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WHY FREE TRADE IS REQUIRED BY JUSTICE*

By Fernando R. Tesón

I. Introduction

In this essay I argue that free trade is required by justice. Protectionist laws are indefensible on two grounds. First, they are indefensible in *principle* because they coercively redistribute resources in favor of persons who are not deserving beneficiaries under any plausible theory of domestic or international justice. Second, protectionist laws have objectionable *consequences* because they harm persons generally (they cause more harm than good), and they particularly tend to harm the poor. Resting on a robust consensus in the economic literature, I claim that liberalizing trade would contribute significantly to global and national growth and, mainly for that reason, would help in reducing poverty. An important corollary of my argument is that protectionist laws are indefensible, not just under a classical-liberal view of politics, but under *any* plausible moral-political theory.

Protectionist laws assume various forms: tariffs, import licenses, export licenses, import quotas, subsidies, government procurement rules, sanitary rules, voluntary export restraints, local content requirements, national security requirements, and embargoes. All these trade barriers, while different in a number of respects, have this in common: they raise the cost (sometimes prohibitively) of importing goods and services.[1] Protectionist laws are artificial, coercive obstacles placed by governments on voluntary transactions across borders. Citizens, and especially the poor, are doubly harmed by trade barriers. On the one hand, protectionist barriers erected by governments of *poor* countries harm their own people. Seen from this perspective, interference with trade is one more instance of the market-unfriendly policies that have caused much of the stagnation in the developing world.[2] Protectionism in developing countries goes hand in hand with unproductive public spending, corruption, ineffectual regulations—all features of economically and socially burdened societies. But on the other hand, when governments in *rich* countries enact protectionist laws, in addition to harming their own citizens, they harm the world's poor by

* I am heavily indebted to Jonathan Klick of the University of Pennsylvania, who did the research summarized in Section II. Many thanks also to the Social Philosophy and Policy Center of Bowling Green State University. The summer I spent there in 2008 as a Visiting Scholar allowed me to conduct part of the research for this essay.

[1] Trade barriers differ in their restrictive effect. See James E. Anderson and J. Peter Neary, *Measuring the Restrictiveness of International Trade Policy* (Cambridge, MA: MIT Press, 2005).

[2] See the discussion below, Section VII.

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denying them access to wealthy markets. This *is* an injustice done by governments of wealthy countries to the world's poor. This particular injustice is a harmful, coercive interference with voluntary transactions—an unwarranted interference in the pursuit of personal projects in order to benefit persons who, as I shall show, are not deserving beneficiaries.

I proceed as follows. First I summarize the economics of trade presented by the most reliable *corpus* of research on international economics. The professional consensus is that free trade contributes to national and global economic growth and, mainly for that reason, helps the poor. I then examine the possible justifications for protectionist laws enacted by *rich* countries and find them wanting. I continue by examining the possible justifications for protectionist laws enacted by *developing* countries and conclude that those, too, are untenable. I end by discussing objections to my arguments.

II. The Economics of International Trade

In this article I assume the accuracy of the general consensus in the economic literature on the beneficial effects of international trade.[3] When trade opens between nations, in all practical situations joint gains occur and no country (considered as a unit) loses. In most situations, the gains of trade are split, so each of them gains. Therefore, not only does trade enhance aggregate wealth (that is, the wealth of both nations added together) but, in virtually every case, it also enhances the national wealth of each nation. This improvement occurs because the resources in each country are used more efficiently, as predicted by the law of comparative advantages. This law predicts that even if a country can produce one of the goods more cheaply than a trading partner, it still may import that good if doing so frees up its resources to produce a good in which its trading partner has an even greater cost disadvantage.[4]

[3] Economic models of international trade generally fall into two categories: the law of comparative advantages, which in turn has two versions, the Ricardian original version (see next note) and the Hecksher-Olin version; and the endogenous-growth model. The first model supports the view that liberalized trade is good for general economic growth and for the poor in particular. The second model is a version of the infant-industry argument and, while conceding that open trade is generally beneficial, it makes the case (I think unconvincingly) for sometimes supporting trade barriers in developing countries. For a full discussion of these trade theories, see Fernando R. Tesón and Jonathan Klick, "Global Justice and Trade: A Puzzling Omission," FSU College of Law, Public Law Research Paper No. 285; FSU College of Law, Law and Economics Paper No. 07–24. Available at SSRN: http://ssrn.com/abstract=1022996.

[4] The first proponent of the theory was David Ricardo. See David Ricardo, *On the Principles of Political Economy and Taxation,* section 7.15 (3d. ed. 1821), available at http://www.econlib.org/library/Ricardo/ricP.html. Country 1 has a comparative advantage in the production of good A relative to Country 2 if its opportunity cost of producing good A (i.e., how many units of good B it can no longer produce if it produces an additional unit of good A for a given stock of resources) is lower than Country 2's opportunity cost of producing good A. Or, more succinctly, Country 1's marginal rate of transformation between Good A and Good B is lower than that of Country 2. Ricardo offers an example in which England and

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Even under models that defend some trade barriers in specific situations (like the endogenous-growth model) restraints on trade generate short-term losses. Moreover, in this model long-term gains from the restraints are highly uncertain and depend, implausibly, on the foresight and predictive ability on the part of rulers. In particular, those models overlook the potential susceptibility of such actors to rent-seeking activities on the part of those industries seeking protection.[5]

The theoretical and empirical evidence shows that a country benefits even when it liberalizes trade *unilaterally.*[6] In that situation, all countries improve; moreover, the growth is most pronounced in the liberalizing country[7]—an insight that contradicts the folk belief that the country that liberalizes unilaterally is the naive loser in the international trade game.

The finding that trade is a positive-sum game when nations are considered as units contradicts the claim that the country that erects trade barriers helps itself and hurts other countries. We routinely hear this claim from politicians and others not trained in economics, and it is based on a serious economic mistake: that exports are good and imports are bad. The view is known as mercantilism.[8] Mercantilism views trade as a

Portugal both produce wine and cloth. If it takes 100 English workers one year to produce quantity X of cloth and 120 English workers one year to produce quantity Y of wine, and it takes 90 Portuguese workers to produce X units of cloth and 80 Portuguese workers to produce Y units of wine in the same time period, Ricardo claims that Portugal will import its cloth from England and export wine to the country. To see this, if Portugal allocates its 90 cloth workers to wine-making, in principle, it can ship 9/8 Y units of wine to England. In turn, England can now allocate its wine workers to cloth production, sending 6/5 X units of cloth in return to Portugal. After this trade, employing the same total amount of workers as before, Portugal has 20 percent more cloth than it previously produced (and the same amount of wine), and England has 12.5 percent more wine than it previously produced (and the same amount of cloth). While the exact split of the surplus generated by the trade will differ depending on the relative demands for wine and cloth in the two countries, in Ricardo's example both countries have the potential to expand their consumption of both goods without using more resources. Joint consumption of both goods across the two countries is guaranteed to rise even though Portugal can produce both goods more cheaply than England can. That is, economic growth occurs even if Portugal has an absolute advantage in the production of both goods. Earlier, Adam Smith had argued the case for free trade when a nation has the opportunity to trade with a country exhibiting an absolute advantage in desired goods. By specializing in the good in which its comparative advantage lies, trade effectively allows both countries to shift their production possibility frontiers outward. I owe this explanation of the law of comparative advantages to Jon Klick. For a full treatment, see Fernando R. Tesón & Jonathan Klick, "Global Justice and Trade: A Puzzling Ommission."

[5] Gene Grossman and Elhanan Helpman, "Protection for Sale, *American Economic Review* 84 (1994): 833 present their rent-seeking model as a plausible way to look at trade policy. An individual engages in rent seeking when he tries to obtain benefits in the political arena, as opposed to trying to obtain them in the market. See David Henderson, "Rent-Seeking," in the *Library of Economics and Liberty,* at http://www.econlib.org/library/Enc/RentSeeking.html.

[6] See the collection of essays in Jagdish Bhagwati, ed., *Going Alone: The Case for Relaxed Reciprocity in Freeing Trade,* (Cambridge, MA: MIT Press, 2002).

[7] See Dan Ben-David and Michael B. Loewy, "Knowledge Dissemination, Capital Accumulation, Trade, and Endogenous Growth," *Oxford Economic Papers,* 52 (2000): 646.

[8] Mercantilism was refuted more than 230 years ago, notably by Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations,* R. H. Campbell and A. S. Skinner ed., vol. 2 [1776]; (Indianapolis: Liberty Fund, 1981), 642–66.

