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Articles

A note on the ethics of free trade

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Abstract: Arguments against free trade are often couched in ethical terms. They usually describe the plight of those who lose from free trade, but seldom consider the costs of protectionism. This essay examines free trade from the perspective of several important ethical theories and concludes that free trade is consistent with each of them.

A problem often posed to new philosophy students concerns three gravely ill patients, the first in need of a heart transplant, the second a liver transplant, the third a kidney transplant. Without a transplant, each soon will die. Why not kill the first healthy person who walks by and perform the transplants? That way, three people will live, while only one person will die. Based on a straightforward, utilitarian calculus – the greatest good for the greatest number – this is the ethical thing to do. The students, of course, reject the idea out of hand – and well they should. Yet, while examples like this have long been used by its opponents to attack utilitarianism, they have not succeeded in entirely eliminating utilitarian thinking from daily life. Utilitarian calculations – maximizing benefits to the greatest number, impartiality in distributing those benefits, and looking expressly at the consequences of actions – are useful maxims in formulating public policy.

Free trade is an example. The standard justification for free trade is very much a utilitarian justification, beginning with David Ricardo's classic explanation of the benefits of the doctrine of comparative advantage. Ricardo famously points out why it makes sense for England – with a comparative advantage in cloth – to produce cloth, and for Portugal – with a comparative advantage in wine – to produce wine, and for England and Portugal then to trade, rather than for each to try to produce both cloth and wine.[1] In pointing out why more cloth and more wine will be available collectively to England and Portugal through specialization and trade, Ricardo implicitly assumes a smooth transition in each country from the comparatively disadvantaged to the comparatively advantaged industry. Grape growers

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1 Ricardo, Ch. VII.

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and wine makers in England will become weavers and tailors, Ricardo assumes, while the weavers and tailors in Portugal become grape growers and wine makers.

But grape growers and wine makers do not easily become weavers and tailors, and weavers and tailors do not simply leave their looms or put down their needles and become farmers and vintners. Thus, while free trade brings overall benefit to England and Portugal, there can be individual hardship and loss. True, in an absolute sense this loss is not comparable with losing a life in order to supply healthy organs for transplant. But, in a philosophical sense, is it any different? Do not both free trade and involuntary organ transplants involve imposing hardship on one or a few so as to confer benefits on a far greater number? Are they not, from an ethical perspective, the same?

This essay attempts to show that they are not the same. It first compares the facts of the organ transplant example with the very different facts that typically face governments in deciding trade policy, and then looks at those facts from several major ethical perspectives in the Western philosophical tradition: utilitarianism, libertarianism (or liberalism), the Christian moral doctrine of double effect, Kantianism, the contractualism of T. M. Scanlon, and the social contract theory of John Rawls.

A look at the facts

When governmental policies move toward a system of free trade, ethical issues typically arise in two ways. First, governments may bind existing regimes of protection, i.e., they agree not to increase existing tariff levels, as they have done through Article II of the General Agreement on Tariffs and Trade (GATT). Changes in comparative advantage over time, however, may render this bound level of protection insufficient to avoid injurious import competition to some industries. Second, when existing import barriers are reduced, an even greater number of industries likely will face the need to adjust to import competition. These situations confront governments with the ethical questions presented when action is taken that can lead to injury to some interests and to benefits to others, such as consumers and more efficient industries that are capable of taking advantage of increased export opportunities. Of course, it might be asked, what was ethical about erecting the protectionist regime in the first place? Probably very little was ethical about it, but today's officials face the need to alter existing regimes, whatever their origin, in the direction of freer trade. The ethical questions this involves are the subject of this essay.

The fact that the reduction or removal of trade barriers already in place causes injury to those involved in a particular industry serves to highlight an important ethical difference between the organ transplant example and a movement toward free trade. True, the situations are similar in the sense that, in each case, harm may be done to one or more for the benefit of a greater number. This similarity, however, is superficial.

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One important difference between the transplant example and movement toward free trade is that the involuntary organ donor is in no way responsible for the condition of those in need of transplants, and has neither benefited from nor caused their condition. Those who benefit from protection, however, do impose a cost on others in society. These costs are not trivial. In a report issued during the Uruguay Round of trade negotiations, GATT noted that in 1989, restraints on imports of Japanese autos raised the price of autos to French consumers by 33%. The results of protection on clothing imports to a four-person family amounted, in 1993 US dollars, to $200 to $420 per year in the United States, to $220 per year in Canada, and up to $130 per year in the United Kingdom. Moreover, the report added, because protectionism tends to concentrate on products that are family essentials, it acts as a regressive tax on the least advantaged sectors of society.[2]

A second difference is the fact that, in the transplant case, the death of the involuntary donor is not simply a consequence of the saving of the lives of the other patients; it is necessary to the result. It is the means by which their lives are saved. In contrast, while loss to some may be a foreseen consequence of a movement to free trade, it is not necessary to that movement. Injury is not the means by which the end of free trade is achieved. This distinction is particularly relevant to the doctrine of double effect, discussed below.

