the problems with the abstraction from the actual physical / historical economic world, and reliance on mathematical modelling that are features of neoclassical economics. He explains that models of the circular flow of the factors / resources of production in the economy contribute to this, showing raw materials, capital and labor flowing to producers, being transformed into products, and flowing back to the factor providers, in a continuing cycle, with only vague arrows leading in and out, connected to nothing. Daly explains that the flow of resources and counter flow of money, abstract from the fact that neither the resources input into the system, nor the products, actually move in a circular flow. Resources are input into the system, and are output as waste at various points. In no case, do high entropy wastes from the process ever actually substitute for new inputs of low entropy resources or energy in the cycle.\textsuperscript{60}

\textsuperscript{59} Daly, Herman. \textit{Beyond Growth} (Boston: Beacon Press, 1996)5-7.

\textsuperscript{60} Low entropy resources are resources, energy or raw materials which are structured in their usable state, examples include: oil, coal, or wood, or metals or minerals. They become high entropy (and are usually waste) through use in a production process. Complex hydrocarbon molecules are broken down into a variety of less complex compounds (such as CO2 and H2O) which are no longer a form usable for energy. Wood might not break down chemically, but its organized structure of linked cells is disassembled (cut), making it less usable as a structural material in building (without new inputs). Low entropy equals high structural organization. High entropy equals lower structural organization, or more disorganization of the structure.

In the case of recycling, high entropy wastes are input into the cycle again but are accompanied by low entropy energy. Most recycling is not very efficient ecologically (or economically much of the
There is much confusion about what, precisely, is supposed to grow as GNP grows. Many people speak of the “dematerialization of the economy” and the possibility that GNP can grow forever without encountering physical limits, because it is measured in value units rather than in physical units. [T]he notion that we can save the “growth forever” paradigm by dematerializing the economy, or “decoupling” it from resources, or substituting information for resources, is fantasy. We can surely eat lower on the food chain, but we cannot eat recipes.

Daly notes that, the infinite resources assumption is often maintained in orthodox economics, even though there is a growing understanding of the importance of resource use and environmental concerns among economists, because most poverty reduction and development schemes are tied to continuing unrestricted economic growth. He explains that, the usual argument in support of this assumption is the presentation of possibilities of technology, and resource substitutions, as a dynamic force, which constantly counters depletion and degradation. One flaw in this position is that, another low entropy resource is always substituted for a depleted low entropy resource, Daly explains that we never, under any circumstance, substitute high entropy

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61 Daly, *Beyond Growth*, 28.

62 The infinite resource assumption is a position that works with the assumption that there are no effective limits to economic growth, that economies can keep growing infinitely. The infinite resources assumption is the idea that resource availability will not be a limiting factor in economic growth because technology will always allow us to find substitutes when scarcity forces the price up enough to make it profitable to work on it. This is obviously to some extent true, this does happen, but also very obviously there are limits.
wastes for low entropy resources in net terms, and the pool of low entropy resources is finite and diminishing.\textsuperscript{63}

He explains that it is often claimed reproducible capital is a near-perfect substitute for resources. Daly argues that this makes no sense, for it assumes capital can be produced independently of resources, and is in opposition to the concept of the coordination of factors in production. Capital is a necessary component of transforming resources into products; it can’t substitute for fewer resources, except in a limited margin. Daly argues that the abstraction from actual economic activity in models, leads to the error of considering the problem of resources in economics to be a problem of human social ingenuity, which is basically limitless, rather than a problem of the laws of nature. He understands the problem of resource scarcity or depletion, as belonging exclusively to neither category, and that it requires consideration from both perspectives.

Daly’s critique of the free trade model of international trade is based on his concerns for ecological sustainability, and bringing economic practices in line with the carrying capacity of the environment, but he is also very concerned about other issues of justice such as inequality and poverty. Daly’s position is that free trade, and the economic growth it promises will not end poverty in the short term, and in the long term will make us all worse off. He does believe free trade may bring economic growth, but he feels that it will not benefit all, and the distribution will, for the most part, not

\textsuperscript{63} Daly, \textit{Beyond Growth}, 33.
take poverty reduction into account. He also believes that the focus on growth alone, rather than satisfying as many human needs as possible, will mean the resources used lavishly now, will not be available to satisfy human needs in the future, increasing poverty in the long term.

Daly makes note that free trade is the default position for almost all orthodox economists. He explains it is, for the most part, the unquestioned belief of economists that free trade is desirable and brings benefit to all. He notes that it was also his belief, and he required considerable accumulated evidence before abandoning it. He explains that, the reason that most economists hold this belief is their faith in the theory of comparative advantage.

**Daly’s Critique of Comparative Advantage**

In order to consider the possible benefits and costs of free trade, Daly suggests it is important to understand the theoretical assumptions it is based on. He explains that, absolute advantage is fairly simple and doesn’t take much explaining to make sense. He credits Adam Smith for first laying it out as a clear argument against mercantilism. Absolute advantage can be exemplified as a situation, where there are two countries, both producing cheese and oranges. Country 1 is much more efficient at producing oranges than country 2, and country 2 is much more efficient at producing cheese than country 1. They each have an absolute advantage in one of the products. And they could benefit by specializing in the product they are the best at producing, and trading for the product the other country produces more efficiently. Daly says no one needs an
economist to point this out, but he explains, David Ricardo’s theory of comparative advantage changes this because it means that you don’t have to be the most efficient producer of anything, to benefit from trade.

Daly breaks down how Comparative Advantage works, and uses an example of coal and wheat between two countries, country A and country B. Ricardo uses units of labor, but Daly uses a total inputs cost, which he calls unit cost. This makes sense, as the model has been shown to function similarly (assuming similar assumptions) even if other factors are included. The unit cost in Daly’s example is expressed as “a” and “b” for each of the countries.

Country A: requires 1a to produce a unit of coal (C), and 1a to produce a unit of wheat (W); it has a total of 2a (units of resources), and uses them to produce 1C and 1W

Country B: requires 1b to produce a unit of coal (C), and 4b to produce a unit of wheat (W); it has a total of 5b (units of resources), and uses them to produce 1C and 1W

The total aggregate production of both countries is 2C and 2W.

Daly explains that while country B produces nothing more efficiently than country A, it does produce coal 400% more efficiently than wheat. According to comparative advantage, country B could specialize in coal and import wheat. Country A produces coal and wheat equally efficiently, and produces both as efficiently as Country

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65 The Hecksher - Ohlin Model includes multiple factors, it was developed by Eli Heckscher and Bertil Owen in 1919, and refined by Paul Samuelson in the 1950s. See also Giancarlo Gandalfo, International Trade Theory and Policy (New York: Springer, 1998), 65.

66 Daly, Herman and Farley, Joshua. Ecological Economics.
B produces coal. According to comparative advantage they can each specialize and enjoy more total goods with the same resources.

If Country B specializes in coal, it can use its total of 5b (5 resource units) to produce 5C and no W. Country A can specialize in wheat and use its total of 2a (2 resource units) to produce 2W and no C.

The total world production will have increased from 2C and 2W to 5C and 2W. Countries A and B can then work out between them what the ratio of exchange between C and W will be based on demand. Daly says that Ricardo explains that in the situation, although it is not possible with this information to know the exact distribution, it is certain that both countries will be better off, or they would not engage in trade.

Daly notes that this is an impressive result, more than doubling coal production, with no sacrifice in wheat production. He suggests that it is necessary to examine the assumptions to bring to light the complications the theory doesn’t consider. Some of the costs and problems are veiled by the assumptions.

He argues that claiming the coal is produced with no additional resources input is misleading. The increased production of coal means that the reserves of coal are depleted 500% faster in country B, and 250% faster worldwide, and that an additional 250% more pollution is created, as the extra coal is burned. Daly claims that the problem is that conventional or neo-classical economists normally do not count costs outside of capital and labor. He argues that a reasonable form of accounting would include some factor based on the depletion of non-renewable resources.
He also explains that transport costs are missing from the calculation; Wheat must be shipped from A to B, and Coal from B to A. Daly points out if the cost of transport is near 3C, then even without any other concerns, the world gains nothing. He argues that in general energy is subsidized, in many countries it is subsidized directly, in most cases it is also subsidized because many of the negative external costs of energy are not internalized into the cost of producing it. Daly claims that international trade, which relies heavily on energy intensive transportation, is indirectly subsidized by energy prices that do not reflect the full price of actually producing them.67

Daly points out a third assumption to be considered. This third assumption is that the cost of specialization is negligible, but it turns out there are costs that must be considered. Each of the countries loses an entire economic sector; in one all farmers must give up their occupations and become coal miners, and in the other all miners are forced into farming. In each country, the loss is the loss of a lifestyle and choice of occupation. Daly claims that, while it is fairly widely understood in societies, that people derive a considerable portion of the satisfaction in their lives from the way they earn their living, economists identify welfare with the range of consumer choices, and say little about it in respect to choice of occupation.68

The second part of the cost of specialization is very powerful. After specialization countries lose the freedom to choose whether or not they will engage in trade. Daly

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points out that one of Ricardo’s fundamental assumptions, that trade will always be beneficial, assumes that trade is voluntary, and we can reject an exchange if it is not to our benefit.

The voluntariness of “free trade” is compromised by the interdependence resulting from specialization. Interdependent countries are no longer free not to trade, and it is precisely the freedom not to trade that was the original guarantee of mutual benefits of trade in the first place.69

Daly explains that once committed to specialization, the freedom in free trade becomes much more problematic, particularly for countries with a large portion of their economies specialized in nonessential commodities. In this situation countries are particularly vulnerable to market conditions for those products. They may be forced into very bad terms of trade to supply basic needs, if the market conditions are such that quantity supplied exceeds quantity demanded.70

Capital Mobility Negates Comparative Advantage

Ricardo makes it clear that comparative advantage assumes immobility of capital. Daly argues that mobility of capital in international trade shifts the situation of comparative advantage to one of absolute advantage. Capital will be moved by its owners to wherever there is an opportunity for it to produce more with less input, and, instead of moving between industries within countries, owners of capital move it to


more productive industries in other countries. This means there will be less total production of all types, in countries that do not have an absolute advantage.

Comparative advantage is a clever second-best adaptation to the constraint of international capital immobility. But without that constraint, it has no reason to be, and absolute advantage is all that counts.  

Daly argues that, the reality of the situation in free trade is that capital today is vastly more mobile than goods. He claims comparative advantage is completely irrelevant in our contemporary international trade regime.

Daly explains that it is possible in situations of comparative advantage for everyone in a country to benefit from specialization in particular products, but it is not automatic. It requires that the winners compensate the losers. In Daly’s example, it means that in Country B, as resources shift from farming to mining, in order for everyone to benefit, it is necessary that, the benefits from the winning mining sector compensate the losses in the losing farming sector, otherwise, although there is still aggregate benefit, those that lose their livelihood and are scrambling to engage successfully in the new industries will be harmed, even though the total benefit for the society is increased. Within countries there are sometimes institutions and policy mechanisms that compensate losers (although Daly says it is not common for there to

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72 Daly, *Beyond Growth*, 153.

73 As explained earlier, Jagdish Bhagwati a strong pro free trade economist, agrees that current free trade must be based on absolute advantage.
be effective compensation), but internationally there are no structures which compensate losers when capital is moved from one production process to another.\footnote{Daly and Farley, Ecological Economics, 360-2.}

Interestingly, Daly points out that the move ends up being from a situation where all countries will benefit, (none will be made worse off) to a situation where there will be winners and losers, but there is still an aggregate benefit. Winners could compensate losers, if they chose to, and still be better off.\footnote{Daly and Farley, Ecological Economics, 362.}

The nice thing about the comparative advantage argument is that both countries benefit from free trade, and gains are mutual—at least in theory, if not always in fact. The problem with absolute advantage is that both countries do not necessarily gain. If one country has an absolute disadvantage in both commodities, it will lose jobs and income as capital moves abroad. But under absolute advantage, world production will still increase. In theory, it would increase by more than under comparative advantage.\footnote{Daly and Farley, Ecological Economics, 362. Production will increase by more because capital will be moved to where it is most efficient, rather than just to where it is comparatively more efficient.}

Daly explains that absolute advantage is less politically convenient to promote, because it doesn’t have any guarantee of mutual benefit. He comments, “All countries still could be better off if there were a regulatory institution whereby winners could compensate losers. But then it would no longer be ‘free’ trade.”\footnote{Daly and Farley, Ecological Economics, 363.} Daly does not feel that, the comparative advantage justification for free trade always being the best choice, holds in our current world economic order. He thinks that, absolute advantage can definitely produce growth, but it comes at a cost, with winners benefitting while
losers see little compensation. He argues outright that, Adam Smith and David Ricardo looking at the actual conditions in today’s world, would not support a policy of free trade.

In the presence of capital mobility, money will logically flow to wherever there is an absolute advantage of production and away from countries where this is none. The world’s poorest countries may be poor precisely because they are inefficient at producing nearly everything. If this is true, then resources are likely to flow away from the poor countries, and the countries most likely to suffer from globalization are in fact the very poorest.\textsuperscript{78}

Daly argues that, there is some empirical support for this. He explains that while in the last 40 years the poorest quintile of the world’s population has seen increases in income, when measuring from 1995 (founding of the WTO) to 2003, eight of the twenty poorest countries, for which data is available, actually experienced a loss in real per capita income.\textsuperscript{79} Daly notes for contrast that the wealthiest 20 countries averaged an increase of 17.6%

A problem with this, explains Daly, is that the gains of the wealthy developed countries are fueled by non-renewable resource consumption (including unsustainable depletion of renewable resources). Once consumed, these resources will not be available in the future to improve the well-being of the poorest. He also comments that the resource use generates waste that harms ecosystem services that could otherwise benefit the poorest countries.\textsuperscript{80}

\textsuperscript{78} Daly and Farley, \textit{Ecological Economics}, 381.

\textsuperscript{79} Daly and Farley, \textit{Ecological Economics}, 381.

\textsuperscript{80} Daly and Farley, \textit{Ecological Economics}, 382.
Most of these poorest countries were involved in international trade in the one area where they might have an absolute advantage: the extraction and export of natural capital. The revenue they received from both export and domestic sales of these resources counted as part of their income. Without this revenue, income as measured by GDP would have fallen even more. Yet as you will recall, we earlier defined income as the amount you can consume in one period without affecting your ability to consume in subsequent periods. Thus, revenue from non-renewable natural resource extraction cannot be counted entirely as income, and the situation of these poorest countries is even worse than it appears.\textsuperscript{81}

Daly considers that countries competing on the basis of low cost labor will have a very difficult time under free trade conditions, breaking out of poverty, because competition under conditions of absolute advantage will prevent increasing the rock bottom wages, and maintain a pressure to externalize social and environmental costs. He takes the position that, most countries that have successfully fought poverty with a focus on trade, such as Korea, Taiwan and China, have not actually done this under conditions of free trade.

\textbf{Trade in Financial Capital}

Daly takes the position that, the free trade in financial capital, which is an important part of our current international trade regime, is destructive to the environment, exacerbates poverty, and worsens inequality by increasing the concentration of wealth already held by the wealthiest elites. He does not support free trade in international capital, even aside from the negation of comparative advantage (which he thinks would cause many problems even if it held).

