

A Political Approach to International Trade Justice

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The candidate confirms that the work submitted is his own and that appropriate credit has been given where reference has been made to the work of others.

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joy, irreverent wit, and willingness to be entirely himself within an often stuffy academic world left a profound mark on me, as I know it did on many others. He would, no doubt, be somewhat baffled that a thesis on international trade would end up being dedicated to him, and he would probably be disappointed at the complete lack of gallows humour there is to be found in the pages that follow. As ill-fitting a commemoration as it may be, I felt an impulse to use this acknowledgements section, and the thesis that follows, as my own small way of paying tribute to a wonderful thinker and a good man.

Abstract

In this thesis I develop a political approach to trade justice, one which accounts for states' procedural as well as distributive duties towards one another, and which takes the global distribution of power seriously. The thesis is divided into three parts. In the first part, I set out the general theoretical framework of my account. Here, I argue that it is the dependence that trade generates between states which grounds duties of justice between them, before identifying three distinct duties which are grounded by dependence, namely the duty of recognition, the duty of stability, and the duty of accountability. Building on this, in the second part of the thesis I discuss the demands of distributive justice in trade, where I advance a shift-sufficientarian account of states' duties. On this account, states have different distributive duties and claims depending on where they stand in relation to two thresholds of development. When a state crosses one of these thresholds, there is a change (or 'shift') in trade partners' reasons to benefit that state further, with duties becoming less demanding above each threshold. The final part of the thesis is concerned with procedural justice and the institutional character of the trade regime. Here I draw on the neo-republican literature to argue that realizing the three duties of justice identified in the first part of the thesis requires states to minimize inter-state domination, and that this speaks in favour of strengthening multilateralism in trade. While the current multilateral organisation, i.e. the World Trade Organisation, has failed to effectively constrain inter-state domination, I suggest a number of reforms which, taken together, would give weaker states considerably greater control over the terms of their economic integration.

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List of Abbreviations

ACFTA = ASEAN–China Free Trade Area

ASEAN = Association of Southeast Asian Nations

COVID-19 = Coronavirus Disease 2019

DDA = Doha Development Agenda

DSM = Dispute Settlement Mechanism

EEA = European Economic Area

GATT = General Agreement on Tariffs and Trade

GSP = Generalised System of Preferences

ITO = International Trade Organisation

LDC = Least-Developed Country

NAFTA = North American Free Trade Agreement

OECD = Organisation for Economic Co-operation and Development

PTA = Preferential Trade Agreement

RTA = Regional Trade Agreements

S&DT = Special and Differential Treatment

TPP = Trans-Pacific Partnership

TRIPS = (Agreement on) Trade-Related Aspects of Intellectual Property Rights

TTIP = Transatlantic Trade and Investment Partnership

USMCA = United States-Mexico-Canada Agreement

WIPO = World Intellectual Property Organisation

WTO = World Trade Organisation

Introduction: Trade Justice as Political Justice

International trade is not just an economic phenomenon, but a political one as well. There are at least two related senses in which this is true. First, international trade involves not only the exchange of goods and services across borders, but also a set of institutions within which states shape, manage, and regulate the terms on which such cross-border exchanges can occur. When we're thinking about trade as a set of market exchanges, we might call this the 'transactional level' of trade. When we're thinking about trade in terms of the institutions and the rules which give shape to the transactional level, we can call this 'governmental level' of trade. The logic of actors at the former level is primarily economic, while the logic of actors at the latter level is primarily political (which includes, but is broader than, concern with economic gain). The two levels are closely intertwined. On the one hand, states participate in trade relationships with one another so that they can increase their wealth and opportunities by means of integrating their respective markets. On the other hand, states' market size is a key, perhaps the key determinant of power within forums of trade governance.

This is the second sense in which trade is political: it is shaped by power. More specifically, the power that some states have over other states at the governmental level of trade in large part determines and limits the sorts of outcomes we can expect from inter-state negotiations. In such negotiations, a state's market size gives it power, on the most straightforward definition of the term: it allows it to get others to do what they wouldn't otherwise do (Dahl, 1957). The larger a state's market, the more attractive it is as a trade partner, and the more it can demand in return for granting favourable access to its own market. Because the states we have today are of such radically different sizes, both in economic and in sheer demographic terms, the distribution of power between states at the governmental level of trade is radically uneven, which in turn impacts the distribution of costs and benefits foreseeably produced at the transactional level of trade.

This is all fairly obvious. We know that the decisions of a United States or a China are more consequential to the outcomes produced by the trade regime than the decisions of a Mozambique or an Eritrea. The current US administration alone gives ample illustration of this. Over the last number of years, it has effectively brought the World Trade Organisation's (WTO) judicial branch to a standstill, by refusing to agree to the appointment of any new judges to its Appellate Body; it has used the threat of sanctions and tariffs to compel a number of trade partners to renegotiate their trade relationships in ways which are more amenable to the administration's political and economic interests; and, admittedly at some cost to themselves, its concerted trade war with China

has likely contributed to the slowdown of China's extraordinary, historically unprecedented growth. China itself is no shrinking violet within the trade regime. Since joining the WTO in 2001, it has used its sizeable and growing economic weight to extract preferential trade agreements from other states in the Asia-Pacific region, and to subsequently leverage other states' increasing trade dependence as a means of furthering China's own non-economic goals (Sampson, 2019). Of course, the power of even the largest states is not irresistible; the current standstill of trade negotiations within the WTO can in part be attributed to the increasing power of developing countries acting in coordination to prevent the EU, the US, and other historic trade powers from riding roughshod over their collective interests (see e.g. Jawara and Kwa, 2004; Blustein, 2009; Hopewell, 2016). And, while the above examples capture some of the more dramatic exercises of power in trade governance today, we should not think that power is confined to such cases; it also shapes more quotidian, unremarkable outcomes in trade. Even the most inconsequential trade agreement, being a binding agreement negotiated between states with different sets of interests, and different bargaining chips at their disposal, is doubly political, in the sense that it is an intergovernmental relationship shaped by power.

From looking at much of the trade justice literature, however, one would be forgiven for not realising any of this. Even within the most prominent accounts in the literature, the political nature of trade is overlooked in two different ways, corresponding to what might be called the fairness-based and exploitation-based approaches to trade.¹ Fairness-based approaches have little to say about power, and about the political nature of trade more generally; trade is depicted as an economic enterprise, where trade justice is a matter of equitably distributing economic gains and opportunities. On the terms I introduced above, the focus here is on what outcomes states, acting at the governmental level, ought to aim at when regulating the transactional level of trade. The most prominent version of this approach is Aaron James' account of structural equity, where each trading state is owed an equal return on its productive endowments, and they are entitled to this on the basis that they are equal participants within a cooperative scheme of mutual reliance (James, 2012). Despite some outward signs of competitiveness between states, James argues that this competitiveness is underpinned by a more basic shared goal, namely of generating mutual income gains. What makes outward competition acceptable is that states believe they are engaged in positive-sum interactions, where the bargains struck are ultimately win-win. Issues concerning how

¹ The accounts that I mention below are more complex than I describe so briefly here, and have some nuances which aren't captured by what I say in these limited remarks. Each of these authors will be discussed in more detail in various parts of the thesis. For now, I just want to sketch their basic positions, in order to illustrate the gap within the literature which this thesis is trying to plug. It's worth saying that none of these authors are entirely unconcerned with, or unaware of, the political elements of trade. The problem is not one of ignorance, but of focus: politics is treated as peripheral, rather than central, to trade justice.

trade negotiations should be conducted, what procedures and institutions are required, and how states should engage with one another in trade more broadly are taken to be of instrumental concern; what matters is that they produce the equitable outcomes which represent fair treatment (James, 2012, 90).

Oisín Suttle (2017) adopts a similar approach. For Suttle, trading states must act according to two distributive principles, in order to reconcile individuals' non-voluntary subjection to a trade regime with their status as free and equal persons: first, states' international-facing policies (e.g. tariffs, export subsidies) must promote global equality of opportunity, and, second, states' domestic-facing policies must not undermine other peoples' capacity to become or to remain well-ordered (2017, 25-27). Within Suttle's conceptual framework, states owe these duties directly to *individuals* in other states, and these duties are owed regardless of, and are unaffected by, the particular nature of the relationship between the two states in question (that is, so long as the states are not entirely closed off from international integration). Suttle does not address how states ought to, or are entitled to, interact with one another. For Suttle, then, like James, issues concerning procedures and institutional design, on the one hand, and issues of distributive justice on the other, can be treated entirely separately (Suttle, 2017, 35).

Typical of the fairness-based approach, then, is a sort of studied indifference to the political dimension of trade: we ought to, and can, determine what justice requires without considering the differential degrees of power that states have, and the institutions within which they wield that power. Distinct from this fairness-based approach to trade justice is the exploitation-based approach. One might think that exploitation-based approaches to trade justice would foreground the importance of states' differential degrees of power. When some agents have more power than others, after all, it makes it more likely that they can exploit the weaker agents. To an extent, this is indeed borne out by the work of exploitation-based theorists, each of whom pays attention to the significance of differential degrees of power, and to the sorts of pathologies which these differentials can in turn produce (see Chapter 3). The problem, however, is that these accounts only foreground power in order to subsequently expunge it from the picture: trade justice is defined in terms of the *absence* of power (or, more precisely, the absence of power as a determinant of outcomes).

For example, when discussing justice in trade governance, Richard Miller (2010, 69-83) contrasts arrangements organised around accommodation to bullying on the one hand, with arrangements organised according to reasonable mutual deliberation on the other, arguing that the outcomes which would be produced by the latter sort of arrangement ought to be the standard against which

we judge the outcomes produced by inter-state negotiations. In effect, outcomes should “mimic those that would arise from deliberations undistorted by poor countries’ desperation” (De Bres, 2019, 180). While this approach allows Miller to critique a number of the most egregious asymmetries in how states have fared through their participation in trade in recent decades, it leaves vital questions unanswered. For one thing, nothing is said about how states should seek to channel, challenge, or constrain the unequal powers which allow exploitative exchanges to occur in the first place. Moreover, little is said about the contexts and forums in which decisions should be taken, or through what procedures they should be taken: such issues, presumably, make a difference to states’ collective abilities to constrain exploitative exercises of power.

Mathias Risse and Gabriel Wollner also give pride of place to the concept of exploitation within their theory of trade justice (2014; 2019). They distinguish between injustices which arise *in the context of trade*, where agents violate one or other of the duties they would have had to observe whether or not they participated in trade, and injustice *from trading*, where agents violate a duty that pertains to them by virtue of their participation in trade. The duty that applies to agents by virtue of their participation in trade is the duty of non-exploitation, where exploitation in trade is understood as a power-induced absence of reciprocity. While reciprocity is defined as the proportional satisfaction of claims arising from cooperation, little is said about how to interpret ‘proportional satisfaction’, particularly among unequal trade partners. As a result, the presence and exercise of power does the heavy lifting in Risse and Wollner’s discussion of injustice in trade governance (Risse and Wollner, 2019, 146, 148-149). Of the authors canvassed, Risse and Wollner perhaps go furthest towards appreciating the political nature of trade, insofar as they discuss the appropriate institutions in which states ought to negotiate their relationships, as well as noting the various ways in which power could be unjustly exercised to bring about absences of reciprocity. Yet, fundamentally, their account suffers from similar shortcomings to Miller’s:² power is treated as something which generates injustices in trade, but it is not taken to be, for example, a source of additional responsibilities. Nor is power taken to be the sort of thing which justice requires states to channel, cultivate, or challenge in itself, over and above the outcomes its exercise produces. Moreover, due to their failure to provide a workable theory of reciprocity, at no point in Risse and Wollner’s work is it obvious what trade justice would amount to in a world where inequalities between states were largely inescapable, and would continue to play a role in shaping states’ trade relationships.

² They also suffer from a separate shortcoming, namely that their account is far too unwieldy to be workable; see Chapter 3.

The problem with each of these four accounts is that, in their own way, they abstract from the nature of inter-state trade relationships, which in turn produces an inadequate degree of action-guidance for states as they are today. For the foreseeable future, some states will remain magnitudes of order larger than others, their market size will give them a privileged position in shaping any negotiations to which they are party, and their attractiveness as trade partners mean they will always find willing trade partners. To acknowledge all of this is not an apology for any and all the consequences of power, or a justification for powerful states to pursue their self-interest without restraint, but it is to acknowledge that a theory of trade justice must engage directly with the fact of unequal power. Without this, it's difficult to imagine how our theory of trade justice could possibly be action-guiding, that is, could serve to direct the behaviour of states in the context of their trade relationships with one another. There is, here, an instructive contrast between thinking about international justice, when compared to domestic justice. At the domestic level, individuals are dwarfed by the power of the state. Despite whatever differences there may be between them in size, wealth, age, and so on, individuals are all approximately equal in some sense, if only in their vulnerability. Neither of these things are true of states in the international order. There is no power that dwarfs the largest states, and so there is no agent that can enforce something like equality between those states and the rest. Equally, some states are far more vulnerable than others. States don't perish with nearly the frequency of individuals; they persist, and they grow, accumulating greater levels of wealth as they go along. Some have, for all kinds of reasons, done better at this than others. Given all this, if we're trying to figure out what states should do in trade, we need to ask how they ought to take account of, and respond to, inequalities between them and their trade partners. We need to reckon with power, rather than abstracting from it.

That, in a nutshell, is what I do in this thesis. I develop what I will refer to as a political approach to trade justice, one which accounts for states' procedural as well as distributive duties³ towards one another, and which takes the global distribution of power seriously. A distributive duty, as I understand it here, relates to an agent's claim to a certain absolute or relative share of some good, broadly defined, i.e. some *distribuendum*. The *distribuendum* of a theory could be some tangible good like income, but could also be some intangible good, such as 'opportunities' or 'rights'. These intangible goods can, like resources, be shared out between agents, and can be shared out more, or less justly. We might also talk about the distribution of certain risks or costs that arise of a relationship; these, too, can be shared more or less justly among participants. A procedural duty,

³ At times, I will refer to these as 'obligations' rather than 'duties'. Throughout the thesis, I take both words to mean the same thing, namely a binding normative requirement (Frazier, 1998)

in contrast to this, relates to how agents stand in relation to the decision-making forums (again, broadly defined) that regulate a relationship. This covers how much of a say agents have within decisions, to what extent their interests are taken into account, how decision-making in a relationship is structured, and also what we might call ‘metaprocedural’ concerns, regarding who gets to decide what decision-making procedures shall regulate a relationship in the first place (Barry, 2006).

Terry MacDonald and Miriam Ronzoni (2012) have recently argued that such procedural concerns have, with the partial exception of the work on global democracy (see e.g. Held, 1995; Kuper, 2006), been largely neglected in the global justice literature.⁴ As suggested by the (very brief) literature review above, the same is true in the trade justice, where distributive concerns predominate. While there are some isolated papers on procedural justice in trade, there has been little attempt to integrate the two sorts of concerns into a single coherent theory of trade justice.⁵ My thesis fills this lacuna in the literature. Distributive and procedural concerns are, of course, intimately linked: the procedures that are used to form and amend any given trade agreement will shape the distributions produced, and the desirability of certain distributions will in turn shape how participants interact in negotiations and what procedures they see fit to adopt. In this sense, it can be somewhat artificial to distinguish sharply between the two. Still, at times, it will be useful to treat them as if they were neatly separable, in order to bring certain considerations into focus. To capture the fact that they are, ultimately, interconnected, and that justice is broader than either of them considered alone, I use the term ‘political justice’ to subsume the categories of procedural and distributive justice.

The thesis is divided into three parts. In the first part (Chapters 1-2), I set out the general theoretical framework of my account. Here, I argue that it is the dependence that trade generates between states which grounds duties of justice between them, before identifying three distinct duties which are grounded by dependence, namely the duty of recognition, the duty of stability, and the duty of accountability. Each of these duties has at least some distributive as well as procedural implications, and so they can each be rightly considered political duties in the capacious sense of the term I introduced above. Building on this framework, in the second part of the thesis (Chapters 3-5) I discuss the demands of distributive justice in trade, where I advance a ‘shift-sufficientarian’ (see

⁴ Note that MacDonald and Ronzoni use the term political justice to refer to what I’m here calling procedural justice. I reserve the term political justice to capture the broader notion of justice, which covers both procedural and distributive justice. I believe my use of the terms is closer to our ordinary language usage, and therefore in this case preferable.

⁵ Even in the case of Risse and Wollner, their account of exploitation actually has very little bearing on their discussion of the appropriate institutional features of the trade regime; see Kniess (2020).

Shields, 2012) account of states' duties. On this account, states have different distributive duties and claims depending on where they stand in relation to two thresholds of development. When a state crosses one of these thresholds, there is a change (or 'shift') in trade partners' reasons to benefit that state further, with duties becoming less demanding above each threshold. The final part of the thesis (Chapters 6-8) is concerned with procedural justice and the institutional character of the trade regime. Here I draw on the neo-republican literature to argue that realizing the three duties of justice identified in the first part of the thesis requires states to minimize inter-state domination, and that this speaks in favour of strengthening multilateralism in trade. While the current multilateral organisation, i.e. the World Trade Organisation, has failed to effectively constrain inter-state domination, I suggest a number of reforms which, taken together, would give weaker states considerably greater control over the terms of their economic integration.

In the remainder of this Introduction, I will introduce three sets of theoretical assumptions which underpin much of the ensuing discussion, concerning the nature of trade justice, the primary agents in trade, and feasibility constraints which we ought to respect. In the next section, I will situate the thesis as putting forward a relational theory of trade justice: I hold that trade is the sort of practice which generates distinct duties of justice between its participants, duties which did not apply to them before their participation. Following this, I will identify states as the primary holders of duties and claims within the practice of trade, which motivates my focus on states throughout the thesis. I will then identify two modest but important feasibility constraints which I take to limit the sorts of conclusions that a non-ideal, action-guiding theory of trade justice, of the sort that I put forward, can reach. This will be followed by a brief chapter summary.

Relationism about trade

It is often thought that, as our world has changed to become ever more interconnected, with our own actions being increasingly linked with and vulnerable to events occurring far from our shores, so too have our duties of justice changed. To hold such a view is to be a relationist about justice. Relationists believe that the practices which agents participate in, and how they stand in relation to other agents by virtue of such practices, matter for determining what duties of justice apply to them. To be a relationist about justice is not to commit to any particular position about what justice demands, or between whom it is owed: we could come to wildly divergent views on this question, depending on what sorts of relations we take to matter. We might, for example, think that the only sort of relationship which generates duties of justice is shared participation in a state, in which case agents would owe duties to their fellow citizens, but none to outsiders. Alternatively, we might

think that participation in a shared state *system*, replete with international treaties, intergovernmental organisations, and diplomatic ties, is the sort of practice which generates duties amongst participants, in which case agents would also have demanding obligations to those with whom they do not share a state. Importantly, we might hold that both of these positions are true at the same time: there may be multiple, overlapping practices, each of which generates distinct duties between its participants.

We need not be relationists about justice to care deeply about trade. Even if trade did not generate new duties, after all, it may still be considered of great instrumental significance as a means by which we can promote, or hinder, whatever independently-identified goals our societies have reason to pursue or to protect. This thesis, however, argues that trade *is* the sort of practice which grounds relational duties between participants, precisely because of how it predictably affects states' capabilities in realizing their domestic goals.⁶ By virtue of the dependence which trade generates between them, states assume a set of duties and claims which they didn't previously hold towards one another. Defending this position fully requires a defence both of the relational picture more generally, as well as a defence of the specific claim that trade-generated dependence grounds duties between participating states.

Chapter 1 defends the latter claim. With regards to relationism about justice more generally, all that needs to be true to motivate this position is that certain relationships we enter, or practices that we participate in, change the sorts of duties and obligations we have, and to whom we have them. This is a pretty intuitive claim. Promise-making, moving in with new housemates, a friendship gradually morphing into a romantic relationship, entering a new workplace, taking on an organisational role for a campaign group; all of these, and countless other new relationships we develop and participate in, generate novel claims upon us that it would have been inappropriate, perhaps even nonsensical, to hold us to prior to our participation. What we owe to others is partially determined by how we stand in relation to others.

If this is true at the personal level, it seems likely that the generation of duties and claims is also a fairly ordinary consequence of participating in significant social and political practices. Think, again, of sharing a state. The rules, both formal and informal, which structure life between citizens will predictably and substantially shape the powers, vulnerabilities, benefits, and harms that citizens bear. The laws which a state enacts, and which our fellow citizens support, will in large part

⁶ Of course, adopting a relational position here does not entail rejecting the existence of all non-relational duties of justice; it only entails that these non-relational duties are not exhaustive; see Risse (2012) for an account of global justice which incorporates both sorts of grounding. In Chapter 5 I defend a particular trade policy on both relational and non-relational grounds.

determine whether we can earn a decent living without having to relocate, whether we are subject to dangerously high levels of air pollution each time we set foot outside our home, whether we can file for divorce without worrying about financial destitution, and a million other life-shaping outcomes. Given that it is our fellow citizens that create, uphold, and amend the state's laws and customs, it is those same citizens who owe us a justification for the ways in which their support for, or apathy concerning, certain rules has shaped our abilities to realize our own plans, and meet our own needs, and the needs of those whom we are responsible for. More generally, then, where such life-shaping outcomes are systematically and predictably produced by a practice which a set of agents uphold, and which could be arranged differently, it is natural to think that those who partake in the practice and who are capable of reforming it are, for these reasons, implicated in the outcomes produced, in a way that outsiders are not. If we can tell a convincing story about why trade makes an important moral difference of this sort, that is, how trade systematically impinges on participants' abilities to realize their plans and meet their needs, and the needs of those to whom they are responsible, then we have good reason to attribute duties and claims to agents by virtue of their participation in trade.

States as the primary agents of trade justice

The previous section suggested that significant social and political practices plausibly generate distinct duties and claims between participants, with regards to the management of that practice. The practice I'm concerned with in this thesis is that of international trade. But what sort of practice is trade? More specifically, who are the participants that hold duties and claims against one another in trade? In their discussion of trade justice, Risse and Wollner (2014) introduce three competing 'moral ontologies' or 'images' of trade.⁷ On the first image, trade is a matter of consensual exchanges between economic actors at the transactional level of trade, where no claims or duties of justice arise; this, Risse and Wollner assert, is the standard image of trade in the economics literature. On the second image, which they attribute primarily to Aaron James, participation at the governmental level of trade generates duties and claims between states, but participation at the transactional level of trade does not necessarily generate duties and claims

⁷ A moral ontology of a particular domain is "a description of that domain which reveals which aspects matter, and in what ways, for identifying the applicable moral principles" (Risse and Wollner 2014, 221-222). In their most recent work (2019), Risse and Wollner identify a fourth moral ontology, namely 'instrumental trade', where trade is taken to be valuable for bringing about or protecting a certain outcome, but does not generate distinctive duties in and of itself. I'm not convinced that there is a difference between this and the first image I mentioned here: those who defend the economics image of trade support trade because it is taken to be instrumental to bringing about or protecting some desirable outcome.

between agents. On James' account, international trade relies upon states' assurances to one another that they will uphold the conditions which facilitate reliable market exchange across borders. Trade on this picture is conceived as, in the first instance, a state-led practice, and so it is states that inherit duties and claims by virtue of their participation in trade. Finally, there is Risse and Wollner's preferred image, which treats both the transactional level and the governmental level as sites where participation in trade generates duties and claims. On Risse and Wollner's view, states, corporations, individuals, and all other participants at either level of trade share the same duties and claims, namely duties and claims of non-exploitation.⁸

Risse and Wollner see this third image as an attractive synthesis of the first and second image. This appears sensible, especially given the interconnectedness of the two levels, which I've noted above. Yet there is an unstated assumption in Risse and Wollner's discussion concerning the relationship between these two levels. They appear to assume that if both levels of trade matter from the perspective of justice, they must matter in the same way; that is, the duties and claims that apply to participation at one level must apply to participation at the other. They treat the moral issues arising at the two levels of trade as fundamentally analogous, arguing that this is the best way of integrating a theory of trade justice into our picture of what domestic and global justice requires.

This assumption is unfounded. It is certainly true that both the transactional level and the governmental level of trade matter. But that doesn't mean that the principles that apply to participants at each level need be the same. As touched on above, the prevailing logic at each level is distinct, and the agents that typically participate at each level (states at the governmental level, and individuals and companies at the transactional) are also qualitatively different: they have different powers on the one hand, and we care about them for different reasons on the other. Given this, what constitutes fair treatment of agents at each level need not be the same. Moreover, there are enough differences between the activity of exchanging goods on the one hand, and co-creating rules on the other, to think that the duties that apply to states, when creating rules at the governmental level of trade, will not be the same as those that apply to economic actors trading on the basis of those rules. While their abilities to dictate the outcomes of trade are admittedly limited, states at the governmental level of trade nevertheless actively regulate and steer behaviour at the transactional level. And even where states don't do this, they have the legal authority to do

⁸ Risse and Wollner run together a few things which should be kept separate. As well as the point mentioned below, they suggest each of the three images lend themselves to a different account of the sort of principles that apply in trade; the first image entails no significant principles, the second image generates substantive principles, and the third image, generates procedural principles (i.e. principles of non-exploitation). There is no reason to think that certain images should be tightly associated with certain kinds of principle, nor do they give an argument for thinking they should.

so. States at the governmental level are, in this sense, responsible for the transactional level. Hence why I believe that developing a theory of trade justice must start with the governmental level. In this thesis, then, I will give an account of states' duties towards one another at the governmental level of trade. This is not to be taken as a rejection of the idea that duties and claims of justice apply to agents at the transactional level. But determining what these are is beyond the scope of this thesis.⁹

Before moving on, a brief word about the language used throughout the thesis. I will often refer to the agents at the governmental level of trade as 'states', without additional qualification. There are two senses in which this is potentially misleading. First, not all participants at the governmental level of trade are states: while most are, there are exceptions such as Hong Kong and the EU, each of whom has the legal authority to determine trade policy for their own jurisdictions. There are few such exceptions, and I don't believe these exceptions make a difference to the substantive arguments that I put forward in the thesis. Hence, this qualifying note aside, I will refer to all participants at the governmental level of trade as states. At times, I will also refer to states as countries, where doing so feels more natural. The two words as I use them here are not meant to mark any meaningful conceptual distinction. Finally, I will often make use of hypothetical bilateral trade relationships between states in order to explain or illustrate features of my account. Because referring to both parties as 'states' would lead to confusion, I will frequently refer to one party in a bilateral relationships as the 'state', and another as the 'trade partner'. (At other times, I will call one state 'A' and another state 'B'.)

Second: I will often attribute duties and claims to 'states', without distinguishing between, say, the duties of a state's government and the duties of a state's citizenry. I will do so because this seems like the most appropriate way of talking about duties that apply to participants at the governmental level of trade, given that the existence of the duties which I identify will typically extend beyond the lifetime of any specific government, and also beyond the lifetime of any specific set of citizens, taken individually. It is the state that bears duties and claims in trade in the first instance, and governments and citizens inherit certain duties and claims only derivatively. Of course, at any given time, it will be the government of a state, and the state's citizenry who have the responsibility to act upon the duties I identify. Given this, the reader can typically (unless otherwise specified) read references to the state's duties as a shorthand for something like 'the government's duties to pursue

⁹ Similarly, while corporations may be thought to have taken on an increasing amount of governance functions over recent decades, I will not consider their duties and claims in this thesis. I do believe, however, that where corporations do take on governmental functions, the trade justice framework I put forward here can be adapted to give a plausible account of their duties.

certain outcomes, and their citizens' duties to support their government in doing so'. Similarly, when I speak of a state's claims, this can be read as shorthand for 'the claims that a state's government has, acting on behalf of their own citizens'. Finally, when I talk about the state's domestic duties to their own citizens, this can be read as a shorthand for the duties that the government, acting as an agent of the incorporated citizenry, owe to the citizens, taken individually.

Feasibility and action-guidance

Political philosophers regularly appeal to the notion of feasibility, whether as a pro-consideration for their own theories, or else as a reason to reject the views of others. Often, the standards being used to judge whether or not something is feasible are left unstated, which risks making our rulings come across as ad hoc. Seeing as I will, at a number of points throughout the thesis, reject certain arguments partly on the basis of their infeasibility, it's worth flagging up what standards I'm applying when making such judgements. Following Erman and Moller (2020), I take it that we ought to hold different sorts of theories of justice to different feasibility standards. Ideal theories of justice, which set out to describe some desirable end-state to which we should aspire,¹⁰ are less constrained by empirical facts about the world as it is today, compared to non-ideal theories which seek to give practical guidance to agents in the messy here and now. Even if an institutional scheme is completely unobtainable in any foreseeable future, if we're engaged in ideal theorising, then we might nonetheless consider such an institutional scheme feasible so long as it doesn't violate 'hard constraints', such as those imposed by the laws of physics (Gilbert and Lawford-Smith, 2012).

By contrast, where a theory is meant to be action-guiding for agents as they participate in an ongoing practice, feasibility constraints are tighter. A theory that is meant to provide guidance to agents in our current world must be evaluated, in part, on the basis of what would happen if agents motivated by justice took up the theory and attempted to pursue its prescriptions. Given this, in evaluating such non-ideal theories of justice, we need to take into account 'soft constraints' as well, such as those constraints imposed by current institutional arrangements, cultural assumptions, or misaligned incentive structures.¹¹ Because it is a theory of this latter sort which I seek to develop here, soft feasibility constraints do come into play in determining the plausibility and attractiveness of my account, as well as the accounts of other authors that I discuss. Of course, some soft

¹⁰ For a good discussion of the various senses in which a theory could be ideal, or non-ideal, see Valentini (2012).