Thus, those who stand to lose from free trade are in a position very different from that of the innocent, involuntary organ donor. Nevertheless, they in fact are harmed by a change in government policy, and the fact of this change itself needs to be addressed in any ethical evaluation of a free trade policy. Those who currently benefit from protection usually had little to do with the decision to implement that policy. The regime was simply part of the status quo, the 'given', when a particular line of work was chosen. Liam Murphy and Thomas Nagel question 'whether it is right to change the rules midway through people's lives'. They go on to note:

> Even though no one may be entitled to any particular bundle of resources in the abstract sense, a plausible norm of political morality has it that we are entitled to enjoy what we had reason to believe would be the consequences of our choices under the prevailing institutional arrangement.[3]

Is it fair, then, to change the rules after people have made commitments – commitments that may be irrevocable for all practical purposes? If not, are those who enjoy protection entitled to continue to impose its costs on the rest of society, costs that are disproportionately borne by the least advantaged of society? Few philosophers have addressed this question directly, and none appears to have done so in any detail. Nevertheless, ethical theory does shed considerable light on the approach society should take in addressing this very important question.

2 GATT 7.
3 Murphy and Nagel, 129.

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A utilitarian approach

Classical utilitarianism quickly disposes of any argument for protection. It is undisputed that free trade expands overall welfare. The losses suffered by those who lose by trade are more than offset by the gains experienced by those who benefit. From this utilitarian perspective, there is nothing more to be said. The fact that some may have unwisely relied on the permanence of existing protection would not alter the conclusion. Their loss simply would be weighed against the overall gain from removal of the protection, and would rarely, if ever, be enough to justify protection.

Contemporary utilitarianism is far more highly developed than the original, classical version of Jeremy Bentham, James Mill, and John Stuart Mill. Utilitarians today debate: act *versus* rule utilitarianism; aggregate *versus* average; hedonistic *versus* non-hedonistic; cardinal *versus* ordinal utilitarianism. Nevertheless, at the end of the day, while they remain confirmed utilitarians, they do not have a good answer for the plight of the involuntary transplant donor. Indeed, philosophically, they just throw up their hands. R. M. Hare argues that 'cases that are never likely to be encountered do not have to be squared with the thinking of the ordinary man'. Further, he contends, '[f]antastic unlikely cases will never be used to turn the scales as between rival general principles for practical use'.[4] J. J. C. Smart acknowledges 'that utilitarianism could, in certain exceptional circumstances, have some very horrible consequences'. He concludes, 'Let us hope that this is a logical possibility and not a factual one.'[5]

From the perspective of considering an issue of public policy, such as free trade, utilitarianism can be accused of trying to prove too much. It attempts to be an all-encompassing moral theory, one that tells us how to make each and every moral decision that faces us, from personal behavior to public policy, but it does not answer all questions to our intuitive moral satisfaction, as the transplant example shows. Utilitarianism can, however, 'be defined sufficiently broadly to handle any ethical issue, at least any ethical issue of interest to economists', such as trade policy.[6]

Indeed, there may be no alternative. At some level, we really cannot escape utilitarianism. 'In everyday life we make, or at least attempt to make, interpersonal utility comparisons all the time.'[7] When a group decides by majority vote whether to vacation collectively in the mountains or at the beach, it is making a utilitarian decision. When officials ask whether raising the speed limit will result in more gain in public convenience than risk of injury or death, they are making a utilitarian decision. When military commanders send out a small reconnaissance

4 Hare, 30, 33.
5 Smart, 69, 71.
6 Mirrlees, 102.
7 Harsanyi, 49.

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patrol to scout the enemy before placing an entire unit at risk, they are acting on a utilitarian basis.

It is curious that the great utilitarian, John Stuart Mill, does not even address free trade in his essay, *Utilitarianism*. He was, after all, one of the classical economists who, following Adam Smith, were among the leading nineteenth century proponents of free trade.[8] However, in the debates on free trade that occurred during his parliamentary career, Mill did suggest a policy that has important contemporary ethical implications for the doctrine of free trade today.

At the time, the British Parliament was debating repeal of the Corn Laws. These laws, enacted at the behest of Britain's landowners, severely restricted the import of grain, thereby sharply raising the cost of food. In the course of those debates, Mill – somewhat grudgingly – proposed what became known as the compensation principle. He suggested that some of the gains from trade be used to compensate those who lose from the policy. 'It would be better', Mill said, 'to have a repeal of the Corn Laws, *even clogged by compensation* than not to have it at all; and if this were the only alternative, no one could complain of a change, by which, though an enormous amount of evil would be prevented, no one would lose.'[9]

Redistribution of the gains from trade through payment of compensation does not diminish the overall amount of those gains. Therefore, a utilitarian normally would look upon redistribution as ethically neutral, and not oppose it. However, a utilitarian at least would have to ask whether the disappointment of those whose share of the gains is being redistributed, resulting in lower net gains for them, is more than the satisfaction of those who receive the proceeds. If so, to be consistent, a utilitarian would have to oppose compensation. It appears that Mill never asked himself this question.