\textsuperscript{81} Daly and Farley, \textit{Ecological Economics}, 382.
He argues that, historically financial assets have grown faster than the economy as a whole over the long run, as they are not constrained by any of the physical limits of the real economy. Many financial investment firms earn most of their profits using computers to detect small discrepancies in international exchange rates, buying and selling very large amounts of currency very rapidly, which produces huge profits, but does absolutely nothing to increase real wealth. It is an exercise in using financial capital power to redistribute real wealth in the favor of those who are already wealthy. These situations give huge information advantages to the extremely wealthy; leaving the average investor at a major disadvantage, and leaving the majority out of a huge positive sum game. Daly claims that, these very large funds capture the gains from very risky gambles, and society pays the costs.

Daly also holds a position in many ways similar to Pogge’s International Borrowing Privilege. He focuses on the problem of free trade in financial capital, as a root of the problem of corrupt, incompetent, or simply kleptocratic governments in poor developing countries, taking on debts that their population will be forced to repay.

The consequence of free international finance (a necessary complement to free trade) has been the running up of unrepayable debts. Large surplus accumulations of money resulting from trade imbalances sought ways to grow exponentially and to recycle back to the deficit country to finance further trade deficits. Banks pumped money into Third World countries at a rate much greater than the ability of those governments to build wisely or to administer honestly. Government officials and associated elites wasted or stole large amounts of the borrowed funds, which consequently generated no increase in wealth. Yet these

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82 See Daly’s discussion of pigs and negative pigs in Beyond Growth, 178.

83 Daly and Farley, Ecological Economics, 404.
loans must be paid back at interest not by those few who benefited, but by the
general public, who received none of the benefits. The benefits were privatized,
and the costs socialized.\textsuperscript{84}

Daly sees the international debt problem for poor countries to be consistent
with the problem of focus on growth as a solution to poverty. The practice of giving new
loans to poor developing countries to pay the interest on loans that they already cannot
repay causes a massive increase in debt, with the idea that it will stimulate economic
growth, in the hope growth will increase faster than debt. Daly considers that this is
often near impossible, as debt has no physical limits to growth, but the actual physical
production of goods and services, to pay the debt, is limited by its physical dimension.\textsuperscript{85}
He argues that, even when financial assets do contribute to real growth of market goods
and services, even in wealthy developed countries, the marginal costs of the growth
often outweigh the benefits.\textsuperscript{86}

Daly believes free international trade in financial capital is a source of many
more problems than it solves. He is in favor of limiting the trade in financial capital,\textsuperscript{87}
and instead suggests a trade account clearing house of the type proposed by Keynes at
Bretton Woods for the IMF.\textsuperscript{88} This would allow trade to occur without the need for

\textsuperscript{84} Cobb and Daly, For The Common Good, 231.

\textsuperscript{85} Daly, Beyond Growth, 38.

\textsuperscript{86} Daly and Farley, Ecological Economics, 404.

\textsuperscript{87} Daly recognizes the relationship between free movement of financial capital internationally, and free
trade as explained by Friedman.

\textsuperscript{88} Explained in chapter four.
floating exchange rates which encourage speculation. Daly is also in favor of very high reserves for banks, and tight regulation of financial instruments, and the trade in them.

Daly has critiqued the free trade model for international trade, from the perspective of both, concern for sustainability of the economy within the carrying capacity of ecological systems, and also out of concern that it causes massive inequality, and is ineffective in addressing concerns about poverty. He feels that the conception that free trade creates growth, and that economic growth is the solution to poverty, is mistaken. While he agrees that free trade should create growth, the costs of growth have been, and are likely to continue to be, very high considering the resources used and environmental degradation caused, when compared with its poverty reducing effects for the worst off. Daly also argues that resources used inefficiently now, in a growth at any cost style approach to poverty reduction, will make the situation worse for the worst off in the future.
CHAPTER FOUR

ALTERNATIVES

Strategic Protective Tariffs and National Interest: Fletcher

Ian Fletcher advocates a protectionist trade model based on strategic tariffs to protect the development of desired industries. This model is a contemporary protectionist model, addressing the negative issues stemming from the push to free trade, with a strategy for implementation. In his book, *Free Trade Doesn’t Work: What Should Replace It and Why*, Fletcher spends considerable time explaining why his strategic tariff model is the best alternative to free trade. In doing so, he looks at the weaknesses of free trade models and the way the assumptions that support them, are at best problematic, and in some cases just not true.¹ He attempts to refute key claims of the free trade model and also points out weakness he feels are often ignored. He is concerned, in the same way Gomory is, about the lack of sustainability in a situation where we are not exporting enough high-end products to cover what we spend to import goods that, under free trade, can more cheaply be produced elsewhere.

Fletcher explains the problem of having a long term trade deficit. Trading is an exchange, and Fletcher notes, we must pay for the goods we receive from other

countries. There are three ways we can pay for goods we receive: with goods we produce today (his example: jet planes), goods we produced yesterday (his example: office buildings), or goods we will produce tomorrow (debt). Fletcher explains that since we are already in a position, where we are unable to pay for the goods we consume with present or past goods, there are going to be problems paying the debt incurred by our trade deficit.2

Fletcher also considers it problematic that the free-trade model tends to put strong downward pressure on the wages of laborers, while maximizing the returns to capital. He sees this to be bad for society in the long term, and not a just path for the US economy. Contrary to views such as Bhagwati’s, which consider inequality a reasonable price to pay for economic growth, Fletcher is concerned about inequality.

Even if it expands our economy overall, it could still increase poverty. In a word: Brazil, where an advanced First World economy exists side-by-side with Third World squalor, the rich live behind barbed wire, and shopkeepers hire off-duty policemen to kill street children.3

Fletcher also points out that there is also a problem with assuming any comparative advantage is worth exploiting. He argues that there are some industries that are good to focus on, while others are bad for the economic and social development of a country. He explains that good industries have continuing returns to investment, and are susceptible to continuing improvements, both to product and

2 Fletcher, Free Trade, 37-38.

3 Fletcher, Free Trade, 35.
process. Product improvement is particularly important, as it breaks away from the pressure to compete strictly on price.\(^4\) Good industries also tend to have what are known as “ladder” externalities, which are basically positive externalities of a production process that stimulate other industries, or create virtuous circles of industrial development and innovation (Fletcher uses RAM chips in the semiconductor industry as his example\(^5\)).

Examples of bad industries include resource industries and agriculture, because there is little possibility of product innovation, and the concern that process innovation usually develops from outside industries, rather than from the industry itself. He also notes that resource industries tend to foster a parasitic elite that contribute little of value to society at large.

At this point Fletcher is ready to describe his alternative model. A first concern is that the model not be too complicated. Complicated strategies for organizing a protective system of tariffs would be difficult to implement and, more importantly, would be beyond reasonable democratic accountability.\(^6\) What we need, he says, is “some simple rule for imposing a tariff which will produce the complex policy we need. All the complexity will be on the ‘economy’ side not the ‘policy’ side.”\(^7\)

\(^4\) Fletcher, *Free Trade*, 193.

\(^5\) Fletcher, *Free Trade*, 187.

\(^6\) Fletcher, *Free Trade*, 231-233.

\(^7\) Fletcher, *Free Trade*, 232.
Fletcher advocates a “natural strategic tariff”—a 30% flat-rate import tax. This proposal might seem simplistic, because it is a blanket policy that would not necessarily target important industries, but Fletcher claims that it would actually do the work of steering the US economy towards the industries that will provide the most long-term benefit. He argues that a flat 30% tariff would do little to protect industries competing on the basis of cheap labor, as it would not begin to compensate domestic workers. It would also not be enough of a barrier to protect industries that have exhausted their potential for improvement through innovation. However Fletcher claims, for industries where there is still a strong potential to build an advantage that will allow economies to scale, 30% would confer a strong competitive advantage in the part of the development curve where costs to produce each unit are still very high.

Fletcher considers this the ideal model for the US, since it would favor industries where highly trained workers produce high value per unit of labor, and tend not to compete on labor costs. A model focusing on development of this sort of industry would tend to produce goods with high demand in other markets, since they would generally be the main players in these industries. (His examples include jet airplanes from Boeing and Airbus and watches from Switzerland.) Such industries would also tend to support a larger proportion of the profits from industry returning to labor, which increases aggregate effective demand.

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8 Fletcher, *Free Trade*, 233-236.

Interestingly, Fletcher thinks this model would only work well for the US, because it has the size (GDP) and industrial productivity to support a large number of retainable industries (what he refers to as “good” industries). For other countries, Fletcher considers a targeted tariff rather like Infant Industry Protection, where selected good industries are focussed on, and much of his concern is with the need for these countries to have the control over trade and flows of financial capital to allow this.\textsuperscript{10} His concern with this approach, however, is that, unlike the Natural Strategic Tariff, targeted strategy requires an effective bureaucracy to be successful at picking winners, whereas the flat import tariff takes advantage of the fact that some will spot market opportunities that bureaucracies would miss.

Fletcher suggests that the US will benefit if other countries also effectively develop retainable good industries, because then there will be other countries with effective demand for the products of US industries. Moreover, as far as industries not considered “good” industries, the US will actually benefit from a laissez-faire race to the bottom on the part of countries engaged in them, since the cost of these imports will be lower, and the US would not be interested in competing in those industries anyway.

Fletcher’s protectionist model swims against the current of the last thirty years of economic orthodoxy in thinking about international trade, and is one of very few arguments by economists that openly call their model protectionist. However Fletcher’s argument is well-supported in many ways, with reasoned economic analysis of Gomory

\textsuperscript{10} Fletcher, \textit{Free Trade}, 238.
regarding flaws in the theory of comparative advantage, which, as we have noted, has been used indiscriminately as a trump argument for free trade. Fletcher offers considerable empirical evidence regarding the importance of government involvement in industrial development, both in the sense of creating and supporting new industries, and also in ensuring they have a protected environment in which to develop.

Chang’s breakdown of the actual history of Industrial development, supports Fletcher’s argument that protection and sound industrial development policy are required to maintain and build the types of industries he categorizes as “good,” or “retainable,” and that free market models for trade are not the models that brought the US and other wealthy developed countries to their current positions.

Fletcher is supported in some ways by Stiglitz’s analysis, particularly in the concern that the current trade regime has allowed developed economies to be weakened by the shifting of a considerable proportion of the returns from the production process from labor to capital.

Although Fletcher’s argument, in many ways, seems very strong, there are also concerns with the position he takes. Fletcher’s protectionist model of a natural strategic tariff largely ignores any international concerns for justice. It is a nationalist argument which pays little attention to international obligations. Fletcher’s model is meant to reduce a trend towards greater inequality in US society, a worthwhile goal, but it ignores the concern for inequality in international relations, which many commentators
have noted, is highly influential in determining the terms of trade relations (these would include Pogge, Bhagwati, and Chang explicitly).

Fletcher’s strategic protectionism is explicitly oriented towards improving the US economy and is not focussed on global poverty in any way. He mentions that it is important for some trading partners to be successful enough to provide a market for US industries, but he also suggests that a laissez-faire race to the bottom for some goods would in fact not be problematic for the US Essentially Fletcher takes a nationalist, IR realist position, which ignores the concerns of other countries, except when they might be beneficial to the US These concerns do not necessarily invalidate his protectionist model completely, but do indicate that it would need to be reviewed from a global perspective, in order for it to be useful in addressing the concerns for global poverty and inequality.

Strategic protectionist models for international trade are well supported by historical evidence that they have served as an effective tool for economic development in many cases. The proponents of strategic protectionist models make it clear that free trade models do not generally lead to development of lesser developed countries, and very likely create long run sustainability and inequality problems, even for wealthy countries. The greatest apparent weakness of the strategic protectionist model, according to the criteria being used to evaluate international trade in this project, is that they are focussed on effective trade strategies for individual countries. This is problematic when considering international trade from the perspective of global justice.
While Fletcher’s perspective may support abandoning the goal of having the IMF and World Bank enforce trade liberalization, as conditions required to achieve development and economic stabilization assistance, and might allow developing countries to choose their own trade strategy, which would be of benefit to them, it does little to address the obligation of citizens of wealthy developed countries to actively work towards reducing extreme global poverty.

The strategic protectionist model is argued by such proponents as Fletcher, to be a useful tool in reducing inequalities among the citizens of states that are using it. This is an important consideration from the perspective of justice, but as its orientation is nationalist, concern for reducing inequalities among states at the international level is not addressed at all. Fletcher suggests that it would be advantageous to have some economically successful trading partners, but that extreme competition among the states competing based on labor price in products from “bad” industries is in the interest of the countries that are well positioned in “good” industries. Fletcher definitely sees international trade from the point of view of international relations realism, where if the US doesn’t use its economic power to shape its position in the world in its own benefit, others will shape it in theirs.

Another concern of the nationalist perspective of the strategic protectionist model is that, there is no mechanism specified that would work to limit the ability of producers to benefit from using production processes that generated negative externalities that are mostly felt in other countries.
Strategic protectionist models have considerable potential to produce economic development that could lessen domestic poverty and reduce inequalities, but they will need to be combined with a global justice perspective in order to eliminate some of the problems that arise from their generally nationalist orientation.

**Stiglitz and Charlton: Fair Trade for All**

Joseph Stiglitz has made forceful claims about problems in the current international trade regime, and with the current focus of international bodies tasked with facilitating international trade (WTO) and supporting international economic stability and development (The IMF particularly).

Stiglitz is critical of unrestricted free market approaches to free trade, particularly in the case of impoverished developing countries. In his recent book, co-authored with Andrew Charlton, a Research Officer at the London School of Economics, he points out, “To date not one successful developing country has pursued a purely free market approach to development.”

A first major concern for Stiglitz and Charlton, in the case of developing countries, is that the assessments of the unrestricted free trade model on welfare in developing countries assume a model where there is full employment. They argue (as did Keynes eighty years earlier) that this assumption is problematic, and clearly not reflective of the economy of most poor developing countries. They argue that the theory of comparative advantage, which works on the assumption that resources which

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are committed to less efficient types of production will quickly shift to new areas where they will be used in more efficient types of production when they face more efficient international competition, rarely holds in developing countries. This is because most developing countries have vast reserves of resources, particularly labor, so there is no need to free up labor for use in new more efficient industries. It is already available, awaiting any type of opportunity to be put to use. When a developing-country’s industry is outcompeted by a more efficient international competitor, often the workers move from low productive inefficient employment to zero productive employment rather than moving from low production inefficient employment to employment in a more productive enterprises.\(^\text{12}\)

However Stiglitz and Charlton definitely view increasing trade as an important part of long run plans for economic development and decreasing poverty. They view trade liberalization as an important tool for economic development, but see it as something that needs to be managed and achieved cooperatively, in conjunction with appropriate development strategy for each country’s situation.