¹¹ It's worth noting that there is a reflexive element to all of this: what sorts of theories we put forward today may, in some cases, change the boundaries of the feasible. Equally, there are things we can do today in the here and now to expand what sorts of things might be feasible in the future. See e.g. section 8.5. See also Gilbert (2017).

constraints are softer than others, so how possible it is to realize various non-ideal theories of justice will be a matter of degree. Theories which ask little personal sacrifice of agents, to give one important consideration, will typically have a higher possibility of being realized than theories which demand a great deal of sacrifice of those same agents. When evaluating theories of justice, the greater or lesser possibility of realizing their prescriptions should not be given too large a role; if it were, our ranking of various theories of justice would have an implausibly high status quo bias. Still, at a certain level of improbability, it seems reasonable to reject a non-ideal theory where we cannot see any plausible route to its realization, even where the theory is otherwise attractive.

This, as I understand it, is the role of feasibility judgements in evaluating theories of justice: feasibility is a threshold concept, which marks the division between, on the one hand, theories which are sufficiently possible and which we should therefore not reject even where they are less possible than other candidate theories and, on the other hand, theories that have such a small possibility of realization that we should not evaluate them on the same terms as other theories of justice. Feasibility should be thought of as a test that an account has to pass in order to be considered worth evaluating in terms of its attractiveness. Just as there will be disagreements about how feasible any given proposal will be, there will equally be disagreement about where exactly we ought to set our threshold of ‘sufficiently feasible’. Given this, and even though I take feasibility to be an important consideration when evaluating theories of justice, I will make an appeal to feasibility considerations only when I don’t think there could be reasonable disagreement that a proposal violates one of the two conditions I specify below. And, wherever I do make this sort of appeal in order to support or reject an argument, I will supplement this judgement with further arguments, so that feasibility isn’t doing all of the heavy lifting.

I’ll put forward two constraints which I take to delimit the space within which a feasible non-ideal theory of trade justice must sit.¹² The first applies to procedural justice, and the second applies to distributive justice. The first constraint has been foreshadowed by how I introduced the thesis. States in the international order are of different sizes and, partly in virtue of this, have different degrees of power in the international order. Borders are drawn and redrawn from time to time, and there is nothing given about the borders we have today. In the medium-term, however, it is implausible to think that the world will look radically different in terms of its jurisdictions than

¹² Related to feasibility constraints are what we might call ‘preconditions’. In international trade, where states engage in a practice of mutual market reliance (James, 2012), the existence of states and of markets are both preconditions for this practice, and thus set limits to the conclusions we can reach. Without keeping both states and markets in place, we’re no longer talking about ‘trade’ in the sense with which this thesis is concerned. Reaching the conclusion that markets or states should be abolished as part of a theory would be a *refutation* of, rather than a conception of, international trade justice.

what we have today. Thus, we need to account for the fact that some states will, for the foreseeable future, be significantly bigger than others, in territory, in population, in natural resources, and therefore in economic power. In the face of such stark power differentials, there's a risk of succumbing too easily to fatalism, and thereby rejecting as infeasible anything that involved constraining or going against the interests of the most powerful states. This, I take it, would be to admit defeat concerning the pursuit of trade justice; given that asymmetries of power do predictably produce the sorts of pathological exchanges which the exploitation-based theorists highlight, we must assume, at least as a starting point, that we could do something to rein in such inequalities and their worst effects. Still, any theory that wishes away the inequalities between states, or any theory that depends for its realisation upon these inequalities making no difference to the outcomes of interactions between states, I shall deem infeasible. Within this, there is a range of unlikely and improbable scenarios which we should nevertheless consider feasible. But a theory of trade justice which called for the upending or abolition of inter-state inequalities would not be a theory of trade justice suitable for action-guidance in the world we've inherited.

The second important 'soft constraint' is set by the nature of trade, and the reasons that states would have for participating. Participation in trade is a policy choice for states.¹³ While there may be additional reasons for their participation, fundamentally states participate in trade because they expect to gain by doing so, whether economically or in a broader sense. A states, or at least a state that is motivated by justice, will not participate in trade when participating justly would require that state to accept a worsening of its own (citizens') status quo. Certainly, suffering absolute losses for the sake of other states may be something that's required by justice in some cases, say where there is a duty to alleviate absolute poverty.¹⁴ Where trade is a promising means by which states can fulfil duties of this sort, and doing so requires the state to accept some losses, then states may have a duty to accept being made worse off by the trade relationship they set up with an impoverished state. Equally, a state may have duties to rectify inequities which stem from how they have treated a trade partner in the past, which might require the state to lose out temporarily. But it's not a feasible demand to make of trade partners that they ought to be made worse off *because* they've set up a trade relationship. If justice in trade required some states to suffer losses as the price of their participation, states that were motivated by justice would be better off staying in,

¹³ It might be responded that, while trade may be a choice, it is not a voluntary choice, in the sense that there may be no acceptable alternatives to participation (Olsaretti, 1998). But this point loses its force in a case where a state would be better off under autarky. In such a case, the state could not justify to its citizens the decision to participate in trade by saying that they had no acceptable alternative; autarky would have been, for them, the more acceptable alternative.

¹⁴ I assume such a duty throughout the thesis (see section 2.2.), which in turn motivates my discussion of developed states' duties to Least-developed countries in sections 4.5., and 5.4.

or returning to, autarky. Thus, a feasible theory of trade justice must allow at least some level of gain for all participating states, at least in cases where all their other duties towards one another have been fulfilled.

Chapter summaries

In Chapter 1, I argue that dependence between states is what grounds (i.e. explains) duties of justice in trade. I do this by first identifying four conditions that a plausible account of grounding must meet: it must be sensitive to the intensity and significance of trade relationships; the duties grounded must be distinctly internationalist; the account must be able to ground distributive duties as well as procedural duties; and it must be a feature of all trade relationships which generate duties of justice. A dependence account of grounding meets all four conditions, and does so in an intuitively compelling way. While other accounts of what grounds duties of trade justice can meet some of the conditions, none can meet all of them. Relative to rival candidates, then, the dependence account provides a firmer foundation for the ongoing attempts to develop a theory of trade justice.

In Chapter 2, I identify three duties that are grounded in states' dependence upon one another as trade partners: the duty of recognition, the duty of stability, and the duty of accountability. The first duty, the duty of recognition, requires states to recognise and treat one another as having analogous sets of duties to their respective citizenries. This involves taking account of a trade partner's duties to realize domestic justice and to act on the basis of its own citizens' values. It further involves a duty to recognise the role that the state itself plays in the trade partner's efforts to realize the two aforementioned duties. According to the duty of stability, states must ensure that a trade partner's dependence upon them does not result in a shortfall of domestic justice for that trade partner. The duty of accountability requires states to be transparent to their trade partners, and to create and uphold forums within which trade partners can contest their policies. While states owe all three duties to one another at all times in their relationship, the duty of recognition is relevant primarily in the context of states' negotiations over the creation or amendment of a trade relationship, stability is primarily relevant to how states conduct themselves in the ongoing management of an existing relationship with a trade partner, and accountability is relevant primarily in cases where something goes wrong in that relationship (i.e. where either the duty of recognition or the duty of stability are violated). Acting upon these three duties ensures that states' trade relationships are characterised by reliable, justice-enhancing interdependence.

In Chapter 3, I look at the theories of distributive justice in trade that have been put forward thus far. Most accounts of distributive justice in trade can be divided into two categories, exploitation-based and equality-based approaches.¹⁵ Exploitation-based approaches face serious problems being action-guiding at the governmental level of trade, and must ultimately appeal to a more conceptually-basic understanding of what counts as a fair outcome in trade. Equality-based approaches can be further divided into internalist and integrationist approaches: internalist approaches hold that states should gain equally from their participation in trade, whereas integrationist approaches hold that the distributions produced in trade should conduce towards equality between participants more broadly. I argue that each of these approaches has major shortcomings. Internalist equality-based approaches fail to address the question of how states ought to weigh duties of trade justice against domestic duties, and so they cannot guide states on how they ought to act. Moreover, there are conceptual and normative problems with isolating and distributing the gains from trade in the way that internalists require. Integrationist equality-based approaches vary with regards to how demanding they are, so they do not all fail for the same reasons. Nevertheless, none of these accounts presents a convincing argument for why equality is an appropriate demand to apply to trade relationships. I suggest that a theory of distributive justice in trade should be able to account for some of the intuitions which plausibly motivate the support for equality as a principle, without thereby capitulating into an equality-based approach.

In Chapter 4, I put forward my own ‘shift-sufficientarian’ theory of distributive justice in trade. I will argue that what states are entitled to claim in trade is determined both by their reasonable partiality towards their own citizens, as well as the relative urgency of their own and their trade partners’ needs. On the picture I develop, states are to be divided into three brackets (developed, developing, least-developed), which correspond to how urgent their needs are, and thus how dependent they are upon improvements to their current status quo if they are to realize domestic justice. The lower a state’s bracket, and the higher the bracket of their trade partner, the more claims the state can make, and the more they are entitled to pursue their self-interest in an unrestrained fashion. Conversely, the higher a state’s bracket, and the lower the bracket of their trade partner, the more demanding the distributive duties the state shoulders. Initially, I identify states’ distributive duties by looking at the principles which ought to regulate bilateral relationships between states in each of the three brackets, before considering how we need to reinterpret our principles in order to apply them to cases where there are multiple affected states. While my

¹⁵ At the beginning of this Introduction, I described two equality-based approaches as ‘fairness-based’ approaches. The reason for this difference in terminology is that, in this Introduction, I was highlighting the fact that these accounts attempt to determine fair treatment in trade while neglecting questions of procedural justice. In Chapter 3, the focus of my criticism concerns their arguments for equality as a distributive principle.

argument illustrates that developed states have demanding duties to other states, particularly to least-developed states, I also discuss the distributive duties that are owed by developing and least-developing countries, a topic which has been unduly neglected.

Chapter 5 builds upon Chapter 4, by putting forward a novel proposal that would allow developed states to fulfil their demanding duties towards Least-Developed Countries (LDCs). I argue that each developed country should commit to buying a demanding, but not crippling, percentage of their imports, in value, from LDCs. This commitment should exclude imports of natural resources like oil and minerals, as these commodities are prone to rent-seeking, and reliance upon the export of such commodities often leads to, or exacerbates, domestic instability. The ‘LDC-quota’ proposal I put forward here allows developed states to discharge their demanding duties to LDCs without imposing tariffs upon developing countries, and it leaves open to developed states how best to achieve quota their target. I argue that, while developed countries’ adopting of an LDC quota would involve developing countries absorbing some relative costs, this is acceptable insofar as developing countries also have distributive duties to LDCs, though they are not as demanding as developed states’ duties. While this chapter is more concrete than the Chapter 4, it also serves to underline an important theoretical point which Chapter 4 makes, namely that there are good reasons to differentiate developing countries from least-developed countries in our theories of distributive justice.

Chapters 6-8 are concerned with answering two questions: what forums should states use to negotiate their trade relationships, and how should such negotiations proceed. Chapter 6 introduces the concept of domination, which is central to the final three chapters. Domination has three components: dependence, imbalance of power, and arbitrariness (Lovett, 2010). Where one agent dominates another, they are capable of exercising discretionary power within the relationship in order to control the relationship’s terms and outcomes. On the account of domination which I endorse, agents must be given control over the exercise of power within their relationship if they are to be considered non-dominated. I will argue that non-domination is a suitable lens through which to view trade justice for a number of reasons: it connects questions of justice with questions of power; it allows us to gain critical purchase on questions of institutional design; it connects procedural and distributive concerns (i.e. it is a properly ‘political’ ideal, in the sense of the term I’ve been employing); and it highlights a particular sort of danger which can be generated by dependence relationships. The presence of domination undermines the realisation of each of the three duties of trade justice identified in Chapter 2, and therefore states have a duty to reduce the presence of domination in trade (though, given feasibility constraints, they cannot eliminate it

entirely). How states go about reforming the trade regime in light of this duty will require careful judgement, and sensitivity to the context of their trade relationships.

Following on from the previous chapter, Chapter 7 suggests that the pursuit of non-domination should inform decisions concerning which forums states should manage their trade relationships within. I suggest that, viewed in this light, states are faced with a choice between two sorts of institutional configuration. One option facing states is to embrace and to intensify their participation in regional arrangements. The other option is to work towards re-establishing multilateral pre-eminence, through enhancing the centrality of the WTO. I argue that, between these two alternatives, there are good reasons to endorse the multilateral option. The WTO gives weaker states a greater ability to ensure that the rules they've had a hand in shaping are non-arbitrarily enforced, and it gives them greater opportunities to cultivate their collective power. While multilateralism is preferable to the regional alternative, however, this does not amount to an endorsement of the WTO, which currently fails to effectively mitigate the domination of some states by others within its negotiations. While the use of consensus procedures gives weaker states some formal power to reject or approve of deals, this is insufficient to give states the ability to enact any sort of reliable control over proceedings, which would be needed to ensure their non-domination. Moreover, because of their precarious economic position, and because of the importance of being seen as reliable co-operators in international affairs, weaker states' ability to utilise their formal consensus-blocking power is severely limited. This analysis shows that the WTO is in need of significant reform if it is to contribute to the non-domination of states in trade.

Chapter 8 takes up the challenge implicit in the previous chapter, by looking at how the WTO might be reformed in order to mitigate the domination found therein. Given their centrality to shaping the rules of trade, I focus in on WTO trade rounds, which I divide into three separate phases: the launch, the negotiation, and the conclusion. I argue that the launch phase represents the most promising avenue for institutional reform, though I do suggest some modest reforms to the latter two phases. During the launch phase, I argue that states should set concrete goals for the ensuing trade round, based on their common interests, i.e. those interests which they collectively recognise as relevant to the trade relationship. Doing so would serve three functions: it would constrain the worst-excesses of competitive bargaining at the negotiation phase; it would raise the reputational costs of neglecting the WTO as a negotiating forum, and; it would act as a yardstick against which non-WTO agreements, and the outcomes of the WTO trade round itself, could be evaluated and subsequently revised. Taken together, this ought to enhance weaker states' abilities to control the terms of their own economic integration. Having discussed the prospects of favourably reforming the three phases of WTO trade rounds, the final section of the chapter briefly

zooms out by looking at the prospects of realizing a less dominating international order, given that powerful states themselves have an interest in retaining their dominant position. I reject the idea that non-domination can or should be tackled through powerful states exercising their own dominating power as a means to bringing about a less dominating world. Instead, I suggest a more promising avenue for the pursuit of international non-domination is through internal reforms to states' domestic deliberations which would serve to make them more sensitive to their international obligations.

Part 1: The Framework

Chapter 1. Why Dependence Grounds Duties of Trade Justice

1.1. Introduction

This chapter asks what it is about the practice of trade that grounds duties of justice between its participants. More specifically, it asks what it is that grounds duties between states at the governmental level of trade. While justice will often be a salient consideration in the context of trade, this salience isn't always best explained by pointing to the existence of a trade relationship. Where there is a duty to tackle immiserating poverty or environmental destruction, for example, these aren't the types of duties that must be observed only when dealing with one's trading partners. In other cases, however, even though it seems like considerations of justice apply, it is difficult to make sense of this without making appeal to what trading partners owe one another *as* trading partners. We might need to appeal to such trade-based considerations in cases where the benefits and risks of a trade relationship fall unevenly between trade partners, or where states make favourable entry into their own markets conditional on trade partners' implementation of domestic reforms, or where state subsidies give otherwise inefficient domestic industries a competitive advantage in international markets. Even if a justification for each of these is forthcoming, that justification will be owed to trade partners *as* trade partners. To know what kinds of justifications will pass muster, we need to explain what it is about being a trade partner that grounds distinct duties of justice. In this chapter, I argue that it is the dependence that trade generates which grounds duties between trade partners.

The argument will proceed as follows. In section 1.2., I'll argue that an account of what grounds duties of trade justice must build upon the recognition of states' pre-established, special duties towards their own inhabitants. I then identify four conditions that a plausible account of grounding must meet, based on the nature and extent to which trade alters states' abilities to discharge their duties. In section 1.3., I'll introduce the notion of dependence, distinguishing between weak and strong dependence, and noting that agents can be dependent upon other agents as well as upon systems. Dependence meets all four of the conditions previously identified, and does so in an intuitively compelling way. In section 1.4., I'll look at the rival accounts of grounding that have been put forward in the trade justice literature; interactional coercion, systemic coercion, and cooperation. I'll show that each of these accounts of grounding can meet some of the four conditions, but none can meet them all. This is followed by a brief conclusion (section 1.5.).

1.2. Identifying a ground of duties in trade

For present purposes, we can define international trade (henceforth simply ‘trade’) as a practice involving the regularised exchange of goods, broadly defined, across states. This definition captures three key features of trade. First, it involves exchanges; these typically occur within markets at what we might call the transactional level of trade. Second, these exchanges occur across state jurisdictions. Third, either the exchanges themselves, or the terms on which they occur, are regularised, i.e. exchanges are conducted with some frequency and in a patterned fashion over time, according to a shared set of norms, rules, and expectations. The regulation of the terms on which cross-border exchanges occur takes place at what we can call the governmental level of trade. Participants at this level of trade set, manage, and alter the rules that apply to participants at the transactional level. The primary actors at the governmental level are states.

The question that concerns us here is what, if anything, it is about trade that grounds duties between participants, i.e. states, at this governmental level. A ground of justice is a feature of a practice that explains why a set of duties apply to participants within the practice. A practice, in turn, is a social system governed by a set of rules (Hobden, 2019). A particular duty may have more than one grounding; where this is the case, the applicability of the duty in question is overdetermined (Risse, 2012, 5). For example, if egalitarian principles apply between citizens domestically, it may be the case that these egalitarian principles are grounded in a number of different features (e.g. coercion, cooperation, shared national identity) all at the same time. Identifying a grounding feature within a practice, then, should be seen as showing what conditions are *sufficient* to explain the existence of a set of principles; the presence of these conditions may not be *necessary* to generate those same duties.¹⁶

In an important sense, identifying the grounds of domestic egalitarian principles on the one hand, and identifying the ground of principles of trade justice on the other, are disanalogous tasks. In the former, there’s a particular principle that we’re trying to explain; we can therefore adjudicate between different candidate answers based on how well they explain the applicability of that principle. In trade, by contrast, there is no agreed-upon principle, or set of principles, which we’re trying to ground; the literature on trade justice is still somewhat shapeless, and theorists’ accounts differ greatly in their nature and demandingness.¹⁷ In this kind of context, identifying a grounding feature plays a different role. It doesn’t, in the first instance, explain why a specific principle applies

¹⁶ While Walton (2014) has argued against the idea that trade generates distinct moral duties, his arguments only have force with relation to this necessity claim.

¹⁷ For two recent attempts at mapping out some of the terrain, see De Bres (2016b) and Miller (2017).

to a practice, but rather, it helps us clarify why the changes brought about by the creation of a practice are significant enough to generate duties and claims. Giving a plausible explanation for this, in turn, ought to help us develop and determine what the relevant duties and claims might be.

Without a set principle that we're trying to explain, what can we use to adjudicate between competing accounts of grounding? If we think of a grounding relation as an explanatory bridge which links a set of principles to a type of practice, the answer becomes clear: accounts of grounding can be evaluated on how well they capture the nature of that practice, and the nature of the change in participants' relationships. In short, we're looking for a 'fit' between a ground and a practice. But before getting to the 'fitness' of a grounding, we must first establish why the participants in the practice matter in the first place. In the case of trade, why do we care about states and how they relate to one another? Ultimately, we care about states for instrumental reasons; we care how a state acts, how it is treated and how it fares internationally because these all have concrete impacts upon the lives of the state's inhabitants. The state has duties of justice towards its inhabitants, and whether states discharge these duties will go some way towards determining to extent to which their inhabitants can pursue their projects, be secure, live decent lives, receive adequate healthcare, education, and leisure, and so on. We care about a state's opportunities and capacities because these go some way to determining how effectively domestic justice can be realized.

One way to put the relationship between domestic and trade justice is to say that duties of trade justice are conceptually downstream from duties of domestic justice. In the same way that international (or, more precisely, inter-state) trade presupposes states, a theory of trade justice presupposes a conceptually-prior theory of domestic justice (Risse and Wollner, 2014, 212-213). Each state in the international order, whether they participate in trade or not, has pre-established special duties towards its own inhabitants. This is not to say that domestic justice must always take priority over trade justice when they come into conflict. It is only to say that states are not footloose agents when they participate in trade; they are already bound by thick, demanding duties towards their domestic constituents. This means that understanding what domestic justice requires will go some way towards explaining whether a particular state is justified, entitled, or even in some cases required to participate in trade. Where autarky would leave a state unable to ensure an adequate set of life opportunities for its citizens, for example, that state may have a duty to participate in trade in order to improve its current status quo. Conversely, if participation in trade were to actively hinder states' abilities to discharge domestic justice, for example, this would seem to deprive their participation of much of its normative warrant. Understanding what domestic justice requires, and more specifically what a minimally-decent standard of domestic justice entails, will go some way

toward explaining what states are owed in trade, i.e. what entitlements states can claim, on behalf of their own inhabitants, against other states.

Following on from this, to ground duties between states in trade, we need only to explain how trade affects states' ability to discharge their pre-established duties; the demandingness of states' own duties will, in turn, explain why other states have demanding duties towards them. With all this in mind, I'll suggest that a ground of trade justice will have to meet the following four conditions. Meeting the first three is necessary for ensuring an appropriate fit between states' status as duty-bearers towards their inhabitants on the one hand, and the nature and extent of states' participation in trade on the other. Meeting the fourth condition is necessary for ensuring a plausible fit between the grounding identified and our intuitions about what sorts of cases raise considerations of justice.

Admits of degrees: The nature of states' participation in trade varies in a number of ways. For present purposes, note two. First, states differ significantly in terms of how 'open' or 'closed' they are with respect to the global economy as a whole (Irwin, 2005, 162-165). Second, each state has a different set of key trading partners; typically, states trade more with neighbouring states than with distant ones, and with big states more than with small ones.¹⁸ If duties of justice are grounded in trade relationships, then their extent and demandingness will partly be a function of the intensity and significance of the trade relationship in question. A world where trade between states is rare, limited, and discretionary will generate far less demanding duties than a world where intensive trade between states is necessary if states are to ensure even basic levels of welfare for their inhabitants. Similarly, a state's duties in trade will be sensitive to the nature and extent of that state's own participation, e.g. we should expect EU member states to have more demanding duties to one another than they do to Australia, and we should expect Costa Rica to have more demanding claims against the US than they do against Israel.

Explains the distinctively international nature of trade justice: A grounding of trade justice will explain a set of distinctly international principles, designed to regulate the partial economic integration of separate states, rather than the complete integration of states into a single whole (James, 2012, 21-23). States are the primary authors, subjects, and enforcers of trade law, through which they facilitate commercial activity across their respective jurisdictions. If trade grounds distinct duties of justice, these duties will be of the sort which qualify states' singular focus on domestic justice, without committing them to renouncing all partiality to their own inhabitants. This suggests that whatever it is that grounds duties of justice in trade will be distinct from

¹⁸ See the 'gravity model' of trade (Krugman et al., 2015, 42-47).

whatever it is that grounds duties of justice domestically. Otherwise, duties of trade justice would not merely qualify domestic duties, but would instead expand their scope, making them global in application. Note, finally, the relation between this and the previous condition. We can think of statism and cosmopolitanism as two poles of a spectrum, where undemanding principles between states will be close to statism, and highly demanding principles will be closer to cosmopolitanism. How demanding our principles of trade justice are, and thus where they land on the statist-to-cosmopolitan spectrum, will be sensitive to how integrated the international economy is.

Grounds distributive and procedural justice duties: States participate in trade in order to reap the benefits of integrating into the international economy. Integration leads to a more efficient allocation of states' resources, allowing them each to specialise in what they are relatively good at producing and trade for the rest. However, the distribution of benefits, opportunities, costs, and risks associated with economic integration can diverge greatly between states, based on the position they end up occupying within the international division of labour. Whether a state specialises in designing high-end consumer electronics or in extracting the raw commodities which ultimately power those consumer electronics will make a significant difference to how and whether trade benefits a state and its inhabitants. But integration is also a political process. It is coordinated and managed by sovereign states who bargain towards agreements, the terms of which can be subsequently enforced. As a result of such agreements, participating states will typically have less policy space than before, as some options for intervening in their economy are effectively taken off the table. Insofar as a state's duties to its inhabitants extend to, and are affected by, the state's dealings in international forums, we care about how much of a role each state had in shaping the terms of agreement to which they're bound, whether trade partners are sensitive to a state's priorities and concerns, whether they can challenge discriminatory treatment, and so on. To the extent that justice is concerned with both the welfare and the self-determination of states, a grounding of trade justice ought to be capable of explaining both distributive and procedural duties.

A necessary feature: Whatever feature of trade grounds duties between participants must be a feature of all the trade relationships that ought to be regulated by principles of trade justice. Trading arrangements will be unlikely to ground any distinct duties of justice between states in cases where few goods are ever exchanged, or where the goods traded are of trivial concern: we might think here of the pottery trade of the Beaker folk, or the spice trade between the East and West (Barry, 1982, 233). Whatever it is that grounds duties of trade justice should be something which can mark a distinction between these cases, and cases which clearly generate duties of justice, for example the current trade relationship between Mexico and the US, where the livelihoods of

millions of workers are tied to the continuation of a favourable trade relationship. A plausible ground of trade justice duties must include all the right sort of cases.

To summarize, our grounding must be sensitive to the intensity and significance of trade relationships, internationalist in character, able to ground distributive and procedural duties, and a necessary feature of all the trade relationships which plausibly generate duties of justice. In the next section, I will argue that it is the dependence that trade generates between states which grounds duties of justice between them.

1.3. Dependence in trade

Agent A depends upon agent B to the extent that B plays a role in how A will, or plans to, realize their goals.¹⁹ There are strong and weak forms of dependence. One form of weak dependence is where B plays an integral role in how A plans to realize a peripheral, or non-core goal. The less central the goal, the weaker the dependence. Another form of weak dependence is where B plays a role in A's plans to realize core goals, but where the role B plays admits of easy substitution; B can be replaced by C, D, E, etc. Where B's role in A's plans admits of easy substitution, or is only significant for the realization of peripheral goals, B's refusal or failure to play that role will not (ordinarily) thwart A's core goals, nor undermine A's core functionings.²⁰

In stronger forms of dependence, B plays an integral role in how A will, or plans to, realize their core goals. B's role is integral if it admits of no easy substitution. A thus faces high or prohibitive exit costs from the relationship (Lovett, 2010), as B's refusal or failure to play their role in A's plans will indeed threaten A's core goals or functionings. The source of A's dependence can vary greatly; A may depend upon B to provide essential protection, or A may depend upon B not to inflict a threatened grievous harm. In each case, what B does plays a central role in determining whether A's core functionings remain intact, and their core goals remain realizable. It is also important to note that A could depend upon B without actually having much hope that B will play the role that A depends upon (Smith, 2010).²¹ Even if I know that my partner in crime is going to inform the police of my actions, I still depend upon her not to.

¹⁹ The following paragraphs have benefitted immensely from discussion with Andrew Kirton, as well as Kirton 'The Difference between Reliance and Dependence' (2015).

²⁰ Functionings, as used here, refer to those things that A needs to be and to have in order to be capable of making plans and pursuing goals in the first place.

²¹ While Smith talks about reliance rather than dependence, I've avoided using this term in order to avoid confusion with James' (2012) account, discussed below.

A may be dependent not only upon an agent, B, but also a set of agents, an institution, or a social system. Indeed, systems of various kinds may represent some of the strongest sources of dependence for agents, in two different ways. First, even if they don't figure anywhere in an agent's conscious planning, systems often ensure the stable background conditions which allow agents to take various aspects of social life for granted, thus freeing them up to develop further goals on top of those. A number of an agent's core goals and functionings may be threatened gravely all at once were these systems to grind to a halt (Kirton, 2015). Second, and relatedly, the fact that a system or institution does undergird much of an agent's planning and functioning means that systems are typically (though not always) far less amenable to substitution than individuals are.

To see what each of these various dependences look like in concrete terms, think of an agent within a market. A may be weakly dependent upon B if B runs the only home supply shop nearby, and A is planning on building a doghouse. Here, A needs tools and materials that they can only get from B, and if B moves operation, stops stocking tools, or simply refuses A entry (perhaps A insists on bringing the dog in to help pick out the materials), B thwarts A's plans. Not, however, in a way that thwarts A's core goals or functionings. A may also depend upon B if B also stocks basic foodstuffs, and this is where A ordinarily does their shopping. Even though food is central to A's functioning, so long as A can get this food from other suppliers nearby, again B's failure or refusal to be dependable does not seem greatly problematic. From this, we can gather that where A is weakly dependent upon B, as in the cases above, B has some latitude as to whether or not they play their role in A's plans. B's failure or refusal to play their role will, in ordinary cases, be admissible.²² B, after all, has their own plans and goals, which are themselves of moral concern.

Contrast now with a case of strong dependence, where B is the only supplier of basic foodstuffs for miles. Or, to make the case even sharper, say B is the only supplier of essential medicines, of the kind that A depends upon in order to survive. Here, B's dependability in playing the role A requires of them is of pressing concern, as A's basic functionings are at stake. In such a case, there is a weighty presumption that B ought to play their role in A's plans insofar as it is possible, and where the cost of doing so isn't excessive. Indeed, other agents may have to take steps to facilitate B playing this role, if there is a danger that B will otherwise fail or refuse to do so. The importance of A's core functionings generates a claim against those who are implicated in whether A is capable of attaining them.

²² The focus here is on the nature of the weight of A's claims against B that might be grounded in A's dependence; I'm thus bracketing off other considerations that might apply to the above case, such as duties not to discriminate.