While Mill's proposal was motivated more from practical than from ethical considerations, the notion of compensation and assistance to the losers from trade is highly relevant to analysis of the issue under other ethical traditions, particularly, as discussed below, to the social contract theory of John Rawls. It is also relevant to Kaldor–Hicks efficiency, a criterion widely used in welfare economics that can be viewed, in many ways, as applied utilitarianism. Economic efficiency occurs, under Kaldor–Hicks, if a change maximizes the overall value of social resources, even if, as a consequence, some are worse off. The outcome is Kaldor–Hicks efficient if the winners could compensate the losers, and still be better off. Under Kaldor–Hicks, however, the winners do not actually have to compensate the losers – they simply have to be capable of doing so, and still come out ahead.[10]

8 Irwin, Ch. 6.

9 Ibid., 183, emphasis added.

10 Kaldor–Hicks efficiency also can be measured from the perspective of the losers, by asking how much they would be willing to pay the winners to forego the change.

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A libertarian approach

The rights-based philosophy of libertarianism – or liberalism, in its classical sense – rejects both utilitarianism and protectionism. In the words of Robert Nozick, whose *Anarchy, State and Utopia* is the leading contemporary libertarian work, 'Individuals are inviolable'.[11] Individuals are ends, not means, and neither they, their work, nor their resources may be taken, without their consent, for the use of others. Libertarians reject utilitarianism precisely because it allows injuring some for the benefit of others, so long as the total benefit outweighs the total harm. A libertarian would not allow the sacrifice of a single individual, no matter how many others might be saved thereby. As for protectionism, to a libertarian 'any kind of trade restriction violates someone's rights'.[12] It means 'forced labor for private benefit'.[13] Libertarians ask, 'What gives one person a right arbitrarily and forcibly to reduce another person's living standard?'[14]

While it might be said that those who benefit from a movement toward free trade reduce the living standard of those who do not, there is nothing arbitrary or forcible about their actions. They do not use the coercive power of government to achieve that end. Libertarians place the emphasis on the word 'free' in the term free trade, in the sense of free from the coercive interference of government. While they acknowledge that individuals may be harmed by free trade, they do not see this as a drawback. Libertarians reject the notion that the individuals who lose from free trade are being sacrificed improperly for the benefit of the winners; they reject the notion that the losers from trade are being 'used' in the sense that their rights are being violated. 'Some individuals will lose their jobs under a free trade regime', they argue, 'but there is no such thing as a right to a job.'[15] For a libertarian, the argument that some may have relied on the continuation of an existing regime of protection is no reason for its continuance; the very existence of that regime violates the rights of others. As a rights-based philosophy, libertarianism easily disposes of the transplant problem: it is wrong to sacrifice the rights of an individual for the good of others, even for the greater good of a much larger group.

While Mill, the arch-utilitarian, did not discuss free trade in *Utilitarianism*, as noted above, he did address it specifically in *On Liberty*, making the libertarian point that injury to some from free trade is no reason not to adopt the policy:

> In many cases, an individual, in pursuing a legitimate object, necessarily and therefore legitimately causes pain or loss to others … Whoever succeeds in an overcrowded profession, or in a competitive examination … reaps the benefit from the loss of others … [S]ociety admits no right, either legal or moral, in the

11 Nozick, 31.
12 McGee, 75.
13 Bovard, 239.
14 Ibid., 248.
15 McGee, 75.

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> 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, or force.
>
> … Whoever undertakes to sell any description of goods to the public, does what affects the interest of other persons, and of society in general … But it is now recognized that both the cheapness and the good quality of commodities are most effectually provided for by leaving the producers and sellers perfectly free, under the sole check of equal freedom to the buyers for supplying themselves elsewhere. This is the so-called doctrine of Free Trade, which rests on … the principle of individual liberty asserted in this Essay.[16]

The doctrine of double effect

The doctrine, or principle, of double effect has its roots in Catholic moral theory.[17] It concerns situations in which a single action may cause two very different results. Many contemporary philosophers, not all of them Catholic, consider it particularly relevant today to such subjects as just war theory and medical ethics. The doctrine builds on the insight that actions often have many consequences, some of which may be good, others bad. It holds that, in certain circumstances, it is permissible to take an action intended to bring about good consequences, even if it is foreseen that the action also will bring about other consequences that are bad. However, the reverse is not true. It is not permissible to take an action intended to bring about bad consequences, even for the sake of other consequences that are good. Intent is crucial to the doctrine. In just war theory, this means that the destruction of an enemy munitions depot that predictably will take the lives of innocent civilians, nevertheless, may be justified, provided, of course, that the war itself is justified.[18] In medical ethics, it means that a drug may be administered to relieve the pain of a terminally ill patient, even though it may hasten the patient's death.[19]

Actions are permitted by the doctrine of double effect provided, not only that the intended effect is good, but also that the actor intends and aims only for that good effect; the bad effect is not a means to the good effect; the means chosen are appropriate for achieving the good effect; and the good effect is sufficiently good to justify the bad effect. Thus, an advocate of the doctrine would say that both the destruction of a munitions depot and the relieving of pain, in themselves, are good; that these are the only aims of the action taken; the foreseen bad effects (loss of innocent civilian life and an early death for the patient) are not means to the good end; and finally, and perhaps most controversially, that the good outweighs the bad.