The alternative to the current international trade regime suggested by Stiglitz and Charlton is one that would generally be based on the current WTO structure, but refocused to create a true “development round” of negotiations, which would be

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conducted in such a way as to actually promote poverty reduction and economic growth in developing countries.\textsuperscript{13}

Stiglitz and Charlton argue that within the WTO, bargaining has been conducted almost exclusively from the position of self-interest, whereas to be successful, a development round would require a set of cooperative principles. They suggest that negotiations should be based on several largely self-evident principles:

1. Any agreement should be assessed in terms of its impact on development; items with negative impact on development should not be on the agenda.
2. Any agreement should be fair.
3. Any agreement should be arrived at fairly.
4. The agenda should be limited to trade-related and development friendly issues.\textsuperscript{14}

Stiglitz and Charlton acknowledge any general definition of “fairness” is likely to be disputed. They suggest several more concrete principles:

Fairness 1: GDP growth—Any agreement that differentially hurts developing countries more or benefits developed countries more should be viewed presumptively as unfair.

Fairness 2: Trade disputes—Since, given the costs to bringing a claim against another country are high, developed countries should, at minimum, provide financial assistance to less developed countries involved in such legal disputes so as to level the playing field.

\textsuperscript{13} It is worth noting that Stiglitz and Charlton laid out this proposal for a true “development round” of negotiations at the WTO in 2005, while the Doha development round of negotiations, which began in 2001, was underway. Those Doha negotiations met with strong resistance and suspicion on the part of developing countries, and were stalled completely from 2008 to 2013. There is currently (July 2014) a proposal that is a very watered down version of Stiglitz’s Market Access Proposal under consideration. While at the same time a new agenda for a Trade in Services Agreement (TISA) formulated by wealthy developed countries has just been made public. It contains conditions regarding control over banking and investment. It will be interesting over the next year or so what happens with these.

\textsuperscript{14} Stiglitz and Charlton, \textit{Fair Trade}, 68.
Fairness 3: Initial conditions—Even though developing countries in general have higher tariffs than developed countries, reducing them should be gradual, so as not to be disruptive. Moreover, developed countries should not, as they often do now, impose higher tariffs on goods imported from developing countries that products imported from other developed country.

Fairness 4: Historical considerations—Fairness should also take into account economic conditions in a country that are the result of colonial relationships or unfair previous trade agreements.15

Stiglitz and Charlton suggest that in order to keep a true development round on track, and not subvert its purpose as a tool for promoting economic development and reducing poverty, a principle of conservatism should be adopted regarding what goes on the agenda at negotiations. Issues ought to be included in a development round only if they score highly in the following: (1) the relevance of the issue to trade flows, (2) development friendliness, (3) the existence of rationale for collective action (i.e., nations should not be forced to undertake certain actions unless their actions have effects on the trade of others that require collective action to resolve).16 The main purpose of these restrictions would be to limit the inclusion of the types of issues, which developing countries often felt were included so as to tip the scales in favor of developed countries.

A problematic issue for developing countries in trade negotiations has been “Green” (environmental) and “Blue” (Labor) regulatory tariffs. Developing countries often claim that strong regulations are forced on them to protect developed countries. Stiglitz and Charlton feel that standards should not be included in a trade agreement—

15 Stiglitz and Charlton, *Fair Trade*, 76-78.

16 Stiglitz and Charlton, *Fair Trade*, 86.
with three exceptions: (1) *international negative externalities*—trade policy should recognize that not forcing firms to pay the true social costs of their environmental damage is a subsidy which other countries should have the right to take action against; (2) *matters of human rights*—human rights violations that are reducing the costs of operating should be susceptible to countervailing duties (example forced labor, expropriation of land); (3) restrictions on collective action on the part of labor that results in lowered production costs.\(^\text{17}\)

The biggest single part of the Stiglitz-Charlton proposal, although it has many other important facets, is their *Market Access Proposal*. The Market Access Proposal consists of the fairly simple idea that all member countries would commit themselves to providing free market access to all goods from all countries with both a smaller per-capita GDP and a smaller overall GDP than they do.\(^\text{18}\)

Stiglitz and Charlton suggest that there would be several important benefits to this proposal. Firstly, there would be very significant liberalization of trade in goods that were important to developing countries. The agreement would also tend to increase the amount of trade *between* developing countries, opening markets of somewhat developed countries (mid-level GDP) to very impoverished countries (South–South trade). Another strong point of the proposal, according to Stiglitz and Charlton, is that its obligations are progressive. The poorest will not be forced into much liberalization;


middle-income countries will have to liberalize significantly, and developed countries
will need to open to developing countries generally.

This proposal seems reasonable in the sense that it is progressive, and should, in
the long run, fulfill both the concern for reduction of poverty in international trade, and
to reduce inequality, at least between countries if not within them. A proposal like this
would require that countries take the position that they are cooperating to assist
developing countries and promote poverty reduction, which is consistent with Stiglitz
and Charlton’s insistence that, a true development round would require adopting
cooperative bargaining, instead of bargaining only in national self-interest.

Another important area that this proposal would address is the concern over
escalating tariffs. Escalating tariffs are tariffs which tend to restrict the level of
processing of exports, by increasing the level of tariff applied as the product is more
processed. This means a lower tariff on raw materials and a higher tariff on
manufactured goods. Such escalating tariffs tend to lock developing countries into
exporting raw materials with little value added, which produces little skilled
employment, thus limiting industrial development.

TRIPS the agreement on Trade Related Intellectual Property Rights, is another
area that Stiglitz and Charlton think should be a focus for a true development round of
negotiations. They argue that if the goal were actually to support development and
poverty reduction, the TRIPS agreement would need to largely exempt poor countries.\(^\text{19}\)

\(^{19}\) Stiglitz and Charlton, *Fair Trade*, 141-145.
They argue that in many cases, the basic research behind most innovations is publicly funded, and that material reward provides little of the motivation for this sort of intellectual activity. “There is little evidence,” they say, “that stronger patent protection would generate greater flows of basic ideas.”

Private-sector intellectual property rights should be understood as an innovation tax on the difference between marginal cost and selling price of a product. Stiglitz and Charlton think it is unfair to charge this innovation tax to some of the poorest people on earth, who desperately need the assistance that could be made readily available. If the international community feel that more basic research is necessary, this research should be funded directly, and not by levying a tax on the poor.

The TRIMs agreement (Trade Related Investment Measures) is another matter of concern for Stiglitz and Charlton. TRIMs, when enacted by many members of WTO (and previously GATT), opened their banking system and financial services to purchase by foreign banks. This created a situation where governments lose much of their power to support or motivate lending to underserved and riskier sections of the population, which they might choose to do in an attempt to promote economic development of those sectors and reduce poverty.

Stiglitz and Charlton see little point insisting on general rules to regulate capital flows:

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There does not seem to be a compelling rationale to force national governments to adopt a uniform multilateral agreement. Idiosyncratic national regimes are often more sensitive to national development priorities than one-size fits all multilateral disciplines.\textsuperscript{22}

They are also concerned that some aspects of TRIMS create a situation, known as “hot money,” where foreign investment flows into and out of countries very rapidly, and can create a “race to the bottom” type of situation, as investors rapidly shift money in and out of countries looking for slightly better investment terms. They see a strong link between this type of investment and financial instability.\textsuperscript{23} Stiglitz and Charlton are generally concerned to avoid any investment services liberalization that would exaggerate financial instability in developing countries. Despite this concern, they feel that one of the areas that should be included in a pro-development round of negotiations would be the liberalization of labor-intensive services, as this is an area that they feel would strongly benefit developing countries:

Facilitating the free mobility of capital is far less important for global efficiency or for the developing countries themselves than facilitating the movement of labor, particularly that of unskilled workers. Indeed there is a strong case that capital market liberalization may actually lower global economic efficiency.\textsuperscript{24}

Stiglitz and Charlton also feel that not only the content of negotiations will need to change to support development and poverty reduction in international trade, but also that the WTO itself will need to undergo some significant changes. They suggest

\begin{itemize}
\item \textsuperscript{22} Stiglitz and Charlton, \textit{Fair Trade}, 149.
\item \textsuperscript{23} Stiglitz and Charlton, \textit{Fair Trade}, 151.
\item \textsuperscript{24} Stiglitz and Charlton, \textit{Fair Trade}, 150-51.
\end{itemize}
institutional reform will be required in the WTO to support a focus on supporting
development and reducing poverty.

A first concern here is representativeness and openness of negotiations, Stiglitz
suggests that the current negotiating practices are problematic; they occur to an extent
behind closed doors and end up with agreements that contain portions many
governments would not have included if they had not been forced to as part of a
package.25 (Here one can think of Pogge’s comment that trade has been beneficial, but
could have benefited the least well off much more than it has.) Stiglitz calls for an end to
“Green Room” bargaining, where only a select fraction of countries represent
developing countries at the actual negotiations. Stiglitz says that while the practice has
been formally abolished, is still largely how negotiations are conducted.26

Another area of concern is admission to the WTO. The process has become
increasingly lengthy and requires more and more liberalization as a price of entry.
Stiglitz and Charlton advocate clear rules that are manageable by least developed
countries, a shortened and simplified process, as well as a halt to forcing unfair levels of
liberalization on developing countries seeking admission.27


26 Stiglitz and Charlton, Fair Trade, 169. An example of this practice continuing though formally banned
would be the blueprint for negotiation of the Trade in Services Agreement, released by Wikileaks on June
19, 2014. Obviously Wikileaks is not a completely authoritative source but there has been little attempt to

27 Stiglitz and Charlton, Fair Trade, 160-162.
There will need to be a body developed to assess what measures are best adopted to support countries facing economic crisis. There is also a strong need to develop a fair resource at the WTO to assist developing countries in assessing the real costs and benefits of various proposals, (for trade agreements to be included in the WTO) as many developing countries lack the technical resources to do this effectively before agreeing to or rejecting proposals.

Another area where reform is suggested is in the WTO dispute settlement system. The WTO dispute settlement system favors wealthy developed countries, both in the costs of successfully making a claim, and in the ability to assure that a successful resolution will be followed up with action.28 (Bhagwati also gives extensive support for this measure in his defence of free trade.)

An effect that developed countries do not normally consider for implementation of trade liberalization proposals, but should, is the fiscal cost of the loss of tariff revenues to government. In developed countries tariffs are not usually a very important form of revenue for government operations, but in lesser developed countries tariff revenue can be a significant form of revenue.29 This is because in many such countries, a very significant portion of the economy is underground and not taxable. Many governments in such countries lack effective tax revenue collection systems, and tariff revenues are relatively easy to collect. (Stiglitz and Charlton suggest that a value-added-

28 Stiglitz and Charlton, *Fair Trade*, 83-84.

tax (VAT) system can be welfare-enhancing as compared to tariff revenues, but admit this fails in developing countries with substantial underground economies.)

Another cost Stiglitz and Charlton think it is important to consider, is the implementation costs of particular proposals. Implementation costs from the Uruguay Round for the parts of the agreement that required regulation changes were costed at an average of $150 million for twelve sample developing countries. In eight of those twelve this exceeded the total budget for development spending. Stiglitz and Charlton point out that the extensive non-compliance on this point indicates that many developing countries felt the price was too high, and that the money was better spent in areas such as basic education.\(^{30}\) They recommend that regulatory proposals with extensive implementation costs be left out of a development round.

While Stiglitz and Charlton support trade liberalization in general, as a source of long run benefits to developing countries, they are concerned that the extremely poor will not be able to sustain themselves through even small short run drops. They insist that assistance must be rendered for the development of social safety nets and insurance. Stiglitz and Charlton, in fact, argue that employment insurance can be economically efficient, because it allows displaced workers to search longer for a job that makes effective use of their skills, rather than accepting a drop in employment standard.\(^{31}\)


\(^{31}\) Stiglitz and Charlton, *Fair Trade*, 203.
Stiglitz and Charlton comment that even with fair trade liberalization, there will be a problem of supply constraints; that developing countries may still not be able to benefit from new favorable access to markets:

In the context of low productive capacity, a deficient policy environment, poor infrastructure, poor access to technology, and missing/imperfect markets (especially financial markets), liberalized markets will not stimulate the required development to take advantage of new trading opportunities. 32

They suggest that technical assistance, technology transfer, and the development of functional financial markets will need to be negotiated into the agreements, if international trade is to be effective in supporting economic development and reducing poverty.

The Stiglitz and Charlton proposal for a more just approach to international trade is important in that it generally relies on existing international institutions, and does not depart radically from some of the ideas already being considered in international society to assist developing countries. However Stiglitz and Charlton make clear that their proposal would require a change in the spirit of negotiations, from individual national interest to a cooperative attempt to aid in the economic development of the least developed countries.

**Schweickart: Socialist Protectionism**

David Schweickart, a philosopher working in the area of political economy and economic justice, offers a proposal for an alternative to the current international trade

regime as part of his project to articulate and defend an economically viable, ethically desirable alternative to capitalism, which he calls “Economic Democracy.” His proposal is formulated in response to the question, “How would a country structured as an Economic Democracy conduct trade relations with other countries?”

When his answer is examined, it becomes clear that the policy he proposes for an economy that has gone “beyond capitalism,” might also be suitable for a capitalist country committed to a just system of international trade. Schweickart proposes that international trade should be based on fair trade rather than free trade. He labels his proposal “fair trade,” for it stems from, as he explains:

[T]he moral conviction that one should not, in general, profit from, or be hurt by, the exploitation of the cheap labor of others... Consumers should not benefit because workers in other countries work for lower wages than domestic workers, nor should home country workers be put at risk by these low wages.  

Schweickart means fair trade in the actual sense of trade that is fair, rather than in the sense of the Fair Trade marketing strategy. He also calls his proposal “socialist protectionism”:

Free trade is fine so long as the trading partners are roughly equal in terms of worker incomes and environmental regulation. However when trading with a poorer country or one whose environmental regulations are lax, Economic Democracy will adopt a policy of socialist protectionism.

Schweickart embraces protectionism as a strategy to prevent race to the bottom competition on worker wages and environmental regulations, and as a strategy to allow

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34 Schweickart, After Capitalism, 78.
the development of strategic industries. As we have seen, such protectionism has considerable support as a useful tool for all three of these purposes, both from strategic protectionists like Ian Fletcher, and also economists who are generally in favor of trade liberalization such as Joseph Stiglitz and Andrew Charlton. As Schweickart points out, protectionism is not a radical position, given that every economically successful country has employed protectionism at some point; a claim supported by others already considered in this work.\(^{35}\)

Schweickart proposes a two-part trade policy. The first part is protectionist: the imposition of a Social Tariff, on imported goods, designed to compensate for low wages or lack of commitment to social goals regarding the environment, worker health and safety, and social welfare on the part of the exporting country. The second part of the policy is where Schweickart’s alternative differs from other proposals. It states that all tariff proceeds will be rebated back to countries of origin of the goods on which tariffs were placed.\(^{36}\)

The first part of the policy is fairly straightforward: in a situation where imported goods (or services) are coming from a country where they are being produced through the use of labor paid at wages lower than the domestic rate, a tariff would be imposed to compensate for the difference in wages. This is intended to eliminate international competition driving down wages, avoiding a “race to the bottom” in the area of wages.

\(^{35}\) Schweickart, *After Capitalism*, 78.