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zero-sum game where one country's gains come at the expense of other countries. It rests on the false assumption that a surplus in international trade must be a deficit for other countries.[9] Mercantilists claim that exports, believed to benefit domestic producers, should be encouraged, while imports, believed to hurt domestic producers, should be discouraged.[10] But national well-being is based on present and future increased consumption. Exports are valuable only indirectly: they provide the income to buy products to consume.[11]

Mercantilism is so obviously wrong that one wonders why it continues to enjoy political and, in some circles, even academic success. The endurance of mercantilist beliefs stems from the discursive pathologies of politics. First, trade theory is *opaque and counterintuitive.* The public cannot easily see that the country that protects hurts its own citizens. Instead the public tends to adopt simpler zero-sum explanations of social outcomes.[12] Second, protectionists use the imagery of nationalism. We need to protect "us" against "them"; our local industries against the invading products; our culture against immigrant invasion.[13] People use vivid imagery for political gain. To see the advantages of trade, people need to see that the government that protects *hurts its own people.*[14] This is concealed by the notion of "protecting" *something that is ours,* in our country, against *something that comes from the outside.* Because that "something" is alien or external, politicians and rent-seekers can easily portray it as a threat. All one can say is a trivial truth: that the government can protect *specific* producers and workers by shielding the industry from foreign competition (or, for that matter, from domestic competition.) But trade barriers do not "protect" the employment rate in one's country because they have high opportunity costs. They artificially divest resources toward inefficient endeavors. Nor do trade barriers "protect" the real value of wages. Conversely, trade barriers positively harm *all* consumers, that is, everyone. When the rhetorical smoke clears, trade barriers benefit inefficient producers who prey, courtesy of the government, on defenseless consumers.

[9] See Thomas A. Pugel and Peter H. Lindert, *International Economics,* 11th ed. (McGraw-Hill, 2000): 33.

[10] Ibid.

[11] Thus, "imports are part of the expanding national consumption that a nation seeks, not an evil to be suppressed." Ibid. Equally problematic is the claim that imports reduce domestic employment. See Laura LaHayes, "Mercantilism," *Concise Encyclopedia of Economics,* http://www.econlib.org.

[12] Guido Pincione and I analyze this phenomenon in *Rational Choice and Democratic Deliberation: A Theory of Discourse Failure* (Cambridge, UK: Cambridge University Press, 2006).

[13] This rhetorical argument was criticized more than a hundred years ago by Henry George. See Henry George, *Protection of Free Trade: An Examination Of the Tariff Question, with Special Regard to the Interests of Labor,* chap. 6 (1886), Library of Economics and Liberty, http://www.econlib.org/library/YPDBooks/George/grgPFT6.html.

[14] As Jagdish Bhagwati writes: "The fact that trade protection hurts the economy of the country that imposes it is one of the oldest but still most startling insights economics has to offer." Jagdish Bhagwati, "Protectionism," in *The Concise Encyclopedia of Economics,*" http: www.econlib.org/library/Enc/Protectionism.html.

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One way to encapsulate the mercantilist mistake is this. Mercantilists see protectionism as an *unsuccessful coordination game:* "Our country must protect because we know *they* will protect. If only they made a credible commitment to repeal their protectionist laws, we would do the same." However, protectionism is best characterized as a *successful rent-seeking game:* industries affected by foreign competition seek and obtain protection from their governments in exchange for political support and other benefits.[15] Two further facts explain the political success of protectionism notwithstanding the well-known fact that open trade benefits the great majority of the population. The groups that benefit from free trade, such as consumers, are *diffuse* and have high organizational costs; while the groups that benefit from protection are *concentrated* and have low organizational costs. Further, while trade theory predicts that in the long run many of the workers and firms now hurt by foreign competition will be better off because free trade creates higher-paying jobs and higher returns to capital, workers and owners have trouble grasping these benefits.

The theoretical prediction is that freer trade causes global and national growth in *aggregate terms.* Critics of free trade have long argued that the beneficial aggregate effect of trade is consistent with the bad effect of leaving the poor out, as it is possible that the gains of trade fall on the rich or the middle class of both trading partners.[16] Nations must be disaggregated to find out who wins and who loses with open trade. On this view, when we take *persons or families* as units, free trade may well lead to losses for the poor.[17]

This objection finds no support in theory or evidence.[18] An analysis of the effect of trade on poverty centers on a simple two-step argument:

[15] I owe this insight to Jon Klick.

[16] This is what critics of globalization mean by the cliché that "trade helps big business." Even philosophers of the stature of John Rawls echo such sentiments. Referring to the European Union, Rawls writes:

> The large open market including all of Europe is aim of the large banks and the capitalist business class whose main goal is simply larger profit. The idea of economic growth, onwards and upwards, with no specific end in sight, fits this class perfectly. If they speak about distribution, it is [al]most always in terms of trickle down. The long—term result of this—which we already have in the United States—is a civil society awash in a meaningless consumerism of some kind.

John Rawls and Phillipe van Parijs, "Three Letters on The Law of Peoples and the European Union," *Revue de Philosophie Économique* 8 (2003): 9. Phillipe van Parijs approvingly calls this passage Rawls's "most explicitly 'anti-capitalist' text."

[17] As an aside, all theories of justice have difficulty identifying the appropriate entity (class, family, individual) that should benefit from redistribution of resources.

[18] The specialized research converges on this point. See L. Alan Winters, "Trade and Poverty: Is There a Connection?" (2000), www.wto.org/English/news_e/pres00_e/pov3_e.pdf; T. N. Srinivasan and Jessica S. Wallack, "Globalization, Growth, and the Poor," *De Economist* 152 (2004): 251; David Dollar and Aart Kray, "Growth is Good for the Poor," *World Bank Policy Research, Working Paper,* no. 2587 (2001).

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trade enhances growth, and growth reduces poverty.[19] Even if openness to trade *at first blush* does not help the poor more than it helps others, why assume that the poor will end up worse off than before? When a country grows, good things happen. More industries are created, more jobs are available, and so the opportunities for the poor expand. Further, when a country grows, so do societal resources that can be used to alleviate poverty. The more resources a country has, the more resources the government will have. And the more resources the government will have, the more effectively it will address the country's poverty. So whether a country's economic policies are laissez-faire or redistributive, the poor will benefit from access to global markets as producers and consumers.

In general, empirical studies have found that "in most cases, trade reform increases the income of the poor as a group and that the transition costs are generally relatively small relative to the overall benefits."[20] However, a country may liberalize trade yet simultaneously pursue policies that are counterproductive for either growth or wealth distribution. This conflict of forces occurred in Argentina, where the liberalizing measures of the 1990s were accompanied by massive unproductive public spending and political corruption.[21] Under those circumstances, it is of course fallacious to attribute the cause of the country's collapse (and the corresponding increase in poverty) to trade liberalization. It is therefore crucial to control for non-trade variables when assessing the effects of trade on the poor. Specialists recommend that governments accompany the country's adaptation to the law of comparative advantages, for example, by easing industrial adjustment or helping the country diversify its exports, always in the light of its comparative advantages.[22]

But even if the gains from trade were partially skewed against the poor, trade would still be beneficial. For consider: The main goal of development policy is to get poor countries to *develop,* even prior to computing distributional effects. So it is a bit strange for trade skeptics to reject a practice that concededly makes a poor country grow by saying: "no, not *that* kind of growth." At the very least, they should

[19] The evidence for this proposition is overwhelming. For a nontechnical account, see Jagdish Bhagwati, *In Defense of Globalization* (Oxford, UK: Oxford University Press, 2004), pp. 51–67. For a more technical analysis, see Neil McCulloch, et al., *Trade Liberalization and Poverty: A Handbook* (Centre for Economic Policy Research 2001), and Jagdish Bhagwati and T. N. Srinivasan, "Trade and Poverty in the Poor Countries," *American Economic Review* 92 (2002): 180. As these authors show, the argument that free trade helps the poor are static (freer trade should help in the reduction of poverty in the poor countries which use their comparative advantages to export labor-intensive goods), and dynamic (trade promotes growth; and growth reduces poverty).

[20] Geoffrey J. Bannister and Kamau Thugge, "International Trade and Poverty Alleviation," *Finance and Development* 38 (2001): 50.

[21] See Jean-Cartier Bresson, "Economics of Corruption," *OECD Observer* (May 2000), www.oecdobserver.org/news/fullstory.php/aid/239; and Joseph Contreras, "Argentina's Fiasco," *Newsweek,* December 21, 2001.

[22] See, e.g., Bhagwati, *In Defense of Globalization,* p. 55.

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welcome free trade and then propose measures to correct the undesirable distributional effects.