16 Mill, 90–91.
17 Boyle, 7.
18 Walzer, 151–159.
19 Beabout, 307–309.

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In the case of the terminally ill patient, while the doctrine would permit the administration of a pain killer that had the side effect of hastening death, it would not permit simply killing the patient in order to relieve pain. Similarly, while the doctrine would permit, in a just war, the bombing of a munitions depot with the side effect of death and injury to nearby civilians, it would not permit the intentional killing of those civilians in order to deprive the enemy of a work force at the munitions facility.

The utilitarian overtones in the doctrine's requirement of proportionality, that the good outweigh the bad, are interesting. They show how difficult it is to escape utilitarian calculations when establishing public policy. There are, however, differences between utilitarians and those who utilize the doctrine of double effect. For a utilitarian, consequences are crucial and intent is irrelevant. Utilitarians reject the notion that there can be a moral difference between two people who perform the same act with identical consequences, even if they have different motives for doing so. For those who look to the doctrine of double effect for guidance, on the other hand, the utilitarian calculus that is part of the exercise is just that – part. The other parts, including intent, are crucial as well.

The doctrine of double effect supports a policy of free trade. When a government abandons a policy of protectionism, it does so in order to obtain the well-known benefits of free trade for all of its citizens: lower prices, wider choice, greater overall material well-being. Although a government may foresee that some of its citizens are likely to lose by that policy, their loss is not the intended effect, nor is it a means to the intended effect. Clearly, the means chosen for achieving the intended benefits of free trade – the elimination of trade barriers – are appropriate means to that end. Finally, economic theory makes clear that the overall benefits of free trade greatly outweigh their cost.

Critics of the doctrine argue, however, that when we can foresee an event – such as civilian casualties or hastened death – it is disingenuous to say that we do not intend it.[20] We intend the foreseeable consequences of our actions. Thus, critics would argue, bomber pilots who foresee civilian casualties are responsible for them. Similarly, physicians who foresee that pain medication will hasten death are responsible for that early death. By the same reasoning, they would say, a government that lowers trade barriers, foreseeing that there will be those who lose by the policy, is morally and ethically responsible for the harm that is caused.

Supporters of the doctrine reject this thinking. Instead, they argue that the proper test for good intent is to ask what our reaction would be if the unintended consequence did not materialize. Would the military commander see failure in a mission that destroyed only the munitions depot and left the nearby civilians unharmed? Would the physician see failure if the patient did not die prematurely, but lived longer while pain free? Clearly not. Applying this test to free trade, we may ask whether a government would be disappointed if an affected industry's response

20 Hart, 122–125.

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to increased foreign competition was either to become more competitive or to move smoothly to another sector of the economy, with no loss of jobs, wages, or profits. Again, clearly not. Thus, by this test, for those who accept the doctrine of double effect, free trade is ethically justified.

The reliance of some on an existing regime of protection would not alter the result under the doctrine of double effect. The reason why those who lose from free trade may be in a position to lose is not relevant to the issue of whether the doctrine's criteria are met. The losers from free trade have no higher ethical claim than those who locate in the vicinity of a munitions depot on the assumption that peace will continue.

Like libertarians, those who accept the doctrine of double effect have no trouble with the transplant example. The death of the involuntary donor is not an unintended effect of saving the lives of the three seriously ill patients. It is itself intended. It is the very means by which the end is accomplished, and is, therefore, inconsistent with the conditions under which the doctrine may properly be used to justify harm.[21]

A Kantian perspective

Immanuel Kant, considered by many to be the greatest Western philosopher of the modern era, wrote well before free trade became a topic of major interest in the early nineteenth century. Although he never directly addressed the issue, free trade is consistent with both his political and his ethical writings. Kant was very much a classic liberal who viewed positively the Enlightenment's dismantling of the feudal order. He was aware of and spoke approvingly of the economic specialization that underlies, and is furthered by, free trade:

> All trades, crafts, and arts have gained by the division of labor, namely when one person does not do everything but each limits himself to a certain task that differs markedly from others in the way it is to be handled, so as to be able to perform it most perfectly and with greater facility. Where work is not so differentiated and divided, where everyone is jack-of-all-trades, there trades remain in the greatest barbarism.[22]

Along the same lines, he also wrote in positive terms about navigation's contribution to 'lively' commerce:

> Although the seas might seem to remove nations from any community with one another, they are the arrangements of nature most favoring their commerce by means of navigation; and the more coastlines these nations have in the vicinity of one another (as in the Mediterranean), the more lively their commerce can be.[23]

21 One writer, however, does not see it this way. The death of the organ donor, he argues, is not 'directly willed' by the surgeon, who simply wants the organs and would have no objection if the patient could live without them. Martin, 282. This view does not seem to be widely shared.