Finally, we can think about the market system that A and B are both a part of. In a well-functioning competitive market system, B's refusal to supply A with the goods that A needs should not be a problem, insofar as there will be a competitor that A can deal with instead. Where there are many such competitors, then A is only weakly dependent upon any one of them. This makes A more secure and their plans more robust. However, A is nevertheless strongly dependent upon the market system as a whole; A still relies upon this system for their necessary supply of food and medicine. Where agents are dependent upon a system, this generates a more diffuse set of duties and claims amongst participants, pertaining to the upholding and supporting of that system's smooth and effective functioning.

It's only a short jump from thinking about dependence in the market to seeing how it applies to trade. Trade enhances the degree of dependence between states. Where trade is only a small portion of a state's economic activity, and where trade is confined to non-essential goods, that state will only be weakly dependent (on other states, and on the system as a whole). However, trade will often be in goods that are central to a state's functioning, including not only food and basic medicines, but the basic resources necessary for maintaining the state's basic infrastructure, everything from steel and copper to oil and gas. As the volume of trade increases and the barriers to international exchange fall, more and more of the jobs and expectations of each state's inhabitants will be tied, directly or indirectly, to the vagaries of their state's trade relationships. And, even if states' import and export profiles are fairly diverse, so that no single trade partner plays an integral part in securing their core functionings, we can still talk about states being strongly dependent upon the trade regime as a whole. Each trade partner may only make a small contribution to a state's goals, but the set of trading partners taken together could nonetheless be essential for that state's basic functioning.

Today's world is characterised by low barriers to trade and high levels of interdependence. Most states, including all of the largest states, are members of the World Trade Organisation (WTO), a multilateral institution which entitles all members to favourable conditions of access into one another's markets. Through several rounds of multilateral negotiations (as well as through separate bilateral and regional trade agreements), tariffs and non-tariff barriers to trade have fallen precipitously over the post-war era, most notably in manufacturing where the average tariff has fallen from 40-50% to around 4% today (Baldwin, 2012). Such conditions of international economic openness played an integral role in the successful development strategy of the Asian Tigers, perhaps most notably in the case of China, whose unprecedented economic growth has lifted hundreds of millions out of poverty (Panagariya, 2019). For other states, international interdependence has caused devastation and turmoil. Authoritarian rulers of resource-rich states

like Angola and Equatorial Guinea have entrenched their power using the rents accrued from exporting their sought-after commodities, while the enticement of seizing power in order to reap such resource rents has fuelled civil war, conflict, and instability in states like Sierra Leone and the Democratic Republic of Congo. Somewhat less visibly, generous US and EU agricultural subsidies to their own farmers have intensified the poverty of millions of African farmers, who are unable to compete with artificially-cheap rich-world produce in goods such as cotton and poultry (see e.g. Irwin, 2005, 186-187; Carmody, 2016, 31). Consumers in developing and least-developed countries are also deeply affected by the decisions of the developed world: the increasing demand for biofuels, for example, has contributed to dramatic spikes in the price of foods like corn and cassava, which are a staple of diets in many African countries (Carmody, 2016, 174-178). As trade barriers fall, and developments in information and communications technology make it easier than ever to conduct business across borders, the plans and welfare of more or less all states are increasingly tied to the decisions and actions of their trade partners.

What I want to suggest is that where trade generates dependence between states, it is this that grounds duties of justice between them. As I'll show, dependence meets the four conditions specified above in an intuitively compelling way. First, the discussion above makes it clear that dependence admits of degrees. We can speak of states being more dependent upon some trade partners than others, as well of their greater or lesser dependence upon the trade regime as a whole. The stronger the dependence, the more demanding their claims against trade partners. Where states depend upon the system, this generates duties upon participants to play their role in upholding and managing that system. Those states like the US and China, whose behaviour predictably exerts systemic impacts upon the trade regime due to their size and wealth, have more demanding duties with regards to how they wield their economic and political weight. Through identifying different degrees and sources of dependence, then, we can ground correlative duties on the part of trade partners.²³ These duties will pertain to how the trade relationships in question alter states' abilities to discharge their duties. On this picture, states acquire more duties to the extent that their actions become integral to another state's plans, and acquire more claims when other states become integral to theirs, at least where states' plans pertain to how they would fulfil their duties.

²³ The fact that grounding duties of trade justice in dependence allows us to identify specific duty-bearers towards each state, on top of states' duties to the trade regime as a whole is, I believe, an important virtue of the account. In the international context, where outcomes are produced through innumerable overlapping interactions and processes, we will often be unable to attribute moral responsibility to any single agent. Yet, in order to rectify shortfalls of justice, we often will need a way of assigning duties to specific agents (Miller, 2007, 81-109). The dependence account does so, by tracking the agents most implicated in one another's abilities to discharge justice. See section 2.3.

Dependence between states also gives us a way of explaining how to integrate trade into our picture of international justice. Within the international order, states are the primary agents responsible for realization of justice within their own territory. A state's decision to participate in trade (and thus, to render themselves economically and politically dependent upon trade partners) must get its initial normative warrant from the fact that trade promises to enhance their ability to realise their duties. These duties then are largely, if not entirely, duties of domestic justice. However, as states become increasingly interdependent, a number of them become deeply significant players in the realization of domestic justice within other jurisdictions. On the picture suggested here, the more integral they become to one another's core functionings, the more demanding their obligations towards one another become. This connection between increasing dependence on the one hand, and increasingly demanding duties on the other, tracks our intuition that the increased intensity of trade in recent decades has changed what we owe to international partners, while nonetheless retaining states' special duties to their inhabitants as a central part of the moral story. That the dependence account builds upon the recognition of states' special duties to its inhabitants stops it from sliding into cosmopolitanism: on the picture developed here, each state's goals, and the conditions of each state's functioning, are still meaningfully separate from their trade partners'. This is so even if the weight of obligations to outsiders ought to play an increasing role in the justification of decisions taken domestically.

Does grounding justice claims in dependence allow states to make both distributive and procedural claims against one another? It does. In terms of distributive claims, a state's trade-generated dependence places their trade partners in a role where their actions make a significant difference to whether the state can discharge its duties and look after its inhabitants. A state can come to depend on the markets of their trade partners, so changes to the terms of market access can cause significant disruption and economic harm, thwarting investment decisions, resulting in job losses, and so on. That some of a trade partner's policies could undermine a state's ability to discharge domestic justice (e.g. its ability to ensure an adequate standard of living) generates duties on the part of their trade partners with regards to the policies they adopt and fail to adopt. In terms of procedures, states' dependence on trade gives them a strong interest in being able to shape the terms on which trade occurs. Where states have some control over the terms of their economic integration, this gives them a chance to tilt international conditions in their favour, and to make the role that the system plays within their plans more secure. Where a state that's dependent upon a trade relationship has little-to-no say over the terms of the relationship, whether or not that state is able to realize domestic justice is left at the discretion or whim of other agents. This may not only result in unfair terms and ultimately in shortfalls of distributive justice, but it effectively

disenfranchises the citizens of that state, whose state ought to be responsive to, and capable of being responsive to, their priorities and preferences while the state is integrating into the international economy.

Finally, note that dependence between states is indeed a necessary feature of the practice of international trade, and strong forms of dependence are a necessary feature of any intensive trade relationship. The more states trade, the less of the goods and services their inhabitants purchase from domestic vendors, and thus the more dependent they become upon sellers from outside states continuing to produce for international market. Ordinarily, this dependence is generated when states insert themselves into one another's plans through negotiating trade agreements, and entrenched through states binding themselves to the terms of an agreement, granting other states a right to retaliate against them when they violate the agreement's terms. Dependence is even further entrenched as each trading partner shifts its economic activity to specialise in the production of those goods that it is relatively good at producing, and trading for the rest. This all makes the substitution and exit costs of trade relationships quite high, as one partner refusing to trade with another would entail that both states would need time and resources to readjust their production, import, and export profiles. Were other trade relationships not capable of plugging these gaps easily, this would result in significant economic dislocation and potentially, as a result of this, political turmoil and instability. While the cultivation of such dependence is typically a gradual process, it is one directly incentivised and facilitated by the terms of market access promised and provided by trading partners to one another, combined with the purchasing power of their respective inhabitants.

1.4. Rival accounts of grounding in trade

A full defence of the dependence account of grounding requires us to look at how successfully other accounts can meet the four conditions set out above: it must admit of degrees, explain the distinctly international character of trade justice, ground both procedural and distributive duties, and it must be a necessary feature of all trade relationships which plausibly generate duties of justice. A number of philosophers in recent years have tried their hand at grounding trade justice claims, with most attempting to ground them in the presence of either coercion or cooperation, mirroring a long-standing debate about what grounds egalitarian demands of domestic justice.²⁴

²⁴ For coercion accounts see Blake (2001), Nagel (2005); for cooperation accounts, see Sangiovanni (2007), Freeman (2006).

Whatever their merits in the latter context (see e.g. Pevnick, 2008; Abizadeh, 2007), neither coercion nor cooperation are plausible as grounding candidates in trade.

Interactional Coercion

Nicole Hassoun (2012) defends an account which grounds duties in the presence of interactional coercion within trade.²⁵ Interactional coercion involves a threat or the use of force by one agent to make another agent worse off. For an institution to be coercive, in turn, agents who violate its rules “must be likely to face sanctions for the violation” (2012, 50). Throughout her discussion, Hassoun adopts a non-moralised account of what coercion consists in: for her, there is nothing necessarily *wrong* with coercion, but it does require justification, because it obstructs individuals from living their lives as they so choose. Hassoun argues that a necessary (but not sufficient) condition for justifying as legitimate the coercion that a political institution wields is that the institution “must ensure that its subjects secure sufficient autonomy to autonomously consent to, or dissent from, its rules” (2012, 45). Absent the ability to autonomously dissent, individuals’ acceding to a coercive institution cannot be taken as a signal of their consent.

From this premise, Hassoun believes that all those who take the importance of consent seriously must support the provision of those basic goods that are needed to secure a sufficient level of autonomy for individuals subject to coercive rule. In concrete terms, this means that coercive institutions must ensure that those subject to its rules must have enough food, water, education, and health to be able to reason about, and make, plans of some kind. Though it is not her sole focus, in the second half of her book Hassoun discusses the international trade regime at length as a site where institutions need to be ensure that individuals attain sufficient autonomy, because the trade regime is ultimately coercive in character. To avoid getting too bogged down in conceptual questions over when an institution is coercive, Hassoun relies upon examples which she takes to be intuitive instances of coercion to make her case (2012, 69): in the context of trade, she draws attention to the imposition of sanctions as a means of enforcing states’ trade commitments to one another within organisations such as the WTO (2012, 70).

²⁵ Strictly speaking, Hassoun focuses on what legitimacy requires, rather than justice. Still, she recognises that the two are intertwined, and she does suggest her argument might give succour to those who believe demanding duties of justice apply internationally (2012, pp.46-49). In any case, determining whether interactional coercion can ground duties of trade justice is worth considering.

This basis for grounding duties of justice will fail to meet the first and fourth conditions; either that, or it will reduce to the dependence account put forward above.²⁶ To see this, let's imagine that the US lifts its decades-long embargo on Cuba and the two countries conclude a bilateral trade agreement, significantly reducing barriers to trade in almost all goods and services. As a result of this liberalisation, the US soon becomes Cuba's single most important trading partner, accounting for 55% of its exports, consisting mostly of sugar. Given the size of the two economies, Cuba becomes only a minor trade partner for the US. For Cuba, rejecting the trade agreement would have meant foregoing sizeable economic benefits. Still, for present purposes, let's assume they were doing a good enough job of securing their citizens' basic needs before the agreement, so that we can say that their participation is voluntary in a meaningful sense. Because the US has a long-standing distaste for submitting to authoritative international judicial bodies, the two states agree that the agreement will not be subject to formal enforcement mechanisms; where disputes arise, the US and Cuba will conduct an informal settlement process to determine what ought to be done to resolve the matter.

Note a few features of the US and Cuba's relationship after concluding this agreement. The US can now use their new-found leverage to push Cuba into making more far-reaching domestic reforms in line with US interests, or alternatively, they could set Cuba's interests back by simply refusing to adhere to the agreement's terms, knowing that it would be very costly (and ineffective) for Cuba to try to retaliate. The US could also harm Cuba simply through neglect, failing to take Cuba's dependence into account during domestic decision-making (for example, when deciding whether to impose a tax on sugary drinks). Finally, the US could cause great hardship by giving another state, say the UK, even more favourable terms of market access, undercutting the gains Cuba thought they'd secured and had come to be strongly dependent upon. In such cases, even where the US abides by the terms of their agreement, circumstances may change (and may be changed by the US) in such a way that the US still receives all their expected benefits from the trade agreement with Cuba, while Cuba's prospective benefits end up being eroded. Recalling that Cuba has their own demanding set of duties to discharge towards their own inhabitants, I think we'd want to say that, as per the first of our conditions, how the US acts in the context of its newly-instituted trade relations with Cuba is subject to certain duties of justice, more demanding than whatever duties it had previously. This is so even though there is no enforcement mechanism binding the two states to the agreement.

²⁶ For present purposes, I'll assume that it could meet the second and third conditions, though see Cotton (2014, pp.365-368).

One response the coercion account theorist can give is to claim that what matters is not that states are *authorised* to coerce one another, but that states have the *power* to coerce one another. Yet this response will ultimately reduce to the dependence account put forward above. What gives the US the power to coerce Cuba in this case is the fact that the US can refuse to play the role that Cuba has come to depend upon. Over time, an increasing chunk of Cuba's economic activity has been geared towards servicing the preferences and needs of the US; employment patterns, investment decisions, skills development may all have been impacted by, and made vulnerable as a result of, integration with the US. Cuba's dependence entails that the costs of exit may now be extraordinarily high in political, social, and economic terms. And, as suggested above, our moral concern with how the US relates to Cuba extends beyond whether the US coerces Cuba; insofar as neglect of their interests or undercutting their competitiveness would also thwart Cuba's ability to discharge its duties, this alone generates duties on the US's part.

Systemic Coercion

Another sort of coercion-based account grounds duties of trade justice in systemic coercion (Valentini, 2011; Suttle, 2017). For Laura Valentini, a system of rules is coercive "if it foreseeably and avoidably places nontrivial constraints on some agents' freedom, compared to their freedom in the absence of that system" (Valentini, 2011, 137). The rules in question can be formal or informal, and a system of rules could regulate anything from complex organisations, to everyday patterns of social interaction. For Valentini, the baseline against which we judge whether an individual's freedom is constrained by a system is whether there is a possible alternative system where they would have greater freedom. Given this, more or less all imaginable systems are coercive to at least some agents. For Oisín Suttle, a system is coercive so long as agents within it are non-voluntarily subjected to institutions which determine how benefits and burdens are distributed within a scheme of social cooperation. A system can thus be coercive even if no agent is made worse off by their subjection to that system. On this picture, "even under ideal conditions, the international order is necessarily coercive" (Suttle, 2017, 82).

On either Valentini's or Suttle's version, systemic coercion will be a feature of all trade relationships: trade creates winners and losers, and more or less all individuals will be affected, directly or indirectly, by the terms on which their state integrates into the international economy. Therefore, such accounts unproblematically meet our fourth condition. They may also meet the third condition, although moving from the very general claim that a system places constraints on agents to one that assigns particular duties to agents within the system will require a lot of work.

However, systemic coercion accounts cannot satisfactorily meet the first and second conditions, for the very same reason that they so evidently meet the fourth. Systemic coercion cannot admit of degrees insofar as it is a feature of any possible iteration of a trade regime. While Valentini and Suttle can both use their conceptual framework to distinguish a world with a trade regime from a world where states are entirely autarkic (Valentini, 2011, 187-189; and Suttle, 2017, 96-103, 108), they cannot distinguish between a world with low levels of trade and a world with highly-intensive trade of the sort which generates strong interdependence: in both cases, there is a trade system with rules to which agents are subject, and at least some of those agents will be worse off than they would be under an alternative system. For instance, a world where states confined their trading to luxury goods such as diamonds and Renaissance paintings would come out as systemically coercive of more or less all individuals in all participating states, if only because they would be much better off under an alternative arrangement where there was trade in a much wider range of goods. Similarly, in the imagined case discussed above, the systemic coercion account can't explain why *anything* about the US's and Cuba's obligations towards one another change once they sign their trade agreement: both countries' inhabitants are non-voluntarily subjected to a trade system before the agreement, and they remain so afterwards.

Valentini's and Suttle's accounts also fail to meet the second condition because they both ultimately lend themselves to cosmopolitanism rather than internationalism. They do so for different reasons. Valentini attempts to develop an internationalist picture of justice through combining both statist principles and cosmopolitan principles. On her view, the principles grounded in the systemic coercion of the global economy supplement a set of broadly statist principles which regulate states' duties towards their own citizens and their duties of non-interference towards one another. What's required in order to make global systemic coercion justified, in turn, is the creation of a set of "international or global institutions capable of effectively regulating the international economy in such a way as to make it compatible with everyone's freedom" (Valentini, 2011, 198). In her subsequent discussion, Valentini attempts to stop this requirement from slipping into outright cosmopolitanism by framing the role of these institutions in terms of how they ought to treat states, i.e. states ought to be given the ability and opportunity to develop and thereby secure their inhabitants' freedom. However, as Simon Cotton has pointed out (2014), framing the justification of these global institutions in terms of how they treat states is at odds with the systemic coercion view, where each *individual* coerced by the system is owed a justification. Where the structure of the trade regime must be justified directly to all coerced individuals, it's difficult to imagine any individual would accept a system where they were significantly worse-off than any other individual

due, say, to their own state's relative profligacy. Ultimately, it doesn't seem like the systemic coercion view can "resist the pull of a demanding cosmopolitanism" (Cotton, 2014, 370).

Suttle attempts to avoid the cosmopolitan implications of grounding duties in systemic coercion by focusing on states' particular policies as the primary target to be evaluated by principles of trade justice. While the trade regime as a whole is systemically coercive, it is also the case that states' policies are systemically coercive, insofar as they non-voluntarily subject agents (both domestic and international) to their effects. And, Suttle argues, because states are the primary actors in trade, our theory of trade justice ought to be primarily concerned with the justification of states' coercive acts. Once Suttle acknowledges the special significance of states, the rest of his exposition focuses on how their trade policy measures are to be justified, where different standards apply depending on who the state intends to target with any given policy (2017, 86-96). Where a state's policy measures intentionally target domestic inhabitants (e.g. healthcare reform, education policy), they require less demanding justification to affected outsiders than measures which the state uses to intentionally regulate international economic activity (e.g. measures such as tariffs, or export subsidies).

The key problem Suttle's account faces is that if systemic coercion is what grounds demands of justice, then all individuals subjected to the system are owed a justification for the nature of the system *as a whole*. So understood, a state would owe outsiders justification not only for the particular policies they enact, but also for all the policies which they fail to enact. In concrete terms, individuals would be owed a justification for the overall distribution of holdings within the international scheme of social cooperation of which they're a part. If systemic coercion were the feature which grounded duties of justice in trade, the trade regime would have to be justified to all affected individuals, and again here the justification would have to be more or less cosmopolitan in character. In different ways, then, both Suttle's and Valentini's accounts inevitably treat the properly international nature of trade as a cosmopolitan practice; this is so regardless of the actual shape, intensity, or design of the trade regime in question.

Cooperation

The other major approach defended grounds duties of trade justice in cooperation between states. This view is most prominently defended by Aaron James (2012).²⁷ For James, trade, understood

²⁷ For others who adopt James' account, or something like it, see e.g. Herwig and Loriaux (2014), Brandi (2014), Risse (2017).

merely as exchanges across borders at the transactional level, is not the sort of thing that grounds duties of justice. Instead, it is the existence of a social practice of “mutual market reliance”, cooperatively upheld by states, that grounds such duties (2012, 17). States do this by providing assurances concerning their reliability as trading partners not only through compliance with explicit rules, but also through the promotion, refinement and management of these rules (and their underlying assumptions) within forums such as the WTO and the OECD. The reason that states do this is that they share a common purpose, namely the mutual augmentation of national income. According to James, even though states often adopt an outwardly competitive stance when bargaining with one another in trade, he believes this is mutually acceptable because it is underpinned by a shared view along the lines of “We both know that cutting such-and-such tariffs is win-win” (2012, 41). James believes that the unilateral case that economists make for trade liberalisation (i.e. that each state would be better off liberalising its own trade regardless of the behaviour and policies of other states) fails to map onto real world economic circumstances, ignoring states’ concerns both for the distributional effects of trade, as well as their need for assurance that their reliance on international trade won’t leave them vulnerable. Therefore, states must cooperate in order to create a stable international economic environment wherein trade can flourish. And it is the cooperative scheme that states uphold and manage which is the site of trade justice principles.

It’s worth commenting on the relationship between this cooperative account and the dependence account I endorse. We might say that reliance is synonymic with dependence, and that the key grounding feature of both these accounts is the same. But, while much of James’ insights are indeed conducive to the dependence account, there are a few important points where the two accounts diverge. To see this, it’s helpful to distinguish between interdependence and cooperation. When two agents are interdependent, both agents play an integral role in the realisation of one another’s separate goals. This contrasts with cooperation, where both agents share a common goal. The separability of interdependent agents’ goals entails that their interests may pull in opposite directions; thus, an agent’s realisation of their goals may be thwarted by the other agent’s attempt to realize their own goals. An interdependent relationship can, of course, at times be characterised by cooperative elements, where the interdependent agents would benefit from working with one another. However, the interdependent account also allows that there will be times where the two agents will be in competition with one another, where the goals they hope to realize pull in opposite directions. Competitive tussles between interdependent agents will not always be undergirded by a background assumption of a win-win scenario; there may be genuinely zero-sum games. This is

particularly true in decision-making forums, where one agent's greater influence will typically amount to another agent's lesser influence.

While both James' account and my own could be framed in terms of reliance, it should be clear from the above that James' account is a cooperation-based account, rather than a dependence account. How well does the cooperative account meet the four conditions? I believe it can meet the first condition. James' own version of the account specifies that the demands of justice only apply to agents who pass some threshold of integration, and thus contribute meaningfully to the gains from inter-state cooperation (2012, 178). Other cooperation-based accounts might meet this condition differently; for instance, one might develop an account wherein participation in some cooperative schemes (e.g. the WTO) entails less demanding duties than participation in others (e.g. the EU). The cooperation approach can also ground suitably international principles of justice. States' role as duty-bearers towards their inhabitants is untouched in this picture, but through their participation in trade states assume additional duties towards other states. This is so because the gains from trade are the product of inter-state cooperation, and all states are entitled to a fair share of that which they helped to generate.

The cooperation account, however, struggles to meet the last two conditions. First, while a cooperation account can ground distributive demands,²⁸ it's not conducive to grounding any robust procedural demands in trade; insofar as states have a shared goal within the practice, the extent to which some agents play more of a role in shaping negotiations or decisions is at best a secondary concern. Where one institutional design is more effective at bringing this shared goal about than others, the fact that the goal is indeed shared by all participants suggests they will all have reasons for endorsing this design, regardless of how much of a hand they have in shaping it. This is reflected in James' claim that the "appropriate form of trade governance is largely if not entirely an instrumental matter: everything depends on what is most likely to induce reforms in the direction of structural equity in the trade practice overall" (James, 2012, 90), where equity is "assessed in light of that practice's distributional consequences" (2012, 35).²⁹ However, fair treatment in trade also involves recognising states as collective bodies entitled to shape the terms of their own integration. The fact that many states were effectively coerced into signing the agreement which created the WTO, for example, by US and EU threats to rescind market access

²⁸ Having said that, if the distributive demands require us to figure out what economic gains are attributable to trade cooperation and which aren't (as James' does), making these demands actionable will be a difficult, perhaps even incoherent task. For what I take to be a decisive critique of this aspect of James' account, see Risse and Wollner (2013).

²⁹ While James does make some passing remarks about procedural justice, specifically about 'political fair play' and 'fair bargaining', these largely reduce to the requirement to negotiate towards structural equity (2012, 157-158).

upon which these other states had come to depend, is morally objectionable over and above the distributive effects of the agreement itself (see Steinberg, 2002).³⁰ The need to ensure that collective decisions are not coercively imposed but are instead taken in a fair manner, taking the voices of all relevant parties into account, is itself a demand of trade justice.

In this sense, cooperation is likely better thought of as a principle, rather than a ground, of trade justice. This explains why the cooperation account fails to meet the fourth condition. Even if most trade relationships involve some degree of cooperation, we shouldn't take this as a necessary requirement in order for duties of justice to apply in trade. While James argues that the economic case for unilateral liberalisation overlooks important realities about how states operate, we can nevertheless imagine a world where unilateral liberalisation *did* lead to substantial international integration. In such a world, states' domestic policy, and any policy they took towards international trade (e.g. providing export subsidies to strategic industries) could have significant effects on other states. Where their policies could thwart other states' ability to discharge their own duties of justice, how they act in such contexts is of deep moral significance. This is so, regardless of whether any of the states in question could be thought of as cooperative partners. Having said that, where states are implicated in one another's abilities to discharge duties, it may be the case that they have an obligation to *become* cooperative partners, if this is necessary in order to ensure that their interdependence is dependable. If this is correct, we might follow Abizadeh in calling cooperation is a "constitutive condition" of justice, rather than an "existence condition" (2007, 324); the presence of cooperation is a part of what is required by justice, rather than something which itself grounds duties of justice.

1.5. Conclusion

I've argued that it is the dependence that trade generates between states which grounds duties between them as trade partners. Dependence meets the four conditions I put forward, that any plausible grounding ought to meet: it must admit of degrees, explain the distinctly international character of trade justice, ground both procedural and distributive duties, and it must be a necessary feature of all trade relationships which plausibly generate duties of justice. While dependence is capable of meeting each of the four conditions, none of the alternative accounts of grounding put forward are able to do so. Relative to rival candidates, then, the dependence account

³⁰ For further discussion, see part 3 of this thesis.

provides a firmer foundation for the ongoing attempts to develop a comprehensive theory of trade justice. In the next chapter, I look at the duties that are grounded in inter-state dependence.

Chapter 2: Three Duties of Trade Justice

2.1. Introduction

In this chapter, I will argue that dependence grounds three duties of justice between trade partners. I will refer to these duties as the duty of recognition, the duty of stability, and the duty of accountability, respectively. While trade partners owe one another all three duties at all times in their relationship, the duty of recognition is relevant primarily in the context of states' negotiations over the creation or amendment of a trade relationship, stability is primarily relevant to how states conduct themselves in the ongoing management of an existing relationship with a trade partner, and accountability is relevant primarily in cases where something goes wrong within that trade relationship (i.e. where either the duty of recognition or the duty of stability are violated). So, simplifying only slightly, we can say that recognition informs the terms that states should set up, stability applies to the terms that have already been set up, and accountability applies when the terms have been violated. What successfully fulfilling each of these duties involves will be sensitive to the degree of dependence present within a particular trade relationship – existing or proposed. Taken together, acting upon these three duties ensures that states' trade relationships are characterised by reliable, justice-enhancing interdependence.

This chapter will proceed as follows. Section 2.2. introduces the duty of recognition, which has three elements: a state must show recognition of a trade partner's duty of domestic responsiveness, recognition of a trade partner's duties of domestic justice, and recognition of the role that the state itself plays within a trade partner's plans to realize justice. (This third element of recognition entails giving differential treatment to trade partners according to the degree of their dependence, where more demanding duties are owed to more dependent states. Fleshing this out requires a full theory of distributive justice in trade, and so this third element of recognition is only briefly mentioned here; it will occupy us at much greater length in the second part of the thesis.) In section 2.3., I will discuss the duty of stability, under which states have a duty to ensure that a trade partner's dependence upon them does not result in a shortfall of domestic justice for that trade partner. In section 2.4., I discuss the duty of accountability, which has two elements: transparency and contestability. States must give account of themselves to, and be held accountable by, trade partners for how they act in the context of their trade relationships. This will be followed by a brief conclusion (section 2.5.).

2.2. The duty of recognition³¹

Prior to participating in trade relationships, states have special duties towards their own citizens. I will assume that states would have to fulfil at least some procedural as well as some distributive duties in order to count as realising a minimally-decent standard of justice for those citizens. I will also assume that states have at least a minimal set of duties towards one another, such as a duty to observe treaties, to treat one another as sovereign equals, and to assist states that are incapable of providing a minimally-decent standard of justice for their citizens.³² The question for us is what duties states owe to one another, over and above these pre-existing duties, once they enter into trade relationships.

Recall from the previous chapter that A depends upon B to the extent that B plays a role in how A will, or plans to, realize their goals. Dependence grounds duties of justice between trade partners insofar as states become implicated in other states' fulfilment of (or failure to fulfil) their duties of domestic justice. As mentioned, for A to be dependent upon B does not necessarily mean that B *will* carry out their role in A's plans, nor does it necessarily mean that A even expects B to do so. If B is A's only hope of achieving core goals and functionings, A can be dependent upon B while nonetheless expecting B to thwart A's plans. Setting up a trade relationship generates interdependence between the states involved, as each state inserts itself into the other state's plans. We can characterise trade negotiations, then, as forums wherein states deliberate over the terms of their interdependence. The dependence generated may be of a weak or a strong form: for states that are already doing a good job of fulfilling their domestic duties, a new trade relationship may not play an integral role in their plans to realize justice, whereas for worse-off states, improvements through trade may play such an integral role.

Given the weightiness of each state's duties towards their own citizens, trade partners cannot insert themselves into a state's plans like so without acquiring duties pertaining to what sorts of outcomes they are entitled to push for. (The same applies when states are negotiating to modify the particular terms of their relationship.) The duties that trade partners owe are defined by a requirement to recognize and show due consideration for the relationship between a trade partner's government and its citizenry, hence the duty of recognition (henceforth simply 'recognition'). The recognition owed to trade partners has three elements: first, recognition of a trade partner's duty of domestic

³¹ There is a voluminous literature on the concept of recognition within political philosophy (for a starting point, see Iser, 2019). While there are clear affinities between my use of the term and the way it is used by many authors in the literature, the duty I discuss here need not be assimilated to that literature.