\(^{36}\) Schweickart, *After Capitalism*, 79.
The same approach would be taken in the case of negative environmental or health and safety externalities. Any time a product was imported that was produced in a way that evaded paying the full environmental or health and safety costs of its production, it would be assessed a tariff that would effectively be equal to the estimated value of environmental or health and safety costs that were evaded in its production. Again the purpose is to avoid competition based on unjust production practices.

The second part of Schweickart’s proposal takes a different approach than that taken by other proponents of protectionism. The assessed tariffs are rebated back to the country, whose goods they are assessed on, to be used in development activities. They aim at providing these countries with resources to work towards developing industries that do not operate based on unjust relations of production.

It is noteworthy that Schweickart’s proposal says nothing about international capital flows; a concern of most trade theorists. This is because a country practising Economic Democracy will generally not have significant international flows of capital. Virtually all funds for investment are generated publicly (via a capital-asset tax on all business enterprises), and are reinvested in the domestic economy. These funds are the property of the society in general, and are used to support productive enterprises in the domestic economy, rather than speculative investment. This arrangement avoids the downward pressure on wages and environmental standards that occurs when a country needs to attract foreign investment capital, or counter threats to move capital
offshore.\textsuperscript{37} (Schweickart claims that not relying on foreign investment capital may well be an important benefit, even for relatively poor developing countries.\textsuperscript{38})

Schweickart’s model also addresses the issue of IP (Intellectual Property). Intellectual Property has been a contentious issue during the discussions around implementation of the Uruguay round of GATT, and currently in the WTO (TRIPS).\textsuperscript{39} In many cases developing countries are forced into agreeing to very stringent IP agreements as a cost of entry into trade agreements, that leave them unable to afford medications and technologies that would facilitate important improvements in welfare. As we have seen, Stiglitz and Charlton in general want to avoid forcing IP agreements on developing countries, as they tend to be costly to implement and slow economic development.

Schweickart’s proposal suggests that once the motivation to avoid international competition based on low wages is removed (and hence the worry that low-cost production abroad would displace domestic workers), there would be no reason to protect IP internationally at all, and in fact, it would be easy for a country practising Economic Democracy to promote free technology transfer to developing countries and exemptions from patent restrictions for less developed countries (which is impossible to build support for under the current international trade regime).

\textsuperscript{37} Schweickart, \textit{After Capitalism}, 77.

\textsuperscript{38} Schweickart, \textit{After Capitalism}, 77.

\textsuperscript{39} Stiglitz, Joseph. \textit{Globalization and its Discontents} (Norton, 2002); Stiglitz and Charlton, \textit{Fair Trade}. 
Schweickart’s proposal focuses on avoiding trade competition based on exploitative labor or environmental practices. It is based on the assumption that relative economic self-sufficiency is an important value, but addresses the need for international trade in many situations. The proposal is intended to promote international cooperation on development, as opposed to facilitating a race to the bottom in wages and both social and environmental standards, which is something the current trade regime often receives criticism on.

**Daly: Ecological Economics Proposal**

Herman Daly has a proposal for an approach to international trade that is more just than the current regime. He suggests thinking about his proposal in terms of empty world versus full world economics. He explains that the contemporary free trade model develops from classical economics, and in Adam Smith’s time, compared to today, the world was empty. Free trade economics, and a belief that least developed countries can simply grow their way to a similar standard of living to the now developed countries, are “empty world” thinking. Daly’s proposal is based on “full world” economics. His proposal is known as the steady state economy (SSE). Daly notes that he doesn’t pull his ideas out of thin air, that the concern for the ability of the environment to sustain the economy, is as old as the study of political economy, he is influenced by Mill, and his conception of a stationary state economy.

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40 This is empirically true, various population estimates put the world population between approximately 450 million and 650 million (Those are World Bank and UN), with the 1st Billion being reached about 1804. So today’s world is 10-14 times fuller than it was in the time of Adam Smith.
His proposal for a steady state economy is based on two main concerns. The first is, ensuring that the size of the economy, or the size of the resource throughput of the economy, is sustainable within the limits of the ecosystem that supports us. The second is a concern for distributing the benefits of that sustainable economy in a way that provides a decent standard of living for all. Since we do not actually know the limit of our ecosystem, to sustain our economy, and many people who study ecology and biology believe we are already past its carrying capacity, Daly suggests we must adopt precaution as our principle. This means we must begin to limit, and work towards reducing, the quantity of natural resources we use up in our economy, and the wastes we put out into natural sinks. Daly’s steady state economy defines the concept of economic development as, the efficient use of a steady or fixed quantity of natural resource and energy inputs in an economy, to satisfy more needs of human beings, through improvements in technology and distribution.

Daly claims that economists are always concerned with efficiency and the maximization of something. He explains that what is maximized in SSE is life. The maximand is measured in cumulative person-years of life lived at a standard sufficient for a good life. Daly does not go into particular depth about what a good life ought to be defined as, but explains that it is possible to tell that it is a life that allows individuals to pursue their interests and potentials, rather than just absolute bare minimum.

Daly rejects a strictly free trade model for international trade, because adjusting the national economy, including labor markets, natural resources and capital to
international markets, makes it difficult to control negative environmental and social externalities, and manage monetary policy in a way that ensures prices reasonably reflect full social marginal opportunity costs, in interest of public welfare.\footnote{Daly, Beyond Growth, 158-9.}

International free trade conflicts sharply with the national policies of (1) getting prices right, (2) moving toward a more just distribution, (3) fostering community, (4) controlling the macroeconomy, and (5) keeping scale within ecological limits.\footnote{Daly, Beyond Growth, 159.}

Daly argues that free trade really only maximizes efficiency in one of the areas where efficiency should be maximized in an economy. Free trade maximizes the efficiency of allocation of resources to the most productive uses, but it does nothing for concerns of efficiency in distribution, in order to satisfy the needs of the most people with the resources available, and it completely ignores, what the efficient sustainable scale of the economy should be, in relation to the environment that sustains it.\footnote{Daly, Beyond Growth, 159-60.} His proposal for trade is really more of a proposal not to trade.

There is clearly a conflict between free trade and a national policy of internalization of external costs. External costs are now so important that the latter goal should take precedence. In this case there is a clear argument for tariffs to protect not an inefficient industry, but an efficient national policy of internalizing external costs into prices.\footnote{Daly, Beyond Growth, 161.}

Daly`s proposal, when considered as an economic model, is a form of import substitution industrialization, based on tariffs.
Daly’s proposal, keeps national and international economics separate, he rejects cosmopolitan conceptions of global citizenship, and does not welcome the idea of a global government without individual nations. He suggests reform is needed at the international level, the national level and the regional level within countries.

[A] "community of communities," an international federation of national communities cooperating to solve global problems under the principle of subsidiarity. The model is not the cosmopolitan one of direct global citizenship in a single integrated world community without intermediation by nation states.\(^{45}\)

His concern is based on the concern that “cosmopolitan globalism” weakens the power of national communities (and subnational communities) to control negative externalities and financial capital, and increases the power of transnational corporations to resist this control. He feels that capital must be made less global and more local. He describes the buzzwords he would like to see as “renationalization of capital”, and “community rooting of capital for the development of local economies.”\(^{46}\) He quotes Keynes, explaining that he would like to see goods be produced nationally as much as possible, and that capital being national was important above all.

Daly in general, advocates self-sufficiency for nations, not isolation, and not complete trade barriers, but self-sufficiency for the most part. He says for the US, self-sufficiency is industrial self-sufficiency, and argues that de-industrialization of the US means that American labor will experience a drop in standard of living. He explains that

\(^{45}\) Daly, \textit{Beyond Growth}, 92-3.

\(^{46}\) Daly, \textit{Beyond Growth}, 93.
if US workers want to compete with workers in developing countries, to produce the
highest return on capital to production, free trade is fine. Daley argues that if the US
does not want to compete in a race to the bottom on wages and environmental
standards, the appropriate tool is the tariff.

Tariffs would protect now-endangered industries from further erosion and allow
them to begin to recover lost ground. Tariffs would also encourage new
enterprise in areas where the United States has become dependent on imports.
With the assurance that these industries could be profitable while paying
suitable wages, capital would flow to these opportunities. The operation of the
free market, within national boundaries reinforced by tariffs, would lead to the
industrial self-sufficiency that would make possible truly free trade, that is, trade
in which the nation is free to engage or not.\textsuperscript{47}

Daly explains that the use of a tariff system would carry a cost. It would probably
slow overall economic growth in the sense of GDP, and would lower the purchasing
power of a particular wage, but wages could be set high enough to assure a desirable
standard of living for working people. It would also lower returns to US capital, which
would not be able to profitably use low wage foreign labor to produce goods for the US
market.\textsuperscript{48} Daly is concerned not just with the harmful effects of free trade in general,
but also about free trade in financial capital. He feels the most effective way of ending
the harmful effects of the international trade in financial capital, is a tariff system set
high enough to protect domestic production from competition in the form of domestic

\textsuperscript{47} Cobb and Daly, \textit{For The Common Good}, 285.

\textsuperscript{48} Cobb and Daly, \textit{For The Common Good}, 285.
capital being invested in foreign production, and the products being imported to domestic markets.

In fact Daly is critical of the power of financial capital in the economy generally, and in his proposal for a steady state economy he argues for both a minimum income, which he explains has fairly strong political support, and a maximum income, for which he says there is virtually none. He assumes this is because there is a belief that there is no limit to total possible increase of wealth. He argues for a progressive tax that, above the accepted income differential, would have a very high marginal rate in order to minimize accumulated inequality in wealth.

Daly suggests that while labor would likely see the value in buying local, and would be willing to accept higher costs, holders of financial capital would provide powerful resistance to the proposal, as it restricts their ability to seek the highest rate of return. And retailers and large corporations that make most of their profits from selling low priced imported goods would also resist the proposal. He suggests that the impact on retailers would be lessened if the proposal was phased in slowly. He feels that low wage service workers, which have become a large sector of the workforce, might also

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49 Daly, Herman. “A Steady-State Economy: A failed growth economy and a steady-state economy are not the same thing; they are the very different alternatives we face.” (Sustainable Development Commission, UK, 2008), 6-9.

Daly would like to see the ability to accumulate wealth limited and believes the role of financial capital in a steady-state economy would be much reduced from its current situation.

50 Daly, Beyond Growth, 201.
suffer from the proposal, as prices for goods in the economy would rise, and their already limited purchasing power would diminish.\textsuperscript{51}

Daly is also concerned about intellectual property rights. He argues that many forms of knowledge should not be converted into property rights with a market value.

Knowledge, unlike throughput, is not divided in sharing, but multiplied. Once knowledge exists, the opportunity cost of sharing it is zero and its allocative price should be zero.

Sharing knowledge costs little, and does not create unrepayable debts, and it increases the productivity of the truly rival and scarce factors of production. Existing knowledge is the most important input to the production of new knowledge, and keeping it artificially scarce and expensive is perverse.\textsuperscript{52}

Daly feels that the benefits to everyone from sharing knowledge, far outweigh the possible benefits to innovation of costly (both to spread of innovation, and to implement) intellectual property regimes.

While Daly’s proposal is for protectionist tariffs at the national level, he is also concerned about institutions at the international level. He claims that it is necessary to rethink how balance of trade accounts are calculated. Daly argues that the World Bank (and in fact national governments) need to begin to use measures of economic growth that separate growth, in the sense of increasing use of resources, from the ability of an

\textsuperscript{51} Daly has extensive plans for domestic reforms to address this but they are not really a direct part of his position on trade. He outlines proposals for decentralizing industry into regions and local areas where it can be done so efficiently, and considers schemes to promote worker owned cooperative production. He also considers a negative income tax and how to align that concept with a desire for as near full employment as possible. He recommends depletion quotas on natural resources which would strictly limit their rate of use and motivate their more efficient use. Daly also considers that human population must be managed within the limits of the planets carrying capacity (which we don’t actually know), to address the problem of population control, his suggestion is birth licences, which would be fixed in number but transferable. See Daly, Beyond Growth, 31-63.

\textsuperscript{52} Daly, “A Steady-State,” 6-7.
economy to satisfy human needs. He considers that the export of non-renewable resources should not be classified solely as income, that a portion of this value needs to be registered as sale of a capital asset, rather than income from production. He considers that if this were done accurately, it would change some countries’ apparent trade surpluses, under current accounting, to deficits resulting from foreign sale of capital assets. The IMF recommendations and actions for those countries would then change to reflect this. Daly suggests this shift in balance of trade accounting would be an excellent initial focus for the IMF in sustainable development.\textsuperscript{53} Daly is concerned that GNP (or GDP) is a poor economic indicator, as far as measuring how efficiently an economy is using a limited stock of resources to satisfy human needs. He suggests an indicator, the Measure of Economic Welfare (MEW), which separates categories of consumption and production, as well as recognizing investment in several types of capital.\textsuperscript{54} Daly’s main concern here is that traditional measures such as the GNP or GDP, tell us very little about the sustainability of an economy in use of resources or the distribution of its benefits, which are crucial concerns for both national governments and international institutions in Daly’s proposal.

In his critique of international trade, Daly suggests he would like to see an international currency clearing house, to manage currency and balances of trade. He explains that this was the proposal Keynes initially developed for the IMF, but it was

\textsuperscript{53} Daly, \textit{Beyond Growth}, 88.

\textsuperscript{54} Cobb and Daly, \textit{For The Common Good}, 76-78.
rejected at Bretton Woods.\textsuperscript{55} The strength of it would be that it would allow international trade in goods to be paid for over time without requiring an immediate balanced exchange, and avoid the necessity of developing a speculative market for currency. Countries would maintain accounts with the institution in a currency that only existed as accounting numbers at the clearing house. Interest of a sort would be charged on both positive and negative balances, to provide for an incentive for countries to adopt policies which would favor a neutral balance of trade over the long term.

Even though Daly’s proposal is based on tariffs, it is quite different from Fletcher’s tariff based protection proposal, as Fletcher’s proposal is focussed on maximizing economic growth in strategic industries that will also target international markets. Daly’s proposal differs from other proposals, because its specific focus is development of an economy that can provide a good quality of life for all people in the long term, while recognizing the finite nature of the world’s resources. There are many strengths to Daly’s proposal, but its weakness is that it fails to effectively address the concern for alleviating extreme poverty in least developed countries. Daly does not ignore this he suggests that developed countries should work through international institutions to promote self-sufficiency for developing countries. He makes a strong argument that least developed countries are often failed by the current free trade

regime, but his proposal, while probably an effective option for most people in wealthy
developed countries, doesn`t seem to acknowledge very much ethical obligation on the
part of wealthy powerful countries in the current regime. It seems like an effective
alternative to the current international trade regime would need to take Daly`s concern
for long term sustainability into account and would need to consider the arguments
Daly makes about the problems of free trade, and particularly his concern about the
unrestricted mobility of financial capital in relation to the ability to achieve just
distributions and manage negative externalities.
CHAPTER FIVE

A COSMOPOLITAN PROPOSAL FOR JUSTICE IN INTERNATIONAL TRADE

I came into the project of applying philosophical conceptions of social justice to the problem of injustices occurring in, and resulting from, international trade, which I perceived in many ways to be a worthwhile problem in the field of social justice that had received only passing attention from philosophers, with the plan that I would attempt to apply principles of justice, derived from Rawls’ two basic principles in ATOJ to international trade. In ATOJ Rawls very specifically lays out how the principles would require economic institutions of a society to be structured, and what would be required of their basic functions. I thought that his extensive discussion of institutions and social structures, a part of his conception of justice, as structuring the social processes to produce just results from the interactions of members of society in pursuing their own interests, made it a useful approach. My project was to understand the problems with the current international trade regime, and develop a proposal for an alternative scheme for international trade, based on principles of justice.