22 Kant 1785, 2.

23 Kant 1797, 121.

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More famously, he said in his essay, *Perpetual Peace*, that the 'spirit of commerce … cannot exist side by side with war'.[24] In the eighteenth century, when Kant was writing, the term 'commerce' generally referred to international trade.[25]

Kant's view that international trade furthers the cause of world peace was emphatically shared by the creators of GATT after World War II, and that motive was one of the primary motives for establishing the system.[26] While there does not appear to be any evidence that GATT's creators were directly influenced by Kant, they certainly appear to be influenced by his idea of commerce as an antidote to war. Kant was one of the first to observe that when goods do not cross borders, armies do.[27]

A more direct appreciation of a Kantian perspective on free trade results from an examination of the topic in light of the 'categorical imperative' that was central to his moral philosophy. Kant formulated the categorical imperative several different ways, the first of which serves our purpose: 'act only in accordance with that maxim through which you can at the same time will that it become a universal law'.[28] He gives some specific examples of its application, one of which concerns a person seeking a loan who knows at the time that he will be unable to repay. Without a promise to repay, of course, the loan will not be forthcoming. Personal advantage would counsel making the empty promise and taking the funds. But when the would-be borrower asks, 'How would it be if my maxim became a universal law?', the implausibility of doing so becomes apparent: 'For, the universality of a law that everyone, when he believes himself to be in need, could promise whatever he pleases with the intention of not keeping it would make the promise and the end one might have in it itself impossible, since no one would believe what was promised him but would laugh at all such expressions as vain pretenses.'[29]

Although the categorical imperative is a rule for personal morality, it can be applied as well to governmental action as a test of the appropriateness of a policy. Protectionism fails the categorical imperative's key underlying notion of universalizability. Just as the practice of falsely promising to repay cannot be successfully universalized, i.e., applied to each and every instance, economic theory tells us that protectionism cannot successfully be universalized to every product in a single country, let alone to every product in every country, without impoverishing the citizens of that country in the first instance, and most, if not all, of humanity in the second. The fact that those benefiting from protection innocently relied upon its continued existence would not alter this analysis.

24 Kant 1970, 114.

25 Wood, 316.

26 Wilcox, 22–23; Gardner 8–10.

27 Montesquieu (1689–1755) might well have been the first: 'The natural effect of commerce is to lead to peace'. *The Spirit of the Laws* 338, Pt 4, Book 20, Ch. 2. Montesquieu (1748).

28 Kant 1785, 31.

29 Ibid., 32.

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In contrast, a Kantian has no difficulty in accepting, as a universal law, the maxim that no person should be forced to become an organ donor, thus satisfying the criteria of the categorical imperative. In addition, Kant has put forward another imperative, which he calls the 'practical imperative'. This provides: 'So act that you use humanity, whether in your person or in the person of any other, always at the same time as an end, never merely as a means.'[30] Forcibly removing another's organs clearly, and impermissibly in Kant's view, uses that person as a means and not an end.

Scanlon's contractualism

T. M. Scanlon advances a form of ethical contractualism in which moral behavior is 'justified to others on grounds that they, if appropriately motivated, could not reasonably reject'.[31] Others, of course, would attempt to justify their standards to us on the same could-not-reasonably-reject basis. In considering whether we could reasonably reject a proposed principle, Scanlon offers a formula that sounds somewhat utilitarian: 'we should consider the weightiness of the burdens it involves, for those on whom they fall, and the importance of the benefits it offers, for those who enjoy them, leaving aside the likelihood of one's actually falling in either of these two classes'.[32]

Scanlon does not consider many concrete policy questions, such as free trade. At times, however, he seems not only to move away from utilitarian considerations, but even to suggest that a person indeed could reasonably reject a policy of free trade. For example, he states that 'contractualism does not require, or even permit, one to save a larger number of people from minor harms rather than a smaller number who face much more serious injuries'.[33] By this decidedly non-utilitarian standard, it can be argued that free trade should be rejected, since it may be said to 'save' a large number of consumers from higher prices or limited choice, while it harms a smaller number of producers who certainly do face injuries more serious than the benefit to any individual consumer.

Nevertheless, Scanlon, in fact, urges a more comparative – and again, almost utilitarian – approach. Whether harm to some provides a reasonable ground for rejecting a principle, he writes, 'will depend, of course, on the costs this would involve for others, and these will depend on what alternatives there are'.[34] Further, following Kant's universalizability, Scanlon holds that the assessment of those costs 'must take into account the consequences of its acceptance in general, not merely in a particular case that we may be concerned with'.[35] The protectionist

30 Ibid., 38.
31 Scanlon, 5.
32 Ibid., 208.
33 Ibid., 238.
34 Ibid., 205.
35 Ibid., 204.

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alternative to free trade, if accepted as a general standard, would immiserate the globe. It cannot reasonably be seen as a desirable alternative. Similarly, Scanlon writes, while 'we can accept a prohibition against intentionally inflicting serious harm to others … the cost of avoiding all behavior that involves risk of harm would be unacceptable'.[36] The reduction of protectionist barriers may be seen by those losing protection as the intentional infliction of harm to them, but this is not an accurate assessment. Reduction of trade barriers involves a 'risk' of harm, not the intentional infliction of unavoidable harm.