To be sure, trade liberalization will produce winners and losers, and many of those losers will be poor. But my claim here is not that *each* poor person will improve as a result of trade liberalization; in fact, no policy can do that. The claim is that, in virtually every instance, the poor *as a class* will improve. On the issue of cost of goods, trade liberalization will help the poor in the same way it helps all consumers: by lowering prices of imports and keeping the prices of substitutes for imported goods low, thus increasing people's real incomes. On the question of wages, the evidence seems to show a number of things. Labor markets need flexibility to adjust to comparative advantages. If firms are too constrained by labor laws from reducing their work forces, then the poor may suffer as a result. This is ironic, given that supporters of strict labor regulations claim to act *on behalf* of the poor.[23] Also, the gap between the wages of skilled and unskilled workers may increase, but this is hardly an objection to the claim that the poor as a class benefit from trade liberalization. The objection that liberalizing trade will reduce government revenues, and thus its ability to fight poverty, is also misplaced because it ignores the dynamic effects of trade liberalization. If trade liberalization produces growth, taxable incomes will grow as well, and government revenues will grow with them. And independently of whether the poor are able to export (that is, independently of whether or not foreign markets are open to the goods they produce), the poor *benefit from having a wider variety of available goods to consume,* either because the imported product is not available domestically or because trade lowers the price of the product, bringing it within the reach of the poor.

In sum, trade liberalization (1) increases *aggregate* wealth, that is, wealth measured aggregatively in both trade partners; (2) increases wealth in *each* of the trade partners, and (3) *at the very least,* within each trade partner, such growth is most often shared by the poor in various ways. The burden of proof is on those who deny the beneficial effects on trade. That burden is heavy indeed.

It is important to note the claims I do *not* make in support of free trade. Free trade does not necessarily reduce *inequality* among trade partners or among different groups or individuals within the trade partners. Further, free trade is not a panacea for economic success: countries with bad institutions are less likely to reap the benefits of trade. In particular, nations need to recognize well-defined property rights, freedom of contract, and the rule of law.[24]

[23] Thus, for example, critics of sweatshops claim that, due in part to lax work conditions, "clothing companies benefit from free trade through BIG profits, and garment workers lose out." See http://www.sweatshopwatch.org/index.php?s=36

[24] The literature on the importance of good governance is extensive. A seminal work is Douglass C. North, *Institutions, Institutional Change, and Economic Performance* (Cambridge, UK: Cambridge University Press, 1990).

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III. The Injustice of Trade Protection by Rich Countries

Rich nations are, in general, less protectionist than developing nations.[25] However, they have enacted strong protectionist laws for targeted sectors—in particular agriculture. The United States periodically reenacts the Farm Bill, which obligates the government to buy surplus from farmers in order to keep prices artificially high.[26] The European Union has long maintained the Common Agricultural Policy, a euphemism denoting, too, a vast system of subsidies that keeps inefficient European farmers in business.[27] In addition to these subsidies, rich nations have enacted a host of (mostly) phony regulations, such as quality control, sanitary rules, government procurement rules, and so on, the effect of which is often to virtually ban imported agricultural products. These restrictions certainly harm *consumers* in rich countries who have to pay more for agricultural products. Without these barriers, consumers would simply buy the cheaper (and usually better) agricultural products from developing nations, while the resources now artificially channeled toward agricultural protection would be freed to produce goods and services where the rich nations are comparatively efficient.

These laws, of course, harm local consumers, and are objectionable just for that reason, since, as we shall see, the government has no moral justification for interfering with a voluntary transaction in this way. But crucially, these laws harm *producers* in developing nations as well, because they lose wealthy markets for their products. I have little to add to the extensive literature documenting this fact.[28] Farmers in developing countries experience catastrophic losses as a result of Northern subsidies.[29] Unless these laws can be morally justified, they inflict an injustice on the world's poor by coercively interfering with their means of subsistence and growth.

Can these restrictions be nonetheless justified? Here we face an interesting problem for global justice. In rich countries, these agricultural subsidies are redistributive: they transfer wealth from domestic consumers and foreign farmers to domestic farmers. Supporters of these laws may

[25] See the *2010 World Index of Economic Freedom,* published by the Heritage Foundation and the Wall Street Journal, at www.heritage.org/index/. The study evaluates economic freedom generally, not just trade openness. However, trade openness is one of the components, and the ratings can be found in the section "Executive Highlights" of the report.

[26] The Food, Conservation, and Energy Act of 2008 (Pub.L. 110-234, 122 Stat. 923, enacted May 22, 2008, H.R. 2419, also known as the 2008 U.S. Farm Bill) is a $288 billion, five-year agricultural policy bill that was last passed into law by the United States Congress on June 18, 2008. This bill has been roundly criticized from right and left. See "A Disgraceful Farm Bill," *The New York Times,* May 16, 2008.

[27] For a useful description and summary of criticisms, see "Common Agricultural Policy", at www.economicexpert.com/a/Common:Agricultural:Policy.htm

[28] See Thomas Pogge, *World Poverty and Human Rights* 2d ed. (Polity, 2010): 17–19.

[29] See "The Farmers Ruined by Subsidies," *The Times Online,* www.timesonline.co.uk/tol/news/world/africa/article1629405.ece.

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invoke reasons of distributive justice. Let us assume, implausibly, that farmers in rich countries are, under appropriate principles of distributive justice, the rightful beneficiaries of societal subsidies. Still, those subsidies hurt *foreign* farmers, and in particular farmers in developing nations. This means that even if the protectionist could successfully argue that the transfer is *domestically* justified, he cannot possibly maintain that the protectionist laws meet any test of global justice that focuses on alleviating world poverty. For protectionist laws interfere with voluntary transactions between consenting sellers and buyers in such a way as to hurt the most vulnerable. By enacting these laws rich countries *worsen* the situation of the world's poor.

This is a serious problem for mainstream theories of distributive justice, for they were originally designed to evaluate a basic *domestic* institutional structure, the goal of which is to benefit the *domestic* worst-off groups in society.[30] When those theories add global reach, however, it turns out that the domestic redistributive policies they favor often hurt the distant poor, who almost always are considerably worse off than the domestic poor. The startling conclusion is that enforcing redistributive programs in the name of *domestic* justice may well violate *international* justice or, at least, international duties of humanity or charity toward persons elsewhere that are struggling for survival. For example, in the United States some support imposing a tax on corporations who move their operations to developing countries. They justified this tax by proclaiming the need to "keep jobs at home." Yet, should this policy succeed, it will deny significant employment opportunities to poor persons in developing countries.

This incompatibility between domestic and international justice has led some influential philosophers to reject a justice-based global duty to redistribute wealth.[31] Under this view, justice mandates redistribution of resources only within state borders. These writers argue that preferring compatriots is morally acceptable as long as we do not violate the rights of foreigners. Our farmers (farmers in rich countries) hurt by foreign competition are entitled to our solicitude and help; distant others are not. The Farm Bill is simply an instance of moral solicitude toward those who are closest to us and share a common project. As long as our government doesn't *directly* harm foreigners it is empowered to enact policies in accordance with its best understanding of domestic distributive justice. The government is not a global charity agency. It has been appointed by the citizens of the state to serve their needs and advance their interests, as long as in doing so it does not violate the rights of foreigners. Raising the

[30] Loren Lomasky and I explore this issue in *Justice at a Distance* (unpublished manuscript).

[31] See Richard Miller, "Cosmopolitan Respect and Patriotic Concern," *Philosophy and Public Affairs* 27 (1998): 202; John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), pp. 113–20; and Thomas Nagel, "The Problem of Global Justice," *Philosophy and Public Affairs* 33 (2005): 113. There are important differences among these authors, but all favor a preference for compatriots in tax-based help (as opposed to voluntary charity.)

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cost of imported goods is not a violation of a right that the foreign producer holds. True, the foreign farmers' clientele has been reduced, but no one has a vested right in a clientele. If one is willing to export goods, one has to expect that foreign governments will sometimes intervene in markets in order to realize (domestic) social justice. On this view, given the fact that governments are the normal agents for realizing justice in their own societies, this is a risk that exporters in developing countries should assume. So, the argument concludes, we must concede that compatriots are entitled to our help, and that therefore we cannot condemn protectionist laws just because they harm the distant poor.

This superficially attractive objection fails for several reasons. First, trade barriers *actively interfere* with the rights of persons, namely the rights of buyers (the domestic consumers) and sellers (the foreign producer). So it is incorrect to describe the situation as remote or indirect harm. A protectionist law coercively interferes with contract and directly harms the parties. The innocent description of a protectionist law as mere help to local producers misses the coercive nature of those laws. They help the producer by coercively interfering with a contract between the foreign exporter and the domestic importer, thus harming both. If the protectionist concedes that our duty toward foreigners is a negative duty of noninterference (as opposed to aid), then protectionist laws violate that duty. Particularly significant is the fact that a protectionist barrier violates a right of producers in developing nations: their right to freely dispose of their property, a right that is very important because it is intimately tied to their subsistence.