The proposal is the end result of a process of several steps. The first was examining some of the philosophical literature on global justice, in order to illuminate and critique positions taken on international trade and international economic interdependence. The second was evaluating the current free trade model for
international trade and the main alternative model, which is protectionism. And then, finally, I looked at several alternative models for international trade to consider how they fit with the principles of justice with which I was working, and attempted to evaluate them against the commentary on the strengths and weaknesses of the free trade and protectionist models, by economists with a normative concern for justice in global society (although their conceptions of this varied strongly). In the end, all of the proposed alternatives that I worked with seemed to fall short.

I will now outline the main features of a proposal for a just alternative model for international trade and global economic interaction and explain each of the features in reasonable detail. I will explain the basic argument supporting the choice of each, and address some of the possible counter arguments. The proposed model is a cosmopolitan conception of a new regime of international trade, including most features of international economic activity that are currently covered under various international trade agreements and the WTO, and several which are not. It is based on principles of justice that could be used in building just global economic institutions to support a global economic environment that promotes vibrant economic activity within a background framework of fairness. These would be global institutions in the cosmopolitan sense, with a focus on effectively inclusive democracy that represents the interests of all members of global society. The proposal would make sense within the context of a larger liberal cosmopolitan project, but I will proceed as if the proposal is to stand alone.
My approach is heavily influenced by Rawls’ contractarian understanding of the reasons that justice is appropriate within a society. The principles put forward in this proposal are derived from the goals of the principles Rawls’ puts forward as coming out of his 1st Original Position with the Veil of Ignorance. Rawls did not think that these should apply to global society, but the position I take is that there is enough support for the idea that Rawls’ principles of justice are reasonable, but his conception of international relations and global society, are not in line with his own position on the obligations that develop as a result of being a member of a society, or the value of individuals within society. I conceive the principles of fair trade to be similar to what Rawls suggests would arise as the structure of the fair background framework for international trade, agreed upon in the 2nd Original Position. It is important to remember that this is a proposal for a framework for fair trade, not a comprehensive proposal for a just global society.

The proposal embraces Rawls’ conception of social justice as procedural, that is, that justice in a society is about creating an institutional framework that enables individuals to pursue their own particular interests in a way that is fair to them and to the rest of society. This is a conception supported also by Iris Young in her description of the social justice obligations of individuals as an obligation to work towards establishment of just institutions,¹ and by Charles Beitz, who argues that Rawls’ position in A Theory of Justice on the role of institutions in social justice also makes sense at the

¹ Young, Inclusion and Democracy, 249.
international level. It is also supported by Thomas Pogge in his discussion of the unjust institutions of the current trade regime, and the reforms needed.

**Principles for a Just International Trade Regime**

My proposal requires the creation of new global economic institutions that would be put in place to ensure that trade would be conducted in accordance with the principles of justice in international trade. The principles of justice in trade represent what I feel is required to structure international trade, and economic activity in global society reasonably considered trade related, in a way that supports a just global society. My proposal is inspired by Rawls’ discussion of the economic institutions of a just society, but because it is a proposal with a scope limited for the most part to trade, not all the concerns Rawls has in structuring the economic institutions of a just society show up as principles in the trade proposal. Briefly, there are three principles, each with a different focus:

1) Whenever possible international economic activity ought to be conducted in such a way that it works to reduce absolute poverty in global society.

2) International economic activity ought to be conducted in such a way that it will contribute to a reduction of harmful inequality in global society, both between states and within them.

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3 Pogge, *Politics as Usual*, location 923.
3) International trade ought to be conducted in such a way that international economic activity does not produce negative externalities, that is, impose costs or harm on parties who have not consented to the exchange, including present and future generations. These principles should not generally be considered to have a particular order of priority. Each one is a basic principle that independently, directly or indirectly, works to support justice in global society.

The first principle, that international economic activity ought to be conducted in such a way that it works to reduce absolute poverty, is fairly simple to defend. Absolute poverty is harmful, in the sense of causing death and illness, and is also understood to make it impossible for individuals to pursue their interests in society. Even those that do not support extensive obligations to address justice in global society, accept that there is an obligation to act to mitigate the effects of extreme poverty, regardless of causes.

Although the principle is non-controversial for anyone concerned at all with global justice, it is less clear how elimination of severe poverty should be achieved, and what a suitable economic status, below which one is considered to be experiencing unacceptable poverty, should be defined as. This is a proposal for justice in international trade, and in general, the mechanism for working to eliminate poverty will be using trade to facilitate economic development that can sustainably lift people out of poverty. However, because extreme poverty is a very serious harm that should not be tolerated in a world where we can afford to end it, the proposal also includes the proposition that
some of the funds raised through controls on financial capital and energy use, would be directed to support sustainable economic development in societies which are experiencing extreme poverty. These societies may lack resources to easily develop efficient productive economies, and it seems reasonable to use a portion of the aggregate benefits of economic cooperation in global society to address this, until avoidable extreme poverty is eliminated. As discussed in the positions of Rawls, Pogge, and Daly, there may be situations in which the governments of societies experiencing extreme poverty may, through bad planning and decision-making, inefficiency, corruption or explicit criminal behaviour, make it very difficult to assist the members of some societies. Resolving these situations is beyond the scope of this proposal, but the reasonable approach would seem to be extending the level of assistance possible through international government organizations, and non-government organizations, which would be able to work with the people.

Determining a poverty cut-off would also require consideration. Two concerns seem immediately obvious, what the cut-off would be, and how to measure it. Setting the cut-off at a low level, such as the World Bank $1.25/day USD (PPP), makes elimination of poverty very clear and very quickly achievable. This is different than the type of cut-off envisioned by Rawls for the “duty of assistance” in *The Law of Peoples*, which is described by Rawls as the level at which a country can sustain the institutions.

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4 Purchasing Power Parity.
and social structure of a decent or liberal society. He does not specify a particular figure. Rawls says that it would not need to be particularly high, although I assume, it would likely need to be higher than $1.25/day.

It is also worth considering how this would be measured. The proposal has been considering wealthy and impoverished countries, but there can be important differences in the structure of wealth and income within countries that have very similar levels of per capita GDP. This would require research both in defining groups within countries that required special attention, and also in considering how projects and assistance would reach those most in need within a society. Both the UN and World Bank currently do research in this area, and would be useful partners. Another side of the measurement that is of concern is what statistics should be used. Income is commonly calculated from GDP, but there are concerns that Gross Domestic Product may have drawbacks for sustainability and actual satisfaction of human needs. Herman Daly is particularly concerned that measurements of income should not include the sale of non-renewable resources (which should instead be discounted from income as the sale of capital assets,) and that addressing this concern may require retooling whatever indicator is chosen. The UN has done considerable work with a variety of versions of the

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6 See Daly in chapter three in this dissertation, but Amartya Sen is well known for his concerns about measuring economies in society.
Human Development Index (HDI), which measures, health education and income. A version of the HDI, combined with an effort to assess differences between groups within states, would be an effective approach.

The second principle, that international economic activity ought to be conducted in such a way that it will contribute to a reduction of harmful inequality in global society, requires a more complex argument to justify. The inequality principle is based on the concern that great inequalities are harmful to fair decision making, and the maintenance of effective and inclusive democracy. Rawls, Schweickart, Stiglitz, Pogge, and Beitz all take the position that, extremes of inequality harm people’s interests by tending to lead to diminished ability for individuals to effectively participate in democratic decision-making and weakening their position in agreements and exchanges. The proposal takes a concern for political equality in institutions seriously, and requires democratic political equality in the functioning of the Global Trade Organization (GTO) as an institution, but the goal of the proposal is not absolute global economic equality.

Following Rawls, the principle is not a trump which requires total economic equity, but rather a concern that equality is a high value for effective democracy, and inequality ought to be limited, in keeping with the concern that economic efficiency cannot be permitted to overrule the ability of members of society to participate

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effectively in democratic decision-making processes. The inequality principle will be focussed on addressing harmful inequalities, where large differences in economic power translate into political inequality or difficulty in addressing human rights concerns and environmental issues.

The inequality principle is limited, in that it does not consider active redistribution of the background wealth of countries or individuals in a direct manner, accepting some level of differences in wealth, but seeking to create a structure of economic interaction that supports equality, by requiring it in terms of trade, except in cases of trade where the poverty principle would apply, and in some situations concerns for equity. It might be considered that the inequality principle would be a presumption of actual free trade, in the sense of an equal absence (or presence) of barriers to trade between partners. In situations where a country was below a poverty cut-off, or where the ratio of difference in wealth between states was beyond a specific ratio, it would arranged that terms of trade could shift to favor the expected returns towards the poorer party.

One model for this would be something like the “Market Access Proposal” suggested by Stiglitz. In the proposal he suggests that in an effort to economic development for developing countries, that all countries would eliminate barriers to their markets for countries with lower GDGs and lower per capita GDGs than themselves. The Global Trade Organization proposal would take an approach that was

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8 Stiglitz and Charlton, Fair Trade, 94.
similar in principle, but not exactly in structure. This proposal does take the position that a long term levelling down of levels of consumption of non-renewable resources is desirable, and Stiglitz’s proposal does seem likely to likely to lessen inequality, but it lacks a mechanism for ensuring that economic development will be sustainable. Because it will likely encourage competition based on low wages rather than efficiency, it may actually lead to generally less efficient use of resources in the global economy. Leveling up of developing countries to a level of throughput of non-renewable resources that is similar to the current level of wealthy developed countries, would be disastrous ecologically, and for the quality of life on the planet.

This proposal would be similar to Stiglitz’s, in that it would have a basic principle that trade agreements ought to work towards ending economic inequalities that limit people’s ability to participate, and effectively pursue their interests in global society and its institutions. Market access would be facilitated, but there would also be a focus on ensuring that this was accompanied by effective regulation, to ensure that this did not encourage competition based on externalizing social or environmental costs. (This would include competition based on labor exploitation or unsustainable environmental practices. And the proposal would, almost certainly, require assistance in developing capacity to support the regulation and developing industries.) In many cases, it might prove that support for strategic economic development would be preferable in the long term to simply opening all markets, and allowing poorer countries to use an absolute
advantage they might have in production costs, because their impoverished citizens will work for very low wages.

Another concern with a blanket policy like Stiglitz’s Market Access Proposal is that if not managed carefully, (with controls on financial capital) it may create a situation where holders of financial capital in wealthy countries, could use it to benefit from cheap factors available in poor countries, to the disadvantage of labor in wealthy developed countries. This might lower the inequality between states, but would worsen inequality within developed countries, which is already becoming a source of political and social injustice for many of them. So the proposal will embrace the general spirit of the Market Access Proposal, which is for wealthy developed countries to assist developing countries with economic development opportunities through trade, but will not adopt a complete open market policy for less developed countries, without consideration of environmental and social impacts.

The inequality principle is included in the proposal, with the goal of reversing the trend of rapidly increasing inequality between states and within states. Its goal is not complete global economic equity, but is focussed on ensuring that conditions which support fair agreements and exchange are promoted and maintained, rather than continually eroded by the natural effects of markets and free exchange over time.

The third principle is that international trade ought to be conducted in such a way that international economic activity does not produce negative externalities. This principle in a sense is fairly non-controversial, as all societies accept it in principle, and
all wealthy developed societies enact more or less effective and comprehensive sets of
laws and regulations to prevent negative externalities, or provide for sanctions or
damages when they occur. As we have seen, Rawls suggests that this as an important
function of the economic institutions he proposes in ATOJ.9 Singer suggests that
effective regulation of negative externalities is, in general, considered vital in the legal
systems of developed states, but is effectively absent in international society.10 Pogge
considers the lack of effective measures to restrict the ability of international economic
actors to impose uncompensated costs and burdens on third parties, to be a cause of
important harms in the current international trade regime.11

The reason that the ability to restrict negative externalities is absent in the
current structure of international economic interaction is the result of a combination of
two factors. One is the focus of the WTO on reducing barriers to trade, which means
that its Appellate Body finds almost all claims to harmful 3rd party effects to be less
important than reducing barriers to increased trade.12 And a second is the structure of
contemporary world order, where there is very little agreement on standards of
regulation for many concerns between countries, and virtually no capacity for consistent

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9 Rawls, *A Theory*, 244.

10 Singer, *One World*, 93-94.

11 Pogge, *Politics as Usual*, location 962.

12 Singer, *One World*, 57. This is also the position taken by Bhagwati, who, as discussed in chapter 3,
doesn’t actually see it as much of a problem.
enforcement of what regulative agreements exist, particularly in the case that the negative effects are experienced by members of poor countries.

Another particularly thorny concern is for the effect of negative externalities where the costs or harms created are placed onto future persons. There is some regulation aimed at reducing this in wealthy developed countries, but it is very much an emerging concern. There are basically no effective measures to address this in the current international order, as evidenced by the inability to come to grips with powerful environmental issues such as climate change.

The externalities principle will be addressed in general by the global nature of the institutions that regulate the global economic activity. Fair regulation should be achievable through the inclusive democratic and global nature of the Global Trade Organization institution, in the sense that reasonably effective representation of most interests in global society is the goal, and under those conditions regulation should generally reflect the interests of all to avoid being on the receiving end of negative third party effects from international economic activities. Since this is a stand-alone proposal, enforcement is likely to be much more of a problem in some ways. Issues brought before the institution that is charged with this regulation, in general, can be expected to be dealt with fairly, as the institution would have a focus on just economic interactions rather than economic efficiency as its highest value. However, there would be a concern with how to actually enforce the decisions once made. One structure might be the imposition of fines or damages on parties that engage in practises that result in
recognized negative external social or environmental costs, but in some situations these may be difficult to enforce, as WTO judgments of this type, when they have occurred, have often been. In the stand-alone proposal the most effective enforcement would likely have to be membership in the institutions of global society itself. There would likely be enough benefit for all members of the economic agreement in global society that the costs of being left out are greater than the benefits of behaviour that will cause a party to lose its membership. This is the current strategy of the WTO, but it is weakened at the WTO by the ability of some members to just ignore issues that don’t suit them because of their economic power in global society.

**Functions of Institutions**

The functions of institutions of a fair system of global economic interaction, as mentioned, would include most of the areas covered in the current regime by the WTO, as well as several others that are currently outside the WTO. The institutions would need to structure trade agreements, focussing not on removing barriers to trade at any cost, but on facilitating conditions that increase trade and economic activity in international society in ways that are consistent with the principles of justice.