³² Though we need not endorse all his arguments, many of which are controversial, it might be helpful to think here of the sorts of principles for international conduct that Rawls identifies in his *Law of Peoples* (Rawls, 1999, 37).

responsiveness; second, recognition of a trade partner's duty of domestic justice; third, recognition of a trade partner's level of dependence. What I have to say about the first two is relatively brief, as the specific implications of both will be determined by facts about the particular states involved in a given trade relationship. The third element, in contrast, can be fleshed out more fully, at least insofar as it is possible to make plausible generalisations about how states differ with respect to their current capabilities to realize domestic justice. This third element of recognition, then, will be the subject of Chapter 4, where I put forward my account of distributive justice in trade.

Responsiveness

The first element of recognition requires states to recognize their trade partner's duty to be responsive to its own citizens' values and priorities. Each state receives its right to rule on the basis of some social compact, whether explicit or implicit, linking the state's operations to the values and priorities voiced by its citizens. For citizens to accept the terms on which they're ruled, even when decisions go against them, it must be the case that this social compact weighs the particular interests of citizens against each other on the basis of some view of the common good which the state's citizens can all share.³³ A state's rule, then, must be predicated in part upon a commitment to shaping domestic life in accordance with a view of the common good informed by citizens' reasonable values, views, and priorities (henceforth simply 'values').³⁴ In order to rule as such, the state must be responsive to its citizens. The fact that a state's legitimacy requires it to be responsive to its citizenry entails that, when a trade partner's citizens hold a certain set of reasonable values, this generates a weighty consideration in favour of allowing that state to act on the basis of these values, and to pursue goals based on protecting or advancing them, in their international dealings. These values could be social, political, economic, or environmental. Misrecognition, taken here as a failure to show due consideration to a trade partner's set of self-determined values and priorities, undermines that trading partner's ability to act as an authentic representative of its citizenry in its international conduct.

³³ A distinction is often made between normative legitimacy (whether an agent has a moral right to rule) and descriptive legitimacy (whether an agent is perceived to have such a moral right). I take it, however, that normative legitimacy cannot be entirely separated from descriptive legitimacy; a condition for the moral legitimacy of a state is that those subject to it recognize the state's right to make and enforce rules.

³⁴ Here, and throughout the thesis, I will assume something like Rawls' definition of reasonableness, where reasonable agents are "characterized by their willingness to offer fair terms of social cooperation among equals and by their recognition of the burdens of judgment" (1999, 87; though note that Rawls in this quote was referring specifically to reasonable citizens).

There are two reasons that a state has a duty to recognise a trade partner's duty of responsiveness, and so to allow the trade partner to have a hand in shaping the relationships according to its domestic values. First, because a trade partner's international dealings can have profound effects on the lives of citizens to whom the trade partner has special duties, that trade partner must ensure that the international rules to which it commits are at least consistent with, and ideally promote, its own citizens' reasonable values. This requires each state to give its trade partners adequate opportunity to shape and amend the rules which will regulate their interaction, so as to ensure consistency with their respective domestic social compacts (at least so long as those social compacts are worthy of respect; see below). To do otherwise is to fail to show due respect to the other state's citizenry as competent arbitrators of the sorts of social order which they take themselves to have reason to value.

Second, a trade partner's responsiveness to its own citizens serves a key function in legitimating a state's positions within a negotiation with the trade partner: where A is given the opportunity to shape its trade relationship with B, A's responsiveness to its citizens allows B to argue for its own self-interest in the secure knowledge that A won't allow an outcome that goes against A's citizens' interests or values, all things considered. In concrete terms, it is more acceptable for B to pursue its own self-interest, and to show deference to the views of A's government about the domestic acceptability of a trade arrangement, if A's government is democratic as opposed to its being authoritarian. But (and here's where the duty of responsiveness comes in), for this to be the case, the trading partner, A, must be given ample opportunity to shape and reshape the trade relationship. If A is given no chance to make the international rules reflect its own domestic values, and it is instead simply presented with a once-off 'take it or leave it' agreement by B, then B cannot say with confidence that its trade relationship is, and continues to be, acceptable to A's citizenry.

This legitimating function of a trade partner's degree of responsiveness is important. Each trade relationship will produce some winners and some losers within each participating state: even if both states gain on the whole from a trade arrangement, trade agreements tilt economic conditions towards some consumers' and producers' interests, and away from others. States know, then, that the interdependence they're facilitating will be detrimental to at least some of their trade partner's inhabitants, whether in strictly economic terms, or in broader welfare terms. For B's contribution to these harms to count as being responsible, B must have good reason for thinking that the harms that its trade relationship causes within A are outweighed by the benefits to A in the eyes of A's citizens. A will typically be in a better position to judge this than B will. Allowing A to shape the terms of a trade agreement in accordance with a common good understanding shared A's citizens

gives B greater assurance that, all things considered, the trade relationship is taken to be justice-enhancing for A.

Due recognition of a state's duty of responsiveness does not mean accepting or failing to challenge that state's priorities; where a trade partner places value on the subjugation of women, or on being able to torture prisoners, other states are complicit in injustice if they facilitate or condone the continuation of these practices. Instead, what this first element of recognition requires is more qualified; it requires B to attach weight to a A's self-determined values and priorities *when these are consistent with a reasonable conception of justice*.³⁵ This element of recognition will primarily come into play, then, where there is reasonable disagreement across countries about what kinds of things are valuable (e.g. food sovereignty, a certain type of culture, preservation of certain landscapes), or over how to weigh the various risks that come with economic integration in some areas (e.g. government procurement, food sanitary standards), and so on. Even if B thinks that A is wrong to value what they do, the fact that A has this preference means that B should not push against this preference unless there are such strong, justice-based reasons for doing so.

To see what this element of recognition might involve, take a topical issue: the ongoing US-UK trade talks, and the subject of food safety standards (including, most notoriously, chlorinated chicken). Currently, following EU approaches to food safety regulations, the UK regulates food safety according to a precautionary approach, where the onus is on businesses to establish that their products are safe for human consumption. In the US, by contrast, the onus is on regulators (i.e. the government) to show that a particular product or production process is unsafe. These regulatory differences between the two countries mean that some products and production processes are acceptable in the US that are not tolerated in the UK. Because the more onerous UK food safety standards present a barrier to trade for US agricultural interests, the US has some interest in pushing the UK to relax their standards.

It appears that the UK public strongly support retaining their current food safety standards, and that very few support lowering them (Dearden, 2020, 24). Assuming, very plausibly, that this preference is neither unreasonable nor unjust, if the UK government were to resist adopting the US's regulatory approach, they would be doing so on the basis of a set of values and priorities that the UK citizenry endorse. Showing due recognition for the UK's abilities to determine an attractive vision of social and economic life for themselves requires the US to count the UK's preference as a strong mark against pushing for a relaxation of UK food safety standards. This mark, of course,

³⁵ Recall from Chapter 1 that trade justice is conceptually downstream from domestic justice, and from a theory of minimally-decent domestic justice.

can be overridden, depending on further details of the case: were the US's abilities to realize domestic justice contingent upon getting better market access for their agri-food businesses, and so they were strongly dependent upon a reduction in the UK's barriers to trade in this sector, then the US would be entitled to push for this on the basis of their special duties to their own citizens.³⁶ But if the US can strike a beneficial deal for itself without pushing for a change in the UK's regulatory model in food safety, it ought to do so, out of recognition for the UK's right to determine its own health standards, and the level of risk it deems acceptable.

Note, however, that this first element of recognition requires states to be sensitive to the actual degree of a trade partner's responsiveness to their domestic constituents, in order to determine the extent to which their positions in negotiations are genuinely an expression of their citizenry's values. Take China's heterodox economic order, for example. If we were convinced that China adopted their economic model on the basis of responsiveness to their citizenry, we would have good *pro tanto* reasons not to push them to reform this model. There are, however, genuine questions regarding how responsive China's government is to their citizens' values and priorities. If their trade partners have little reason to think that the Chinese government's preferences are representative in this way, then there is no need to attach additional weight to China's negotiating positions, over and above the merits of the positions themselves (and the duties of distributive justice, identified in Chapter 4). The general rule of thumb is that the more representative A is, and the more A's negotiating position reflects the values and priorities of A's citizens, the greater the significance which B should attach within negotiations to the fact that A adopts a particular position, independently of whether or not the values underpinning this are ones that B shares.³⁷

Justice

On the second element of recognition, states' negotiating positions should be informed by their own views and values, so that they only pursue policies which they themselves consider to be just, or at least consistent with justice. A state acts wrongfully when they insert themselves into a trade partner's plans, believing that doing so will have the effect of making that trade partner less likely or less capable of realizing domestic justice. This is so even if the trading partner themselves do

³⁶ For further discussion, see Chapter 4.

³⁷ It is plausible to think that, similar to the account of distributive justice I put forward in Chapter 4, a more precise rule would give no additional weight to the preferences of a group of 'least-responsive states', would give the same high degree of additional weight to the preferences of a group of 'most-responsive states', and for states in between these two groups this we might attach additional weight in a graded fashion (see section 4.3.). I do not pursue this line of thought here, because the idea of attaching 'additional weight' is too vague to make it practicable, and judgements of how responsive a state is may be issue- and context-specific.

not believe this. The key to this element of recognition is that it requires states, when acting on the international stage, to wield their power in conformity with the principles which they take to legitimate their rule domestically. Where the duty of responsiveness meant that state A had to take seriously state B's particular common good conception of justice, this second element of recognition requires state A to take seriously their own particular common good conception, and to extend it outwards to their dealings with other states (see Garcia, 2013, 67-135 for discussion; for a similar approach, see Blake, 2014). Where a state pursues an outcome in trade which, by its own lights, constitutes an injustice, it fails to treat its trade partner's citizens as moral equals with the state's own citizens, by attempting to wield power in a way which the state itself recognises would be unacceptable if it were wielded in the same fashion over its own citizens (see Brilmayer, 2019).

It is important to note that, while the states within a trade relationship might have differing views about what domestic justice ultimately requires, these differences do not justify one state actively seeking to move a trade partner further away, in the state's own eyes, from justice. One way of putting this element of recognition is to say that states must act with integrity in their international dealings. Of course, it is both unrealistic and inappropriate for, say, a developed state to push a developing country counterpart to implement the full panoply of laws and standards regulating work conditions that the developed country might consider to be required by justice. Given this, we need to amend our formulation: fulfilling this second element of recognition should be taken to amount to a prohibition on a state pushing its trading partners into agreeing to terms that would represent a departure from justice in the state's own eyes, *relative to the trade partner's current status quo*.

To see what the second element of recognition entails, take the case of labour standards. Many developed countries have laws concerning health and safety conditions, minimum wages, unionisation, and so on, which circumscribe the sorts of policies they can enact domestically. The second element of recognition requires those states not to have a double-standard in their engagements with other states; they cannot themselves consider it unjust to ban unionisation domestically, but then subsequently push their trade partners to ban unions where this would benefit the developed state's own businesses. Again, we need to be careful with specifying what this demands in the case of trade partners with unequal starting points: a developed state would be perfectly entitled to push a developing country to adopt labour conditions which wouldn't be acceptable to the developed country domestically, so long as they view the standards as an improvement upon those currently protected by their developing country trade partner. Another case we might think of here is the United States' negotiating position on intellectual property (IP)

protection, an area in which the US has frequently pushed its trade partners to apply more demanding protections than even the US itself grants, including limiting due process and fair use provisions (Sell, 2010). These conditions restrict the rights of the users of IP, and restrict access to the benefits of IP, benefits which can often be quite substantial. Assuming the US doesn't believe that these higher restrictions on IP actually represent a more just way of regulating IP than the US themselves is capable of attaining, then pushing for these demanding terms against trade partners treats the citizens of those trade partners as having less of an entitlement than US citizens have to be ruled only by just exercises of power.

At this point, an objection could be raised. It might be thought that reasonable partiality towards a state's own citizens could justify the pursuit of policies which would undermine their trade partner's pursuit of justice, at least so long as the policies helped improve the state's realization of justice. To see the reasoning behind the objection, think of a state, let's call it Partia, which does not participate in trade relationships, but is aware of economic poverty and hardship abroad. Where other states suffer from humanitarian disasters, Partia is quick to send aid and assistance. However, while Partia is a large and wealthy state, and there are parts of the world which suffer from chronic poverty, Partia gives little in the way of assistance for such causes. Partia's government justifies this on the basis that there are pockets of poverty even within Partia's own borders, and even if such pockets are not as widespread as they are internationally, and even if international poverty is more chronic, Partia has a duty to spend its resources alleviating local poverty before it turns its attentions outwards.

Over time, upon noticing the benefits that other states gain from their trade relationships with one another, Partia decides to pursue its own trade relationships. It bargains hard in such negotiations, taking advantage of its size and economic wealth, in order to create the most promising international opportunities it can for its own citizens. Partia believe that the onerous terms that it pushes for will undermine the realization of domestic justice for some of its trade partners. Still, Partia's priority is the alleviation of its own citizens' poverty, even where this comes at the expense of the foreign poor, so Partia takes its negotiating stance to be of a piece with its partiality towards its citizens prior to their participation in trade.

While Partia's position before and after opening up to trade may appear consistent, in fact it turns upon a mischaracterisation of what partiality can reasonably allow. An agent is entitled to act on the basis of reasonable partiality with respect to resources (whether attentional, social, or economic) which they themselves have some rightful claim to. Where the agent has projects and plans which they have reason to value, the fact that they do value such projects makes it reasonable

to allocate their resources for the furtherance of these projects and plans. Prior to participation in trade, Partia is entitled to allocate large chunks of its budget to projects which would alleviate domestic poverty, even at the relative expense of another state, because the money that Partia is spending is (we can assume) rightfully its own.

What reasonable partiality does not justify is claiming for oneself a share of another agent's resources, or allocating resources that one does not have a claim to, or that one possesses only as a result of one's own wrongdoing. For example, while reasonable partiality allows you to give your worldly possessions to your sons and daughters as inheritance, it does not (at least in a democracy) allow you to give your political office to them: this is not yours to give away. Equally, reasonable partiality does not justify stealing someone else's goods for yourself or even for your family. In the case of states' trade relationships, reasonable partiality entitles a state to attach some (overridable) priority to its own citizens' interests, say by protecting domestic industries which citizens take to be a valuable part of their social life, or by making access to its own markets conditional on its exporters receiving favourable terms of access into other markets. But reasonable partiality does not cover cases where a state tries to pursue its own interests through contributing to shortfalls of justice in another state. The difference between Partia's actions pre-trade and in trade is that, in the latter case, Partia is contributing to an injustice. Partia's gains are, by Partia's own lights (i.e. by its own standards of the rightful exercise of power), ill-gotten gains.

Before moving on, it's worth saying something about cases where this element of recognition may be overridden by other considerations. Above, I mentioned that reasonable partiality cannot excuse stealing someone else's goods. But stealing of this sort may not always be inexcusable; where an agent or an agent's family is starving, this does give them good reason to steal, at least if there are no other realistic avenues for finding food. Reasonable partiality may not justify taking what is not rightfully yours, or causing harm, or contributing to a shortfall in justice, but the urgency of one's needs might. In Chapter 4, I will discuss in greater detail the relationship between reasonable partiality and relative urgency, and how their interplay determines what outcomes states are entitled to push for in trade negotiations. For present purposes, it's enough to note that pushing for a reduction in another state's ability to realize justice might be justified where this is necessary to make up for one's own, more pressing shortfall of justice.

Level of dependence

Recognition of states' duties of responsiveness and justice entail the third element of recognition, namely a recognition that states are entitled to different treatment in trade, based on their level of dependence upon a trade partner. All other things being equal, the less capable a state is of currently realizing justice, the more dependent it will be upon trade partners for improvements to its status quo. An insufficiency of material or institutional resources can translate into a shortfall in either a state's ability to be genuinely responsive to its citizenry, or to realize distributive justice. More likely, it translates into both. A lack of wealth and resources weakens a state's ability to shape the terms of its trade relationships, and thus makes pursuing its values within negotiations more difficult. The intensity of a state's dependence can translate into a weak bargaining hand in negotiations. While other states may negotiate as fairly as possible with a poor trade partner, this would still have the consequence that the poorer trade partner's ability to shape its trade relationships is largely, if not entirely at the discretion of other states. With regards to how a lack of resources would translate into a shortfall in justice, it should be fairly clear: without enough wealth, infrastructure, functioning institutions and so on, many individuals within a state will not have adequate or reliable access to their just entitlements. Fleshing out this third element of recognition requires the development of a complete theory of distributive justice in trade. Because this is both quite a complex question, and the question that has received the most attention within the trade justice literature, I will defer any further discussion of this third element of recognition until the next part of the thesis, where I consider distributive justice in detail.

2.3. The duty of stability

Recognition covers how states ought to negotiate in trade, and what sorts of rules they are entitled to pursue. Once a trade relationship is underway and ongoing, states have an additional duty, one which I'll call the duty of stability. The duty of stability requires a depended-upon state, B, to act so as to prevent A's dependence upon B from resulting in a shortfall in A's ability to discharge its duties of domestic justice.³⁸ Put another way, B must be a dependable trade partner to A, in the sense that A can justifiably expect the relationship with B to continue to serve A's interests.

³⁸ For a somewhat similar duty, see (Cotton, 2013, 148-154).

To unpack what the duty of stability involves, and why states bear such a duty, it might be useful to start with two illustrative cases, one borrowed from Michael Blake, and one which is my own modified version of his case. First, Blake's:

Borduria is an extremely wealthy just society. Its wealth is derived largely from tourism and gambling, and Syldavian tourists flock to Bordurian beaches and casinos. One day the Syldavian government sends a message to the Bordurian: sign our treaty, or we will pass a law preventing the travel of Syldavian citizens to Borduria. If the law is passed, the per capita income of Bordurians could be expected to fall dramatically, perhaps by as much as 50 per cent. This would, however, leave the average Bordurian well above the threshold of autonomous functioning, and the democratic form of governing in place in Borduria is unlikely to itself be destroyed by this change in wealth.

(Blake, 2014, 121)

Blake asks us to think about whether Syldavia's proposal represents a coercive threat, or whether it is in fact an offer. Before discussing, here's my own slightly modified case:

Borduria is a fairly wealthy, just society. It has beautiful beaches and liberal gambling laws which would make it attractive to Syldavian tourists. Currently, however, Syldavia only allows its citizens to travel to certain countries, and Borduria is not one of them. One day the Syldavian government sends a message to the Bordurian: sign our treaty, and we will pass a law allowing the travel of Syldavian citizens to Borduria. If the law is passed, the per capita income of Bordurians could be expected to rise dramatically, perhaps by as much as 50 per cent. Rejecting this treaty would leave the average Bordurian above the threshold of autonomous functioning, and the democratic form of governing in place in Borduria is unlikely to itself be destroyed by rejecting this offer.

Whatever our judgement is in the first case,³⁹ in this second case I believe it is far clearer that Syldavia does not coerce Borduria, and that Borduria has no complaint against Syldavia in that regard.

³⁹ Blake believes that Syldavia's proposal is not coercive. He adopts a moralised understanding of coercion, where a proposal's coerciveness is determined by whether it threatens to leave an agent worse off than they are entitled to be. And, "[i]f the Bordurians do not have a moral right to continue their current standard of living, then they cannot claim that they are being coerced when Syldavia threatens to reduce that standard of living" (Blake, 2014, 122). I think that the moralised approach is implausible as an understanding of coercion (Cohen, 1983), and it is telling that Blake's argument in favour of it is that it can bear more of a normative load in our theorising than a non-moralised conception can. Recognising that trade generates positive duties between agents, as I do here, gives us

There are two important differences between my case and Blake's original case. First, whereas in my case Syldavia propose to give Borduria something they do not have, in Blake's case Syldavia propose to take something away (i.e. Borduria's revenue stream). In my case, there is a significant net gain if Syldavia follows through on its proposal (at least if the treaty on offer isn't particularly nefarious). If Syldavia didn't follow through on its proposal, this would have no effect on the plans, projects, or aspirations of Borduria's residents, or their government: they will not, for example, be saddled with debts run up on the basis of an expectation of continued Syldavian tourist money. In contrast, Syldavia's proposal in Blake's case is disruptive: it takes away a set of options and features of people's environment that they had factored into their plans and built lives around. As we saw in the previous chapter, where agents depend upon something and build their plans on top of it (i.e. the thing in question is 'load-bearing' in the agent's plans), the loss of this can be very costly, and difficult to substitute. This is true for states as well as individuals. More generally, economic contraction is likely to have very different political and social repercussions than a failure to grow (or a failure to grow more than expected), so the barrier to justifying actions which cause the former is far higher (see e.g. Galston, 2014). For all these reasons, we need not adhere to any deep asymmetry between causing a harm and failing to benefit in order to nonetheless appreciate that there is a morally-significant difference between my case and Blake's, and that Syldavia's actions are far more objectionable in his case than mine.

The other important difference between the two cases is the nature of the relationship between Syldavia and Borduria prior to Syldavia's proposal. In contrast to the imagined case that I presented, in Blake's case there is an ongoing trade relationship between Syldavia and Borduria. Syldavia's citizens not only benefit from the beaches and casinos of Borduria but, through their custom, they actually incentivize certain behaviours and investment decisions on the part of Bordurian citizens, and of Borduria as a whole. Through ongoing interaction with Syldavia, Borduria's economy is significantly different from what it would be in absence of Syldavia: if Syldavian tourists didn't, say, appreciate pristine countryside, perhaps Borduria would have invested in exporting land-intensive agricultural produce, for example. This reshaping was done in co-ordination with Syldavia, at least tacitly so: Borduria wouldn't have geared its economy towards meeting the desires of Syldavian tourists if it expected Syldavian tourism to be such a fickle revenue

other conceptual tools with which to bear this normative load, without stretching the notion of coercion further than it can really go.

source, and Syldavia may have been able to plough its wealth into areas of the economy other than tourism knowing that Syldavian citizens' touring preferences were well catered for.⁴⁰

States' participation in trade predictably restructures their economies. More specifically, the dynamics of international integration push states to specialise in the production of fewer goods than they'd produce for themselves under autarky, both because they can benefit from economies of scale through such specialisation, and because their particular endowments and policies will render them less competitive at producing many other goods relative to their trade partners. If one state has little advanced technology, they will be uncompetitive at producing iPhones, if a state has a high minimum wage it will be uncompetitive at manufacturing textiles. The gains from trade stem from exploiting such differences, by allocating labour and capital to those industries where they are most efficiently deployed. Importantly, the ways in which states' economies are restructured are a function of the economic structure of the trade partners with which a state is integrating. If A's comparative advantage relative to B is in producing labour-intensive goods, and A's comparative advantage relative to C is in producing capital-intensive goods, the domestic effects of A integrating with another state will differ greatly depending on whether they choose to integrate with B or C, or with both. In its trade relationship with Syldavia, then, the fact that Borduria specialised in tourism was partially determined by the structure of Syldavia's own economy, not only in terms of the background endowments that Syldavia had, but also the terms which Syldavia did or didn't agree to, e.g. how favourable Borduria's market access is in areas such as manufacturing, agriculture, financial services, and so on. Moreover, this restructuring is incentivized and facilitated by Syldavia's citizens and their purchasing power; without the actions of actors at the transactional level (e.g. visiting Borduria, buying goods from states other than Borduria) this restructuring does not occur.

It might be objected that the above arguments mischaracterise the relationship between Syldavia and Borduria, in two different senses. First, it fails to take account of the nature of economic interactions. In cases where two agents exchange, or are in relationships of exchange, there are certain risks involved for both parties, and each party is aware of this. Given this, we might think that Borduria can have little complaint if they invest too heavily in catering to the Syldavian tourist market, and this ends up coming back to bite them. Second, and relatedly, all of the actions that Syldavia and its citizens have undertaken to generate Borduria's dependence may have been

⁴⁰ Note that the nature of the dependence generated by the relationship between Syldavia and Borduria is framed here in terms of restructuring of the economies of the two states, i.e. at the macro-level. Even though it is individual producers and consumers who are choosing to holiday in Borduria and who are choosing to open resorts, casinos, etc, the attractiveness of these exchanges is ultimately underpinned by macro-level facts about the two states involved, e.g. ease of visiting, exchange rate, social infrastructure.

perfectly admissible. Given that each Syldavian tourist who contributed to Borduria's dependence was acting within their rights, they cannot be held morally responsible for Borduria's dependence, and so Syldavia inherits no moral responsibility for how it ought to treat Borduria subsequently.

Both of these objections overlook important considerations. First, while it is true that economic exchanges often assume a degree of risk at the transactional level, the putative wrong in the Syldavia case comes at the governmental level. Much of the benefits from trading activity at the transactional level stem from competition between producers, and risk-taking behaviours on the part of sellers and entrepreneurs, both of which necessarily involve foreseeable harms and thwarted expectations. In addition, these benefits will not materialise unless we accept that consumers will change their consumption preferences, abandoning some sellers in favour of others. Given this, to reap the benefits of trade at the transactional level, we must accept the harms to the losers from trade as a necessary evil. By contrast, the relationship between states should not be equated with the relationship between rival producers: unlike rival producers, who are stuck in a zero-sum gain for custom, the relationship between states at the governmental level ought to be, according to standard economic theory, mutually beneficial. (Irwin, 1998; Panagariya, 2019; see section 5.2. for discussion). Individual Syldavian tourists could justify their decision not to trade with Bordurian citizens on the basis of the competitive nature of transactional trade, but the same justification for setting back Borduria's ability to realize domestic justice is not available to Syldavia at the governmental level.⁴¹

On the second point, we can concede that neither Syldavian tourists, nor the Syldavian government, need necessarily have done anything morally objectionable prior to Syldavia's proposal: their economic exchanges up until that point might have been perfectly innocent, morally speaking. Yet it need not be the case that an agent has done something wrong for us to nonetheless require them to bear some costs for the results of their actions or inactions. To see this, David Miller's discussion on outcome responsibility is helpful (2007, 81-97). An agent is outcome responsible for something when it is suitable to credit the effects of their actions to them, on the basis that the effect is attributable to their agency. Miller differentiates outcome responsibility from causal responsibility on the one hand, and moral responsibility on the other. We are causally responsible when we are part of the causal chain that resulted in a certain outcome; for us to be responsible for something in this sense, it need not be as a result of our agency. Because of this, it

⁴¹ Added to this, part of what justifies subjecting individuals at the transactional level to the throes of competition and risk is that we expect, or at least hope, that there is a safety net to ensure that these risks do not lead to immiseration (Cotton, 2013, 153). Absent a global social safety net, this justification is not forthcoming when states as a whole lose out.

will sometimes be inappropriate to give us credit, or require us to bear a cost, for our causal contribution to an outcome. While I might be causally responsible for breaking a chair when I sit down on it, for example, it would be unreasonable to get me to pay for the breakage if the reason the chair broke was because it was poorly made. We are morally responsible for an action when the sort of action we are being credited for is subject to moral evaluation, whether moral praise or moral blame. Outcome responsibility is broader than moral responsibility: while we will usually be outcome responsible for that which we are morally responsible, we are also outcome responsible for morally innocent actions, such as winning a race, or dropping a precious artefact as a result of handling it carelessly. We are outcome responsible for actions of these sorts insofar as they were within our agential control, and the outcomes of our agential actions were reasonably foreseeable, making it appropriate to attribute those foreseeable outcomes to us.

To see that outcome responsibility, even absent moral responsibility, is sufficient to generate something like the duty of stability, imagine a case where B borrows A's car (Miller, 2007, 90). A depends upon B to bring the car back safely and in good condition. In borrowing A's car, B does nothing wrong; it is a morally innocent action. But as a result of taking the car, B takes on certain responsibilities for the results of their actions. If, while driving, B damages the car, even where this was not as a result of reckless action, B ought to nonetheless pay A back for the costs of this damage. Intuitively, the more damage B does to A's car, the greater the compensation B owes. This parallels the relationship between Syldavia and Borduria. Insofar as Syldavia and its citizens have facilitated Borduria's dependence through their actions, they bear some responsibilities for how they act in the context of that dependence.

Returning to trade, then, when a state A depends upon a trade partner, B, then B owes A a duty of stability: B's role in A's plans ought to be dependable, by ensuring that A's dependence upon B does not undermine A's abilities to realize justice. Where B's actions do undermine A's ability to realize justice, B has a *pro tanto* duty to compensate A for this, even where B did not intend to harm A. Again, the demandingness of this duty will come in degrees; where A's dependence is only of a weak sort, then the duty may be overridden if it conflicts with B's own efforts to realize justice, whether domestically or towards other international partners.⁴² In cases where A is strongly dependent, and trade with B plays an integral role to A's efforts to realize justice, the duty of stability will require B to play its role in A's plans even at fairly substantial cost to itself.

⁴² See section 4.5. for a discussion on how to apply the duty of stability in the context of states with different levels of dependence.

Note that this duty does not straightforwardly require, and may often rule out, stability understood as a maintenance of a particular status quo, or rigid adherence to the rules that regulate a relationship. Where the current status quo would itself undermine A's ability to realize justice, then B acts wrongfully if they hold A to those terms rigidly. Equally, B need not continue to play its role in A's plans in perpetuity; if circumstances change, and A no longer relies on B, or else A is capable of substituting the role that B played by trading with C, D, E, and so on, then B need not continue to play its role, as B is easily substitutable. And, moreover, B (on its own, or in coordination with others) can act in ways which facilitate this sort of change in circumstances: B may facilitate A's move away from dependence upon B domestically, by encouraging A to diversify its exports, or its trade partners. Having said all that, stability will often be best ensured by maintaining the terms of a relationship; if a state is currently playing an integral role in another state's plans to discharge justice, this in itself is an argument in favour of maintaining the terms of the relationship, all other things being equal.