Second, the inefficient local producer does not have a right to foist his products on the public who no longer wants them. If consumers no longer demand the product it is hard to see what principle of justice, or any other principle, authorizes the producer to enlist the government in force-feeding his products to consumers. A law that grants the producer a monopoly can hardly be justified with public reasons. Nor do the workers in that industry retain a right to their job, given that their employer does not need them anymore. I cannot identify any principle that can justify state coercion to help people produce things that consumers no longer want.

The point can be put differently. We all suffer setbacks and disappointments in our lives. If I lose my job, or if someone rejects me, I can say I have suffered a setback.[32] What kinds of setbacks can the state legitimately prevent or compensate? Certainly, the state should prevent unjust setbacks, such as those to which the criminal law reacts. But it is not the state's job to redress all setbacks. This would be absurd because most of what people do in their everyday lives affects others. For example, if Joe decides to marry Kirsten instead of Meredith, and Meredith loves Joe,

[32] I avoid the word "harm" here because it prejudges the issue.

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Meredith will be disappointed because her interests will be set back. If enough consumers decide to buy Apple computers because they judge them better, makers of PCs will suffer. If two persons compete for the same job, the interests of the one who is not chosen will be set back. Perhaps a necessary condition for legitimate state intervention is that the setting back of an interest be wrongful. That is, A *harms* B when (1) A sets back B's interest, and (2) A does this in a manner that violates B's rights.[33] Since in the above examples no rights are violated, those setbacks ought not to be compensated.

In the realm of international trade the loss of a job due to foreign competition is not an unjust setback of interest because it is purely *competitive.* The worker suffers because consumers are no longer interested in buying what he produces. Here I follow John Stuart Mill's lead in *On Liberty:*

> In the first place, it must by no means be supposed, because damage, or probability of damage, to the interests of others, can alone justify the interference of society, that therefore it always does justify such interference. In many cases, an individual, in pursuing a legitimate object, necessarily and therefore legitimately causes pain or loss to others, or intercepts a good which they had a reasonable hope of obtaining. . . . Whoever succeeds in an overcrowded profession, or in a competitive examination; whoever is preferred to another in any contest for an object which both desire, reaps benefit from the loss of others, from their wasted exertion and their disappointment. But it is, by common admission, better for the general interest of mankind, that persons should pursue their objects undeterred by this sort of consequences. In other words, society admits no right, either legal or moral, in the disappointed competitors, to immunity from this kind of suffering; and feels called on to interfere, only when means of success have been employed which it is contrary to the general interest to permit—namely, fraud or treachery, and force.[34]

Competitive setbacks of interests do not violate rights (notice that in this passage Mill does not even use the word "harm.") A free society should not redress competitive disadvantage for three reasons. First, as Mill says, competition creates wealth and benefits society as a whole. Second, the setback of someone's interest by a competitor is not wrongful because it is the result of a *fair contest*.[35] And third, the attempt to *redress*

[33] Joel Feinberg, *Harm to Others* (Oxford, UK: Oxford University Press), p. 65.

[34] John Stuart Mill, *On Liberty* [1859] in John Stuart Mill, *Utilitarianism, Liberty and Representative Government* (New York: Dutton 1971), 72.

[35] Here I follow Arthur Ripstein, "Beyond the Harm Principle," *Philosophy and Public Affairs* 34, no. 3 (2006): 215. Writes Ripstein: "[I]f you defeat me in a fair contest, you do not deprive me of any of my powers. I merely failed at something that I was trying to do. That

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competitive disadvantage in turn seriously harms third parties, usually the more vulnerable, by coercively interfering with their voluntary transactions. Whatever the general justification the government of a rich nation may have for interfering with contracts, surely harming poor persons to benefit richer persons cannot be part of it. These deontological and consequentialist reasons should be extended to our present globalized economy. Protectionism is a particularly unjust form of coercive redress of competitive disadvantage.[36]

The protectionist could reply that workers have acquired certain expectations that the government must try to preserve. It is not the worker's fault, he may argue, that his industry is now inefficient. He got this job, started a family, bought a home; in short, made life plans that are now frustrated by events he cannot control. For that reason, the worker disadvantaged by foreign competition is a proper beneficiary of societal help. On this view, trade barriers are justified, not so much to enrich the local employer (although they do that), but to preserve jobs. And it is appropriate for consumers to pay for this: society (the consuming public) subsidizes fellow citizens (the workers of the affected industries) who are suffering hardship. It is no different from other forms of wealth redistribution.

Responding to this argument leads to the final and conclusive refutation of the protectionist view. Even if we assume, contrary to what I have suggested, that the government is generally empowered to interfere with trade, protectionist measures are indefensible because they fail to achieve their goal: they do not and cannot effect just redistribution of wealth.[37] When a government protects an industry it *aborts the creation of jobs in other industries.* This occurs because as the economy is unable to adjust to the efficiencies of production, resources are artificially directed to the less efficient endeavors. The government assists workers in those inefficient industries by erecting trade barriers. But what should we say about the person who is now unemployed *because new industries* that would have employed him have been aborted by the strangling effect of protectionist laws? Seen in this light, producers and workers who benefit from protection are *not* deserving of transfers of wealth in their favor, because protection is harming *other* persons in that society. Since those persons are the unemployed,

failure may disappoint me, but it doesn't deprive me of means that I already had, it only prevents me from acquiring further ones. My defeat may change the context in which I use those powers in future: if you win the championship, other people may no longer hire me to endorse their products. But I had no entitlement against you to a favorable context or to have those other people enter into cooperative arrangements with me." (At pp. 238–39.)

[36] A useful discussion of competitive harm can be found in Richard A. Epstein, "The Harm Principle—And How It Grew," *University of Toronto Law Review* 45 (1995): 369.

[37] Mill makes exactly the same point: "Restrictions on trade, or on production for purposes of trade, are indeed restraints; and all restraint, *qua* restraint, is an evil: but the restraints in question affect only that part of conduct which society is competent to restrain, and are wrong solely because they do not really produce the results which it is desired to produce by them." *On Liberty,* Section V, "Applications."

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they are worse-off than the protected workers. Just as the firms obtaining protection get rich at the expense of foreign firms, so the workers in protected industries keep their jobs at the expense of the poor, *in their own countries.* Because this harm really consists of the opportunity costs of inefficient laws, it can only be gauged by asserting counterfactuals and is, for that reason, opaque. The public cannot easily see it.[38]

So, even assuming the nationalist premises of the argument, protectionist laws in developed countries are objectionable because: (1) they violate the rights of foreign producers by interfering with their voluntary transactions; (2) they do not benefit persons or groups that, on any plausible theory of domestic or international justice, are entitled to a transfer of wealth in their favor, and (3) they hurt the domestic poor (by aborting the establishment of efficient industries) and domestic consumers (by raising prices). When we add the fact that protectionist policies, far from being the outcome of a quest for justice, are ordinarily the reaction to political rent-seeking and other forms of predatory behavior, the argument from domestic justice vanishes. Well-organized protected industries hire powerful lobbyists who essentially "buy" the protectionist legislation from politicians interested in incumbency.[39] If protectionist barriers in rich countries are objectionable even without considering their effects on foreigners, they become particularly offensive when they harm the distant poor.

IV. The Injustice of Trade Protection by Developing Countries

Some people who criticize protectionism by rich countries are nonetheless reluctant to condemn protectionism by developing countries. This is a mistake. The arguments against protectionist laws apply equally to developing nations. Powerful local monopolies enlist the government in protecting them against foreign competition, thus hampering economic growth and perpetuating economic stagnation. The debate, once again, suffers from a fatal rhetorical glitch caused by the public's failure to understand the economics of trade.

Critics of rich-country protectionist barriers correctly see that those barriers hurt producers in developing nations, thus hampering those nations' growth. But they do not believe that poor-country protectionist laws will hurt producers in rich countries much, and even if they did, it wouldn't matter much from the standpoint of global justice, since the

[38] There is yet another reason to oppose protectionism: even if the protectionist is right that the state can legitimately aid workers disadvantaged by trade, erecting trade barriers is a bad remedy. Domestic transfer policies such as industrial retraining are more efficient and fair ways to help those workers.

[39] The politics of protectionism are well summarized in John O. McGinnis and Mark L. Movsesian, "The World Trade Constitution," *Harvard Law Review* 114 (2000): 521–31. See also Gene Grossman and Elhanan Helpman, *Protection for Sale* cit.