As we have seen, the long-time, widely purported, theoretical basis for making the elimination of barriers to unrestricted free trade the focus of international trade regimes is very problematic. Comparative advantage appears to be much more limited in the conditions to which it applies than has been argued. We should encourage the reduction of barriers to trade under conditions where analysis showed that there would
beneficial returns from comparative advantage, absolute advantage or efficiencies produced by free markets that in general would be distributed in accordance with the principles of justice. In other cases the function of the Global Trade Organization institutions could be to structure tariffs or duties and restrictions or limits, in ways that supported the three principles. Ideally the institution opens its doors to a clean slate of historic agreements, as many existing ones have been negotiated under conditions that were far from just. The institution would take free trade to be desirable as a starting assumption for many types of trade, and the function of the institution would be to fairly determine when it was, and was not, the best option for supporting the principles of justice. This position can only be just when it is assumed that the decisions would be fairly based on the principles of justice, rather than power and self-interest. It is a position that requires the institution to be inclusively democratic and transparent in its decisions.

Regulation of Trade in Financial Capital

The WTO currently has the TRIMS (Trade Related Investment Measures) agreement, which concerns the flow of international capital (which came into the WTO as part of GATT,) with a focus on trying to ensure that there is as little restriction as possible on the ability of those who hold capital to move it freely around the world in search of the highest returns. Many commentators, even those who in general support a free trade model for international trade, consider that the unrestricted trade in
international capital contributes more harm than good to global society. Unrestricted flows of capital from country to country, or market to market in search of short term profit has proven to both promote instability, sometimes provoking acute financial crisis in countries where capital flows out very rapidly, and to be of little use in supporting the types of economic activity which permit stable development and lift people in poor countries out of poverty. Managing this situation will be one of the functions of a new global institution for international trade. The goal of the financial capital section will be twofold: first, it will be to ensure that trade in financial capital does not create injustices in global society, in the sense of creating economic instability or forcing poor countries to make choices that ignore the basic needs and concerns of their people in order to secure capital or avoid capital flight; second, it will be to try to ensure that global financial capital is put to constructive uses, where it will do the most good in reducing poverty and harmful inequality. Thomas Friedman suggests that international capital can be thought of as “the herd.” In this sense the role of a just institution for international trade would be that of a thoughtful shepherd, knowing the value of the animals, but aware of the hazards of stampedes and overgrazing.

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13 Baghwati, *In Defense*, 203-5 Joseph Stiglitz also specifically argues that it is unjust to force developing countries to accept TRIMS as a condition of a development round of the WTO. See Stiglitz and Charlton, *Fair Trade*, 144.

14 Stiglitz and Bhagwati, both cover this concern in chapter 3.

The tools the institution would use would be regulatory. One would be a tax on transfer of financial capital. The regulatory role would be to ensure that the trade in financial capital did not violate the principles of just trade or any specific regulations which were developed to support these principles. The tax tool would be similar to a “Tobin tax,” but with modifications specifically formulated to support the principles of justice in trade. The tax would take the form of a tax on the trading of stocks, bonds and other forms of financial capital. It is possible that a straight tax on financial capital would in a sense be more effective at reducing inequality, but one of the concerns is to support stability, so a transfer tax would seem to be more likely to reduce very rapid shifts in flows of financial capital that occur to take advantage of small, short term differences in the rate of return. A straight tax on capital could serve the purpose of redistribution but would seem to do little to reduce the rapid speculative activity and its effect on capital markets.

There would be a transfer tax on global financial capital of the type generally known as a Tobin tax. The rate would be set at a level that was determined to restrict


17 Piketty, Thomas, Capital In the Twenty-First Century (Cambridge: Belknap, 2014), 515-36.

18 Keynes suggested that very liquid markets which allowed speculation to dominate investment strategies over enterprise or the development of productive business were against the best interests of society. Keynes, John M. “The General Theory of Employment Interest and Money,” in The Real Price of Everything” ed. Michael Lewis (New York: Sterling, 2007) Chapter 12, section VI: “It is usually agreed that casinos should, in the public interest, be inaccessible and expensive. And perhaps the same is true of Stock Exchanges.”
the profitability of short term speculation, but was still in keeping with financial capital having a global role in economic activity. How high the rate would be set could be decided in keeping with the democratic opinion of the representatives guiding and managing the institution, on the role international financial capital ought to have in international economics. They may decide that the role of international capital should be very limited and set the rate very high, or they may decide to set it lower, encouraging international investment in the real economy, but high enough to reduce short term speculation or gambling. Setting the particular rates would likely require economic expertise, careful thought concerning the desired outcomes, and possible side-effects, as well as some trial and error.

An important possible role for the global transfer tax on investment capital would be as a source of revenue to provide capital for agreed upon economic development projects to assist societies in developing sustainable economies that would help to lift their members out of absolute poverty. This would be a separate branch of the Global Trade Organization. Raising revenue in this way seems very much in keeping with the idea that the aggregate benefit of international economic activity ought to accrue, in a fair way, to members of the global society.

Intellectual Property

Another important area of function for an institution that is charged with promoting just international economic activity would be the area of intellectual property. In the current international trade regime intellectual property is an area of
contention between wealthy and poor states on several levels. Poor countries are required to accept the protocols (TRIPS: Trade Related Intellectual Property Rights) concerning intellectual property in order to ascend to membership in the WTO. As several commentators have pointed out, while it is a voluntary commitment, the extent of international economic interdependence and the importance of international trade mean that in many senses the choice ends up being the selection of the least bad option rather than a free decision. Accepting the intellectual property protocols means, for developing countries, several different types of costs. On one level it means the cost upfront to developing a regulatory regime that is capable of recognizing intellectual property rights and assessing and collecting royalties imposed on the use of those rights that are owed to their owner.\(^{19}\) The second is the actual cost of the royalties to developing economies, which are essentially rents, and are for the most part, held by corporations operating out of wealthy developed countries, which transfer the returns from production in the economy from poor societies to rich societies. A third cost, which is potentially even more problematic for developing countries, is what the current

\(^{19}\) Bhagwati, *In Defense*, 182 Bhagwati said, when IPP became TRIPS, trade related was added to turn the WTO into a royalty collecting agency. “A prime example of such harmful lobbying by corporations in recent years has involved intellectual property protection (IPP). The damage inflicted on the WTO and on the poor nations has been substantial.”

Stiglitz, J; Charlton, A. “The Right to Trade: A Report for the Commonwealth Secretariat on Aid for Trade. (2012), 3 Stiglitz claims that implementation costs for Uruguay round, for IPR, customs, and phytosanitary regulations would be \$150 million as an average for developing countries.

Finger, Michael, J; Schuler, Philipp. “Implementation of Uruguay Round Commitments: The Development Challenge (World Bank E Library, 2000), 25 accessed at: http://elibrary.worldbank.org/ Finger and Schuler note that the cost for Mexico’s Intellectual Property reforms to meet Uruguay Round commitments was \$30 million, they also note Mexico already had a reasonably well developed system, compared to many developing countries, which can expect it to cost much more.
system of rents on intellectual property means for the quality of life and health of the wealthier majority of persons in global society. The rents on intellectual property mean that many drugs to fight diseases that are considered curable or manageable in wealthy societies are priced beyond the reach of most of the population. Governments must in general act to restrict or eliminate the availability of cheaper generic versions, which do not pay IP rents, in order to comply with the IP portion of the trade agreements. The other side of this is that because drug manufacturers recognize that poor persons in developing countries will be unable to pay high prices for drugs they develop, very little is spent on research for drugs effective against diseases which affect mostly poor people in developing countries. A well-known example is malaria, which has had the most documentable impact of any disease throughout human history, and continues to take a very high toll of deaths as well as long term incapacitating illness, in many developing countries. Little concerted research has been done on this disease by for-profit pharmaceutical companies.

A just approach to intellectual property rights would require different strategies to address the different concerns. In an economic system where it is conceived that innovation and research are, at least partially, driven by private for profit interests, it seems necessary that some effective system of intellectual property rights must exist in order to provide incentive for research and innovation. A system where any successful innovation, idea, design or product of research, is immediately copied and marketed by others who can undercut on price, as they do not have to include the amortization of
the research costs in their costs of production, is a system where the types of research
and innovation will be limited. There are two ways of approaching this: one is to ensure
there is a system of intellectual property rights that is reasonably enforceable and
balanced between cost and protection for research and innovation in place; the other is
to assume that some types of research can be understood to be a form of public goods,
which will provide benefit to all or many in society, and therefore are worth paying for as a society.

If a society is committed to both forms, it influences the way that each of the
types of systems can be structured. A society where some forms of research and
development are considered public goods, in a sense will alleviate some of the sources
of concern in intellectual property. The remaining concerns for a justice in intellectual
property would for the most part be a balance between allowing producers who are
involved in research and innovation sufficient protection of their intellectual property to
amortize their research, and avoiding intellectual property rights becoming a rent in the

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20 The question of whether intellectual property developed in a society, that considered it a public good, would be freely shared internationally is an interesting one. In a sense, as a public good it might be free only to members of the society that supported its development. Ideally many cases could be resolved through negotiation. A country paying the costs to develop a particular product would not be happy to face competition on price in that industry from someone from a country which hadn’t had those costs to pay for. The Development Branch would likely be a way to negotiate this. A country might be able to negotiate tariffs against a competitor who had violated an agreement not to compete in certain markets (any agreed upon) using IP that had been taken without compensation for the cost of development. Again this a complex issue. It would not seem very just, for a rich country specializing in products needed to provide basic or essential services to impoverished people, to negotiate a level of compensation for IP they develop that would limit the ability of poor persons whose lives can be improved to a relevant degree to access it. This is where a global institution working to balance justice in distribution of the benefits of research with ensuring the needed research and development actually occurs would be most valuable.
economy, where, once gained, they provide a protection from competition that allows holders to raise prices beyond a reasonable return on investment costs (even considering recouping the investments in research) and reduce a continuing research effort to develop new products or technologies.

It is my position that a reasonably efficient system of just international trade would best be a combined system of intellectual property. In the combined system, some agreed upon areas of research or even particular projects would be considered public goods, where an effort to fund research that was in the general interests of society, or that which served a particular purpose in interests of justice, would be publicly funded (through the transfer tax on capital or the energy dividend). Projects would be funded by an international public research funding body, which would delegate funding grants to research proposals based on perceived value of the research project as a public good. It would probably be necessary to have several international research funding bodies, as it would be necessary for funding bodies to have sufficient expertise in the area to judge the value of research proposals in both applied and basic research areas. These could be similar to institutions which exist within states (such as NSF in the US, and NSERC, CIHR and SSHRC in Canada), but they would exist at the global level and be concerned to fund projects that were valuable to global society, both generally and specifically aimed at reducing harms of poverty and disease. They could also become part of international bodies that already exist, in which case the existing international research bodies would have access to a larger pool of resources to provide
grants and support research, which would come with a caveat of requiring transparency in the process for supporting research. Intellectual property resulting from research funded in this way, (with funds from capital transfer tax or Energy Dividend) would in most cases become public (in global society) and would focus on research that was concerned with solutions to the problems of the least well off, who otherwise, because of their extremely limited effective demand, would not be a focus of research by for-profit companies.

Resources to fund research could come from taxes levied on some types of international economic activity, including the global transfer tax on investment capital and a tax which would be a form of Pogge’s conception of a global resource dividend tax (to be discussed later).21 The amount of resources available would vary with the level of commitment in global society to the idea of research in various areas as a public good. International trade may not be reasonable as the only source of funding for all research that could be considered a global public good, and it would be possible for other schemes of contribution to supplement this.

In a combined system there would still be a system of private intellectual property, but it would be different than the current regime in several important ways. One of the influential differences is that it would be managed by an effectively democratic institution in the interests of global society as a whole, with the principles of justice in international trade as a primary concern, rather than being something that

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21 See chapter 2.
large wealthy corporations have lobbied the governments of rich and powerful countries to impose in trade negotiations. Because it is managed democratically according to the principles of justice in trade and in the interests of global society, the IP system will attempt to balance maintaining enough protection to promote research and innovation in a global economy with not permitting IP rights to become too powerful as rents in the global economy, a situation in which they function to funnel wealth from poorer members of international society to wealthier members. This will not be an easy balance to find, and would likely require different regulations negotiated for different types of industries.

The Regulatory Branch

The regulatory branch and its working groups would constitute a crucial part of the institutional framework of the Global Trade Organization, needed to support justice in international trade. A main focus of the regulatory branch would be attempting to prevent or correct negative externalities. It would do this in support of the principle of justice in international trade that states: international trade ought to be conducted in such a way that international economic activity does not impose costs or harm on parties who have not consented to the exchange, including present and future generations. Its role in doing this would include two distinct functions. These two functions would probably require two separate panels of representatives charged with decision making.
The first would be to formulate a framework of regulations. Initially it would use existing international agreements on human rights, environmental regulations and other issues such as ownership or control of resources to formulate a framework of regulations that would apply to the standard sorts of externalities associated with international trade. All members of the organization would have representation on this panel.

A further part of this first function would be an ongoing effort to identify important areas for new or reformed regulations that might be needed to support the principles of justice in trade. Immediate examples that come to mind are the concerns Thomas Pogge has repeatedly articulated. These include the current accepted practise of permitting any government that can maintain control over a population and territory, regardless of its legitimacy, behaviour towards its citizens, or whether it can in any way be considered to represent their interests, to sell the resources of the country legitimately on the international market. He calls this the international resource privilege. And the similar ability of governments, regardless of their legitimacy, or whether or not they represent the citizens, to take on debt in the form of loans from wealthy-country financial institutions that the citizens of the country will be obliged to repay, even when the loans went into the pockets of dictators or their foreign bank accounts. He calls this the international borrowing privilege. These practises, as Pogge argues, permit wealthy developed countries to benefit economically at the expense of
some of the world’s worst off and are egregiously in violation of several of the principles of justice in trade.\textsuperscript{22}

The second large function of the regulatory branch would be enforcement. For a stand-alone reform to international economic institutions, enforcement would be a considerable challenge. In the case of the regulatory panel, the response to cases brought before it that were determined to be infractions of the regulation, would be an order a stop to whatever action caused the infraction, and where appropriate levy a fine or damages. The authority to do so would derive from it being a result of the fair democratic process, inclusive of all members through which the institution was constituted. However, in many situations, where the power would come from to make the authority effective, would need to be explained. In effect the only real power the institution would possess would be the ability to expel members who violated its terms. This would constitute an effective power only if it was actually the case that membership provided greater benefits than those that could be acquired through breaking its terms, and would likely prove true for individual countries in relation to most issues. This requires a majority of members of global society to commit to the project. For the wealthy powerful countries of the current world order, this commitment cannot be completely self interested, but requires an actual desire to address issues of global justice in trade. For the current regime clearly shows that it is

\textsuperscript{22} Pogge, \textit{World Poverty and Human Rights}, 146-167. See also “Economic Justice and National Borders,” 27; and \textit{Politics as Usual}, location 1040-93. Each of these texts considers these issues.
possible, for wealthy and powerful countries to arrange global order and international 
economic institutions in their favor if that is their goal.