What sort of things, in concrete terms, might the duty of stability require? The specifics will depend first, upon empirical questions regarding the effects of certain measures, and second, upon the nature and intensity of the dependence at stake. At the fairly modest end of this spectrum, we can see the Most-Favoured Nation (MFN) clause that is often inserted into trade agreements in light of the duty to ensure stability. When A is granted MFN status by B, A is being promised the best terms of market access into B that B offers to anyone. If the treaty A and B sign places a 5% tariff on A's goods, but subsequently B signs a deal with C where C faces 0% tariffs, then this 0% tariff is extended to A as well. MFN status, then, is a way for states to secure stability for themselves, by insuring them against the possibility that the gains they make from an agreement would be undercut by their trading partners' offering a different state even better terms after the initial agreement.

Stability also likely requires states to include safeguards and temporary exemptions within their trade relationships, to allow trade partners to temporarily opt-out of certain commitments where their economy would suffer serious set-backs from a continuation to the status quo. In the WTO, safeguards are currently interpreted as temporary measures to alleviate a recent, sudden, and substantial economic disruption, but if a state's ability to realize justice required safeguards to adjust to more long-term industrial decline, for example, the duty of stability would speak in favour of allowing such adjustments (Esserman, 2006), at least where this did not cause or exacerbate injustice in affected trade partners. Note, though, that this is a delicate balancing act; opt-outs and exemptions may enhance stability, but if they are too readily available or too frequently exercised, they undermine stability. For similar reasons, stability will generally speak against unilateral ways

of managing the terms of a trade relationship. Insofar as unilateral trade preferences are easily revocable, they can be used effectively either as threats against a dependent state (as in Blake's case), or can be retracted as soon as doing so becomes politically expedient.⁴³

At the more demanding end of the spectrum, duties of stability may become quite onerous where the source of instability is a state's particular position within the international division of labour. Demanding duties might arise both as a result of the specialisation of a state's trading partners, or as a result of the state's own specialisation. With respect to the specialisation of other trading partners, where there are only a small number of exporters of essential goods, or where only a small few countries have most of the world's wealth, then other states depend upon them to continue exporting those goods and to continue providing market access, respectively. Dependence upon wealthy countries is fairly intuitive, so let's focus in on dependence upon a particular exporter of a good. We can see such dependence in the context of the COVID-19 crisis, where most states, particularly those in Latin America and Africa, are net importers of medical supplies which are essential to dealing effectively with the pandemic, such as ventilators; only a few countries have the technology and the capacity to produce these at scale. The same will be true if or when a vaccine is produced: only a few states have the capacity to produce such vaccines. The duty of stability requires those states that do occupy an integral role in the international division of labour as 'essential medical goods exporters' to continue exporting their wares at a reasonable rate (even where there is domestic pressure to give absolute priority to domestic citizens, to the detriment of importing states), and to expand export capacity wherever possible. It also speaks in favour of participating in joint ventures which would help spread the benefits of essential supplies, such as vaccines, in an equitable way between trade partners. In the context of COVID-19, this speaks in favour of initiatives such as the COVAX facility, a financial- and scientific-resource-pooling initiative which has the aim of ensuring an equitable distribution of any successful vaccines, guaranteeing access to even those states that have no capacity to develop or produce their own (GAVI, 2020).

It might be responded that, while a state may have a *pro tanto* duty to continue to supply medical ventilators to international partners, in this particular case it is overridden by the fact that the state's own citizens need the same medical goods.⁴⁴ So, we might think, insofar as the state is the rightful allocator of its own resources, prioritising its own citizens is an instance of reasonable partiality (see discussion above). It's not clear, however, that this is the case: where the state occupies an

⁴³ See also section 7.3.

⁴⁴ This appears to be the position that Miller (2005) would support.

essential role within an international division of labour, partiality of this kind may well be unreasonable. Insofar as the dynamics of economic integration encourage specialisation, only some states will have a comparative advantage in any given essential good, and yet all states benefit greatly from encouraging and facilitating the cheap production of essential goods: the more efficiently they can be produced, the better the chances that states can afford to provide for their citizens. A world where no specialisation occurs is a poorer world. But if a state is happy to occupy an essential role in other states' plans, and to benefit accordingly, it must be willing to play this role dependably.⁴⁵ Where a state plays this sort of key role in the international division of labour, whether in medicine, or oil, or semiconductors, it may be more appropriate to treat its position in the same way we treat obligations that professionals take on when they occupy certain integral roles in society (e.g. doctor, lawyer, teacher). In most instances, people playing these roles are entitled to show priority to the interests of their loved ones, but they are not entitled to do so when they are acting in the context of their role. Too many other actors depend upon them fulfilling their role impartially.

While they may be highly dependent upon a trade partner playing a particular role in the international division of labour, states can also be highly dependent as a result of their own specialisations. Many states, for example, are highly dependent upon commodity exports, in areas such as minerals, energy, and agriculture. Reliance upon such commodities comes with significant risks, as commodity prices are typically highly volatile, and thus a state's income can fluctuate greatly from year to year if commodity exports form a large share of the national product. Moreover, export markets in minerals and energy often present a way for unrepresentative states to accrue wealth without having to be responsive to their citizens, or build up their workforce and human resources (see Chapter 5).

Because of the instability of commodity markets, and because of the political and social instability that dependence upon them can generate, trade partners who have thus far facilitated and incentivized specialisation in these commodities have one of two duties. They either ought to facilitate the diversification of trade partners' economies, so that they are somewhat shielded from the risks of overreliance upon commodities, or they ought to ensure that a state's continued dependence upon commodity markets is not detrimental to its ability to meet its domestic duties. The first option would provide an argument against practices like developed states' use of tariff

⁴⁵ Note that the producers of essential goods within a given country will also have benefitted, during crisis and non-crisis times, from having a large international market, which allows them to produce more goods and thus reap greater economies of scale. In this sense, dependent states are an important part of the story of how some states are capable of producing essential goods so efficiently.

escalation, where developing countries face lower tariffs on raw materials than they do on products higher-up the production chain, where there is more value-added; tariff escalation practices of this sort incentivise and facilitate the dependence of some states on primary commodity markets, which in the long-run puts them at great risk. The second option, trying to make these markets less liable to shocks, would speak in favour of establishing (in some cases, re-establishing) commodity price agreements, which would make states' dependence upon these commodities more *dependable*, by stabilising the prices paid and received on world markets (Lines, 2013).

2.4. The duty of accountability

We've covered, then, how states ought to interact in the context of trade negotiations, and we've covered how they ought to interact in the context of their ongoing management of the trade relationship. We must now add a third duty, which covers what we might call the reviewing of the trade relationship: ordinarily, this 'review' will be called for when something goes wrong, and a state violates one of its other duties.

In his own discussion of international justice, Risse gives two arguments for the duty of accountability, both of which are pertinent here. First, there is an argument from respect: the seriousness of failing to discharge a duty of justice requires errors and failings to be accounted for, and to give this account to anyone other than the claim-holder would belittle those claim-holders. Second, there is an instrumental argument: if agents are required to give reasons for why they acted as they did, and to give account for their actions, this increases the chances that justice will be done, as "the prospect of giving a justification motivates agents to do their best for fear of embarrassment or sanctioning, and makes it unlikely that the agent will simply forget. Moreover, the justification gives the relevant population more leverage to compel agents to do their duty" (Risse, 2012, 338). Put more generally, accountability is needed between trade partners if their interdependence is to be dependable.

The duty of accountability has two components, transparency and contestation: states must give account of themselves to, and be held to account by, trade partners. Transparency is a matter of ensuring that outsiders have enough information about the decision-making process and the outcomes produced in order to understand the causes and reasons underlying a state's actions, and how they are affected (Schuppert, 2013, 130-131).⁴⁶ In order for a state to have a secure belief

⁴⁶ Note that information about a state's policies is often disaggregated amongst lots of different companies trying to export into the state's market, so trading partners may have little idea of how they are really being affected by the state's decisions. For an illuminating discussion, see Bown (2010).

regarding whether they can depend upon a trade partner, and to act accordingly, they need to know what the trade partner has done and the reasons the trade partner acts and takes the decisions that it does, i.e. what ‘inputs’ have gone into making any given decision. For a state to analyse a trade partner’s reasoning, it must also be the case that they have an understanding of the facts of the matter in question; this is necessary to understand the reasonableness of how the state has weighed the urgency of the various interests at stake in a decision. In order to make their interdependence dependable, states in trade owe one another account-giving, of the sort which allows trade partners to determine the empirical and deliberative inputs which went into making a decision, from which they can reach an informed judgement on the reasonableness of the decision reached. Only through such accountability can states gain assurance that their international dependence will not be thwarted and taken advantage of.

Transparency, then, gives dependent states assurance about the status of their dependence, and gives them the information they need to develop their plans and pursue their goals. But it is important to stress that transparency is not a one-way street, nor can what it demands be defined without any reference to the capacities of the relevant affected parties. Decision-making, and the reasoning behind it, are only transparent to the extent that other agents can actually decipher the information provided and discern how they themselves are affected by it. For information-sharing to actually count as an instance of transparency, the information in question must be legible to the relevant claim-holders. For example, informational overload, whether in terms of the sheer amount of information provided or the complexity of it, hinders transparency and shields the duty-bearer from effective scrutiny. And, importantly, whether a certain presentation of information is an ‘overload’, or counts as overly complex, will depend upon the capacities of the claim-holders. Transparency, especially when it is owed as a duty of justice, requires and assumes that “the audience must have the abilities, time, and powers to sift, scrutinise, and connect the most relevant facts” (Kuper, 2006, 182).

Of course, transparency is in itself of little value if there are no institutional channels in which claim-holders can evaluate and judge decisions and the reasoning underpinning them. Accountability requires not just that duty-bearers give an account of themselves, but that claim-holders can hold them *to account*. For this, the decisions and actions of the duty-bearer state must be contestable by the claim-holder. Without contestability, the way that a trade partner has weighed the significance of their trade-based duties against, say, their duties of domestic justice, cannot be challenged or subject to deliberation of the sort which is necessary if mutually-agreeable norms around the weighting of conflicting duties is to gradually develop between trade partners. The development of such norms, and the deliberation over their content, is in turn necessary in order

to ensure that, where disputes arise between states, they nonetheless arise in a political climate of mutual understanding. Where particular actions go against a state's interests, a trade partner's commitment to being contestable nonetheless grants some assurance that this will be an infrequent occurrence, and so that the trade relationship remains one which they can by and large depend upon.

Like with transparency, in order for contestability to be effective it must be coupled with a level of capacity on the claim-holder's side of the equation, although the sort of capacity in question is of a different kind. Here, what states need in order to effectively contest their trade partners' actions is a power of some kind, one which they can wield in order to make it more likely that their trade partners will abide by their commitments. In many cases, therefore, formal powers of contestation will have to be coupled with the possibility of sanction. How strong any such sanction will need to be will depend on the nature of the relationship, and on empirical questions about the efficacy of various sorts of sanction; in some cases, a purely reputational sanction may be sufficient to hold an agent to account, though this may be insufficient when there are duties of justice at stake, especially where the reputational sanction does not reliably gain publicity. But the existence of some sanction mechanism is necessary for claim-holders to be able to respond effectively to their trade partners' violations of their trade-based duties.

Like the other duties discussed, what the duty of accountability requires will be a function of the details of the trade relationship in question; it will also, in part, be informed by the degree of dependence involved in the relationship. At a minimum, it will require some dispute settlement mechanism, which will allow states to challenge the actions of their trade partners, as to whether they violated the terms of their negotiated agreement. Without this, there is no institutional mechanism which ensures (or makes it more likely) that a state will adhere to its commitments, and won't act in ways which undermine a trade partner's efforts at realizing justice. What form the dispute settlement mechanism takes will rely largely on what kinds of sanctions will give dependent states sufficient assurance that they will get fair value for the terms which they have negotiated; in many, if not most cases, for a sanction to reliably guide states' behaviour it may require the possibility of material worsening, e.g. a deprivation of previously-granted market access. However, where trade agreements are between states of very different size and wealth, giving sanctioning power to the weaker state may still be insufficient to ensure that its trade partner is robustly dependable. Where this is so, and where there is strong dependence on the part of the weaker

party, this speaks in favour of having some means of collectivizing the responsibility to enforce trade agreements, in order to protect the goals and functionings of weak, dependent states.⁴⁷

Besides dispute settlement, in many cases accountability will require technical capacity-building. This is because a lot of states today simply do not have the expertise and manpower to sift through, and make informed judgements on the basis of, the information coming from their trade partners, or about how their interests are affected (Wilkinson, 2014, 57-61). For fairly intense trade relationships, accountability may also require regular summits, where dependent states can discuss the terms of their current relationship, raise concerns, challenge policies, and gather information about ongoing developments in their trade partner's political and economic outlook. For regional or multilateral trade relationships, such as the TPP, or the WTO, the channels of accountability are more demanding still, and require institutionalised, public forums in which account can be given and information-sharing can be implemented. The publicity of these forums is essential for building a body of common knowledge and information regarding participants' actions, which in turn facilitates well-informed deliberation, and lowers the barriers to coalition-formation where a non-cooperative partners' actions ought to be challenged by their fellow members.⁴⁸

For trade relationships where the dependence involved is particularly intense, such as perhaps those between EU member-states, or between smaller Caribbean islands and the United States, there may even be a case for trade partners to have representatives within the domestic state's own decision-making institutions, for example as non-voting members of second houses. Where one state is so dependent on another trade partner that the policies in one will reliably and substantially affect the outcomes in the other, this is good grounds for thinking the dependent state ought to have some voice in their trade partners' political deliberations. In order to respect states' self-determination, whatever voice international partners were given would have to be non-binding, or else easily outweighed, but they ought to nonetheless have enough of a voice that their views form part of public debate around relevant issues. This would serve at least three functions. First, it would prevent injustice which is caused by ignorance or negligence: where so much of a state's deliberations and concerns are geared towards, and shaped by, domestic actors and interest groups, the consequences of certain policies on international partners is liable to being overlooked. It would also remove ignorance as a reasonable excuse for detrimental trade policies. Second, it serves an expressive function: it is a way of making concrete, both to the states' representatives,

⁴⁷ While it is plausible to think that responsibility for bearing the costs of such collective enforcement would be sensitive to the distributive duties of states, as described in Chapter 4, matters of enforcement of trade commitments are beyond the scope of my investigation in this thesis.

⁴⁸ This relates to the arguments in Chapter 7 in favour of a multilateral trade regime.

and to the domestic citizens of the state, that whether or not justice is realized internationally is affected by the decisions taken by the national legislature. To borrow a phrase from Thomas Pogge, it “clarifies the moral situation” (2002, 165). Third, through this expressive function, it may cultivate an appreciation of the interdependent nature of states’ abilities to realize justice, which over time might produce citizenries and legislatures more responsive to their trade partners’ claims of justice, particularly where these could be fulfilled at little cost to the domestic state in question.⁴⁹

2.5. Conclusion

In this chapter, I’ve set forward three duties that trade partners have towards one another, namely the duties of recognition, stability, and accountability. I have discussed these duties as applying to three separate points or facets of states’ trade relationships: recognition applies to rule creation and amendment (i.e. trade negotiations), stability applies to ongoing management of the relationship, and accountability applies when something is perceived to have gone wrong. While I’ve given a number of examples of what sorts of things states ought to do to fulfil each of these duties, the specifics of what they require will depend on the nature of the trade relationship in question. The greater the dependence of one state, the more demanding the duties of stability, accountability, and recognition will be for its trade partner. Equally, while I’ve described the three duties as applying at particular phases, all three duties will apply to states at all times within their trade relationships. Indeed, responding to shortfalls in one might require appeal to one of the others. For example, where a state is dependent upon a limited number of commodities, and therefore lack stability, their trade partners may have a duty to ameliorate this through amending their trade relationships on the basis of a recognition of the difficulties this instability presents for realizing domestic justice. Equally, the extent to which states are transparent towards one another will facilitate evaluations of whether or not a trade partner is genuinely responsive to their citizens. Fulfilling these three duties in combination, then, ensures that states’ trade relationships are dependable and justice-enhancing.

What I’ve provided in this chapter as well as the last is a framework for thinking through the demands of trade justice, rather than a fully-fleshed out account; I have been intent to point out that the content of states’ duties will be a function of the dependence present within their trade

⁴⁹ Note that this proposal is intended to be suggestive of how states might fulfil their duties of accountability where the dependence of a trade partner is particularly intense; a full consideration of such a proposal would require far greater discussion, which would take us too far afield. I will return to a similar proposal in a little more detail in section 8.5.

relationships, as well as our judgements about what is required by domestic justice. Some of this fleshing-out will occur in the second and third parts of the thesis, where I spend some time discussing what distributive and procedural justice require of states within the trade regime today. Before discussing my own account of what distributive justice requires of states in trade, I'll start the next part of the thesis by looking at the accounts of distributive justice that have been put forward in the literature thus far.

Part 2: Distributive Justice

Chapter 3: Distributive Justice in Trade: Exploitation and Equality

3.1. Introduction

Up to now, the trade justice literature has been characterised largely by discussions concerning the outcomes that trade relationships ought to produce, and the distributive duties that apply to states. The most prominent theories of distributive justice in trade can be fit into two broad categories, namely exploitation-based and equality-based approaches. On exploitation-based approaches, trade justice consists in not taking unfair advantage of trading partners. Typically, exploitation-based accounts draw an analogy between trade relationships at the governmental level with trade relationships at the transactional level, and argue that a duty not to take advantage of bargaining weaknesses is the principle which unifies agents' duties at both levels. Equality-based approaches more often focus on the structural features of the trade regime taken as a whole, and therefore emphasize features such as the non-voluntary and co-operative nature of participation in trade. In comparison to the exploitation-based theorists, the conclusions of the equality-based theorists are more varied, with the demand for equality coming in 'internalist' as well as 'integrationist' forms. The internalist approach determines what counts as equal treatment by looking at trade in isolation from other practices, and calls for states to benefit equally from their participation in trade. The integrationist approach, by contrast, is sensitive to states' starting points, and requires the gains from trade to be distributed so as to conduce towards equality between states more broadly. On this picture, worse-off states must benefit significantly more from their participation in trade, relative to their better-off counterparts. The purpose of this chapter is to identify, discuss, and ultimately refute, each of these three approaches to trade justice. This motivates the following to chapters, where I develop my own account of distributive justice in trade.

The chapter will proceed as follows. In section 3.2., I will discuss the shortcomings of exploitation-based approaches. While exploitation-based approaches latch onto an important sort of pathology that can beset trade relationships, they face difficulties in being action-guiding at the governmental level of trade. Moreover, exploitation-based approaches are ultimately reliant upon a background theory of fairness in trade, making such approaches both normatively and theoretically incomplete. In section 3.3., I will turn towards equality-based approaches, starting with the 'internalist' account of Aaron James. Internalist approaches of this kind cannot be action-guiding for states, as they say nothing about how states ought to weigh the duties of domestic and trade justice. Moreover, this approach's insensitivity to non-trade considerations ends up producing unattractive conclusions. In section 3.4., I will look at 'integrationist' equality-based approaches. Weak forms of

integrationist equality are implausible as theories of trade justice, while stronger versions of integrationist equality are neither feasible nor well-grounded as demands to make of a mutually-beneficial trade relationship. Section 3.5. concludes.

3.2. Exploitation-based approaches

There is an extensive literature on the concept of exploitation, and how best to understand it. However it is unpacked further, a widely-agreed basic definition is that exploitation involves one agent taking unfair advantage of another (Wertheimer, 1999, 10). Typically, when they occur, exploitative exchanges or interactions involve a vulnerable agent who has some pressing need, and another agent that is well-placed to meet, or promise to meet, that need, and can charge a high price (literally or metaphorically) for doing so. Where someone is in desperate need for food, a seller can charge an extortionate price. Where someone is in desperate need for a place to stay, a landlord can exploit this situation by making accommodation conditional on sexual favours. From such examples, and as has been hinted at in previous chapters, it's clear that dependence relationships are fertile ground for exploitative interactions: if A depends upon B, then B can make playing their role in A's plans conditional on A acting in certain ways, to the benefit of B.

Given this, it's unsurprising that a number of theorists (Miller, 2010; Risse and Wollner, 2014; 2019; Garcia, 2013; 2018) have made the notion of exploitation central to their theories of trade justice. The international economy is characterised by stark inequalities of wealth and power, and as globalisation has intensified, increasingly the fate of extraordinarily wealthy agents has become intertwined with the livelihoods of the global poor. As barriers to international trade and movement fall, the opportunities for international exploitation increase. At the governmental level of trade, states are of radically different sizes and levels of wealth and, because trade relationships are created and shaped by inter-state bargaining, there is ample opportunity for the powerful to use their economic power to exploit weaker states. Indeed, not only is it possible, but exploitation-based authors have emphasized that the trade regime we have today is characterised, perhaps even typified, by exploitative interactions between states (see e.g. Miller, 2010, 77-81; Garcia, 2018, 66-105). For Richard Miller, Frank Garcia, and Mathias Risse and Gabriel Wollner, trade justice amounts to non-exploitation: Risse and Wollner are representative of this view when they assert that "the distribution of gains from global trade is just only if they have been obtained without exploitation" (Risse and Wollner, 2019, 106).

While the non-exploitation theorists identify an important pathology that can affect trade relationships, as theories of distributive justice they are both unconvincing and incomplete. There are three related reasons for this. First, it is not clear that the notion of exploitation is easily operationalised at the governmental level of trade, particularly given how decisions at the governmental level of trade interact with the transactional level. Second, each of the exploitation-based accounts put forward thus far fails to develop an account of exploitation which could be action-guiding in the right way. Different theories come up short for different reasons on this score: while Miller's approach raises less conspicuous problems than the 'ecumenical' approaches of Garcia, as well as of Risse and Wollner, none of the authors provide an account of exploitation in trade governance that can get us beyond our intuitive judgements. Finally, and relatedly, as argued by Helena De Bres (2019), exploitation-based accounts must ultimately rely upon a more basic understanding of what counts as 'fairness' in trade. Attempts to develop an account of trade justice in terms of exploitation, rather than fairness, end up putting the cart before the horse.

First, an interesting commonality between Miller, Garcia, and Risse and Wollner, is that each of their accounts treats exploitation at the governmental level of trade to be analogous to exploitation at the transactional level. To an extent, this seems perfectly reasonable: at both levels of trade, there are exchanges which can be voluntary and beneficial for each of the parties involved, yet which may nevertheless strike us as unfair. Moreover, at both levels the same sorts of conditions facilitate unfair advantage taking, e.g. asymmetries in information, grossly unequal bargaining power, the leveraging of another party's urgent needs. We might well agree with Garcia when he notes, after looking at a number of real and hypothetical inter-state interactions, that "there is a deep coherence between our individual experience of trade, and its pathologies, between private parties; and our shared public experiences of trade, and its pathologies, between states" (2018, 41).

Yet there are a number of challenges to operationalising the notion of exploitation at the governmental level of trade. One stems from the *differences* between exchanges at the transactional level and at the governmental level. Another stems from the *interaction* between exchanges at the two levels. With respect to the differences between the two levels, bargains at the transactional level (typically) involve a market exchange of goods or services for money, whereas bargains at the governmental level (typically) involve an exchange of market access terms, which are subsequently codified in each state's rules. At the governmental level, no produced goods are exchanged, nor is there any competitive market where terms of market access are traded. This means that, in making judgements about exploitation at the governmental level, we have no recourse to the sorts of baselines which we might use to determine whether a bargain is exploitative at the transactional level, such as the cost of production of a good, or the price it would receive on a competitive

market (see e.g. Reiff, 2019; Wertheimer, 1999). Without such a baseline, it is not obvious how we are supposed to determine when a particular bargain is exploitative, or when advantage-taking becomes ‘unfair’. Added to all this is the complication involved in making a judgement about what would count as an exploitative exchange in the context of a multiparty arrangement such as the WTO, where all 164 members will receive a different profile of gains and losses.

In their most recent work, Risse and Wollner (2019) do attempt to identify a particular baseline against which to judge outcomes, namely the baseline of ‘reciprocity’. They understand reciprocity in trade to require the proportional satisfaction of cooperation-relevant claims amongst trade partners, where the relevant claims are based on the provision of benefits, and bearing of costs, between trade partners (Risse and Wollner, 2019, 94). Without further specification of what counts as a cooperation-relevant claim, however, and an explanation of how we ought to interpret proportional satisfaction in the context of states’ different needs and starting points, this account of reciprocity does not give us an operationalisable baseline.⁵⁰ To see this, take Risse and Wollner’s own brief discussion of what makes the WTO exploitative. They mention the founding of the WTO, which was portrayed as a ‘grand bargain’ between developing and developed states, where developing countries were to receive enhanced access to developed-country markets in agriculture and textiles, in return for accepting a plethora of new rules and disciplines in areas such as services and intellectual property which “allowed developed-country industries to penetrate developing-country markets” (Risse and Wollner, 2019, 140) Risse and Wollner assert that the gains from liberalisation in agriculture have largely failed to materialise, however, and they further note that, at least according to an UNCTAD report from 1999, developing countries were still losing out \$700 billion annually from developed-country protectionism. From this, Risse and Wollner suggest that the WTO agreements “impose an unfair arrangement on developing countries” (Risse and Wollner, 2019, 149).

But, while this seems intuitively plausible,⁵¹ it’s not clear what would count as a fair arrangement on Risse and Wollner’s terms. First, note that, while they criticise the above-mentioned developed-country protectionism, they fail to note that developing-country protectionist barriers are significantly higher than their developed-country counterparts (Irwin, 2005, 162; Bown, 2010). If we are to judge reciprocal treatment between developing and developed countries within the practice of trade, this must surely be a part of our calculation. Second, nowhere do Risse and

⁵⁰ One of the disappointing aspects of Risse and Wollner’s otherwise impressive book is that, despite its length (over 250 pages), only 2 pages (94-95) are given to the elaboration of their trade-specific conception of exploitation, which is supposed to be the core of their account.

⁵¹ See Chapters 5 and 7 for discussion.

Wollner lay out what level of trade liberalisation developed countries would have to commit to in order to treat developing countries reciprocally.⁵² At one point, they criticise the WTO (or, more precisely, the member states which constitute the WTO) because it “has not benefitted the poor as much as it could have” (Risse and Wollner, 2019, 140). While doubtless true, that is not the same as claiming that the poor have not received a proportional satisfaction of their claims, relative to that received by developed countries, which is a far less demanding standard. To meet this latter standard, what has to hold true? For example, in the last thirty years, the greatest increase in relative incomes globally have, with the exception of world richest 1%, fallen to developing countries, whereas the working- and middle-classes in developed countries are no better off than they were thirty years ago (Milanovic, 2016, esp. 11). A rich country like Japan has suffered from long-term economic stagnation while countries like Botswana, Vietnam, and Cambodia have experienced impressive levels of sustained economic growth (Panagariya, 2019). While not all of this has been caused by trade, it is more than plausible to think that, over recent decades, developing countries as a whole have benefitted far more than developed countries have from their participation in the WTO. In this sense, it is not obvious that developing countries really haven’t received a proportional satisfaction of their trade-based claims via participation within the WTO. Risse and Wollner appear to think that developing countries have been treated inequitably in the trade regime. As it happens, I agree with this conclusion. The problem is not Risse and Wollner’s conclusion, but that their account is unable to explain this inequity.

The other difficulty with operationalising exploitation at the governmental level relates to the interaction between that level and the transactional level. Given that the outcomes produced by any given trade relationship are significantly underdetermined by the terms set at the governmental level, how do we come to judgements about whether interactions at the governmental level are exploitative? We might base judgements of exploitation on the distribution of benefits that ultimately results from a trade relationship, which will hinge in large part on the economic decisions of actors at the transactional level. If this is the position taken, it’s not clear that our account is an exploitation-based one at all, insofar as it doesn’t require ‘advantage taking’; all it requires is a certain inequitable outcome. If, instead, we base judgements of exploitation on the extent to which states intentionally or foreseeably engage in wrongful self-enrichment at the expense of weaker states, we risk tolerating gross asymmetries in the distribution of benefits of trade simply because they were unintended by the states involved. The root problem here, I take it, is that what we ultimately care about, morally-speaking, is what happens to individuals, and we only care about

⁵² Tellingly, Risse and Wollner are far more concrete about what exploitation involves when they discuss exchanges at the transactional level (see Kniess, 2020).

interactions between states insofar as these pertain to individuals' lives. The fact that a state was treated exploitatively, however, does not necessarily entail that their citizens were treated inequitably.

An example which brings out these difficulties might be China's accession to the WTO. While WTO members required particularly onerous concessions on the part of China, compared to what other developing countries have been required to sign up to, there are good reasons to think that these concessions may have ultimately benefitted China's citizens, not only relative to non-membership of the WTO, but also relative to what would have presumably counted as fair treatment (Hopewell, 2016, 132-133). This possibility is explained by the 'irrationality' of states' approaches to trade negotiations, where they typically treat trade liberalisation which would benefit themselves as a 'concession' that they make to others (Krugman, 1997). When China joined the WTO, they were required to concede a considerable amount of market access, thereby substantially reducing the barriers to trade and investment between themselves and the world. This benefitted China greatly, as it made China more attractive for foreign investment, gave them cheap access to intermediate goods to use in manufacturing, and subsequently helped it to become the 'workshop of the world', and today the world's largest exporting country. So, while WTO members may have acted exploitatively towards China, China and their citizens may be better off as a result of their onerous accession process, not just compared to a non-trade baseline, but compared even to a non-exploitation baseline. It's unclear to me how the exploitation-based theorists should view cases of this sort.