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critics' moral concern is to alleviate the plight of the world's poor. Protectionism in developing countries, they claim, is at worst morally neutral because it doesn't harm foreign persons in a way that global justice should care: producers in rich countries have vast markets at their disposal, in particular their own wealthy domestic markets. In fact, some have gone further and insisted that protectionism by developing countries *benefits* those countries. This approach enjoyed considerable vogue during the 60s and 70s mainly as a result of the promotion by the United Nations Economic Commission for Latin America and the Caribbean (CEPAL, an acronym of the Spanish name.) It recommended a nationalist economic policy based on import substitution and massive public spending as prescriptions for growth and development. This policy ("Cepalism") was implemented in Latin America and Africa with disastrous results.[40] Vastly discredited today, this theory is still sporadically invoked by populist demagogues to justify nationalist policies.[41]

The view that protectionism by poor countries is benign ignores the central premise of international economics, which bears repetition: the government that erects trade barriers *hurts its own citizens.* Protectionism is self-destructive. In developing countries, the problem is not that these laws hurt producers in rich countries, but rather that they prey on *domestic* consumers in two ways. First, those laws force them to forego the economic choices generated by international trade; second, they abort the creations of new industries by redirecting resources toward inefficient activities. As I indicated, this harm is opaque. Tragically, the unemployed person in my native Buenos Aires cannot *see* that a main reason for his predicament is that inefficient producers and their powerful unionized workers have successfully lobbied the Argentine government to get protection against foreign competition. In this way, the labor unions have improved their situation vis-à-vis our unemployed person, because the latter now will not be employed by an industry that was *aborted* by the perverse incentives created by protectionist laws. Because understanding this requires, not only knowing the complex and counter-intuitive law of comparative advantages, but also positing a *counterfactual* that is itself hard to grasp, the victim of this governmental depredation does not see himself as such and, sadly, continues to support the populist demagogues in the hope that he, too, will benefit from some subsidy or other. A society of producers, sadly, has become a society of beggars.

When we think about who benefits from these laws in developing nations, we realize that the redistribution of wealth resulting from pro-

[40] For Latin America, see Hernando de Soto, *The Invisible Revolution in the Third World* (New York: Harper & Row, 1989); for Africa, see George B. Ayittey, *Africa Betrayed* (New York: St. Martin's Press, 1992).

[41] For the example of Hugo Chávez in Venezuela, see Álvaro Vargas Llosa, "The Rise of Hugo Chávez," *The Independent Institute,* September 19, 2007, www.independent.org/newsroom/article.asp?id=2028.

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tectionist laws cannot possibly be supported by moral reasons. The crude reality is that more often than not the industries that benefit are close allies of the regime in place. In exchange for protection those industries consolidate the rulers' power by helping them win elections or enabling them to persist in their undemocratic ways. But even ignoring this political reality, even assuming that trade protection is not a corrupt deal between government and industry, the redistribution of resources is a *reverse subsidy* in favor of the better-off members of society. This occurs in two ways. First, the owners and workers of protected industries benefit at the expense both of local consumers (who, remember, in these nations are overwhelmingly the poor). Second, the protectionist laws *abort* the creation of new, efficient industries, thus hurting those persons who *would* have been hired in those industries but is now unemployed. No political theory I know of can justify these transfers.

A final point. It is no mere coincidence that, with some exceptions, the wealthier countries have *less* trade barriers than the developing countries. If protectionist barriers were so good for developing nations we should see some evidence of this in the numbers. Not so. Nations who defeated poverty did so mostly by establishing market-friendly institutions and fixing their non-economic institutions, such as the judiciary. Trade openness is a component of economic openness, and the correlation between market-friendly institutions and economic prosperity is undeniable.

V. Trade and Coercion: The Problem of Stolen Goods

International trade takes place mostly between private agents. A private producer in state A attempts to sell his product to private consumers in state B but the government of state B interferes by placing trade barriers, thus raising the cost for the consumers. Governments, I have argued, should not interfere with these voluntary transactions. But sometimes this voluntariness has been vitiated. Trade presupposes legitimate ownership over the traded goods, but sometimes the traded goods are stolen. How should the international trade system address the problem of stolen goods? The view that condemns trading in stolen goods has two versions: the Imperialist Thesis and the Dictator-Thief thesis. According to the Imperialist Thesis, rich people in developed nations presently hold resources that they obtained in the past from people in developing countries through theft, force, and deception. Trading with the poor the very resources that the owner stole from him is deeply wrong. According to the Dictator-Thief thesis, despots stole resources from their subjects and sold them to foreigners (usually in rich nations) mostly to advance these despots' own interests and consolidate their power. Both theses recommend corrective measures even before opening trade. We must return the stolen goods to their rightful owners; only then we could start talking about free trade. I discuss each thesis separately.

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I have two replies to the Imperialist Thesis. The first is simply that its factual premises are, for the most part, wrong. The reasons why some nations are rich and others are poor have little to do with theft. Rather, they have to do with different equilibria between productive and predatory forces in society, as reflected in the quality of institutions and in particular on the success or failure of market-friendly practices. But there are surely some instances (some colonial cases come to mind) where perhaps some of the resources currently held by persons in rich countries are ill-gotten. However, even if ideally compensation would be sometimes justified, the practical difficulties of determining what part of the current wealth held by individuals should be returned to their rightful owners would be daunting. Surely not all wealth, not even its greatest part, is stolen.

But the Imperialist Thesis is misconceived in another sense. It recommends *not* liberalizing trade on the grounds that rich countries have no title over the goods they trade. Yet international institutions should help *reduce poverty, here and now.* If corrective measures are infeasible either because the theft took place too far back in time, or because we cannot possibly know the percentage of wealth that was stolen, or because the amount of coercion needed to restore the *status quo ante* is morally prohibitive, or simply because international politics pose insurmountable practical obstacles, or for some other reason, then that should not be a reason to refuse to liberalize trade, here and now, as a way to alleviate the world's poverty.

The Dictator-Thief thesis is harder to answer.[42] A defense of free trade rests on the moral worth and beneficial effects of voluntary transactions. Yet dictators in some developing countries often appropriate the resources from the people and then sell them to foreigners, most of the time for their own enrichment.[43] In these cases the international transaction was *coerced* at some point, namely when the tyrant appropriated the resources at gunpoint. The case evinces an egregious failure of *domestic* institutions, aggravated by a defective rule of international law—the so-called principle of effectiveness.[44] Under international law, whoever politically con-

[42] The argument is made by Mathias Risse, "Justice in Trade I: Obligations from Trading and the Pauper-Labor Argument," *Politics, Philosophy, and Economics* 6 (2007): 356, and more fully by Leif Weinar, "Property Rights and the Resource Curse," *Philosophy & Public Affairs* 36 (2008): 2.

[43] See Leif Wenar, "Property Rights and the Resources Curse."

[44] Under traditional international law, any government (with some exceptions) with effective political control over a territory is deemed to be, internationally, the legitimate government of the state. Moreover, international law is generally indifferent about how the resources of the state are internally distributed: they may be in private hands, or they may have been expropriated by the government in whole or in part. See, e.g. UN General Assembly, *Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations,* 24 October 1970, available at: http://www.unhcr.org/refworld/docid/3dda1f104.html [accessed 25 April 2011], especially the principle that (e) "Each State has the right freely to choose and develop its political,

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trols the country has a right to sell its resources. This rule is obviously unjust, not only from the standpoint of basic human rights, but from the standpoint of market rules themselves. The result is objectionable in principle because it countenances the sale of stolen goods, and in terms of its consequences because it aggravates poverty, since the tyrant does not utilize the resources to benefit the people but to increase his own power and wealth. Because the gains from trade are achieved at the expense of the victims of theft and oppression, these persons arguably have a fairness complaint against the trading partner, that is, the buyer of stolen goods.[45] An evaluation of free trade from the standpoint of justice must therefore recommend, as Leif Wenar does, abolishing the rule of effectiveness and substituting the principle that resources belong to the rightful owners and not to the rulers.[46] I think, therefore, that Wenar's general point is essentially correct and that the international trade system should be reformed to require that exported goods belong to their rightful owners.

There are a couple of difficulties with the argument, however. Wenar claims that material resources *collectively* belong to the people. This principle, he says, is compatible with either private or public ownership of the resources. According to Wenar, for the government to be legitimately entitled to sell the resources, the process of public acquisition must meet democratic strictures.[47] But the idea of the *people* collectively owning the resources does not sit well with private property rights. My house belongs to me, not to the people. Wenar attempts to solve this problem by requiring that any transfer of resources to the government be sanctioned by democratic procedures. Yet many "socialist" governments are not very different from our Dictator-Thief. The majority is no more entitled than the dictator to steal from the private owner *just because it is a majority.* So, in order to specify the rightful owners of the traded goods, Wenar must add a plausible *substantive* theory of justice that shows when the government may redistribute resources in its favor (or in its friends' favor.) This is not the place to discuss this large issue in political philosophy. Suffice it to say that grotesque dictators are not the only ones who steal resources from their rightful owners. Many democratically-elected governments

social, economic and cultural systems." This rule allows governments to expropriate private property and do exactly what Wenar criticizes: sell them. Even more explicit are the principles in the Declaration on Permanent Sovereignty over Natural Resources, G.A. res. 1803 (XVII), 17 U.N. GAOR Supp. (No.17) at 15, U.N. Doc. A/5217 (1962), cited approvingly by Weinar: "4. Nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign."