It would be important to consider the process of adjudicating particular cases 
that were brought before the regulatory panel. Several features would need to be 
included. One crucial feature would be that the process be seen to be impartial. This 
would not be unreasonable to achieve, but would require a panel of sufficiently diverse 
adjudicators, selected in a manner that made it likely that the panel would not reflect a 
particular bias of interests. Mistakes and/or dissatisfactions with results are bound to 
ocasionally occur, regardless of the efforts to ensure a fair process, so it will also be 
important to ensure that there is an appeals process in place that is also designed with 
fairness in mind. These panels would be subsets of the larger membership of the GTO, 
the exact size of which could be negotiated, but would need to be limited so that they 
could be relatively efficient, addressing cases in a reasonably timely process. The panels 
of both would need to be selected through a transparent process, agreed upon 
democratically by the representatives of global society participating in the Global Trade 
Organization, and could rotate regularly. It might be worthwhile to include a 
requirement that membership on the panels would always be composed of 
representative mix of countries based on their economic position and perhaps region.

Another feature of the adjudication and appeals process that would be vital in 
relation to the principles of justice would be that the process not be such, that 
effectively representing one’s position required resources that were generally only
available to the wealthier and more powerful countries. This is a concern about the current process in the WTO, and is considered problematic even by some commentators who generally support the current free trade model of international trade, and the WTO's focus on it. Issues in international economics can be complex and contentious, so a just process of dispute resolution would almost certainly need to include a component of support and capacity building for poorer and less powerful members of global society, in effectively representing their interests.

Strategic Economic Development Branch

An important function of the proposed institution to support justice in international economics is strategic economic development. This is not a feature of the current WTO. The WTO is committed to a position that places the highest value on removing barriers to trade in support of achieving as close to unrestricted free markets in international trade as is reasonably possible. This position has long-standing support among many economists, and particularly came to dominate economic thinking, with important results for policy outputs, beginning in the 1980s. The focus on promoting unrestricted free markets in international trade, because of a conception of their being the most important factor in the successful development of economies that make use of international trade to lift people out of poverty, has turned out to be unjustified when the evidence is examined. The “Asian Tigers” are often cited as the defining example of the success of free trade, but in fact, when their cases are examined, as we have seen, they turn out to have actually been examples of strategic industrial development and
careful protection of markets, up to the point when the chosen industries were no longer benefiting from it. The actual evidence supports the idea that effective trade-focused economic development that brings opportunities to people and diminishes poverty tends to occur when it is in industries that produce increasing returns to investment and technological improvement over the long term. The research also shows that the trade environment is also an important feature. The success of Korea, Japan and Taiwan appear to be not only because of a focus on development of particular industries for export, but also a result of the Cold War climate, where these countries received fairly open markets in the US and other developed western countries because there was a strong desire that they succeed economically, and not be drawn into the Soviet sphere. The strategic economic development branch of the Global Trade Organization will have the role of assisting societies that wish to develop particular industries that they see as desirable and sustainable pathways to economic development.

This branch would function at a level between individual countries or societies and the trade institutions that represent global society. It would consider proposals with

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25 See above for discussion of Chang and also Stiglitz in chapters three and four. It should also be noted that China benefitted from maintaining protection for its own markets, and ensuring its currency was kept artificially low so that imports were generally out of reach (and exports cheap), while taking advantage of the market liberalization occurring in developed countries since the 1980s.
development plans coming from individual countries or societies, and from the perspective of global society consider if the plan seemed, feasible, reasonable and fair. Because the panel reviewing proposals would be representative of as wide a cross section of interests in global society as possible, and also would be committed at the level of basic structure of the institution to equitable processes of decision-making, most of the time the proposal would be fairly reviewed to evaluate whether it was likely to be workable (which is always a guess, but would require a variety of economic expertise), and whether it was likely to be in line with the principles of just trade. Proposals for strategic economic development that were accepted would be analysed in order to determine how they could be supported. In many cases, it would be possible to arrange combinations of free access to important markets and protection at crucial early stages, which would allow industries to develop in an environment similar to infant industry protection, but without the barrier of reciprocal tariffs. This would be negotiated according to the principles of justice, but also in the expectation that others will assist you when necessary. The difference from infant industry protection as it was practised by now-developed countries historically would be that it could be structured as cooperation to assist everyone in enjoying the benefits of a vibrant economy in global society. Currently reciprocal trade concessions are often extremely adversarial, in a sense, acting as if international trade was a zero sum game (although most trade economists take the position that it is not) and by necessity, if one wins (by getting a concession in a trade agreement) the other loses. The conception of a fair, and
transparently inclusive and effective democratic institution for international trade is designed to create a structure where states can be sure they will not be unfairly taken advantage of, for the unjust benefit of others. In some cases wealthier societies will be asked to make concessions in terms of trade to poor societies that will make trade less profitable than maximal. Obviously it must still be beneficial for both or it wouldn’t occur, but again, following Rawls, the proposal for justice in trade assumes a disposition to live in a just society.

In many cases there might also be a loose coordination concerning which societies will choose to specialize in which industries. This would not be a tight planning of exactly who will produce what, but it would involve discussions over what industries were already highly competitive, (which isn’t necessarily bad) and which industries presented strong future possibilities. Certain characteristics make for more attractive industries, and those industries are the ones that everyone wants to be in, but the institution would provide a forum for strategizing in this way, in a setting that would be as non-adversarial as possible. Under these conditions, (and with some regulation of international flows of investment capital), comparative advantage in some situations

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26 This situation, where no progress is made on important issues, which most agree should be addressed, because all actors feel if they give up anything, that they haven’t carefully ensured all others will also, verifiably do, at the exact same time, they will be taken advantage of (and they may be), is common to many areas of international relations. The Intergovernmental Panel on Climate Change (IPCC) and UN Framework Convention on Climate Change (UNFCCC) and their inability to make progress on reducing carbon emissions, even when most players agree it is crucial, is a perfect example of the limitations of the anarchic nature of the current international order for resolving problems in a global society.
(probably not all because of the concerns for reduction of absolute poverty and harmful inequality) could be used to advantage.

In the case of very poor countries, the support for strategic economic development ought to go further. It could be well worthwhile in long term benefit, for there to be funding available for very poor countries to subsidize the development of industries that have the potential to transform the economic situation of the country. Development of technology, expertise, organizational capacity and a workforce sufficiently skilled to be effective, are often barriers preventing the poorest, least developed societies, from making the kinds of choices that pull them out of poverty. Developing these things is a cost that societies that are very poor are not able to pay. Borrowing money to support this development is problematic, for the poorer you are, the more difficult it will be to pay the loan, and because of the risk, the higher the cost of borrowing. High rates of interest can make servicing the debt crippling for governments trying to put programs in place that will effectively support developing industries, and in some situations conditionalities attached to the loans from international institutions may worsen the situation, particularly in the short term.27

The proposal here is for funding to be made available, in the form of loans with repayment conditions tied to ability to pay. In cases where ending extreme poverty for the least well off in global society is involved, it would need to involve grants or loans where repayment is a long term expectation, based on the society eventually being able

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to rise above extreme poverty, and assist in rebuilding the fund to aid others. In many cases, it might also involve training and transfers of expertise or technology that build capacity in less well-off societies.

The strategic economic development branch may in some ways seem like a rehash of various institutions such as the World Bank and various UN agencies. International agencies in the current world order may have a mandate to support economic development in less developed countries, but their structure and perspective is different. It is commonly pointed out that many foreign aid development projects fail, are enormously inefficient, or even cause dependency or harm. The proposed strategic economic development branch of the GTO has a structural difference that is designed to address these issues. There are two structural features of the institution as a whole that can work to make the proposed solution more successful than the current approach to supporting economic development. The first of these is very specific: current institutions in general, are either controlled by wealthy, powerful countries, who ensure that policies and activities focus on serving their own interests, or, as in the case of many UN agencies, pushed into the background in favor of institutions that more directly represent wealthy country interests. The proposed institution would be democratic

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28 The UNCTAD (United Nations Conference on Trade and Development) has had a focus on dialogue and strategic development for developing countries, but it became much less influential after the creation of the WTO, when developing countries, which for the most part, were not highly involved in GATT negotiations, became members as part of a Washington Consensus push to liberalize their economies. Stiglitz and Charlton, *Fair Trade*, 41-49.

29 See chapters two and three for the positions of philosophers interested in global justice and economists.
and inclusively representative of global society. Its interests would be varied, but they would include those of the poor and those desperately in need of effective development assistance. Those interests would be represented in administering the policies and activities of the institution, in the strategic economic development branch, and in other parts of the Global Trade Organization.

The other structural difference would be a result of the basic principles of justice that motivate the creation of the Global Trade Organization. That is, that in a global society, we are all in a sense “in it together,” and it is unjust that some should suffer from terrible poverty when the resources are available to prevent it, even more so when we are all inescapably connected in a myriad of ways to the international economic interactions that bring immense wealth to some and leave others in desperate poverty. The institution’s purpose is to provide a background framework that allows individuals to interact and pursue their own interests in conditions which make those interactions fair and just. The function of the GTO in global society is to take away the need for all individuals to constantly check all their own actions against categorical imperatives or make a utilitarian calculation each time they put an item in their shopping cart. Because we are committed to sharing the benefits of economic activity in global society justly, we accept that the worst off will be assisted. Successful economic development projects in poor developing societies could mean lessened obligation to provide assistance and more for everyone in the long term. Because of this, all members of global society have an incentive to be sure that projects are well thought out, well organized and funds are
used wisely. Failed projects wouldn’t just mean an endless income stream going to western financial institutions from highly impoverished countries, servicing a debt load they may never be able to pay off. In the context of the proposal, they would represent a failed opportunity for all of society.

Non-Renewable Energy Resource Dividend

The revenue needed for the fund will be derived from a form of Thomas Pogge’s proposal for a Global Resource Dividend and the Transfer Tax on Financial Capital.\(^{30}\) In the former case, the dividend would be paid on the use or sale of non-renewable energy resources.\(^{31}\) The dividend would be paid in recognition that the global store of non-renewable energy resources is a finite pool in which all current and future persons have a stake, and that the harmful effects of burning carbon-based energy sources affect all members of the global society, regardless of their own use of the energy resources. (These effects have disproportionately been felt by poor persons in developing

\(^{30}\) The Transfer Tax on Financial Capital would be variable as a source of revenue. If it was applied at a fairly low rate, to dampen and stabilize, the very rapid speculative flow of financial capital it might produce quite a lot of revenue. On the other hand, it might also be applied at a higher rate, where it would function to keep capital domestic. In that case it would produce much less revenue if it was working effectively.

\(^{31}\) This part of the proposal crosses the boundary of being strictly limited to trade. It might be considered that a tax on the international trade in non-renewable energy resources would be more appropriate for a proposal based on trade. The problem with this approach is that it would penalize countries with less domestic reserves of non-renewable energy resources, while permitting societies with large domestic reserves to use them imprudently. Pogge’s conception of the GRD is influenced by Rawls’ understanding that people have done nothing to deserve the assets and talents they are born with, that it is arbitrary. Pogge considers the same can be said about the distribution of natural resources between countries. A tax on the cost of non-renewable energy resources used in the production of goods and services traded in global society, would have the benefit of encouraging efficient use of energy resources but would be very complicated to administer. The same problem occurs with a tax applied to non-renewable resources in general.
countries.) Non-renewable energy resources seem the best choice for applying the
dividend, as coal, oil and gas are finite resources, of which the global store is
disproportionally used by wealthy developed countries, and the use of which produces
carbon emissions that are understood to be the main factor driving climate change. The
international community is in consensus that increasing levels of carbon in the
atmosphere are leading to climate change that will be harmful to ecosystems that
support human life. And there is also an international consensus that carbon emissions
from using non-renewable (carbon based) energy sources must be reduced. However,
there has been almost no effective progress towards reducing carbon emissions. Carbon
emissions are an open access commons problem, which cannot be resolved unilaterally,
as each individual country’s economic cost in reducing carbon based energy use will not
reliably be compensated by the lessening of harms from climate change, if it can’t be
assured that others will also reduce their emissions. The Non-Renewable Energy
Dividend, paid on use of non-renewable energy resources, is an effective way of
addressing this open access commons problem. The rate paid on the use of non-
renewable energy resources can be set high enough to strongly encourage conservation,
and stimulate research and investment in alternative technologies. Therefore, it seems
acceptable, in interests of fairness of process, to tax the use of energy resources
generally, rather than just in international trade. I argue that although it isn’t’t
necessarily a part of international trade, the use of non-renewable energy resources is
such an influential force in global economic interactions that it is drawn into the purview of a proposal for justice in international trade.

Because the harms of unrestrained consumption of non-renewable energy resources may be very high, we ought to apply the precautionary principle when we consider what level of consumption of non-renewable energy resources would be an appropriate target. In this situation the proponents of both environmental and ecological economics could probably agree that the level should be quite high.\textsuperscript{32}

Although even a rate that was too low to modify resource use behaviour quickly (and energy use has proven relatively inelastic), would likely produce a large amount of revenue. Setting the dividend at a high rate would have the benefit of beginning to modify resource use behaviour very rapidly, but it would come with the cost of economic impacts that could be quite powerful for countries that currently sustain their economies with very high levels of oil, natural gas and coal use. There has been considerable research on these economic costs. Before decisions were made on the rates, more would likely be necessary.

A further argument for the Non-Renewable Energy Resource Dividend pertaining to a proposal for a just trade regime, is the mechanism for ensuring compliance, suggested by Pogge in his GRD proposal. He argues that the most effective way to

\textsuperscript{32} They tend not to agree on very much, but if carbon emissions are recognized as main contributor to climate change, which is harmful externality that has resisted internalization, both would agree that making the price of using carbon based non-renewable energy reflect the real costs of using it would be a good thing. Environmental economists would see it as a way to stimulate research into less expensive resource substitutes, and ecological economists consider reducing throughput of non-renewable resources in the economy a key goal of sustainable development.
ensure that countries were motivated to collect the dividend on resource use would be to tie it to international trade. Countries that had signed onto the agreement but did not pay the dividend would face tariff barriers to their exports, from countries that were members of the Global Trade Organization. This could be an effective method of ensuring compliance as long as the value of trade in the GDP of the country it was applied against was much higher than the dividends that were owed on non-renewable resource use. (Even a fairly high rate charged on non-renewable energy use would be very low compared to the value of trade in developed country economies.) This method would probably be reasonably effective for motivating compliance if the majority of countries normally complied and were willing to implement the tariffs against those that were not.

**Structure of the Institutions**

The structure of the proposed global institution or institutions for justice in trade is a crucial question. What could a just institution look like in this context? I have suggested that they would be democratic institutions that were inclusively representative of global society, and I have also suggested that they would need to be transparent.

One way that the institutions would be radically different than the current WTO and other international economic institutions is that they would assume principles of justice in trade as part of their basic charter and framework, making them the most basic duties of the institution regardless of all other operating interests. This not to
suggest that mistakes, crooked dealings, corruption, and simply self-interested subversion of principles could not occur, but rather, that the basic expectation would be working towards economic justice. And when individuals or groups were found to acting in ways outside that expectation, action would be undertaken to hold them accountable and correct any resulting wrongs. This is markedly different than current international economic institutions such as the WTO, the IMF and the World Bank. These institutions are administered by representatives of the governments of states, who are expected, by the governments that appoint them, to make national interest a high priority. Although the creation of these institutions reflects a belief in the benefits of cooperation in international society, some of their activities and policies arguably reflect positions of international relations realism.