Moving on to the second shortcoming of exploitation-based accounts. A limitation of each of the specific exploitation-based approaches to trade justice advanced (so far) is the failure to commit to any specific discriminating theory of exploitation at all (discriminating in the sense that it can 'discriminate' between exploitative and non-exploitative exchanges). Unless we have such a theory, an exploitation-based approach to trade justice will not provide guidance for how states should act. This issue comes up in different ways for different theorists. Let's start with Richard Miller's account, and then move onto Risse and Wollner's.⁵³

Richard Miller's account of trade justice hinges upon "an account of reasonable deliberations" amongst states, which he takes to be "the proper basis for assessing the justice of the current arrangements" (Miller, 2010, 70). Miller argues that rich countries take advantage of poor countries

⁵³ I won't discuss Garcia's account, as he endorses Risse and Wollner's ecumenical approach, so the same criticisms apply to him, even including the problem of using Steiner's historical account of exploitation alongside non-historical accounts, such as Goodin's (1987).

if the outcome [of their trade negotiations] seriously departs from what could result from reasonable negotiations, i.e. negotiations in which the mutually respectful offering and assessment of reasons for alternative proposals leads to the willing acceptance of a shared commitment by all.

(Miller, 2010, 70).

For states' joint commitments to be properly considered the outcome of reasonable deliberations, Miller identifies three sets of responsibilities which all participants must meet. First, states have a responsibility of good faith towards one another in their reasoning, which requires each state to seek arrangements which all other states can responsibly accept, and further requires each state to observe reciprocity in their reasoning, including by "giving weight, in proportion to seriousness, to relevantly similar reasons offered by others" (2010, 72). Second, states have a responsibility to those they represent, and so fulfilling this duty means only accepting outcomes which they can justify to their own citizens in terms which their citizens could accept. Third, citizens in each state have responsibilities to fulfil their own duties, both to compatriots (through supporting and upholding the conditions of domestic justice) and non-compatriots (by supporting, or at least not objecting to, just international policies).

The picture of reasonable deliberations Miller sets forth is an attractive one; my own account of distributive justice in trade, developed in the next chapter, builds upon a similar picture of states in trade as holding dual responsibilities, towards their own citizens and towards their trade partners.⁵⁴ It seems plausible to think that how states are entitled to act in the context of their trade relationships is a function both of their reasonable partiality towards their own citizens, as well as the relative urgency of their own and their trade partner's needs. Yet in order to help us come to relatively precise judgements about justice in trade, far more needs to be said about what sorts of outcomes count as reasonable, and what sorts of outcomes states can responsibly accept; without further specification, it is not clear that Miller's account can provide action-guidance beyond ruling out intuitive cases of justice and injustice. Certainly, it can tell us that each state should benefit from trade (Miller, 2010, 73), insofar as this is required if states are to be able to responsibly justify to their citizens the loss of sovereign prerogatives that comes with participation in trade. In addition, it is surely right that "in the absence of serious reasons to the contrary, the poor will be favored" within reasonable deliberations of the kind described, given the relative urgency of their claims (Miller, 2010, 74). This latter conclusion, coupled with the requirement for reciprocity in

⁵⁴ Insofar as I'm considering the duties of states, I don't discuss the third duty, and simply assume it throughout the discussion.

reasoning mentioned above, is enough to criticise elements of the current trade regime (2010, 77-81), so Miller's account is not certainly without any critical purchase. Still, it is largely silent on the balance of concessions and gains that would be acceptable within negotiations between rich and poor countries.

Moreover, Miller's account tells us little about how we ought to weigh the interests of poor countries against one another, nor about how poor countries themselves ought to weigh their respective interests against their trade partners'. Miller acknowledges that the standards of reasonable deliberations which he puts forward will be difficult to apply in cases where there are "conflicting considerations of need and vulnerability" (2010, 74). One must assume that such cases will be very frequent in trade, so the ability to resolve them satisfactorily will be essential to any action-guiding theory of trade justice. Miller suggests that we might resolve such cases by an appeal to a veil of ignorance, in order to impartially assess the relative weight of the competing concerns at stake. There is a degree of ambiguity in this suggestion, as Miller does not specify precisely who ought to make use of a veil of ignorance device in their reasoning. Presumably, it is trade negotiators, seeing as Miller believes a model of reasonable deliberations between such negotiators is the appropriate basis for judging outcomes. If this is correct, however, it is difficult to decipher the relationship Miller envisages between the veil of ignorance (which entails impartial assessment) on the one hand, and states' responsibilities towards their own citizens (which entails special concern) on the other. If states have a responsibility to deliberate partly on the basis of their special concern towards citizens, then it would be inappropriate for them to deliberate on the basis of impartiality (particularly in cases where it is the state's citizens' own needs which are at stake). Alternatively, if states can fulfil their duties towards their citizens within deliberations simply by adhering to impartial reasoning throughout the deliberation, then it is not clear what differentiates Miller's account of reasonable deliberations in trade from deliberations which would occur entirely from behind a veil of ignorance. In any case, Miller does not give any suggestion of how states ought to weigh competing interests from behind such a veil of ignorance, so we are again left with little action-guidance from his account.

The problem with Risse and Wollner's (2014; 2019) account of trade justice is quite different. They opt for an 'ecumenical' approach to defining exploitation: rather than defending one account of exploitation and critiquing the others, they suggest that different accounts of exploitation can tell us different ways in which an exchange can be defective, and that many such accounts can be incorporated into our theory of trade justice. They draw an analogy here with judgements of what is wrong with material inequality (Risse and Wollner, 2014, 216). We might come to the conclusion that material inequality is objectionable because it undermines citizens' equal standing in public

life. But, Risse and Wollner suggest, this need not be the only consideration which leads us to the view that material inequality is objectionable. Equally, where we find cases of objectionable inequality which do not threaten citizens' equal standing, that does not undermine the force of the equal standing objection to material inequality. So it is, Risse and Wollner believe, with the different accounts of exploitation.

There is a key difference between the material equality case and the exploitation case, however; in the case of material inequality, we are coming to several different judgements about *why* a specific outcome is wrong. In the case of exploitation, by contrast, we are dealing with a case where there are different judgements about *what exploitation is*. This hints at the basic problem with the ecumenical approach: because there are so many different accounts of exploitation, we can expect them to frequently produce directly contradictory judgements concerning whether an exchange is exploitative.⁵⁵ To see this, take two of the accounts that Risse and Wollner explicitly suggest can be incorporated into their ecumenical approach: Hillel Steiner's (1984) account of exploitation, and Nicholas Vrousalis' (2013). For Steiner, exploitation occurs when an agent, B, gains more from an interaction with another agent, A, than they would have in the absence of some previous rights violation. The exploited party may be the one who has suffered the rights violation; if A was kidnapped by B, and then forced to work in slavish conditions by B, A's rights have been violated, and A has subsequently been exploited following on from this rights violation. However, the rights violation in question could happen to another agent, C, who is not a party to the exploitative transaction in question. Where C's rights have been violated, and where this rights violation prevents C from offering A better terms than B does in fact offer A, then if A accepts B's offer because no better offers are forthcoming, B may be said to have exploited A. This is because B has taken advantage of the opportunity afforded by the prior rights violation suffered by C, in order to extract a better deal from A. In such a case, B exploits A, but the conditions which mean that this exchange is exploitative lie in the fact that C has previously suffered a rights violation. On this picture, exploitation is not a bilateral phenomenon, but rather a trilateral one, involving three distinct roles – the exploiter, the exploited, and the party who has suffered the rights violation (Bajaj, 2015). On this account, then, determinations of exploitation always have a historical component.

⁵⁵ The more accurate analogy, then, would be between different types of equality, e.g. starting-gate equality vs equality of outcome. It is clear that these pull in different directions, in the same way as some exploitation-based accounts do; see below.

Now, take Nicholas Vrousalis' account, where exploitation entails domination for self-enrichment.⁵⁶ Here, exploitation involves a more powerful agent instrumentalising the vulnerability of a weaker agent in order to extract gains from the relationship (Vrousalis, 2013). Vrousalis believes that B dominates A when B has subordinating power over A. B holds subordinating power when they are capable of getting A to do what they want through affecting A's interests in ways which constitute an injury to A's status. So when A is dominated, A is better off acquiescing to what B wants than they are through any other approach; A's optimal strategy is to act subordinate or servile to B (Vrousalis, 2016). And, when B takes advantage of the fact that A optimises through servility to B's wishes, and leverages this in order to enrich themselves, B exploits A. On this account, the wrong of exploitation stems from the disrespect shown to the weaker agent within this relationship, as their equal status is not recognised and acted upon. Importantly, for Vrousalis, it makes no difference to our judgements of exploitation how the exploited party ended up in a position of vulnerability to exploitation. History, then, plays no role in determining whether a relationship is exploitative on Vrousalis' account.

Given their fundamentally divergent starting points and conclusions, Vrousalis' and Steiner's accounts of exploitation will come out with very different judgements not just in marginal cases, but in a great many economic exchanges. This is a serious problem for Risse and Wollner's approach. Risse and Wollner are, of course, aware that there will be conflicts between what the distinct accounts say and suggest that this need not be terminal for their account; rather, we could say that for an interaction to be non-exploitative, it may have to come out as non-exploitative on a number, perhaps all accounts of exploitation (Risse and Wollner 2014, 216 fn19). The upshot of Risse and Wollner's approach is that there may be far, far more exploitation in the world than less capacious conceptions can account for; it may be that almost every interaction may carry some taint of exploitation. Again, Risse and Wollner recognize this, saying such a conclusion "may not be altogether bizarre" (2014, 221). It may not be bizarre, but it is unhelpful. A theory of trade justice should give us the tools with which to evaluate, critique, and guide the actions of states in trade; where most or all of states' economic interactions come out as exploitative on at least some counts, we've muddied rather than illuminated what justice requires of them. This issue is only exacerbated by the imprecision of their account of reciprocity (see above), and their claim that agents in trade have duties to not only 'refrain from violating', but also to 'respect', and 'support'

⁵⁶ It's worth specifying that Vrousalis is concerned strictly with economic exploitation; he does not address what non-economic exploitation may involve.

non-exploitation in trade (Risse and Wollner, 2019, 106-107). The ecumenical exploitation-based approach, then, is far too expansive, and too indiscriminate, to serve as a guide to action in trade.⁵⁷

It might be responded that, while none of the exploitation-based approaches developed thus far can serve as an action-guiding theory of trade justice, this does not rule out exploitation-based approaches entirely. However, there is good reason to think that our theory of trade justice should not be exploitation-based. The problem such accounts face is that, fundamentally, they will be incomplete as theories of distributive justice. As Helena De Bres has argued recently in a searching critique, exploitation-based approaches are incomplete in both a normative and a theoretical sense (De Bres, 2019). Normatively, exploitation fails to capture a number of concerns which we would hope a theory of trade justice could account for. For starters, it fails to account for what we might call marginalisation, where a state is part of the trade system, but because of their own starting positions and the rules which regulate international trade, they are unable to expand their level of trade, and thus they are not able to gain from their participation. The exploitation account cannot explain why it would be wrong to take advantage of a state in this situation, but it cannot explain the wrongness of the initial situation. Equally, exploitation-based accounts will have a hard time saying anything about what, if anything, is wrong with lop-sided distributions of gains and losses between states where this was not a result of any state taking advantage. Such lop-sided outcomes might arise where a rich state distributes far more capacity-building aid to one trade partner than another, equally badly-off trade partner. It might also occur where some developing state with little power over outcomes within the trade regime nonetheless benefits substantially more than a worse-off developing state. Such interactions are presumably subject to some standards of justice, but exploitation-based accounts will be silent on such matters. By taking exploitation to be the heart of trade justice, then, “we are liable to omit or distort significant moral concerns” (De Bres, 2019, 188).

The theoretical problem runs deeper still, and gets to the heart of why we should move exploitation off centre stage in our theories of trade justice. Exploitation accounts are theoretically incomplete, De Bres argues, because they are ultimately reliant upon a background theory of fairness, one which tells us what counts as fair treatment. Without some substantive account of fairness, we cannot determine whether ‘advantage taking’ is ‘unfair’ in any given instance. Conversely, once we have a substantive account of fairness, we don’t need to appeal to exploitation in order to identify

⁵⁷ It may still be a useful account insofar as it gives us a language with which to explain our judgements about trade justice, however: Risse and Wollner do discuss policies which trade justice requires in terms of the exploitation-based account in (2019). The problem is that their account doesn’t do any work in *identifying* what is required by justice.

what justice requires. In this sense, fairness is the more basic of the two ethical concepts, and it is the one which ultimately explains and justifies our judgements of exploitation (De Bres, 2019, 187). On that basis, we will now turn our attention to the most prominent sort of fairness-based account of trade justice.

3.3. Equality-Based Approaches: Internalist

Where theorists have developed conceptions of fairness in trade, they have typically adopted an equality-based⁵⁸ approach of one kind or another. Following a recent paper by Andrew Walton (2020), we can divide equality-based approaches of trade justice into two sorts: internalist and integrationist. As the name suggests, internalist approaches treat the demands of trade justice as being internal to the practice of trade, in the sense that the duties and claims of participants can be determined without reference to the other duties and claims that they bear. In the words of Aaron James (an internalist about trade justice), “in order to focus on internal issues, we adopt the working stipulation that there are no external issues. We assume there are no underlying issues of human rights, poverty relief, environmental protection, or of any other external kind, until explicitly indicated otherwise” (James 2012, 145). In contrast, integrationist approaches integrate the demands of trade justice with the demands from other spheres of social and political life. Integrationist principles, because they consider the benefits and costs of trade in the context of other considerations, are “more directly sensitive to a wider array of moral concerns” than internalist principles (Walton, 2020, 52).

How integrationist or internalist a theory is will be a matter of degree: an account of trade justice might integrate trade justice demands with a few other areas (e.g. domestic justice, or international investment and finance), with all other areas (the fully integrationist picture), or with none at all (the fully internalist picture). Equally, there are at least two different senses in which an account might be internalist (or integrationist). A theory might be internalist in the sense that it analyses trade as a separate domain of activity, which generates distinct principles of justice; let’s call this ‘analytic internalism’. This thesis is reasonably internalist in terms of its analysis, in that it looks at trade in isolation from many other areas where states may have duties. A theory might also be internalist in the sense that the distributive principles arrived at are not sensitive to participants’ positions outside of the relevant domain of activity, in our case trade. We might call this ‘outcome internalism’. This contrasts with ‘outcome integrationism’, where our distributive principles are

⁵⁸ I opt to call them equality-based, rather than egalitarian, because the internalist approach need not conduce to equality on the whole, and I think the term egalitarian should be reserved for approaches which do so conduce.

sensitive to features of states' positions other than their trade relationships. In this and the following section, we're concerned with evaluating outcome internalism and outcome integrationism, respectively.

The nature of the equality that outcome internalists and outcome integrationists advocate for differs markedly. While outcome internalism about equality supports the equal distribution of benefits and burdens that are attributable to trade, outcome integrationism argues for the effects of trade to be distributed "in a way that conduces to the achievement of equality more broadly conceived (e.g., by offsetting other inequalities)" (Christensen, 2018, 115). In this section, I'll discuss Aaron James' outcome internalist approach. I'll show that this account, and any account like it, will present neither a workable nor an attractive vision of trade justice. In the following section, I'll reject integrationist equality-based approaches, for being either implausibly weak, or else both infeasible and unmotivated as claims to make on the basis of trade relationships. Taken together, these two sections show that we have good reason to reject equality-based approaches to trade justice.

Aaron James

Perhaps the most prominent account of distributive justice in trade, James (2012) puts forward an internalist, equality-based approach.⁵⁹ As discussed in section 1.4., James conceptualises the trade regime as a social practice of mutual market reliance, cooperatively upheld by states for the purposes of mutually augmenting their national incomes. According to James, the income gains from trade are best construed as being gains from cooperation, for two reasons. First, the gains from trade can only be produced if participating states provide sufficiently credible assurances to one another that their trade partnership will be reliable. Second, James believes that the gains from trade are generated not primarily as a result of individual states' policies, but rather by the macro-economic effects of how states' comparative advantages interact. Provided states give sufficient assurance of their reliability, it is the differences between states, and their respective endowments, which produces a surplus over what states could achieve in autarky. Because he believes the gains of trade are best seen as cooperatively-created, rather than the product of states' own domestic decisions, James argues that trading states have no entitlement to keep the gains that fall to them over and above what would count as an equitable share of the gains from inter-state cooperation.

⁵⁹ For similar approaches, see Herwig and Loriaux (2014) and Brandi (2014).

James believes that being treated equitably within a cooperative practice requires *equality* when three conditions are met: 1) the relevant agents are morally equal, 2) each agent has a similar interest in greater rather than lesser shares, and 3) no agent has a special entitlement to any particular level of gain (2012, 168). These three conditions, James suggests, hold in the case of states' participation in trade. As a result, the default fair division of the gains from trade is equality; "[a]n unequal division of gains", James says, "would arbitrarily discriminate against countries that receive lesser shares over time" (169). It's important to note that James does not conceive of equal gains from trade in terms of equality in gross income gains. Instead, states are treated fairly (i.e. equally) when the basic productive capacities that they are bringing to the table, i.e. their 'background endowments', are translating into income gains at the same proportional rate as that experienced by all other trading states over some extended period of time (James, 2012, 222). So, where state A has twice as many background endowments in autarky as neighbouring state B does, then A is entitled to twice as great a share of the gains created by their trade relationship as B.

While his approach is both novel and illuminating, I'll identify two sorts of problem with James' approach.⁶⁰ The first is that, because he does not tell us how demanding states' trade-based duties are, relative to their domestic duties, James' account cannot tell us how states ought to act. The second is that outcome internalism is both conceptually and normatively difficult to justify. While there are no other outcome internalist approaches as prominent as James', it appears that these two problems generalise: internalists will at least have to integrate trade justice with domestic justice, and they will at least have to be somewhat integrationist when it comes to determining what distribution of gains from trade are just. Taken together, these points push us towards a (more) integrationist approach to trade justice.

First, the issue of how to weigh demands of domestic and trade justice against each other. A good way to see why it is problematic to develop a theory of trade justice without any discussion of such weighing is to note an ambiguity in the word 'entitlement'. In justifying the assumption of equality in trade, James spends some time arguing against various arguments that might be made in favour of states' having an entitlement to a greater than equal share of the gains (2012, 174-179). He considers, and rejects, the view that states are entitled to a greater share on the basis of their relative contribution to the gains from trade: James argues that these gains are best understood as the product of cooperation which facilitates a more efficient allocation of states'

⁶⁰ I limit my discussion of James' distributive principles here to his principle of international relative gains (2012, 18), as this is the equality-based element of his account. See also Risse and Wollner's (2013) arguments that the principle of international relative gains is the only one of James' three principles of distributive justice which actually follows from his arguments in favour of structural equity in trade. The other two principles that James puts forward are a principle of collective due care between states, and a principle for distributing the gains from trade domestically.

collective productive endowments (see previous page). He also rejects entitlement claims to a greater than equal share where such a claim is grounded in a belief in natural property rights. James argues that both the individual and the collective versions of natural property rights claims fail to map on to the how income gains are generated through states' participation in trade. As he says, "[i]f the gains of trade are owned at all, they are owned in common by the countries that trade. No person, firm, class, or country can claim to have created the greater level of wealth 'with its own bare hands,' independent of the international relationship" (James, 2012, 177-178).

A sense of entitlement which James fails to consider is whether states might be entitled, i.e. *permitted*, to show reasonable partiality towards their own citizens with respect to how they distribute the gains from trade that fall to them. This is not a question about a state's contribution to trade, or about the inviolability of their property rights; it's a question about whether, and to what extent, a sovereign should show special concern to those over whom they rule. One reason that we might think a state is *prima facie* permitted to keep the trade gains that fall to them is because they have demanding duties to their citizens, and the state can better fulfil those duties if it keeps a greater share of the gains from trade than it may necessarily deserve, or have created 'with its own bare hands'. States will want to keep a greater than equal share of trade gains because, as James himself notes (2012, 167 fn.3), national income gains are a primary social good: they are something states should want, whatever else they have reason to want. Increased income contributes to the ability of citizens to meet their needs, and, through an increased tax take, national income gains enhance the state's abilities to provide public goods and necessary infrastructure to ensure that justice is realized.

James would doubtless concur that states do have demanding domestic duties to fulfil. Moreover, all but the most radical cosmopolitans would agree that states can show special concern to their own citizens in at least some instances. Of course, as we've already seen in section 2.2. and 2.3., it will not always be acceptable to prioritise domestic justice over trade justice, and there are instances where putting trade gains to use in fulfilling domestic duties will be unjust. But, where gains above equality fall to a state as a result of voluntary, admissible exchanges at both the governmental and the transactional level, and where using these gains to pursue domestic justice would not set back urgent international duties, James does not explain why the state would not be permitted, all things considered, to use these gains for the pursuit of domestic justice. Insofar as national income gains can often, if not always, be put to good use in furthering domestic justice, there will often be a conflict between doing so and furthering trade justice. For this reason, an action-guiding theory of trade justice must give some account of how trade justice claims are to be weighed against domestic justice claims, at least if income gains are a part of the distribuendum of trade justice.

The lack of any weighing between domestic and trade duties is not the only internalist element that generates problems within James' account. The argument for outcome internalism about equality faces both conceptual and normative problems. First, the conceptual difficulties. To mark some economic product as 'gains from trade', we need to distinguish this economic product from 'non-trade gains'. The difficulty with doing so is that domestic decision-makers will react to the opportunities and risks generated by their participation in trade, and different states will do so in different ways. This makes it difficult, if not impossible, to delineate a set of background endowments which entitle a state to a certain share of trade gains, in a way which doesn't include endowments that have been created or nurtured by a state's social and political decision-making. The more we must attribute greater or lesser shares to states on the basis of their own domestic decisions, however, the less work that James' presumption of an (endowment-adjusted) equal distribution does.

On some level, James is aware of this problem. That is why, for the most part, when James talks about background endowments, he seems to have in mind material resources that states have, such as their population, arable land, and production technologies (e.g. James, 2012, 168, 202, 222). However, James also argues that we must consider differences in domestic states' work-life balances to be part of each state's background endowment: that Americans accept less leisure time and work longer hours than French citizens gives them a claim to gain more from trade (2012, 185). This move is important, but it is a move that James cannot make without significantly diluting his presumption in favour of equal gains. To see why this move is important, it is enough to note that working harder and accepting less leisure time is indeed a legitimate (if overridable) grounds for gaining more from a cooperative practice than another participant.

But the move undermines James' theory because it goes against the claim that trade gains are "essentially the fruit of international social cooperation" (2012, 20). The work-life balance of a society is determined by a society's social and political decisions, whether these are formal rules, or informal cultural norms. If a state's decisions with regards to its collective work-life balance grants that state a greater share of gains from trade, then for the same reasons we'd have to grant states a greater shares of trade gains on the basis of prudent or far-sighted investment decisions, or industrial policies, educational initiatives to increase students of STEM subjects, and so on. Indeed, even the availability of material technologies, the value of land, and a state's population are greatly affected by domestic political and social decisions (see Miller, 2007, 56-62). The problem, in essence, is that the relationship between a state's productive capacities and its political decisions are too tightly wedded for James to grant states an entitlement claim from the former but not the latter.

Finally, the outcome internalist approach is normatively unattractive. Here, it is important to reiterate that for James, the limited aim of the trade practice is to “improve upon endowments[...]rather than to redistribute the benefits of those endowments as such” (James, 2012, 222). Equal (and equitable) treatment in trade requires all participating states to benefit to the same degree from their participation in trade.⁶¹ The problem with this position is that, at whatever time we decide to start calculating the gains from trade, there will be some countries which start off significantly wealthier and with far more endowments than others. The implication of James’ view is that poor countries with less endowments must accept a lower share of the gains from trade than their wealthier counterparts. If those endowment-poor countries gain more from their participation in trade than what would count as their fair share, there is a presumption that those countries must redistribute their wealth (or, alternatively, support institutional changes which would reduce their future income gains) for the sake of countries who have benefitted proportionately less from trade. While this might seem reasonable, note that, on James’ internalist account, where a rich country remains stagnant, or only grows marginally for a long period of time, the endowment-poor country might have to redistribute wealth towards their wealthier, but slower-growing trade partner.

To give a concrete example, take the benchmark suggested by James for when we might start calculating trade gains: the post-war foundation of the modern trading system (James, 2014). James suggests that this marks a pragmatically plausible time from which we might identify the gains attributable to trade over and above states’ respective background endowments. Among the most impressive stories of development during this time have been the Asian Tigers: Singapore, South Korea, Hong Kong, and Taiwan. These states were, at the onset of the era, wealth and endowment poor. On James’ account, insofar as they have gained far in excess of what equality would allow, these states would be required to support redistributive policies which significantly disadvantaged themselves. In contrast, countries that were already well-off at the onset of the postwar era, such as Australia, the UK, or the US, would be entitled to keep a far greater portion of their own gains from trade. Indeed, if any rich country gained less than what James’ equal improvement standard would require, they would in fact have redistributive claims against others, including against high-performing developing countries. This conclusion is, I take it, unattractive to most people. The

⁶¹ While James allows some inequalities which work for the benefit of the worse-off (James, 2012, 222-224), I agree with Walton (2020) that James’ reasoning here is somewhat *ad hoc* in that there is no explanation for why the internalist picture of justice gets adjusted in the specific case of poverty, but not for any other sort of external concern. Put another way, James can only justify greater benefits to worse-off countries by smuggling some integrationism into his internalist account. Moreover, from the discussion of the deontological nature of the demand for equality, it is clear that James views the acceptability of deviations from internalist equality as limited in scope (James, 2012, 135-140).

reason it is unattractive is because it is implausibly insensitive to the relative urgency of different states' needs, and their current capabilities in realizing justice. This is a problem that James' account faces, but it also seems like it would apply to internalist approaches more generally. In order to develop a theory of justice that we have reason to support and pursue, we must recognise that the gains from trade are only valuable insofar as they mesh with, and contribute to, the realization of justice more broadly. This takes us to the integrationist approaches.

3.4. Equality-Based Approaches: Integrationist

Outcome integrationism about equality in trade is the view that the gains produced by or within trade relationships ought to be distributed so as to conduce towards international equality. Here, I'll only consider relational versions of outcome integrationism: on such views, there is something about the trade relationship which grounds a duty to bring about equality between participants; typically, this ground is taken to be the combination of cooperation and non-voluntariness (e.g. Moellendorf, 2009; Suttle, 2017; and, more non-committally, Christensen, 2018).⁶² Because of the vast differences in wealth between states in the world today, the integrationist equality-based approach entails that some states must gain far more from their participation in trade than others, in order to catch up with other states. In this sense, integrationist equality-based positions are markedly different from James' internalist approach.

There are both demanding and undemanding versions of outcome integrationism about equality. With regards to the more undemanding readings, trade justice requires that the trade regime conduces to equality in the long run. Ethan Kapstein's (2006) account of trade justice is at this end of the spectrum.⁶³ Kapstein adopts a similar framing of the problem of international justice as my own, where justice is built on top of "two distinct social compacts: first, a domestic compact, which provides societies with their basic principles of distributive justice; and second, an international compact, which provides states with the 'background conditions' for the pursuit of their national welfare objections" (2006, 15). One important difference, however, is that Kapstein doesn't engage in any attempt to weigh the demands of domestic and international justice, as I will do in the next chapter: he takes domestic justice to place limits on what we can demand of states

⁶² Christensen suggests that all of the following, if they ground egalitarian duties domestically, also do so in trade: coercion, joint authorship, non-voluntariness, profundity and pervasiveness, and reciprocity (Christensen, 2018, 121-140). Interestingly, the confluence of both voluntariness and cooperation also grounds James' outcome internalist principles.

⁶³ Suttle (2017), insofar as he puts his account of trade justice as a critical endorsement of the general contours of current trade practice, also seems closer to this end of the spectrum. Though see section 1.4., arguing that his account of grounding entails far more demanding duties than he admits.

acting at the international level, but he says nothing about the converse. This position, in part, is motivated by what Kapstein takes to be the feasibility constraints on what we can demand of states acting internationally. He believes that states will be reluctant to comply with any policy which requires them to bear costs in order to benefit others, and for this reason he includes himself in the group of theorists that “look askance on policies that would reduce welfare in a particular state” (2006, 5).

The principle of international justice that Kapstein calls for is a version of international equality of opportunity, where the ‘opportunity’ being equalised is states’ ability to grow at the global average rate (2006, 39). Kapstein’s equality of opportunity does not require states to have an equal per capita income at any time in the foreseeable future, nor does it require individuals in poor countries to have similar life chances as individuals in rich countries. Even if there is inequality between individuals globally, this is not an injustice so long as each state has the opportunity to grow on pace with the global average. For Kapstein, then, international justice does not call for meaningful redistribution from one trading state to another. Instead, he pins a good deal of its hopes on free trade, arguing that free trade “may be viewed as a uniquely suited instrument for promoting international economic justice, for the very reason that it bolsters the growth of the least-advantaged regions in a manner that is welfare-enhancing for all states” (2006, 21). Kapstein contends that free trade can plausibly play a role in bringing about equality because of the thesis of economic convergence, whereby worse-off trading partners can catch up with their more developed counterparts, through learning from previous developmental successes, attracting international investment which seeks greater returns than are available in the wealthy country, and perhaps most important of all, through cheap importation of the latest technology and managerial expertise. Part of Kapstein’s approach is informed by the view that sustained economic growth is “the single best instrument we know for durably improving the lives of those millions who are poor” (2006, 15).