As we saw in the discussion of the doctrine of double effect, a government may foresee that some of its citizens are likely to lose when a protectionist regime is reformed, but this is not government's intended effect. The intention is the opposite – to remove the harm caused by protection. This inevitably contains risk for those who were enjoying protection, but it is an unavoidable risk if the certainty of harm to others from protection is to be avoided. To the extent those in import-impacted industries are able to shift to other fields, or to become more competitive in their own field, the harm can be avoided entirely. To be sure, experience teaches that many, if not most, of those in import-impacted industries are not able to make a satisfactory adjustment or to become more competitive. For them, the risk becomes a reality, and they become the losers from trade. But, Scanlon presumably would argue, this does not mean that government intentionally inflicted harm upon them. It simply means that government found that the cost of avoiding all behavior that involved risk unacceptable. The fact that those affected might have relied, erroneously, on the continued existence of a regime of protection would not affect this outcome.

Unlike utilitarians, Scanlon has no difficulty with the problem of the involuntary organ donor. People have 'strong reason to want to avoid bodily injury', he writes. It is therefore reasonable for them to reject principles that would leave others free to act against that interest.[37] This is a rule that we could accept generally, not just in a particular case. The same cannot be said for protectionism.

Rawls's social contract

The contractualism of John Rawls is not, in the usual sense of the term, an ethical theory. It is far narrower than the comprehensive ethical doctrines that deal broadly with moral values. It is, instead, 'a political conception of justice for the special case of the basic structure of a modern democratic society'.[38] Rawls's aim is 'realistically utopian', to probe 'the limits of the realistically practicable'.[39]

Rawls's creative addition to social contract theory is the 'original position' with its accompanying 'veil of ignorance', which he describes as a procedural

36 Ibid., 209.
37 Ibid., 204.
38 Rawls 2001, 14.
39 Ibid., 13.

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interpretation of Kant's categorical imperative.[40] In the original position, as in other social contract theories, people or their representatives determine the principles under which they will be governed. It is a position of equality among free and rational persons in establishing the fundamental terms of their association. However, the persons in the original position are constrained by a 'veil of ignorance'. '[N]o one', in the original position, 'knows his place in society, his class position or social status, nor does any know his fortune in the distribution of natural assets or abilities, his intelligence, strength and the like'.[41]

The original position is not an historical event; it is purely hypothetical.[42] It simply is a device that allows us, in Rawls's words, 'to keep track of our assumptions'.[43] We can enter the original position at any time, he maintains, 'by reasoning in accordance with the modeled constraints, citing only reasons those constraints allow'.[44]

His monumental *A Theory of Justice* proceeds from the description of the original position to develop the principles Rawls believes persons in that position would decide upon. One of these is free trade:

> [P]ersons engaged in a particular industry often find that free trade is contrary to their interests. Perhaps the industry cannot remain prosperous without tariffs or other restrictions. But if free trade is desirable from the point of view of equal citizens or of the least advantaged, it is justifiable even though more specific interests suffer. For we are to agree in advance to the principles of justice and their consistent application from the standpoint of certain positions. There is no way to guarantee the protection of everyone's interests over each period of time once the situation of representative men is defined more narrowly. Having acknowledged certain principles and a certain way of applying them, we are bound to accept the consequences.[45]

When Rawls expanded his theory of justice to the international sphere in *The Law of Peoples*, he concluded that parties in the original position would 'formulate guidelines for setting up cooperative organizations and agree to standards for fairness for trade'.[46] One of these organizations would be 'analogous to GATT'.[47]

In holding that free trade is justifiable if it is 'desirable from the point of view of equal citizens or of the least advantaged', Rawls assumes that free trade meets this standard, but he does not elaborate further. The notions of equal citizens and the least advantaged are central to his theory of justice, which he calls 'justice as

40 Rawls 1971, 256.
41 Ibid., 12.
42 Ibid., 120.
43 Rawls 2001, 81.
44 Ibid., 86.
45 Rawls 1971, 99–100
46 Rawls 1999, 42.
47 Footnote 51. The other international organization mentioned by name by Rawls is the World Bank.

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fairness'. Interpreting the statement *a contrario*, therefore, by Rawls's standard, if free trade is not desirable from the point of view of equal citizens or of the least advantaged, it would not be justifiable.

Equal citizens are those whose representatives in the original position 'are symmetrically situated in that position and have equal rights in its procedure for reaching agreement'.[48] Those persons are rational and attempt, within the constraints of the veil of ignorance, to advance their interests or the interests of those they represent.[49] Persons in these circumstances would be aware of the benefits of free trade and the costs of protectionism. Even though they do not know whether they or those they represent would be winners or losers from trade, they would know that they would be more likely than not to benefit. Given the stark choice, protectionism would be irrational to persons in the original position.

To meet Rawls's justification for free trade we must also ask whether it would be desirable from the point of view of the 'least advantaged'. This separate justification is based on what Rawls calls the 'difference principle', one of the more controversial parts of his theory:

> Social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit of the least advantaged and (b) attached to offices and positions open to all under conditions of fair equality of opportunity.[50]

Part (a) of the principle, which is relevant to Rawls's justification of free trade, has been the source of much discussion. By holding that inequalities are justified only when they are of benefit to the least advantaged, the difference principle has been criticized both from the left for endorsing inequality and from the right for extreme egalitarianism.