What would the organizational and representative structure of an inclusively democratic global institution for trade supporting a cosmopolitan conception of justice look like? A cosmopolitan conception of justice is one in which obligations of justice extend between all individual members of global society. Each individual has an obligation to ensure that his/her behaviour and pursuit of his/her own interests are consistent with permitting all others to do the same, regardless of cultural or political boundaries. Because the proposal for a Global Trade Organization is to function in global society as it actually exists, it must be structured to function effectively in the current international order, but also to take a commitment to cosmopolitan obligations of justice seriously. It is a daunting task, for there is no exact example of an institution that
is realistically comparable, although there are at least several that can provide insight into what would be required.

Institutions in general require several levels of decision making. There are First Order decisions about policy or particular actions. These are the types of decisions discussed in the previous section on functions. In this case they are the policies and actions taken in relation to the principles of justice in trade. Second Order decisions are those concerning who will make those decisions and under what conditions they will be made. And Third Order decisions are those concerned with how to decide who and how second order decisions will be made.\textsuperscript{33} Basically second-order decisions are the process of putting people into place in the institutions, the electing or appointing of first-order decision-makers, and third-order decisions are the process of deciding what process of selecting those persons is the best option in the particular situation. Looking at some examples of current international institutions and how the second- and third-order decisions affect outputs is useful before attempting to explain choices in the proposed model.

A first example is the current WTO. The World Trade Organization is designed to be a democratic international institution, with the goal of supporting reduction of barriers to international trade. The WTO is in some sense democratic. All member states are allowed representation in decision-making regarding adoption of new protocols resulting from trade negotiations, and the voting is based on consensus, with a

\textsuperscript{33} Pogge, \textit{Politics as Usual}, location 4745.
requirement for unanimity. The representatives are appointed by the governments of member states. The WTO includes a very large body of trade agreements that set regulations and conditions for trade between member states, but this is largely the result of the majority of the body of agreements that had been concluded under the previous trade regime, GATT, being subsumed into the WTO on its creation in 1995. The GATT (General Agreement on Tariffs and Trade) was, in general, not focussed on poorer developing countries, which had little involvement in most of the agreements. Wealthy developed countries, in general, under the GATT process were able to establish positions guaranteeing their ability to protect or subsidize particular industries, and carry those into the WTO. Developing countries ascending to the WTO were for the most part required to face new standards, both regulatory and then in the consensus process, which has made it basically impossible to protect their interests in the same way as was possible for developed countries, in earlier GATT negotiations.

The WTO, compared with the IMF and the World Bank, which are administratively dominated by representatives from wealthy developed countries, has a form of global democratic structure. Its democratic structure, however, has some serious flaws, which, in the end, create a situation that is quite unjust. It uses a consensus system of decision-making, which creates a situation where it is possible for a

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34 In general countries are represented at the WTO by the Trade Ministers of Member Countries at the highest level conferences, but countries appoint a delegation to participate in negotiations and working groups. The size of delegations varies widely, depending on the ability of countries to support delegations to represent them. The WTO is based on consensus decision-making, so in effect all countries have equal power to assent to or reject an agreement.
single member to block any decision that it sees as unfavorable to its interests. The consensus model effectively gives all members a veto. In general that has resulted in very little effective progress being made, either in new trade negotiations to create conditions more favorable to developing countries or in reforming very problematic agreements such as TRIPs and TRIM, in the fifteen years since 1999. (With the body of agreements that came into the WTO with GATT 1994 being a reflection of the interests of the wealthy developed countries, and agreements like TRIPS and TRIMs, which resulted from the efforts of corporations, lobbying the governments of wealthy developed countries, a form of governance that makes it very difficult to change the status quo, seems quite unjust.)

Another concern for the effectiveness of the democratic model of the WTO is the dispute settlement mechanism (appellate body). In a sense it is a democratic system, in that it is possible for all members to bring a case before it. The concern is that in many cases, because it is adversarial and both member states are allowed to present their cases, poorer countries are heavily disadvantaged. It appears to be the case that decisions of the appellate body of the WTO tend to reflect the ability of the state presenting the case to afford a very well prepared case.\(^\text{35}\)

The United Nations, created in 1944, is another example of an international institution designed with some concern for a democratic structure. The General Assembly of the United Nations is made up of appointed representatives of the

government of member states. The United Nations General Assembly makes decisions according to a majority system, where representatives of all member states have an equal vote. The General Assembly is perceived by most to be fairly effectively democratic in its decision-making, although to some extent it is hampered by a combination of national interests and the realistic conception that most of its decisions will not result in effective action. Wealthy powerful countries often operate around it, and have a tendency to ignore the possibility of expending effort to build support for most of their projects within the UN.

The structure of one-country, one-vote is democratic, in a sense, but is also problematic from a cosmopolitan point of view. Accepting the position that there is nothing about the status of a state that trumps other obligations of justice, makes the orders of magnitude differences in representation seem unfair when it comes to participating in decision-making in relation to factors that may have the potential to make an individual or group much better or worse off. One vote representing 300,000 persons seems a very different type of representation than a vote which represents more than 1,000,000,000 persons. (These are all large numbers but there is a very serious difference between them.) A cosmopolitan position means taking obligations to all individuals seriously, and so, particularly when there are huge numbers of people, justice must involve fair institutional design. Although there are reasonable arguments for efficiency on several levels of representation by state, in a truly global conception of justice the ideal will need to be a form of representation based on population.
The European Union is another example of a democratic international institution. It is not a global institution, but it operates over a large number of national borders, and in some situations, comes close to being a supranational institution. The part of the EU that is most interesting in relation to our proposal is the manner in which representatives are elected to the European Parliament. In the case of most international institutions, representatives are appointed by the government of the states they represent. In the European Union, however, representatives are elected separately from the governments of representative states. They are representatives of the state where they are elected, and of course act in their national interest, but they will not always reflect the exact same interests as the government of that state. This can be problematic but can also function to serve the interests of justice, in a similar way to the separation of powers within modern democratic states.

Exactly how to structure representation in the GTO is a complex concern. As noted, there is a tension between the demands of cosmopolitan obligations of justice and the pragmatic concerns of a proposal that could reasonably be implemented in the actually existing international society. The cosmopolitan position would seem to require a representation based on population that would allow each individual to select a representative with more or less equal power to represent her or him in relation to other members of global society. The problem with this is that international society is based on states as primary actors, and no proposal ignoring this would be viable. If even the smallest state was to have a representative, and states with larger populations were
to have additional representatives based on population, the number of representatives would quickly become unmanageable. In interests of practicality, the GTO would likely have to be similar to the WTO, with a single vote accorded to each member state.

There are of course problems with this. Indians or Chinese persons could feel that their voice is tiny compared to the extent of their needs. With such an arrangement it would be possible, if this was something that was a concern, to create a rotating panel of members selected through a process that took population into account. The single vote per state compromise is definitely a concern for fairness in a global institution, and countries with large populations may have concerns.

At the WTO, the consensus requirement in decision-making, which is an effective veto, at least nullifies some of the problem of fairness in representation by population, or otherwise. No state has its interests outvoted and sacrificed to a majority. This is actually a valuable feature, and in theory compatible with Rawls’ position on the injustice of a utilitarian willingness to sacrifice some individuals interests for the benefit of the majority. As discussed, this hasn’t turned out to be particularly fair in the WTO. A strict majority-rules decision-making structure could also be unfair, although in some

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36 The rotating panel could be selected through the UN. (The only reason for choosing the UN would be that it is a reasonably democratic international institution that would be capable of establishing a process for selecting representatives that members might agree to.) The rotating panel of population could be fairly small, and still have effective power, if a fairly large super-majority was used for decision making.

37 It has meant that developing countries have been unable to make changes to agreements that came into the WTO at its creation, that favor developed countries.
ways it would be mitigated by integration of the principles of justice in trade, providing a framework for interaction.

A compromise between a strict majority-rule format and the consensus model could be a super-majority system, where a high percentage of votes would need to be in agreement, to successfully pass a decision. This could be a fairly high percentage, 70% or more, to limit the ability of a single bloc of countries to push through terms that were unfair (The actual percentage required would need to be considered and evaluated.) A possible safeguard would be to include the option, available to countries, to appeal a decision to a separate panel that would judge only if the decision was valid in relation to the principles of justice in trade.

Even allowing for a large super-majority, this structure will shift considerable power away from wealthy developed countries, which currently dominate the international institutional order, as they are a fairly small group of countries. This is a fairly radical shift, and will likely incur powerful criticism. I believe, arguing from a position of justice in global society that these claims hold up. The argument starts from the same position as Rawls in *A Theory of Justice*: that accepting the proposal requires a desire to live in a just society. The criticism will be that poor developing countries that make up a large portion of the world’s countries will use their power to skew the policies and actions of the institutions in their favor, or at least make poor decisions through lack of knowledge and experience. In practise this may happen, but the institution is designed to be transparent, and its framework of guiding principles is to be
that of economic justice. In the current regime, as clearly and powerfully outlined by Thomas Pogge, the wealthy powerful countries have arranged the structure of the international economic order in their own interests and make little pretense to setting the basic operating principles of the most powerful international economic institutions to be fighting poverty and harmful inequality. In effect, many of the institutions are already weighted towards increased representation based on wealth. (For the WTO this is not meant to be the case but becomes so because of the costs involved in supporting large and effective delegations for poor countries.)

This is also a concern that has arisen before in relation to representation and democracy. A couple of hundred years ago almost the same concern was being voiced by the elite of the today’s western democracies: what will happen if the poor, uneducated masses, who have no experience managing property and assets, are allowed democratic franchise? With their sheer numbers won’t they destroy effective government, voting for short-sighted, self-interested, unworkable policies? In the US, structures such as the Electoral College system are a reminder of this, in Great Britain the House of Lords, in Canada, the Senate. In a just democratic system there will likely be some weakening of the power held by wealthy, powerful countries in our current institutions. Their capacity to skew most international economic interactions strongly in their favor may diminish, as it ought to, but shifting the power in international economic
institutions towards a greater equality of representation will probably, like extension of universal electoral franchise in western democracies, lead to a more just society.\footnote{38 The western democracies have their own problems with wealth and political equality. To a varying degree all of the wealthy developed democracies, while officially having representative democracy based on political equality of all citizens, the influence of wealth has crept into the systems and has been used to shape the political culture, and social consciousness of the citizens, to the extent that policy outputs generally represent the interests of the wealthiest sectors of society.}

Another concern might be, whether representatives would be appointed by governments in power in member countries, or ought to be elected independently of sitting governments. In terms of practicality it would seem that the system used by the WTO of representation by sitting governments of member countries has much to recommend it. A cosmopolitan approach could favor separate elections for representation at the GTO, particularly if it meant that populations of countries with heterogeneous interests could be more fairly represented. This is the situation of the European Union, and it does sometimes allow for a variety of political views to be represented, but it can also complicate relations between the EU parliament and the individual governments of member countries, so the results are somewhat mixed.

However, with the practical consideration of limiting representation to a single representative per member state, the possibilities for representation of a diversity of interests through separate elections would be limited, in any event.

The proposal for the Global Trade Organization, up to this point has been somewhat unclear on whether one institution is required or several. This is because many of the functions could easily be separated out, and many of the functions would
still be worth implementing even if they were the only part of the project that was considered. In the ideal situation, the proposal is for one larger institution, replacing the WTO and adding several functions. The ideal proposal again would be divided into branches or sections according to the main functions: a Regulatory Branch, a Financial Capital Branch, an Intellectual Property Branch, and a Strategic Economic Development Branch. It also seems like it is reasonable to separate the Energy Resources Dividend Fund from the Strategic Economic Development Branch in interests of transparency.

How Would this New Institution for Global Economic Collaboration Come into Existence?

The proposal for principles of justice in international trade and a global democratic institution that would support them is something of an ideal conception of the form a just regime of international trade could take. It can be understood as something to aim for in reforming existing international economic institutions and designing new ones. The principles guiding the proposal are considered to be what could come out of a negotiation of a framework of a just system of international trade in the Original Position, as Rawls suggests even in TLOP. The proposal is a conception of what would happen if representatives of global society sat down to create a new institution for trade in the Original Position with the Veil of Ignorance, able to leave personal and national interest aside and work out an international trade regime that was in the best interests of all members of global society with a serious commitment to
justice based on rational self interest.\textsuperscript{39} Rectifying serious systemic economic injustice in our actual global society would probably require sitting down to a “new Bretton Woods” with a commitment to create new global economic institutions that were based on a desire to live in a just society, rather than on simple self-interest.

The proposal however isn’t altogether lost if that doesn’t happen, as many of its sections are also arguably good options for improving the international trade regime even if they are implemented on their own. The financial capital transfer tax is a well-known concept, and on its own could be implemented to increase the stability of capital flows in many economies and reduce the “race to the bottom” pressure on wages that extremely mobile financial capital exerts. It would be possible, though not easy to implement a proposal similar to this in the context of the current international economic institutions.

The Intellectual Property proposal is not a radical idea on its own either. Joseph Stiglitz’s alternative for a development round of negotiations at the WTO contains part of it. He has suggested that in some cases intellectual property does need to be treated as a public good in the context of development.\textsuperscript{40} Radically reforming TRIPS in favor of

\textsuperscript{39} The results of the original Bretton Woods conference might also be understood to be much less unjust than what they have evolved into in the last 60 years in any event. Bretton Woods was the conference organized in 1944, as it became clear that the Allies would be victorious. It was a meeting of the Allied countries (there were 40 but the US and Great Britain were the most influential). The goal of the conference was to create a new framework for an international monetary system that would allow stable and productive international trade.

an intellectual property system that did not ignore the needs of developing countries would be valuable even if no other reform was made.

The Strategic Economic Development proposal could also be adopted as a new focus for a more just trade regime, even in the context of the WTO. All it would take would be to back off from the combination of self-interest and ideological commitment that has made free markets at any cost the focus. There is strong evidence that the most effective trade for economic development is not always a completely free market. Promoting cooperative strategic development as a value even if it wasn’t backed up by an absolute commitment to poverty reduction, would constitute improvement over a commitment to imposing free markets on developing countries in situations where they possess little ability compete internationally, except in industries based on unskilled labor and in low wage agriculture.

A new regulatory focus on penalizing practises that are harmful to the environment or tend to cause social harm instead of making market liberalization a trump value would also be of value in any context. There are many clear cases where harms occur because there is no coordination of environmental and social regulations at the global level. The WTO could begin to take some of this on without radically reforming its structure or even its basic mission of promoting trade liberalization. Or it could collaborate with existing UN expertise on this and simply be a forum for imposing trade sanctions on those who are proven to be causing social or environmental harms.
At the very least this would delegitimize those types of trade, even if it did not halt them effectively.

Finally the WTO could be reformed to be more effectively democratic, which could be as simple as rethinking the consensus veto in favor of some sort of super majority. It would not solve all problems, but it would likely warm up stalled negotiations. The proposal to create a fund and provide technical assistance to build capacity among developing countries for both negotiating and implementation of required regulatory measures would also be an extremely valuable reform.\(^41\)

\(^{41}\) See chapter four.
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