[45] Risse, "Justice in Trade I," 362.

[46] This same point was made by Thomas Pogge, "Recognized and Violated By International Law: The Human Rights of the Global Poor," *Leiden Journal of International Law* 18 (2005): 717; Peter Singer, *One World : The Ethics of Globalization* (New Haven: Yale Univeristy Press, 2004), 96–105; and, in general terms (not specifically in reference to the trade system,) in my book *A Philosophy of International Law* (Boulder: Westview, 1998), 1–2.

[47] Wenar, 20–21.

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(governments that would satisfy Wenar's proviso) systematically steal from their citizens as well.

Moreover, dictators of the world believe that placing the collective ownership on "the people" entitles them, the dictators, to dispose of the resources. As I indicated, the standard interpretation of the international instruments that Wenar cites (such as the Declaration on the Permanent Sovereignty of Natural Resources) endorses the governments' power to expropriate resources. This is why dictators support the principle that the "people" collectively own the natural resources: they claim to represent the people, *l'état, c'est moi!* In other words: Weinar's interpretation of the principle of permanent sovereignty over natural resources departs from the (objectionable) common understanding in international law that undemocratic governments, too, are deemed to represent the people. This means that Wenar cannot just invoke the people's ownership of natural resources without adding a theory of international representativeness that is diametrically opposed (although of course better) than the theory presupposed by the international instruments on which he relies.

Finally, it is entirely unclear that the government in the country where the prospective buyers reside will cure this injustice by erecting protectionist barriers. The Dictator-Thief problem dramatically underscores the fact that most injustices are homegrown, as I have indicated. While opening international trade alone will not remedy those injustices, closing trade will not do the job either. Here as elsewhere, protectionism is an ill-suited remedy to cure the problem. Something different is required, namely establishing a corrective procedure for restoring the stolen goods to their owners while maintaining free trade. The Dictator-Thief objection accurately identifies a problem in international trade, the problem of predatory rulers. *This* problem, however, cannot be solved or alleviated by protectionist laws.

These difficulties are not fatal to Wenar's thesis. He can simply claim that the global trade system must address the difficulty of stolen goods, *whatever* our thesis may be about when the goods are in fact stolen. Yet, the fact remains that, grotesque cases aside, liberal egalitarians will often disagree with classical liberals about when traded goods are indeed stolen goods.

VI. The Pauper-Labor Argument

Some authors believe that domestic workers in rich countries are entitled to protection if the imported goods arrive in our shores, not through oppression or theft, but as a result of lower labor standards in the countries of origin. This is the Pauper-Labor argument, usually advanced with considerably stridency in labor circles. Mathias Risse has given a qualified defense of this argument. For him, if labor laws

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in rich countries are established for moral reasons, then for the sake of consistency workers harmed by imports deserve compensation from the government.[48] The idea is that the moral reasons that underlie labor standards are universal, so while the government cannot enforce those in the country of origin, it should acknowledge the universality of those reasons by compensating domestic workers harmed by imports. The domestic workers' competitive disadvantage is the direct result of a morally objectionable act.

It is doubtful, however, that many labor standards are always or often enacted for moral reasons. The overwhelming evidence is that governments enact them for a host of political reasons, including protectionist reasons.[49] However, perhaps labor standards are *supported* by moral reasons, even if the government had other reasons for enacting the standards. This will largely depend on the labor standard in question. Take minimum wages: It is unlikely that high wages in rich countries are supported by moral reasons. These salaries are the result of self-interested bargaining by workers, either individually or through unions, at a time where world labor markets were highly segmented. With the rise of globalization, it became obvious that labor in developing countries was more competitive. Understandably, labor leaders in rich countries speak of sweatshops and slave labor, thus implying that workers in developing countries are in the same moral category as the oppressed, that they are coerced into working for miserly salaries, almost at gunpoint.[50] This rhetoric conceals the fact that unionized workers in rich countries have been simply out-competed. Assuming voluntary relationships, including a right to terminate the contract, one does not have a right to an ongoing high wage if the employer finds someone that can perform the same work at a lower wage.[51] In fact, my intuition is exactly the opposite to Risse's: domestic workers in rich countries are acting *immorally* when they demand protection against cheaper imports, because in doing so they are knowingly enlisting the state in the aggravation of world poverty.[52]

[48] Risse, "Fairness in Trade I," 366–69.

[49] See Risse's example of the 1930 U.S Tariff Act, ibid., 367. Horacio Spector has identified labor standards precisely along these dimensions, and concluded that most of them do *not* reflect moral principles but rather rent-seeking, desire to avoid competition, etc. See Horacio Spector, "Philosophical Foundations of Labor Law," *Florida State University Law Review* 33 (2006): 1119.

[50] For a refutation of these arguments, see Matt Zwolinski, "Sweatshops, Choice, and Exploitation," *Business Ethics Quarterly* 17 (2007): 689–727.

[51] Of course, parties must abide by their contracts, so employers could be contractually committed to paying higher wages even if cheaper labor is available elsewhere.

[52] Quite apart from this, the evidence does not support the view that trading with developing countries has depressed wages in rich countries. Rather, trade with poor countries may well have improved wages, in the sense that it has moderated the decline that might have occurred due to non-trade factors, such as labor-saving technological change. Jagdish Bhagwati, *In Defense of Globalization*, 124–25.

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But perhaps *some* labor standards, such as occupational safety rules, are morally required in the sense that the workers have a *right* to those standards.[53] Even then, Risse's argument fails for two reasons. First, if workers in a developing country have a right to a labor standard, the employer who denies it harms those workers. It is entirely unclear why workers in the *rich* country should be entitled to compensation, especially considering that the taxpayers of the rich country, who have done nothing wrong, must foot the bill. Maybe the argument is that the failure of the developing country to secure the standard creates a "right" by workers in the rich country that their government ban the import (or place trade barriers against it.) This has the peculiar effect of enriching parties who were not wronged (were not denied the labor standard in question) and who are already much better off by global standards, while at the same time harming the people who have already suffered the alleged injustice.[54] Surely this cannot be right.

Second, the argument assumes that labor standards are *inalienable.* This is highly dubious. Imagine that the government of a developing country offers a choice to workers in a particularly successful industry. The government offers to enforce the standards, but workers must understand that this would make their product more expensive and hence less competitive overseas. Because the market for this particular product is largely foreign, enforcement of the labor standards will adversely affect the workers' own welfare. Alternatively, the government offers to relax the standards to keep the industry internationally competitive and thus continue to benefit workers. If the workers accept this offer they *consent* to lower standards in exchange for their overall economic welfare. They trade the risk of a workplace injury or illness for their enhanced prosperity. I cannot see why this would be objectionable unless one thinks, implausibly, that individuals are morally forbidden from making trade-offs of this kind. Accepting a higher occupational risk in exchange for a better economic prospect seems far removed from the standard cases of inalienability, such as consenting to being tortured, or even selling an organ. In this case workers in rich countries have no claim to protection.[55]

[53] I am even unsure about the claim that safety standards are morally required. Why not think of different levels of safety as labor benefits offered by businesses, so that workers can freely choose between various combinations of accident risk and economic welfare? But I don't pursue the matter.

[54] I owe this point to Matt Zwolinski.

[55] Matt Zwolinski and Ben Powell make a similar point in "The Ethical and Economic Case for Sweatshop Labor: A Critical Assessment" (unpublished, 2011). Here again, the evidence does not support the much feared "race to the bottom", i.e., the view that allowing imports from countries with low standards will cause governments to relax theirs, thus creating a desperate race to lower production costs. Rather, the evidence shows exactly the opposite, a race to the *top.* As incomes rise in poor countries, their growing middle class expects and demands improvements in the workplace conditions. See Bhagwati, *In Defense of Globalization,* 127–34.

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VII. Is the Current Trade System Unjust?