While Kapstein’s focus on mutually-beneficial, self-interested interactions may well be more likely to be acted upon than more demanding theories of justice, it’s not clear that his account can be considered a theory of justice as such. He bases his arguments not in terms of weighty moral reasons for undertaking certain actions, but rather in terms of rich states’ long-term, prudential self-interest: they are better served living in a prosperous world with inclusive economic growth (2006, 44). Yet demands of justice are stringent, weighty demands that cannot easily be put to one side, even where prudence and self-interest would favour doing so. Where these demands are thwarted or neglected, this is an injustice, and injustice is the sort of thing that agents ought to bear reasonable costs in order to prevent. Kapstein does not appear to think that developed states

have any such weighty duties: giving developing and least-developed states the opportunity to grow at the average global rate of growth could, after all, be an incredibly undemanding requirement, depending on the state of the international economic environment.

Moreover, with respect to his adherence to free trade and the gradualism that his approach embodies, whether or not free trade does eventually produce global convergence over time, this will not be for many generations. Actual catch up between the worst-off states and the rest would, on current projections, take hundreds of years; it may even take 100 years just for the very poorest to reach a threshold of \$1.25 a day (Woodward, 2015).⁶⁴ Certainly, it is worth noting the difficulties that might apply to moving towards equality any faster than we currently are; setting up the right conditions to allow states to develop and flourish is no easy task. However, there is a world of difference between justifying persistent inequality to a badly-off state (or individual) by saying ‘we’re doing what we can, but there are many barriers to helping you effectively’, and saying ‘we’re moving in the direction of equality, and that’s enough; over time, your descendants can expect to be as well off as our own’. Demands of justice, then, cannot plausibly be as gradualist as Kapstein’s theory allows. If equality is a demand of trade justice, then it is not enough that outcomes conduce towards equality: they must conduce more swiftly and decisively, to match the urgency of an unmet duty of justice.

Darren Moellendorf (2009) and James Christensen (2018, 115-143) are each sympathetic to the more demanding interpretation of integrationist equality. Because Moellendorf’s argument is more fully developed, I’ll focus on his discussion; again, the arguments against his position should generalise to all demanding versions of outcome integrationist equality. Moellendorf argues for outcome integrationism on the basis of what he calls “the principle of associational justice”:

Duties of justice exist between persons who have a moral duty of equal respect to one another if those persons are co-participants in an association of the requisite kind, one that is relatively strong, largely non-voluntary, constitutive of a significant part of the background rules for the various relationships of their public lives, and governed by institutional norms that may be subject to human control.

(Moellendorf, 2009, 33)

This principle combines with a principle of ‘justificatory respect’, which requires that the rules which structure institutional functioning “can be reasonably endorsed by the persons participating within the institutions” (Moellendorf, 2009, 11). Moellendorf thinks applying the principle of

⁶⁴ This, in part, motivates the arguments in Chapter 5, which can be taken as a further rejoinder to Kapstein.

justificatory respect to the functioning of common good associations will entail that the existence of significant inequalities between fellow participants in such associations is unjust: individuals would not be able to reasonably endorse rules which significantly disadvantaged them compared to fellow participants, for morally arbitrary reasons (such as e.g. the country in which one was born). Because the international trade regime, and the global economic order as a whole, are common good associations of the right kind, “inequalities in the global economy are serious injustices” (Moellendorf, 2009, 42).

It’s not altogether clear how demanding we should read Moellendorf’s arguments to be. There is something of a mismatch between his arguments, on the one hand, and the sorts of cases he discusses and the institutional changes he suggests on the other. From the above, it appears that we should take any non-trivial inequalities between participants in the trade regime to be a serious inequality: his discussion appears to support the idea that, say, a computer technician in Spain has a claim of justice against a doctor in Norway (or, rather, against the institutions which regulate their common association). However, the sorts of cases that Moellendorf uses to motivate the claim that inequalities are unjust tend to centre around great affluence co-existing alongside immiseration, such as comparisons between rural African farmers and Swiss bankers (e.g. 2009, 67, 73-77). The modest institutional changes he canvasses towards the end of his book (2009, 132-153) as responses to global inequality again suggest something more gradualist than his arguments seem to call for.

While Moellendorf makes it clear that inequalities in the trade regime are presumptively unjust, and that rich countries should tolerate some losses, at no point is it made clear how much absolute losses we should expect rich-world individuals to suffer for the sake of realizing global equality, or how decisively they should move towards international equality. This sort of failure to specify the demandingness of a theory is a serious shortcoming, and should not be viewed as a merely pedantic objection: there is a vast difference between a theory that requires states to work towards realizing equality within a single generation, and one that requires states to realize equality in one hundred years’ time. The former will require dramatic levels of redistribution and steep levelling-down on the part of all wealthy states. Perhaps the latter can be achieved by comparably modest reforms in global tax and transfer programs, of the sort that he discusses in his final chapter. Each will come to different judgements about what states have a duty to do, and so what actions we ought to morally condemn. Without clarity about the demandingness of a duty of equality and its weight relative to other duties, outcome integrationist accounts are seriously incomplete as theories of distributive justice (though they may still play a role as ideals to be pursued; see Moellendorf, 2009, 66).

In any case, there are good reasons to reject any demanding interpretation of outcome integrationism about equality, at least as a principle of trade justice. The most demanding interpretations, on which states would have to suffer substantial absolute losses, are simply infeasible, in the sense discussed in the Introduction. Suffering absolute losses may be something that's required by justice, for example to correct for past wrongdoing or to alleviate global poverty, but it cannot be something demanded by *trade* justice. If justice in trade required some states to suffer substantial losses as the price of their participation, states that were motivated by justice would be better off staying in, or returning to, autarky.

Even on the interpretation where states must suffer more modest absolute or relative costs, this is unreasonably demanding as a claim to level against states grounded in their trading activity: it simply requires too much of states on the basis of participation in a (typically) mutually-beneficial relationship. Take a case where very rich country B trades with reasonably rich country, A. Prior to their trade relationship, let's say that B's GDP per capita was £90,000, and A's was £30,000. Once they start trading, B's GDP per capita increases to £95,000 and A's increases to £45,000. A has done very well from this trade relationship, and has done better than B has. We might even stipulate that B willingly accepted terms of trade which made this outcome likely. In a case like this, while the income gap between the two states is still vast, it is nonetheless difficult to see why A has any legitimate justice complaint against B, insofar as A is in a much better position to realize its duties to citizens, who (presumably) have a significantly better standard of living than they did before. If A is easily capable of fulfilling its duties to its citizens, on what basis does it have any demanding claim against B for further benefits?

It might be responded that individuals in A are nonetheless entitled to feel aggrieved that, through no fault of their own, they are significantly worse-off than individuals in B, in a way which gives individuals in B an advantage within their shared association. Indeed, most of Moellendorf's argument is focused on the injustice between individual persons as participants within a common good association. Yet to view the trade regime in such individualist terms is deeply revisionist: it fails to map onto what participation in the trade regime is like (on this point, see James, 2012, 193-201). As noted in Chapter 1, states are the authors, subjects, and upholders of the rules that regulate the trade regime. Not only that, but they are also the ones who mediate the relationship that individuals have to the trade regime.⁶⁵ The precise set of international opportunities and constraints that individuals face at the transactional level will in large part be determined by their

⁶⁵ For an insightful discussion on the importance of this mediating role in international affairs more generally, see Smith (2019)

own state, and its activities at the governmental level. While A's citizens may have some interest in attaining equality with citizens in B, B's citizens have claims which constrain how B's government is entitled to behave in its interactions with the government of A. Once we bring the role that states play in trade back into the centre of our picture, we realise that there is an appropriate response that can be given to A's citizens for their worse starting point than B, even if they do feel aggrieved: 'B's government has special duties towards its own citizens, which means it can show reasonable partiality towards those citizens in the context of its trade relationships. Where benefitting A any further would hurt B's citizens, this provides B's government with good reasons not to provide those benefits' (see also Miller, 2011, 97).

It seems from the above arguments that equality, however defined, is implausible as a demand of distributive justice in trade. To conclude the chapter, I suggest that the attractiveness and popularity of equality-based approaches to trade justice stem from a confluence of two things. First, for the reasons mentioned at the end of section 3.2, we have good reason to want to develop a substantive conception of fair distribution in trade. Equality-based positions are plausible default responses to problems of fair division.⁶⁶ So, in the absence of any worked-out alternatives, it is easy to default to equality in discussions of trade justice. Second, what gives equality-based approaches their intuitive plausibility stems not from equality as a demand of trade justice *per se*, as illustrated by the case of A and B mentioned above, but instead from what moving towards equality between trade partners would likely look like in the world we have today. To be specific, conducting towards equality (i.e. equalisation) will presumably involve lifting worse-off states above their current level, and will require the best-off states to suffer costs, whether relative or absolute. That seems intuitively right to many. The theory of distributive justice in trade that I put forward in the next chapter endeavours to put forward a worked-out alternative to equality-based approaches, and argues for equalisation of a sort, but of a sort which is ultimately motivated by sufficientarian reasons.

3.5. Conclusion

In this chapter, I have discussed and rejected the two most common approaches to understanding the demands of distributive justice in trade. I rejected exploitation-based approaches to trade justice because they are not easily operationalisable at the governmental level of trade, the accounts put forward thus far fail to develop a sufficiently action-guiding approach, and they must ultimately

⁶⁶ Tellingly, part of the argument for equality-based positions is often that there is an absence of any alternative distributive principle (see e.g. Suttle, 2017, 96; James, 2012, 220).

rely upon a more basic understanding of what constitutes ‘fairness’ in trade. For this latter reason in particular, we have good reason to seek a substantive account of fairness in trade, which specifies certain distributive outcomes that states should pursue. The most common substantive approaches to distributive justice in trade are equality-based, in different ways. One approach, associated with Aaron James, adopts an internalist equality-based approach. I rejected the internalist approach because its failure to weigh the demandingness of trade duties against domestic duties means that it cannot be action guiding for states in trade. Moreover, an internalist approach to distributing the gains from trade ends up producing unattractive conclusions. For that reason, the integrationist approach is the more promising of the two. However, neither the demanding nor the undemanding versions of integrationist equality-based approaches are satisfactory as theories of trade justice. I’ve also cast doubt on the idea that equality is a plausible demand of trade relationships in the first place: where each trade partner benefits from a trade relationship, and is easily capable of fulfilling its domestic duties, it’s not clear why a better-off state would have a duty to ensure that the trade relationship conducted decisively towards equality for the worse-off trade partner. To conclude the chapter, I tentatively suggested that we should seek to develop a non-equality-based approach to distributive justice in trade, which could nevertheless account for the intuitive pull that equality-based approaches evidently exert. In the next chapter, I develop a sufficientarian conception of distributive justice in trade which does just that.

Chapter 4: A Shift-Sufficientarian Theory of Distributive Justice in Trade

4.1. Introduction

In this chapter, I'll argue that when states are negotiating the terms of their trade relationships, they must recognise and act upon two distinct thresholds along a single scale, which partly determine what they are entitled to seek from trade partners. The two thresholds relate to states' capabilities to discharge their duties of domestic justice. Below the lower of the two thresholds, states are incapable of discharging basic duties of justice to their own citizens, even in the most auspicious circumstances. Between the two thresholds, states are capable of discharging their duties in auspicious circumstances, but are under significant pressure in doing so, and will often fall short. Above the higher threshold, states are robustly capable of discharging duties of justice to their citizens, provided there is political will to do so. All states fall into one of these three 'brackets'. I'll refer to states below both thresholds as 'Least-Developed Countries' ('LDCs'), states between the two thresholds as 'developing states', and states above both thresholds as 'developed states'.⁶⁷ When a state in one bracket crosses above one of the thresholds, this means they have enough capability either to realize justice in perfectly auspicious circumstances, or else they have enough to realize justice across all nearby possible scenarios. Consequently, there is a 'shift' in their trade partners' reasons for benefitting that state further. Following recent work by Liam Shields (2012; 2016), I label this a 'shift-sufficientarian' theory of distributive justice in trade (see section 4.4.).

States are entitled to different treatment depending on their level of dependence upon trade partners. Their level of dependence, in turn, will be determined by what level of capabilities they currently have to discharge justice, where 'capabilities' represents some combination of income, infrastructure, institutions, and whatever other goods (broadly defined) are needed for effective

⁶⁷ There are conceptual and rhetorical benefits to using these categories as part of our theory of trade justice. It's valuable rhetorically as it maps onto a set of distinctions that is already recognised by states in trade as being of moral significance (see e.g. the WTO's Enabling Clause). States are entitled to special and differential treatment (S&DT) in the current trade regime depending on which of these brackets of development they fall into. The arguments here can be seen to provide both a philosophical basis for S&DT, as well as a criticism of how it is currently practiced (see next chapter). The categorisation is valuable conceptually because the states to whom we owe the most demanding duties are not necessarily the ones who have the lowest income; rather, they are owed to states who suffer multidimensional deficits, something which is better captured by the notion of 'development' than by rival categorisations of states. I do not, however, claim that the current designation of each state is necessarily the correct one: many states that are currently labelled 'developing countries' may, for example, be better thought of as LDCs according to the way I apply the term here, or vice versa, depending on the one's theory of domestic justice.

state functioning.⁶⁸ With respect to these goods, I'll make a simplifying assumption, namely that we can bundle this set of goods together into a single metric, so that it would make sense to speak of states with a higher or lower levels of capabilities to discharge domestic justice (henceforth simply 'capabilities').⁶⁹ The level of a state's capabilities will be a function of how these various goods interact and combine with each other. Even though there will be clear general tendencies (e.g. better infrastructure typically improves a state's ability to realize justice), states' set of institutional and material resources may interact in unique ways. So, while I put forward a set of distributive principles which states ought to follow, what adherence to these principles requires in concrete terms will differ from case to case, and there is room for political judgement in the correct application of these principles.

The chapter will proceed in six further sections. In section 4.2., I argue that a state's distributive duties in trade will be determined by the interaction between reasonable partiality towards their own citizens on the one hand, and the relative urgency of their own and their trade partners' needs on the other. In section 4.3., I suggest there are two ways in which we can accommodate this insight, one where states' duties increase (and claims decrease) continuously according to where they fall on a scale plotting states' capabilities, and another where there are discontinuities along the scale, marked by morally-salient thresholds. I argue that there are conceptual, practical, and normative reasons for favouring the latter approach, and so for setting some thresholds along the scale of states' capabilities. In section 4.4., I suggest that the need to separate states according to some thresholds makes sufficientarianism a plausible basis for our theory of distributive justice. While sufficientarianism as traditionally understood faces a number of well-known problems, Liam Shields' (2012; 2016) reformulation, which he calls 'shift-sufficientarianism', can avoid these. I identify two capability thresholds, and three brackets of states: least-developed, developing, and developed. In section 4.5., I identify the distributive principles which ought to regulate trade relationships between states in each bracket, covering six possible bilateral combinations. In section 4.6., I consider the implications of my account for the phenomenon of preference erosion, before discussing how the principles identified in section 4.5. ought to be applied within multi-party trade arrangements. Section 4.7. concludes.

⁶⁸ I take it that determining precisely what sorts of goods and functionings a state needs in order to discharge any given set of duties is a largely empirical question.

⁶⁹ I use the term 'capability' it in a similar way to Amartya Sen (see e.g. 2001), namely to denote an agent's real opportunities to realize valuable states of being and doing. On my account, the relevant 'valuable states' are various realizations of domestic justice. Note also the affinity between my simplifying assumption above, and the Human Development Index (see Conceição, 2019) which was informed by Sen's work.

4.2. Dependence and distributive duties

As argued in Chapter 1, where an agent is only weakly dependent on a relationship, the other agent in the relationship has significant moral latitude with regards to how and whether they fulfil their role in the other agent's plans: the other agent, after all, has their own morally-weighty projects and plans. When the dependence in a relationship is stronger, and one agent plays an integral role in another agent's plans to realize their core goals or functionings, there is a stronger obligation for the depended-upon agent to play their role in the dependent agent's plans, so long as it is not excessively costly to do so.

In the case of trade, some states are less capable of realizing justice than others, which makes them more dependent upon trade partners for improvements to their status quo than vice versa. In cases where a trade partner is weakly dependent upon another state, this gives the other state some moral latitude in how they behave: the depended-upon state, after all, has demanding duties of justice to its own citizens, and therefore is entitled to show some reasonable partiality towards its own interests within international dealings. Where the state has some moral latitude, then, it is entitled to pursue its own citizens' aims in a relatively self-interested fashion, even at the relative expense of a weakly-dependent trade partner.

In contrast, more demanding duties will apply when a state is entering into a new trade relationship, or re-negotiating an existing one, where its trade partner depends upon improving its current status quo because it is currently incapable of realizing justice. Where it is not excessively costly to do so, the state ought to fulfil the role that the trade partner needs them to play, i.e. to give favourable terms of trade. It is still the case that each state has a duty of reasonable partiality towards its own citizens, which extends to its international dealings. But in such cases, reasonable partiality will justify a more limited range of self-serving behaviour: for partiality to be reasonable, after all, it must be sensitive to the relative urgency of the interests at stake. In negotiations with a trade partner that is in urgent need of improvements to its status quo, there will be less room for self-interested bargaining than there would be if the trade partner were easily capable of realizing justice. Conversely, the state that is in urgent need of improvements will be entitled to engage in self-interested bargaining: their own interests are so morally weighty that they should prioritise those over the less urgent needs of a trade partner, and should have no qualms about doing so.

Roughly speaking, then, states' distributive duties in setting up or reforming a trade relationship will be determined by a mixture of both reasonable partiality towards their citizens' interests, and the relative urgency of their own and their trade partners' interests. Reasonable partiality and relative urgency pull in the same direction when a state is worse-off than their trade partner, so the

worse-off state will be entitled to engage in self-interested pursuit of its own aims. Where a state is better-off than its trade partner, reasonable partiality and relative urgency pull in different directions, so that a trade partner's more urgent needs set limits to how self-interested a state's trade negotiators can be. Where the trade partner's interests are especially urgent (think of a state characterised by chronic absolute poverty), self-interested bargaining may be entirely inappropriate.

All the above follows straightforwardly from the account of grounding that I developed in the first chapter, under which states retain their special duties to citizens when they are participating in trade, but these duties must increasingly become tempered by international obligations in the face of trade partners' dependence. As well as following from the dependence grounding, this is also, I take it, both an intuitive and a reasonably uncontroversial picture of how morally-motivated states would interact in trade. The UK would be on surer moral footing if they, on the basis of their own self-interest, made the liberalisation of a trade partner's financial services sector a precondition for giving favourable terms into the UK's own markets if that trade partner was Switzerland, compared to if the trade partner was the Republic of the Congo. The task of this chapter, then, is to flesh out a more rigorous understanding of states' duties and claims, based on how relative urgency and reasonable partiality interact with one another according to the specific capabilities of the states involved.

4.3. Plotting states' duties and claims: continuous or discontinuous?

One fairly intuitive way of accounting for the variation in states' duties and claims would be to plot states on a scale according to their capabilities, so that each state would be entitled to a different level of favourable treatment, on the basis of how high or low their capabilities are in comparison to other states. On this picture, states' duties increase (and claims decrease) in a continuous fashion, corresponding to their levels of capabilities. Call this the continuous scale approach. Alternatively, we might want to mark out thresholds along the capabilities scale, which separate some groups of states from others, and entitle them to different treatment based on where they stand in relation to those thresholds. On this picture, states' relative position along the scale matters, but states' duties do not increase (or claims decrease) uniformly as a state gets higher along

the capabilities scale: passing one of the thresholds causes a discontinuity in states' duties and claims. Call this the discontinuous approach.⁷⁰

Here, I'll defend the discontinuous scale approach. There are conceptual, practical, and normative reasons for doing so. I place more stock in the latter two, as they relate to why our *treatment* of states should be discontinuous. However, some readers may reject discontinuous treatment unless there are reasons to think that states' capabilities can themselves be subject to discontinuous shifts. So, the conceptual point: while in most cases states' capabilities will increase incrementally, I think there are good reasons to think that they can be subject to such discontinuous jumps (or drops). This is because, while it may be true that some components of a state's capabilities typically increase incrementally (e.g. its income, infrastructure, human resources) it is decidedly not true of perhaps the most important ingredient in a state's capabilities, namely its domestic institutions (see e.g. Robinson and Acemoglu, 2012). A state's capabilities hinge in large part upon the state having a certain set of institutional capacities to allocate its resources, to gather information, to ensure compliance, and so on. The strength and quality of a state's institutions are often subject to discontinuous jumps: this is the case most obviously where a new institution is created, or decisively reformed, such as when a state sets up an independent judiciary, creates a central bank, professionalises the civil service, and so on. In other cases, a state's institutional capacities presumably increase incrementally, but these incremental increases might *translate* into greater capability in a discontinuous fashion. This might apply to states' abilities to root out corruption, to collect taxes, or to quell civil conflict: at a certain point, the state becomes 'good enough' at this to allow the state to escape from a number of poverty traps it might have previously been vulnerable to (for the idea of poverty traps, see Collier, 2008; see next chapter for discussion).

Take, for example, the case of property rights. Where people have no rights to their holdings, and have no security in their economic exchanges, this inhibits the productive use and transfer of goods, and resultantly inhibits growth. This, in turn, hinders the development of poor states, who often have patchy property rights regimes. Because of this, certain reforms to property rights can cause massive enhancements of a state's capabilities, directly through enhancing the economic security of individual citizens, and indirectly through putting in place the conditions of development. Francis Fukuyama (2011) has suggested that China's fortunes are a good illustration of this. In 1978, when the Chinese Communist Party began to undertake its 'reform and opening

⁷⁰ A third approach might be an approach which *only* cares about where states fall in relation to the thresholds: so long as each state is on the same side of each threshold, it doesn't matter if one is higher or lower along the scale. Call this the threshold approach. For reasons to reject such a position, see the arguments against traditional sufficientarianism, in section 4.4.

up' under Deng Xiaoping, it did not give its peasants full modern property rights, but it did give them heritable usufructuary rights. This moment of discontinuity gave the peasantry a sufficiently credible assurance that they would be the ones to reap the benefits of their own increasing production, which was enough to facilitate the initial jump in output that, over the ensuing decades, helped China lift hundreds of millions out of absolute poverty (Fukuyama, 2011, 248-249; for discussion, see Kroeber, 2016, 27-42).

The second argument for a threshold view is that it is more practicable than a sliding scale view. Given that there are around 200 countries in the world today, giving different treatment to each one of those states, according to where they fall along the capabilities scale, would leave us with a seriously unwieldy trade regime. On the continuous scale picture, the very worst-off state would receive the best terms of total market access; perhaps it is given free trade terms into every other state's markets, and is entitled to erect barriers against any other state if and when it chooses.⁷¹ The next worst-off state, so long as it is slightly higher along the capabilities scale, would not be entitled to quite the same favourable terms of market access. It could be that some or all of the better-off states would be entitled to raise some (perhaps trivially small) trade barriers against it. Alternatively, and perhaps more likely, the very worst-off state would not give reciprocal free-market access to the second worst-off state. On this second way of operationalising the scalar approach, the higher up the capabilities scale a state is, the less trade partners' markets the state receives favourable access into: states with lower capabilities are entitled to give less favourable treatment to states with higher capabilities than themselves.⁷²

If this sort of fine-grained differentiation was ever a suitable approach to favourable treatment in trade, is certainly isn't now. Increasingly, trade at the transactional level has moved away from a "made-here-sold-there" approach, where goods would be fully assembled in one location and then sold in another, to one where more and more manufacturing and production processes have been spliced into distinct stages, each one performed by a different node within a complex supply chain (Baldwin, 2016, 96; see also Baldwin, 2014). In the context of a trade regime defined by such complex supply chains, the costs of red tape for exporting businesses within such a differentiated trade regime could significantly dampen trade flows. Because of this, giving each state a bespoke set of preferential terms according to fine-grained differentiation that the scalar approach would

⁷¹ This need not be the form that the 'best' treatment takes, but it's a useful stipulation for illustrative purposes.

⁷² This second approach bears some resemblance to Stiglitz's and Charlton's proposal for a fairer trade regime (2005, 94-95), the differences being that their proposal 1) is based on wealth rather than capabilities, 2) recognises a threshold between developed and developing states, so that developed states don't necessarily receive free market access from one another, and 3) gives states free market access only into states that are larger than their own, as well as richer.

recommend “may adversely affect their value even for beneficiaries of such additional differentiation” (Suttle, 2017, 218). There are also political complications, stemming from how close some states’ capabilities might be along the scale: if we were to institutionalise such a scheme, how would the trade regime maintain stable, dependable conditions whilst accommodating frequent changes to the ranking of states’ capabilities? These difficulties would be compounded by the difficulty in ascertaining reliable, accurate measurements of developing and least-developing states’ capabilities. To give just one example, in November 2010, following a review of the methodologies used to measure it, Ghana’s GDP was revised upwards by 60% (Jerven, 2013; found in Wells, 2013, 27). Determining states’ relative entitlements on the basis of an entirely continuous scale according to their capabilities would be fraught, then, with challenges, disputes, and potentially rapid (and, for that reason, destabilising) international adjustments.

Finally, there are normative problems with the continuous scale view. It doesn’t seem like states are always entitled to more favourable treatment than their trade partner simply because they are the worse-off of the two. Certainly, there may be a weak presumption that a better-off state should always seek arrangements which favour a worse-off state, but this weak presumption will often be overridden by the better-off state’s duties of reasonable partiality towards its own citizens’ interests. Indeed, on reflection, for both the very best-off states, and the very worst-off, there’s reason to think that differences between the relative urgency of their interests will not typically be enough to ground claims for differential treatment. Let’s assume, very plausibly, that the very-best off states in the world are capable of realizing justice domestically without any further improvements to their current status quo. Within the set of countries which this is true for, it’s not clear why the very best-off state could be said to have any duty to give favourable treatment to a worse-off, but still very well-off state. Recall that states only hold weighty claims against one another on the basis of their own weighty duties towards their citizens. Where these duties are securely fulfilled, or where the reason they’re not securely fulfilled is because of a lack of domestic will on the part of the well-off-but-not-quite-best-off trade partner, there is no justice-based reason for the best-off state not to prioritise its own citizens’ interests. Doing so is perfectly consistent with the full realization of justice on the part of its trade partner. It may still be the case that the better-off state would be acting beneficently by giving the worse-off state favourable treatment, and that it may enhance global welfare by doing so. But given the special duties that it has towards its own citizens, the best-off state would be perfectly entitled in this case to prioritise its own citizens’ interests at the expense of both global welfare and beneficence. Moreover, the worse-off state’s citizens would have no reasonable grievance against the best-off state: were they to experience a shortfall of

domestic justice, full responsibility for this ought to be placed upon their own government, rather than any less-than-beneficent trade partners.

The problem is different with respect to the very worst-off states. On the continuous scale view, the very worst-off states would get more favourable treatment than the comparably better-off, but still very badly-off states. Let's assume, again very plausibly, that there are several countries that are characterised by abject poverty, and cannot fulfil their duties of justice even under the most auspicious circumstances. Between such states, appealing to the relative urgency of each state's interests, as a means for determining what they're entitled to, seems not only disrespectful to those states whose interests are deemed 'less urgent', but it also crowds out important adjudicating principles which should be factored into our decisions about distribution. Again, we can consider how reasonable partiality would come into this picture. Where a state is in dire poverty, but is nonetheless more capable than another state in dire poverty, it seems difficult to imagine that the somewhat worse position of the state's trade partner would be enough to justify giving that state favourable treatment, where this would reduce the improvements going to the state's own desperately needy citizens. At a certain point of immiseration, the urgency of a citizenry's interests will, combined with duties of reasonable partiality, make it irresponsible for the government of such a state to favour another state within a trade relationship at their own relative expense.

Relatedly, from the perspective of states that are reasonably well-off, to give less favourable treatment to one badly-off state over another on the basis of their respective capabilities may overlook other important considerations. In the face of abject poverty, for example, the efficiency of our measures for improving things arguably matters more than relative comparisons of the intensity of that poverty. To give an analogy, where there are two children drowning, and we must save one, the fact that one of them has a shark circling it shouldn't be the primary consideration when deciding who to save. Even if saving that child might be more urgent in some sense, the degree of urgency involved in saving either is close enough for us to make our judgement of who to save based on other considerations, such as the risks involved to ourselves, the likelihood of rescue, and so on. In this case, we may well think that it is precisely the thing which makes that child the worse-off of the two, i.e. the circling shark, which makes expending our energy on saving the other child the right course of action. Similarly, where a state is the very worst-off on our scale as a result of its endemic internal problems, this may in itself be reason to give more favourable

treatment to other very badly-off states, where doing so stood a better chance of translating into enhanced capabilities to realize justice.⁷³

To summarise, there are conceptual, practical, and normative reasons for recognizing at least some threshold along the scale of capabilities, which would mark out a discontinuity in the distributive duties and claims of states in trade. Where states stand relative to one another on the capabilities scale matters for determining their entitlements, but so does where they stand relative to these (as yet unspecified) thresholds. In the next section, I'll put forward shift-sufficientarianism as a promising theory of distributive justice that allows us to incorporate these insights.

4.4. A shift-sufficientarian account of trade justice

Sufficientarianism, at its most general, is the view that we should ensure that agents have 'enough' of some morally salient good(s), broadly defined. When an agent does not have enough, we have reason to benefit them until they do. Once an agent does have enough, our reasons to benefit them change or subside. Sufficientarianism, then, takes certain morally-salient thresholds to be a central feature of our moral landscape; on the sufficientarian picture, whether, and to what extent, distributive justice is realized is a matter of determining where all the relevant agents stand in relation to some such threshold(s).⁷⁴ Importantly, whether or not an agent has reached this threshold will be a non-comparative matter, at least in the sense that comparisons with others are not sufficient to establish injustice. Given the importance it places on certain thresholds which separate out some agents from others, sufficientarianism may represent a promising way of accommodating the considerations raised in the previous section. It has, however, come in for fairly sustained criticism over the years, as it seems to commit adherents to implausible or unpalatable positions. To see why, we need to get a clearer idea of the structure of sufficientarianism.