Rawls's difference principle is similar to, but importantly different from, the more familiar Pareto principle, used in economics, which holds that a particular arrangement is efficient when it is impossible to change it so as to make one or more persons better off without at the same time making one or more persons worse off. Under Pareto, a change that made someone better off, while leaving everyone else unaffected, would be acceptable; under Kaldor–Hicks, it will be recalled, a change that maximizes value is efficient, even if some lose. The difference principle, however, is not concerned with losers from free trade *per se*; it is concerned with the impact on the least advantaged of change that causes or increases inequality. Those who lose by trade are seldom, if ever, the least advantaged in a society, although they are just as seldom, if ever, the most advantaged either. In developed industrial countries, in recent years, many of the losers were relatively well-paid production workers in older industries whose technologies had migrated to lower-wage developing countries: footwear, steel, and automobiles among them. It is

48 Rawls 2001, 20, §7.3.
49 Rawls 1971, 142.
50 Ibid., 83.

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often the loss of these relatively high-paying jobs to imports that causes much of the opposition to free trade.

Because free trade almost always creates some losers, it normally is not Pareto efficient. Typically, it would be Kaldor–Hicks efficient since the winners normally would be able to compensate the losers, and still come out ahead. But Kaldor–Hicks is indifferent as to the identity of the winners and the losers. Under the difference principle, in contrast, who wins and who loses is crucial. Free trade would almost always be acceptable, so long as society's least advantaged were among the winners, not the losers. They would almost always be among the winners, however, since free trade tends to lower costs, particularly for consumer essentials, such as food and clothing.

Although it might be possible to skew protection in such a way that the least advantaged benefit, this is likely to prove impossible to do in practice, and therefore would be beyond the 'reasonably practicable'.[51] As noted, those who obtain the rents of protectionism are seldom, if ever, the least advantaged in society. To the contrary, as the 1993 GATT report notes, protectionism tends to act as a regressive tax on the least advantaged.[52] But, even if protection did succeed in moving the least advantaged up a rung on the socio-economic ladder, in all likelihood this would simply place another group that does not benefit from the protection on the lowest rung. Protection for low-wage apparel workers, after all, raises the cost of clothing to low-wage workers in other industries. A protectionist policy that simply permitted one disadvantaged group to pass the burden to another would not meet the requirements of the difference principle.

For these reasons, rational persons, operating under a veil of ignorance, who are attempting to advance their interests and the interests of those they represent, are unlikely to agree to a policy of protectionism. Indeed, though they do not know their own personal situations, persons in the original position do know general facts about the world, and would be aware, as the GATT study observed, that protection almost always amounts to a regressive tax on the least advantaged.

Nevertheless, Rawls would not simply leave those who lose by free trade to their fates. At the same time that he endorses free trade, he cautions:

> This does not mean, of course, that the rigors of free trade should be allowed to go unchecked. But the arrangements for softening them are to be considered from an appropriately general perspective.[53]

Here Rawls takes us back to Mill, and the notion of compensation for those who lose by free trade. Unlike Mill, however, Rawls does not endorse the notion reluctantly, as the price that must be paid for a sound policy. Also, unlike Mill, Rawls would not make compensation available only for economic dislocations caused by increased international trade. Rawls's position – not only for dislocation

51 See note 39 above.
52 See note 2 above.
53 Rawls 1971, 100.

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from trade, but also for dislocation from other causes, such as technological change – may be seen as a modification of Kaldor–Hicks, under which compensation is required. Rawls envisions a social safety net for those who are dislocated by economic change, whatever the cause.

An important detail, from a Rawlsian perspective, concerns the potential application of the difference principle to compensation. Since the losers from free trade are often among the better-compensated in society whose jobs are put under pressure from lower-cost imports, they are seldom, if ever, the least advantaged. For this reason, the difference principle normally would not apply to the level of compensation they would receive, and it would not be necessary, to make them better off than they were before. Something less, which otherwise met Rawls's standard of justice, would be sufficient.

Under Rawlsian justice as fairness, the right has priority over the good. The reverse is the case with utilitarianism, under which utility – the good – has priority over rights. Thus Rawls is not troubled by the transplant problem. Even though it may be good in a utilitarian sense to take one life to save three, this would violate the basic right to life of the sacrificed individual. Rational agents behind a veil of ignorance would not agree to such a practice. Nor would the reliance factor be a problem for him. As a conceptual matter, persons in the original position are establishing the initial rules for their society, so the reliance problem simply would not arise. However, in applying Rawls's justice as fairness standard to the existing world, where protection is in place and the problem is very much alive, assistance to those who are disadvantaged by the elimination of protection, not continuation of that protection, would be the just policy.

Afterthoughts

Modern economies are characterized by rapid change, by the 'creative destruction' that brings both progress and dislocation.[54] Both progress and dislocation are good, for without them we would all be subsistence farmers, if not hunter-gatherers. Although much, if not most, economic change is driven by technology and other factors apart from international trade, it is the latter – with its ever present, easy-to-accuse foreigner – that is widely blamed for the painful dislocation change inevitably brings. This blame often is couched in ethical terms – fair and unfair, right and wrong. Examination of the ethical implications of free trade, in light of some of the more prominent current ethical theories, demonstrates, however, that it is free trade – not its opposite – that is truly ethical.