Given the advantages of free trade, the role of the World Trade Organization (WTO) in liberalizing trade has been positive.[56] By enforcing the most-favored-nation clause, the WTO system has dramatically lowered tariffs and other trade barriers in the last fifty years or so, with the corresponding global economic growth.[57] However, while the current WTO regime is preferable to a generalized protectionist regime, it has a number of imperfections from the standpoint of justice and efficiency. First, current arrangements allow governments to over-protect, thus hampering the chances that the poor will participate in the world economy. One problem with the WTO treaty, therefore, is that it *does not liberalize trade enough.*[58] In particular, the WTO rules that allow protection of agriculture by rich countries are highly objectionable, as I have already pointed out. The WTO should enforce the most-favored-nation clause without exceptions if it is to be consistent with global justice.[59] Second, although generally structured to gradually lower trade barriers, the WTO regime is partly predicated on outdated mercantilist notions: governments seek to secure foreign markets access for exporters, thus treating access to *their* markets as a bargaining "chip." Because imports benefit consumers, the notion that granting access to one's markets is a *concession* to other countries is false. A government that lowers tariffs helps its own citizens. This fact is, yet again, concealed by the nationalist rhetoric of protectionism. So the WTO is suboptimal from the standpoint of global justice, and it is certainly inferior to more liberal alternatives, like unrestricted trade.[60]

Still, however bad the present system may be, protectionism is worse. Current critics of the WTO, while rightly criticizing protectionism in rich countries, wrongly claim that developing nations can sometimes help

[56] The World Trade Organization was created in 1995, and it is the international organization that deals with trade rules among nations. It is the successor to the General Agreement on Tariffs and Trade, which had been in place since 1947. See http://www.wto.org/english/thewto_e/thewto_e.htm.

[57] See McGinnis & Movsesian, *The World Trade Organization,* 529–47.

[58] For an earlier appraisal of the protectionist features of the WTO (then the GATT), see Jagdish Bhagwati, *Protectionism,* in *The Concise Encyclopedia of Economics,* (1988), available at http://www.economlib.org. My criticism of the WTO is diametrically opposed to the criticism by the anti-globalization forces, who blame the WTO for being too biased toward free trade. I believe, on the contrary, that the WTO does not do enough to promote free trade.

[59] The most favored nation clause is the centerpiece of the international trade system. It prohibits discrimination among trade partners by obligating members to extend any trade concession they make on a product to the same product exported by everyone else. Article 1 of the GATT 1947 (one of the constitutive agreements of the WTO), reads: "any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties."

[60] See Amartya Sen, "How to Judge Globalism," *American Prospect* (Winter 2002): 2 ("Global interchange is good; but the present set of global rules needlessly hurts the poor.").

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their economies by enacting protectionist measures. The institutional solution that could bring the world closer to the ideal of unrestricted trade is a WTO-like organization whose sole purpose is to ensure that nations liberalize trade. On the other hand, excessive international regulation *restrictive* of trade, even if meant to address a genuine market failure, is often counterproductive with regard to the poor.

The main contrary view is represented by the work of Thomas Pogge.[61] He claims that the global order, and especially the world trade system, is *directly responsible* for poverty.[62] According to Pogge, the global order, established and dominated by rich countries, systematically confines millions of persons to extreme poverty. This happens through a variety of mechanisms, of which three are salient. First, rich countries refuse to liberalize agriculture. They protect their own rich farmers, thus harming farmers in the developing world. Second, rich countries have succeeded in enforcing intellectual property rights on pharmaceuticals, which exacerbates health problems in the developing world. And finally, the global order controlled by rich countries is too deferential to sovereignty. This allows corrupt and tyrannical elites in the developing world, in complicity with the West, to exploit their subjects.

Pogge deserves credit for having awakened new audiences to the awful reality of world poverty; for having called attention to the objectionable protectionist policies by rich countries; and for having challenged the prevailing notion of sovereignty upon which the international order relies. On the latter issue, the sanctity of borders and its political incarnations, nationalism and national interest, have harmed many persons in history and done much to undermine justice in the world at all levels. Economic relations, no less than political relations, often proceed without sufficient scrutiny of the moral credentials of governments. Global institutions such as the World Bank and the International Monetary Fund are subject to criticism on this score, because they assist developing countries without pausing to consider whether they are thereby consolidating bad governance and, eventually, perpetuating poverty as well.

The problem with Pogge's theory is that his *causal* claim is wrong. The global order, far from being the cause of poverty, is responsible for the vast amelioration of extreme poverty over the last one hundred years or so. As Mathias Risse explains, according to Pogge's own benchmarks, the global order "has caused amazing improvements over the state of misery that has characterized human life throughout the ages."[63] Once one controls for domestic institutions, Pogge's attempt to blame rich countries loses much of its superficial appeal. Rich countries got rich for quite

[61] See Thomas Pogge, *World Poverty and Human Rights,* 2d ed. (Malden, MA: Polity, 2008).

[62] Ibid., 1–32.

[63] Mathias Risse, "Do We Owe the Global Poor Assistance or Rectification?" *Ethics & International Affairs,* 19 (2005): 9–10.

diverse reasons, usually anchored in Europe's embracing of capitalism and technological innovation. The literature points to two of such reasons: the emergence of good, stable institutions, and the establishment of efficient markets.[64] Even when those institutions were morally objectionable to our modern eyes, they were nonetheless hospitable to growth and innovation. As David Landes put it:

> The economic expansion of medieval Europe was . . . promoted by a succession of organizational innovations and adaptations, most of them initiated from below and diffused by example. The rulers, even local seigneurs, scrambled to keep pace, to show themselves hospitable, to make labor available, to attract enterprise and the revenues it generated.[65]

This is known as the institutionalist thesis, the view that poverty and stagnation are caused by deficient institutions, including, but not limited to, insufficient protection of private property and freedom of contract. Pogge's attempt to dismiss the massive evidence in favor of the institutionalist thesis is, I think, unsuccessful.[66] Some of his more specific empirical claims are dubious as well. For example, Pogge cites the rich countries' protectionist agricultural policies as evidence that the global order (which allows these practices) causes poverty. While those unjust practices exacerbate the problem, they are far from being the main cause of world poverty. The explanation understates the importance of domestic institutions, as explained.[67] It suggests that stagnation in the developing world derives mainly or only from what *others* do, and thus fails to control for the ruling elites' contribution to that stagnation.[68] Further, whether the West's protectionist policies harm farmers of a given developing country

[64] Mathias Risse develops a full (and I think definitive) response to Pogge in his article "How Does the Global Order Harm the Poor?" *Philosophy and Public Affairs* 33 (2005): 349–76.

[65] David Landes, *The Wealth and Poverty of Nations,* (New York: Norton, 1998), 67–68. See also his description of the ideal wealth-creating society, 239–40.

[66] Pogge is aware that his views are contradicted by mainstream economic research. That is why he, uncharacteristically, dismisses economists *in totum.* He writes that we should take the economists' findings with a great deal of caution, because "while economists like to present themselves as disinterested scientists, they function today more typically as ideologists for our political and economic 'elites'—much like most theologians did in an earlier age." Thomas Pogge, "Real World Justice," *Journal of Ethics* 9 (2005): 29.

[67] See Kym Anderson, Agriculture, Trade Reform, and Poverty Reduction: Implications for Sub-Saharan Africa, http://www.unctad.org/en/docs/itcdtab24_en.pdf. The author shows that while trade liberalization in the agriculture sector can bring important gains, developing countries need to change their "anti-agriculture, anti-export and anti-poor bias of current policies." The extremely complex empirical issues are set forth in M. Ataman Aksoy & John C. Beghin, eds., *Global Agricultural Trade and Developing Countries* (Washington, D.C.: World Bank, 2004).

[68] At several points Pogge suggests that this emphasis on domestic factors, which he calls *explanatory nationalism,* may be self-serving. See *World Poverty,* pp. 4, 6, and 15.

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depends on the size of the market for that country's exports. Argentina, for example, sells her beef and grain mostly to Russia, China, India, and Egypt. Given that the rising demand for agricultural products (at the time of this writing) comes from non-Western countries, farmers in developing countries might be in a particularly advantageous situation, as they do no longer depend on exporting those products to Western markets. They are certainly less likely to be harmed by the West's trade policies. Of course, this is an empirical issue and will vary for particular countries and products, but the truth is that protectionist policies harm first and foremost the country's *own* consumers. Of course Pogge is correct in calling for the dismantling of the West's protectionist policies. As I argued, that call is part of the general call to liberalize trade for *moral* reasons. But saying that liberalizing agricultural trade will help is not the same as saying that the current protectionist policies of Western powers are the main cause of poverty.

VIII. A Curious Case Study: Export Subsidies

I said that the government that enacts protectionist laws hurts its own people. However, economists have identified an apparent exception to this. It is the case of strategic export subsidies. Imagine two firms from different countries, A and B, who export a homogenous product (say, sugar) to a third country, C. C imports all the sugar it consumes. If the two exporting firms cannot collude to fix prices, then in the absence of any subsidies there is a state of equilibrium where each firm would choose its own output to maximize profits (they cannot alter the competitor's output.)[69] Now suppose that A subsidizes its firm's exports. The subsidy will displace the competitor's sugar from C's market. It will shift profits from B's firm to A's firm. If the gains for A exceed the amount of the subsidy, then A will gain. In this specific case it seems to be in the national interest for citizens of A to subsidize its sugar industry. The idea is that "it is to the advantage of a country to capture a large share of the production of profit-earning imperfectly-competitive industries."[70] In this case, where a duopoly competes for a third market, the country that subsidizes reaps net benefits. This finding, in short, would be an exception (albeit a partial and narrow one) to the principle that the country that protects hurts itself.

These findings generated an important literature.[71] In general, economists have been skeptical of the validity of the argument. The problem is that if the assumptions of the models are slightly changed the conclusion

[69] The seminal paper is James A. Brander and Barbara J. Spencer, "Export Subsidies and International Market Share Rivalry," *Journal of International Economics* 18 (1985): 83.

[70] Id. at 84.

[71] For a full discussion of the strategic-subsidy debate, see Douglas Irwin, *Against the Tide: An Intellectual History of Free Trade* (Princeton: Princeton University Press, 1996): 207–16.

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that the country benefits from the subsidy collapses as well. The following changes in the assumptions would drastically alter the original finding: (1) the possibility of subsidy wars and the their negative effects on the subsidizing country, (2) the possibility of entry of multiple firms in the market, which approach perfect competition and thus prevent appropriation of profits, (3) the possibility of competing firms using a common resource such as research and development, which significantly alters the results, and (4) the possibility of foreign ownership of the domestic firm, which again alters the conclusion.[72]

Let us assume that sometimes it is at least prima facie plausible that the export subsidy helps the country that subsidizes. Is it still *fair*? The strategic trade theory rests solely on the supposition that national interest is the yardstick for measuring the desirability of trade policy. In any country, if a subsidy helps that country, then it is appropriate and rational for that country to enact the subsidy. But this is not enough for global justice. Policies pursued in the national interest may unfairly harm foreigners. I already mentioned *internal* subsidies and how they affect foreign producers. In the United States and Europe governments pay inefficient farmers to keep them in business and thus price foreign producers out of domestic markets. This practice harms the world's poor and is for that reason objectionable (an internal subsidy by a developing country will be objectionable as well since it will harm domestic consumers.)

But, unlike the internal subsidy, the export subsidy is an economic benefit bestowed by a government to a producer for exporting his products. It may consist of monetary payments, tax exemptions, or payments in kind, but in all cases the payment is tied to export performance in the sense that facilitates exportation by lowering exporter's production costs. Like internal subsidies, export subsidies have an effect on the country of importation, albeit a bit different effect. Consumers in the importing country buy the subsidized product which displaces the like product available locally. There is no question that the subsidy is inefficient. It creates what economists call a *deadweight loss,* that is, an aggregate loss that no one recoups. But aside from that, does an export subsidy inflict an injustice on persons in the country of importation (or in third countries)?

Let us evaluate an export subsidy in a rich country from the standpoint of the welfare of the world's poor. Let us consider first the case of firms from rich countries competing for the market of a poor country. Rich country A subsidizes a sugar producer so it can successfully export to poor country C. Country C *does not* produce sugar: it imports all the sugar it consumes. Country A does this to compete with a firm from country B, another rich country. A's and B's firms are competing for C's sugar mar-

[72] See the discussion in Irwin, *Against the Tide,* See also Paul Krugman's criticism, "Does the New Trade Theory Require a New trade Policy," *The World Economy* 15 (1992): 423.

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ket, and this competition does not displace C's sugar producers since there are none.

It seems clear that no injustice is done by A to persons in C, the poor country. On the contrary, the citizens in A are bestowing a *gift* on C's consumers by paying their sugar supplier so that those consumers can pay less for their sugar and thus increase their welfare. Moreover, C *welcomes* the competition between A and B, even if it takes the form of a subsidy war. In fact, this may be an imaginative and better alternative to development aid provided by the governments of A and B to the government of C. The only injustice is suffered by A's taxpayers, who are coerced by their government into helping the sugar producer. But we can avoid this complication by imagining that A's citizens pay *voluntary* contributions to the sugar producer, and thus indirectly help C's consumers. Here it is clear that, from an economic standpoint, A's citizens are providing a *benefit* to C's citizens. Moreover, the poor country welcomes this subsidy war! But what about B's citizens, the rich country whose firm gets displaced? Aren't they the victims of an injustice? Hardly. No one has a right to maintain its competitiveness in the face of the improved situation of one's competitor. If A's subsidy to its firm can be interpreted as A's citizens giving money to its sugar producer to help it compete against B's firm in C's market, it is entirely unclear that B has any moral claim. Moreover, the assumption is that B is also a rich country. So this is a transaction where A is bestowing a benefit on C, the poor nation. Other things being equal, arranging world trade so that poor countries benefit is a good thing. And this benefit is preferable to direct governmental aid for a number of reasons, including the fact that the benefit is experienced directly by C's consumers without governmental interference.

The situation changes if C, the poor country, has sugar producers. By operation of comparative advantages, C's sugar producers will suffer. They can no longer profitably produce sugar and will have to direct their resources (capital, labor) to a different endeavor. However, C will experience a net *benefit*, since the savings by the sugar-buying public normally will exceed the losses by the local sugar producers. Here everything depends on the ability of C's economy to accommodate to the efficiencies of production, but at any rate, as explained earlier, erecting tariffs is not the adequate response to the subsidy. This is because, quite simply, the tariffs will hurt C's own people. Working families will have to pay more for their sugar. So the verdict is uncertain. If a major goal of international arrangements is to alleviate poverty, then subsidies by wealthy countries to gain access to markets in poor countries, in cases where the subsidizing country is competing against other rich producers, do not wrong others. Subsidizing exports can be seen as a creative way to replace the usually unproductive foreign aid. However, this is true *only if* the subsidized imports do not predictably harm the

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developing country otherwise. This occurs in the case, already discussed, of the *internal* subsidies granted by rich countries to their farmers, which displace the more efficient producers from developing countries from the rich countries' domestic markets.

IX. Concluding Remarks

With few exceptions, the literature on global justice has been indifferent or hostile to free trade. Yet anyone who cares about justice should support free trade for empirical and moral reasons. The benefits from trade to the poor are denied both by protectionist measures in developed countries and by local monopolies and foreign interests allied with those in power in developing nations. Few things have done as much to cause the economic stagnation in the developing world as the policies of import substitution and similar protectionist devices (perhaps only *political* failure ranks higher in the list of such causes.)[73] Trade barriers cannot possibly be justified by a theory of justice, domestic or international. Domestically, trade barriers transfer resources from the worse-off (local consumers) to the better-off (workers and owners of protected industries). Internationally, trade barriers in rich countries transfer resources from poorer foreign producers and workers to richer local owners and workers. And this, assuming the best scenario: More often, trade barriers allow governments to transfer resources in favor of rent-seekers and other political parasites.

Developed countries deserve scorn for not opening their markets to products made by the world's poor by protecting their inefficient industries, while ruling elites in developing nations deserve scorn for allowing bad institutions, including misguided protectionism. International reform, then, should try to *create those effectively functioning institutions* that best secure economic growth while helping the poor. Because trade relies on mutual advantage and not on altruism, there is little doubt that liberalizing global voluntary exchanges will go a long way toward that goal.

Critics of free trade simply do not believe that the poor can compete in world markets. They conjure up the image of a poor and uneducated peasant immersed into a whirlwind of overwhelming economic forces which he cannot possibly shape or control. Yet only by allowing this poor peasant to participate freely in a global free market will he regain the freedoms he *does not* currently have: the freedoms to produce, work, and trade at will. The evidence unequivocally shows that freeing world markets improves the lives of millions of persons. Our poor peasant is the

[73] For the effect of import substitution policies in Latin America, see Joseph L. Love, "The Rise and Decline of Economic Structuralism in Latin America: New Dimensions," *Latin American Research Review* 40 (2005): 105, ("it is universally agreed that ISI has not been a viable policy for some time.") For a useful account of the debate, see generally Henry J. Burton, "A Reconsideration of Import Substitution," *Journal of Economic Literature* 36 (1998): 903.

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victim, not of free trade, but of one or more of the following: oppressive political conditions, in particular denial of human rights; collusion of the government with local monopolies or foreign producers; lack of protection of property and contract; lack of labor mobility; and stifling cultural structures. These institutional failures cause poverty, not the other way around.

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