But if dislocation is good because it is a necessary accompaniment to progress, those whose livelihoods are destroyed by the process, creatively or otherwise, may be forgiven if they are not always able to see it that way. Because opposition to free trade from those who would be injured by it is rightly seen as an impediment to

54 Schumpeter 1942, 82 ff.

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progress, free trade advocates, beginning, as we have seen, with Mill, have advocated compensation to those who might be injured.[55] In the United States, the *Trade Expansion Act of 1962* offered 'adjustment assistance', primarily in the form of retraining and relocation allowances, to those injured by the reduction of trade barriers.[56] In the more than four decades this program has been in effect, however, it has not been well-funded, has suffered from several structural flaws, and did not prove overly successful.[57] A number of important changes were made to the program by the *Trade Act of 2002*, including, for the first time, wage insurance and health care provisions.[58] Funding, however, remains low, and the effectiveness of the program remains to be seen.

One of the criticisms leveled at the entire notion of a trade adjustment assistance program is its narrowness. Critics correctly point out that technological change is as disruptive as trade, perhaps even more so. With Rawls, they would ask why, then, provide assistance only to those who are injured by trade, and not to those whose livelihoods are made obsolete by technological change? For some of these critics, the point is largely a rhetorical one: they are opposed to any kind of governmental assistance. They believe that an adjustment program for all would be out of the question politically, and thus simply use the all-or-none argument to defeat any trade adjustment assistance proposal. Rawlsians, however, call for a broad program because they believe a broad program is ethically required.

The *realpolitik* approach to special trade adjustment assistance is more in the tradition of Mill and avoids ethical considerations. It recognizes that free trade is a policy adopted by governments, and that those who are injured by it – or those who fear that they might be – are often in a position to block it, and thereby to deny the benefits of the policy to the rest of society. Technological change, on the other hand, is more of a process than a policy, and those victimized by it usually are not in a position to do much about it – as Ned Ludd and his followers long ago proved. In the real world, this means that one group may need to be appeased, while the other can be left to fend with far less governmental assistance. The same is essentially true when purely domestic competition is involved: Company A succeeds; company B fails, and company B's employees lose their jobs. There normally is nothing the unfortunate employees of company B can do about it. Consequently, there is little political pressure to adopt measures to assist them, apart from whatever limited benefits, such as unemployment insurance, might be generally available.

Jagdish Bhagwati cites the importance of the easy-to-blame foreigner as justification for providing extra assistance for import injury, while denying it for injury from domestic causes. He argues that the Rawlsian argument that assistance

55 See, e.g., Bhagwati, 118–120.
56 PL 87-794, 76 Stat 872, Ch. 3.
57 Kletzer and Litan 2001.
58 PL 107–210, 116 Stat 937, Div. A.

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should be provided to all who are injured by any kind of change 'is valid in a cosmopolitan world that does not differentiate between foreign and domestic communities. However, in the real world the refusal to accept change … is greater when the source of the disturbance is presumed to be foreign.'[59]

There is much practical wisdom in Bhagwati's observation. As he further notes, 'If you import cheap steel and I lose my job in Pennsylvania, that is not quite the same as if I lose my job because you build a steel mill in California; it leads to greater resentment and more resistance to change.'[60] More than half a century earlier, Jacob Viner made a similar observation. 'Men are less tolerant of questionable methods of competition, or even of any methods of competition, to which they or their fellow-citizens are subjected, when the agents are foreigners', he said. 'What they accept as reasonable when done to them by a fellow-citizen, or even laudable when done by a fellow-citizen to a foreigner, they bitterly resent when done to one of themselves by a foreigner.'[61]

Of the ethical theories considered in this essay, adjustment assistance would be inconsistent only with libertarianism. To a true libertarian, taxing one person to assist another – whether that other has been injured by free trade or some other cause – is always unjustified. The doctrine of double effect – which is used only to justify an injury, not to provide a remedy – is not really relevant to the issue. Utilitarianism neither requires nor prohibits assistance for import injury; it would depend on the calculation of utilities. In fact, assistance that went beyond an attempt to compensate for import injury, to encompass a general social safety net, could well be consistent with some versions of utilitarianism. This, too, would depend on the calculation of utilities.

Assistance also would be consistent with Kant's ethics, but, as with utilitarianism, it would not be required, as it is under Rawls's version of Kantianism. It is not at all clear how adjustment assistance would fare under Scanlon's contractualism – could we, if properly motivated, 'reasonably reject' such a program? To pose a question like this, when we all are aware of whether we, or those close to us, are ever likely to need assistance is to demonstrate the advantage of Rawls's veil of ignorance. The fairest way to answer such a question is when its particular effect is unknown.

In the end, however, the important ethical questions presented by import injury and adjustment assistance are questions of redistribution – to adapt the title of Scanlon's book, what *do* we owe to each other? Redistribution raises questions of equality, of liberty, of contribution, and of justice that go far beyond free trade. There is no question, however, that under any of the theories examined in this essay, the place to begin is with free trade. To be a free trader is to be ethical.

59 Bhagwati 1988, 118–119.
60 Ibid., 119.
61 Viner 1923, 93.

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