Traditionally, sufficientarianism has been understood as, at a minimum, the conjunction of two theses, the positive thesis and the negative thesis (Casal, 2007). The positive thesis states that it is important that agents reach some morally-salient threshold, above which they are said to have 'enough'. The negative thesis states that, above this threshold, the distribution of costs and benefits between agents is unimportant, from the perspective of justice. What adherence to these two

⁷³ I discuss how developed states ought to fulfil their duties to the very worst-off states, political sharks and all, in the next chapter.

⁷⁴ For an influential early defence of this view, see Frankfurt (1987). For other defences, see e.g. Crisp (2003), Axelsen and Nielson (2015). For notable critiques, see e.g. Temkin (2003), Casal (2007), and Widerquist (2010).

principles entails in practice will be determined in large part by where and how we set the threshold in question. But wherever we set it, this characterisation of sufficientarianism is vulnerable to serious critique.

To see this, let's first see the problem when we set the threshold at a low level, so that 'enough' counts as 'freedom from deprivation'. On this approach, it appears that indifference to the distribution above the threshold opens the door to significant unfairness. Paula Casal gives the example of a tsunami which strikes, creating the need for aid (2007, 311). When determining who should give such aid, or be coerced into giving such aid, it seems intuitively plausible that the wealthiest should bear a proportionate burden. Where many agents are barely above the threshold, and a few others are very far above the threshold, how they distribute the costs and benefits between them seems to matter, morally speaking. Indeed, in the context of our own discussion, it appears particularly implausible to think that we're indifferent to the distribution of capability-enhancing goods as soon as a state is free from deprivation. Because justice matters so much, so do increases in the states' capabilities to realize it, over and above the bare minimum needed.

The alternative is to set the threshold of what counts as 'enough' at a high level, so that it does not signify 'free from deprivation', but something closer to 'ability to flourish'. With a high threshold, perhaps the above criticism does not hold, and we do become indifferent to further increases in a states' capabilities, because any additional increases don't impact the likelihood that justice will be realised. A state may be so affluent that, at a certain point, scarcity of resources is no longer a constraint that makes a difference to whether justice is fulfilled. However, this version of sufficientarianism runs into its own problem. If we set the threshold at such a high level that we are genuinely indifferent about the distribution between agents that are above that threshold, we will greatly reduce the significance of sufficientarianism as an approach to distributive justice. If most, or even all the agents we care about are below the sufficiency threshold, then sufficientarianism itself will have little to say about the distributive duties of most agents. While we might supplement this version of sufficientarianism with other principles which would apply to the many agents below the threshold, it might then be asked how much work the sufficientarian element of our theory is really doing. Certainly, it might tell us that agents above the threshold ought to aid those below the threshold, but any number of alternative theories of distributive justice will converge on that solution.

To put the two horns of the dilemma into practical terms, think about wealth as the only distribuendum. We have to decide where to set our threshold of 'enough'. Setting it at something like something like £15,000 or even £150,000 seems to walk into the first horn of the dilemma:

where a natural disaster strikes, we do care about who bears the burden of shouldering the costs between a class of people earning £150,000, and someone earning £15,000,000. On the other hand, if we set the threshold at a higher point, say £1,000,000, the significance of getting people to this level seems less intuitively obvious; people can live flourishing lives on far less. Furthermore, having the goal of getting people to this threshold, and putting any significant weight on this as a consideration when developing policy, for example, seems wrongheaded, or, at best, a marginal concern. The obvious response is to say that we should aim for some middle-point, where perhaps enough means something like ‘doing pretty well’. But we should reject the idea that there’s some sort of magic middle-point where we might resolve the dilemma. The reason for this is because the level at which we stop caring about fairness in distribution (if there’s ever a point where we stop caring) is much higher than any point which we might set as the level of a plausible social minimum, below which one is deprived. It is, in part, the misalignment between these two levels which render many traditional versions of sufficientarianism unsatisfactory.

The other element of traditional sufficientarianism which has come in for much critique is the stark difference in treatment that agents receive depending on what side of the sufficiency threshold they fall on. Say we set our sufficiency threshold of minimal-decency at £15,000 a year. Imagine, now, two different (entirely isolated) countries, A and B, each of which abided by sufficientarian principles of justice, so that agents below the threshold were always entitled to redistribution from those above the threshold, and agents above the threshold were never entitled to redistribution. Imagine further that, in each country, there are only two classes, ‘the rich’ and ‘the poor’. In A’s poor earn £14,000 a year, and are therefore entitled to redistribution from A’s rich, who typically earn £16,000 a year. In B, by contrast, ‘the poor’ earn £16,000 a year, while ‘the rich’ earn £100,000. According to the traditional sufficientarian account, the poor in A would be entitled to redistribution from the rich in A, despite the fact that the difference between the two groups is marginal. In contrast, the poor in B would not be entitled to any redistribution from the rich, insofar as they are all above the sufficiency threshold. This is so, despite the fact that the gap between rich and poor is dramatically larger in B than it is in A. Cast in this light, there appears something deeply implausible about the sufficientarian picture: marginal differences in agents’ positions surely cannot make so much more difference to agent’s duties and claims, compared to much larger differences between agents’ relative position above the threshold.

Based on a recognition of these issues, Liam Shields (2012; 2016) has recently proposed a re-statement of what he believes a sufficientarian account of justice must be committed to, which he calls ‘shift-sufficientarianism’. On Shields’ account, what is distinctive about sufficientarianism as a theory of distributive justice is the combination of the following two theses:

Positive thesis: we have weighty non-instrumental reasons to secure at least enough of some good(s)

Shift thesis: once people have secured 'enough' there is a discontinuity in the rate of change of the marginal weight of our reasons to benefit them further.

(Shields 2012, 112).

In other words, it's important that agents have enough of something, and when they have secured enough of that something, the reasons, or the weight of the reasons, to benefit them change; the reasons do not (necessarily) disappear. On this view, sufficientarianism is to be complemented with other distributive principles, which tell us how we ought to distribute benefits and burdens to agents depending on where they fall in relation to a sufficiency threshold. What separates sufficientarianism from alternative theories of distributive justice is the 'shift': when an agent reaches some threshold(s), this changes the way that other agents ought to relate to them, and what weight should be given to the agent's interest in further gains. Such shifts are compatible with a range of principles applying to the distribution of costs and benefits above (or below) the threshold. A shift-sufficientarian account will offer better guidance than other accounts of distributive justice just when there are one or more identifiable, morally-salient thresholds which, when an agent reaches or crosses this threshold, plausibly shifts other agents' reasons to benefit that agent further (2016, 34-35).

I believe that shift-sufficientarianism represents a promising approach to thinking about distributive justice in trade. On the one hand, it allows us to recognise a number of different thresholds along the capability scale, thereby avoiding the first set of criticisms traditional versions of sufficiency faced. On the other hand, because the thresholds represent discontinuities rather than a complete quenching of our reasons for benefitting agents once they cross a threshold, the treatment that agents can claim when they are just above and just below a threshold need not be dramatic: this allows us to avoid the second sort of criticism against traditional sufficientarianism. Of course, there is a risk that, if we need to identify a large number of sufficiency thresholds, and accordingly a large number of separate distributive principles to regulate interactions between agents, a shift-sufficientarian account of justice would be unwieldy: if we had to identify many groups of states, and account for many discontinuities in our treatment of them, we would end up running into similar practical problems as the continuous scale approach faced, and reducing our theory's potential for action-guidance. We would do well, based on the discussion above, to adopt just a low and a high threshold, given that each captures an important intuition. Reaching the low threshold is important because, below this level, agents cannot live a minimally-decent life. The claims of agents below this level to further benefits are strong and urgent. A higher threshold is

important because it marks a point above which an agent's claims to additional benefits from others are weak, given that they already have adequate resources to flourish at their own disposal.

Given the above, and given the arguments in section 4.2. in the context of trade I propose identifying two thresholds which mark out points of discontinuity along the scale of states' capabilities, where states' duties and claims shift once they pass one of the thresholds. The lower threshold corresponds to the point where a state is capable, in fully auspicious circumstances (see below), of fulfilling its duties of justice. Below this threshold, there is no way that a state can stretch its material and institutional resources in order to fulfil whatever domestic justice requires. Because of this, they have a duty to pursue improvements to their status quo. A state below this threshold is necessarily strongly dependent upon any of its trade partners, insofar as any and all potential improvements to its current status quo would play an integral role in the states' realization of justice: justice simply can't be realized without those improvements. As a result, trade partners have demanding duties towards such states. Call states below this threshold 'Least-developed Countries', or 'LDCs'.

The higher threshold, in turn, corresponds to the point where states' capabilities are such that they do not depend in any way upon further improvements to their status quo in order to realize justice: they are already robustly capable of realizing justice, under favourable and unfavourable conditions, provided sufficient political will. Above this threshold, states have little claim against their trade partners for additional benefits, and the state is not in a position to blame unfavourable circumstances for continued failures to fulfil their duties to citizens. A state above this threshold also has no obligation to its own citizens to seek improvements to its status quo, given that at this point the state's ability to realize justice does not depend upon attaining such improvements. Call states above this threshold 'developed states'.

Finally, there are the states between the thresholds. These states are at least potentially capable of realizing domestic justice, but to do so they need favourable circumstances, great efficiency, and considerable political and economic skill. Put another way, there is little slack in the system. Because there is little slack, and much must go according to plan in order for justice to be realized, states between the thresholds are often faced with tragic choices when allocating resources in all but the most ideal circumstances. Because the problem of realizing justice is not just a matter of political will, but of material constraint as well for these states, it will typically be prudent to seek out income and resource improvements to make their position more secure. Nevertheless, states at this level may have different risk tolerances, and may reasonably see further trade integration as detrimental to aspects of their social and economic order which they have reason to value.

Moreover, unlike states above the higher threshold, and unlike states below the lower threshold, differences in degree (i.e. in the states' level of capabilities along the scale) will make an important difference to how states between the thresholds should be treated. This is because the degree of slack in their system, and the degree to which prudence would require additional trade gains in order to realize justice, will differ greatly between such states. On this basis, and unlike with LDCs and developed states, we must be very sensitive to the differences between states between the thresholds. Call the states between the thresholds 'developing states'.

Before moving on to the distributive principles, it's worth addressing a potential challenge to the approach being pursued here. It may be thought that where we set the thresholds separating LDCs from developing states, and developing states from developed states, may be arbitrary. But here we should be careful to distinguish between vagueness and arbitrariness.⁷⁵ Vagueness involves accepting that there are grey areas in determining where to set a threshold, and that precision will be difficult, or even impossible. Arbitrariness, on the other hand, is not so much a matter of grey areas, but rather of lacking criteria for setting our threshold in one place rather than another. Where our threshold is arbitrary, there is no clear reasoning explaining why we're setting the threshold at one level rather than another. Where there are good reasons to set a threshold, vagueness is not a problem, but arbitrariness is.

Take, for example, the thresholds we set in drink-driving laws. Because alcohol impairs people's motor responses, which in turn makes them less competent drivers, we have good reasons to limit how much alcohol people are allowed drink before getting behind a steering wheel. We may also have good reasons not to set the legal blood-alcohol level at zero: perhaps the social costs of not allowing anyone to drive the morning after a few pints would outweigh the risks that come from allowing such people to drive. But we need to set some threshold, whether it be zero or something higher. While we may know what considerations are relevant, and we may take them into account when we're setting our blood alcohol limit, there is an inevitable element of vagueness here: there is no way of knowing with precision at what point we strike the perfect balance between our safety concerns and our broader social concerns. However, so long as we are tracking these, and we are choosing our threshold in a way which is sensitive to evidence relevant to these considerations, the threshold we set will not be arbitrary.

With regards to the above-identified thresholds, the issue is vagueness rather than arbitrariness, at least so long as we have a theory of minimally-acceptable domestic justice that is not in itself arbitrary. Once we know what minimal standards apply to states' realization of justice, we can

⁷⁵ My thanks to Rob Lawlor for discussion on this point.

judge through empirical research and international comparison what suite of goods and functionings states need as prerequisites to realizing this minimal standard. So long as there are clear, measurable criteria that we can use to set our threshold, and so long as there are good justice-based reasons for setting *some* threshold, the worry about vagueness is not a grave one. I've identified such good justice-based reasons in section 4.3. If the theory I develop below is both attractive and plausible, this will constitute an additional reason to set thresholds of the sort identified above, even if there are challenges involved in doing so with precision.

In the next section I'll begin identifying the distributive principles which should regulate states' trade relationships. I will first discuss bilateral trade relationships: doing so allows us to get a clearer picture of the relevant normative considerations when states in each of the different brackets interact. Once I have gone through all the possible bilateral combinations, in section 4.6. I will discuss the principles which apply when there are multiple, potentially overlapping trade relationships.

4.5. Distributive principles in trade relationships

This section discusses six different sorts of bilateral trade relationship, and develops a distributive principle to regulate each one. To help ground the discussion, below is a table summarizing the conclusions:⁷⁶

⁷⁶ In addition to the distributive duties identified below, states must adhere to the duties discussed in Chapter 2.

	Developed countries	Developing countries	LDCs
What developed countries owe	N/A, Self-interest	Across-the-board (sizeable) benefit	Maximal benefit, consistent with staying above threshold
What developing countries owe	N/A, Self-interest	Rough equality, unless greater benefits fall to less capable partner	Across-the-board (sizeable) benefit
What LDCs owe	N/A, Self-interest	N/A, Self-interest	Rough equality, but each party entitled to keep anything above this

[Table 1]

Developed - Developed trade

We can start with a trade relationship between two developed states. In this sort of trade relationship, each state is robustly capable of realizing justice. Let's call this the default relationship, not because it is the norm, but because neither state's needs for improvement are strong enough to override their trade partner's entitlement to prioritise their own interests. As we've seen, states have significant moral latitude with respect to how they act when a trade partner is only weakly dependent. Given their high level of capabilities, both trade partners in developed-developed trade relationships have such moral latitude. This suggests that there is nothing wrong with them pursuing their own interests, even at the relative expense of their trade partner. On the account being developed here, then, it is acceptable for developed states to negotiate whatever terms they find mutually agreeable, and to subsequently let the chips fall where they may. Each state should act on the basis of reasonable partiality towards their own citizens within negotiations. They can expect their trade partner to do likewise. Both parties know that, insofar as each state is capable of realizing justice without a further intensification of trade, either party can walk away if they take the positions pursued by their trade partner to be unpalatable.

Because developed states are under no obligation to pursue improvements to their status quo, they are also under no obligation to pursue trade relationships with one another. Equally, they are under no obligation to ensure that the distribution of their trade agreements are evenly-divided: even where a trade agreement produces more gains for one state than another, this shouldn't, in the ordinary course of events, risk or prolong injustice in the lesser-benefitted state. So this outcome, too, is acceptable. However, things change in cases where a state is at risk of falling below the threshold which separates 'developed' from 'developing'. To fall below the threshold would be to risk injustice for the developed states' own citizens, in a way which would no longer be attributable merely to failures of political will. Of course, given their high current status quo, developed states should be able to walk away from any agreement which did threaten to push them below the higher of the two thresholds. Still, their developed country trade partner should also refrain from pursuing such a relationship: a developed state's self-interested pursuit of their own citizens' non-justice-based interests is acceptable only where this doesn't risk injustice for their trade partner.

Developed – LDC trade

In negotiations with developed countries, LDCs are, I believe, entitled to push for their own self-interest in an unconstrained fashion. They can do this, first, on the basis that they know their developed country trade partner is easily capable of realizing justice more or less regardless of what the outcome of the negotiation is. If the LDC were somehow to push for something that would greatly jeopardise the developed states' own realization of justice, the developed states could easily walk away from the deal, and could just as easily resist LDC pressure while continuing to negotiate. Second, the LDC can engage self-interestedly on the basis that their own need for increases in its capabilities are far more urgent than the need of the developed country. On current conditions, even when the state does everything right, it is unable to do the bare minimum for its citizens. On that basis, it has a duty to its citizens to pursue improvements to its status quo, including through trade agreements, where these are promising avenues for improvement. In contrast to the LDC, which is simply unable to discharge justice, doing so is well within the grasp of the developed country, provided sufficient political will. Thus, LDCs' reasonable priority towards their citizens, the relative urgency of their needs, and the comfortable position of their developed country trade partners all pull in the same direction, meaning that the LDC has no justice-based reason to temper their pursuit of what they take to be the best deal possible for them.

It might be thought that, at the very least, LDCs owe developed states some benefit from the trade relationship: states participate in trade, after all, for the purpose of making gains above what they

could otherwise make, so to deny even this minimal condition would be against the spirit of the practice. From the perspective of an LDC state, however, they have no moral reason for making sure that their trade partner gains: the interests of the developed states in gaining from the trade relationship are trivial in comparison with their own. The LDC may nonetheless have practical reasons to ensure that the developed state gains something from the relationship; this makes it more likely to continue to uphold the terms of the relationship. Moreover, it is difficult in practice to imagine how a developed state would lose out in absolute terms from a trade agreement with an LDC: the gains to the LDC will in most cases involve inhabitants reaching mutually advantageous terms with inhabitants of the developed state.

Turning, then, to developed states; what do they owe LDCs in trade? Given the impossibility of the LDCs' realization of justice under current conditions, developed states' demands are very weighty. For starters, developed states have a *pro tanto* obligation⁷⁷ to pursue trade relationships with LDCs. By definition, LDCs are incapable of realizing a minimally-acceptable standard of justice for their citizens: I have assumed that there are duties to aid such states, at where doing so would not be excessively costly. Added to this, developed states are the states with the most slack in their system. Given their high capabilities, and therefore their robust ability to realize domestic justice, it is difficult to imagine how trading with an LDC would threaten injustice for the developed state. It will rarely be 'excessively costly', then, for a developed state to set up a trade relationship with an LDC. Just like LDCs have an obligation to pursue improvement-generating trade relationships, then, developed states have a duty to pursue these with LDCs (where the trade relationship would in fact benefit the LDC), and to play the role that LDCs need where LDCs do seek a trade relationship.

What are developed states' distributive duties within such trade relationships? Given that a developed state is sufficiently well-equipped to discharge justice without any further gains to itself, it might be thought that pushing for any gains at all would be unjust. While further gains to the developed country might give them an even greater margin of error in realizing justice, and this is not of no significance, this sort of additional slack cannot reasonably be prioritised over the immediate, urgent need for improvements on the part of the LDC. If the developed country is successfully fulfilling its duties of justice with the capabilities it already has, then further gains do nothing to contribute to justice. If the developed state's domestic duties aren't already being fulfilled, the appropriate response is to reallocate resources domestically in order to ensure that

⁷⁷ Cases where this does not translate into an 'all things considered' obligation would include cases where trade would set back the capabilities of the LDC, and may include cases where the developed state has already done more than its fair share to aid the LDC through non-trade channels.

justice is fulfilled, rather than externalising the costs of rectifying this, and thereby prolonging injustice in the LDC (for a similar point, see Miller, 2010, 72). That is not to say that a developed state cannot gain from the relationship with the LDC: it is to say that they cannot push for gains when this would reduce the amount of gains going to the LDC. Where maximising the gains going to the LDC also has the upshot of producing benefits for the developed country, even sizeable ones, this is perfectly acceptable, and indeed, even desirable. Given this, developed countries should pursue as broad and as deep a relationship as is necessary to maximise the benefits to the LDC.

The previous point must be qualified: a developed state does not need to pursue arrangements which would risk it falling below the threshold separating developed from developing states. To fall below this threshold would be to risk injustice for the developed state's own citizens, in a way that would no longer be attributable merely to political will. This sort of outcome could rightly be considered 'excessively costly' as a price to pay for benefitting another state. The developed state's citizens may feel rightly aggrieved if their state sacrificed their own secure realization of justice, for the sake of enhancing another state's capabilities. Where a state is just over the threshold, then, and is at risk of falling below, loosening the stringency of the demands on them, if only temporarily, and letting other developed states pick up the slack, seems like the reasonable response.

So we have four claims. One is that LDCs have a *pro tanto* duty (to their citizens) to seek improvement generating agreements. Two is that developed countries have a *pro tanto* duty (to LDCs) to offer improvement-generating agreements. Three is that LDCs can engage in unconstrained bargaining, pushing for their own self-interest, and trying to maximise their own gains from any relationship. Four is that developed states are entitled to pursue gains for themselves only when this maximises the gains to the LDC; pushing for gains that diminish the benefits accruing to LDCs is inadmissible (up until the developed country is itself at risk of falling below the higher threshold).⁷⁸ Where outcomes of a negotiation turn out to produce outcomes that are at odds with the principles discussed, the participating states should renegotiate, or try to somehow recalibrate the flow of benefits from the relationship in order to better realize justice.

⁷⁸ Note that this is not inconsistent with the second feasibility constraint set out at the beginning; this argument is premised on the fact that LDCs are below a minimally-acceptable threshold, and so there are duties to them prior to developed countries' trade relationship with them. I have discussed these non-relational duties alongside the remainder of the relational duties discussed below in order to complete the picture of what states owe one another in trade.

Developed - Developing trade

Because developing states are capable of realising justice in at least some circumstances, it would at least be possible for justice to be realized globally without improvements to any particular developing states' status quo. This means that, unlike with LDCs, a developed state does not have a duty to improve a developing state's status quo; improvements that the developed state can generate for the developing state won't necessarily play an integral role in the developing state's realization of justice, insofar as these gains may be in excess of what the developing state needs in order to carry out its goals and functionings. Developing states are under no duty to seek out improvements to their current status quo for similar reasons. Insofar as developed and developing states have no obligation to improve the developing states' status quo, there is also no obligation concerning how extensive or broad the trade agreements in question ought to be. Having said that, the closer they are to the lower threshold, the more prudent it will be for developing states to pursue potentially improvement-generating trade relationships. Similarly, the closer to the LDC threshold a developing state is, the stronger the justifications a developed state would need to have for not participating in a trade relationship which would benefit the developing country.

When developed and developing states do trade with one another, what distributive principles apply? First, like LDCs, it seems that developing states are entitled to pursue their self-interest in an unconstrained manner against developed states. Like LDCs, developing states have more of an urgent need for improvements than developed countries do, and this, coupled with reasonable partiality and the knowledge that the developed states can walk away from unpalatable agreements, entails that developing countries need not temper their pursuit of the best deal they can get.

What about developed states? We saw that a developed state in negotiations with an LDC would act wrongfully if it sought to make gains over and above what benefitted the LDC. Given that LDCs are unable to realize justice, even in favourable conditions, and given that developing states can realize justice in at least some circumstances, developed states' duties will be less demanding when negotiating with developing states. It is possible that, when the developed state pushes for gains over and above what maximises benefits to the developing states, this nonetheless does not set back the developing state's realization of justice. Given that developed states have no duty to participate in trade with developing countries, and given that participation could have significant, and in some cases deleterious impacts upon their citizens, it will not be wrong for developed states to make sure that, overall, they gain from participating in a trade relationship with, and benefitting, a developing state. States, after all, participate in trade in order to make gains: requiring them to

bear losses for participating in such relationships is infeasible as a principle of trade justice (so long as states' non-trade duties have been met).

Having said that, developing states' needs are nonetheless more urgent, and their ability to realize justice far more precarious than developed states' needs and abilities. For this reason, developed states would act wrongfully if they were to pursue their self-interest in an unconstrained fashion, letting the chips fall where they may. Developing states can only fulfil their duties if favourable circumstances prevail, domestically and internationally. So developed states that are, or become, part of a developing state's plans to realize justice therefore have a duty to play a beneficial role for that developing state: they must 'manifest' favourable conditions.

We could interpret 'manifesting favourable conditions' in an 'on-the-whole' sense, or an 'across-the-board' sense. In an on-the-whole sense, a developed state would fulfil its duties so long as the gains to the developing countries outweighed the losses generated by the relationship. On 'across-the-board' benefit, the developing state would have to gain in each of the areas covered by the relationship. I believe 'across-the-board' benefit is the more plausible interpretation of manifesting favourable conditions.⁷⁹ To manifest favourable circumstances, a trade relationship ought to contribute to easing the duress faced by a developing state in their efforts at realizing justice, by increasing the slack in their system, and contributing to a political and economic environment characterised by less tragic choice-making. When a developed state pushes for terms which are not beneficial to a developing state, they are not contributing to easing this situation, but rather they are exacerbating it, and seeking to take advantage of it by furthering their own non-urgent goals at the expense of the their trade partner's more urgent goals. Pushing the developing state to take on losses in some areas as the price to be paid for gains in other areas is to effectively force the developing state negotiators to countenance trading off injustice in one area for another. This represents a continuation of the developing countries tragic choice situation, rather than an alleviation of it. In a context where the developed state can benefit itself without pushing the developing state to suffer losses, such pushing is callous, and fails to take the relative urgency of interests at stake seriously.

⁷⁹ These is, admittedly, an ambiguity here in determining which aspects of states' trade relationships count as separate and distinct areas. I take it that the principle developed here can serve as a regulative principle for trade relationships without coming up with any more precise specification: the procedure we'd adopt to test a trade agreement's compliance with the principle would be something like (i) identify an element of a developed-developing trade relationship; (ii) see if this particular element benefits the developing country; (iii) if it does not benefit them, see if this element is nonetheless a necessary corollary of another element of the agreement which does produce benefits to the developing state, greater than the losses they suffer as a result of the first element.

When determining the demandingness of the duties owed to a trade partner, where the developing country falls on the capability scale matters more than it does in the case of developed countries and LDCs (see section 4.3.). While LDCs are simply incapable of realizing justice, and developed countries are capable of doing so regardless of the outcome of a trade negotiation, developing countries' occupy the entire space between these two points. The closer to the lower threshold they are, the more dependent they are on their trade partner for improvements. A developed state would act unjustly if it withheld significant benefits from a developing state close to the lower threshold, where so benefitting the developing state would come at little cost to the developed state's citizens. Developed states do, after all, have the above-mentioned obligation to manifest favourable international circumstances, and, given that the developing country depends upon on this in order to realize justice, this is not a trivial obligation. When dealing with the best-off of the developing countries, developed states could fulfil this 'favourable conditions' duty just by making sure each area covered by their agreement improved the developing countries' position. However, both in trade agreements with better-off and worse-off developing countries, a developed state's reasonable partiality towards its citizens has more weight than where the developed state is engaging with an LDC. Affected citizens of a developed state could rightfully object to their own state imposing significant losses upon them for the sake of a country that could (conceivably) realize justice even in the absence of those citizens suffering those losses.⁸⁰ How reasonable this objection will be will depend on where the developing country stands in relation to the two thresholds, and so how likely it is that they really could realize justice in ordinary circumstances.

Developing – LDC trade

What obligations do non-developed states have when they engage with one another? Let's start with a negotiation between an LDC and a developing country. The discussion above suggests a basic framework for thinking about non-developed states' duties. First, when states are negotiating with a state in a high bracket, they are entitled to pursue their self-interest single-mindedly, as reasonable partiality and the relative urgency of interests push in the same direction. Second, when negotiating with a state in a lower bracket, self-interest must be restrained, as reasonable partiality and relative urgency pull in different directions. From this, we can say that LDCs are entitled to pursue their own interests single-mindedly in negotiations with developing states, and that

⁸⁰ I say 'losses' because reasonable partiality towards citizens will be of greater (but not necessarily decisive) moral weight in cases where a developed state is trying to prevent harms to their citizens, compared to when they are seeking additional gains; see section 2.3.

developing states are not entitled to pursue their own interests single-mindedly in the same negotiations.

What degree of self-restraint must developing states observe in these negotiations? It would, I think, be too demanding to ask them to only seek gains where this maximises the benefits to the LDC. Developing states, after all, are entitled to show some reasonable partiality to their own citizens, and given that their own ability to realize justice is precarious, the developing state should seek substantial gains wherever it can. So, if maximising the benefits to the LDC came at a loss, or even amounted to very little gain for the developing state, the citizens of a developing state can rightly object. They ought to be secure in the knowledge that they will have access to justice, and they will continue to do so in the future. Where gains from trade would help make citizens' access to justice more secure, they may be reasonably feel aggrieved when their state foregoes such benefits for the sake of others. So what developing states will owe LDCs is akin to what developed states owe developing states. First, they ought to seek arrangements which benefit LDCs in all the areas covered by the relationship, so that they manifest favourable economic and political conditions for the LDC. Second, the developing states should seek an agreement which is on the whole beneficial for themselves, on the basis of their special duties to their own citizens.

There is one important difference between the developed-developing case and the developing-LDC case. Whereas developing states are at least potentially capable of realizing justice, so they are not obliged to seek trade agreements, and developed states are not obliged to create them with a developing state, LDCs are obliged to seek out trade relationships, at least where this would improve their prospects of realizing justice. Given that LDCs are currently incapable of realizing justice, even in the best of circumstances, where there are areas that developing states and LDCs can trade in that would produce mutual benefit for both, there is an obligation to do so. LDCs are obliged to pursue this in order to enhance their own position. Developing states are obliged to do this both as a means of responding to the LDC's greater urgency at no cost (indeed, at some benefit) to themselves, and as part of further securing their own citizens' access to justice.

Developing – Developing trade

When two developed states negotiate, we've suggested that the principle for negotiation would be for both to pursue their own self-interest, and let the chips fall where they may. Can we extrapolate from this, to say that the same principle applies to LDC-LDC and to developing-developing state negotiations? I think this would be a mistake, as it overlooks the importance that developed states'

high capabilities plays in legitimating the ‘chips falling’ position. Where each state can walk away from negotiations without risking or prolonging injustice, they are each in a position where they can live with lopsided agreements; this should have no major bearing on whether or not they can fulfil their domestic duties. The cost of a lop-sided agreement, where developing states or LDCs only make limited gains compared to their trade partner, represents a much greater opportunity cost for non-developed states. Equally, whereas developed states can walk away from deals they take to be inequitable, neither developing states nor LDCs can easily walk away so long as the deal on the table would produce some benefit. Unlike with developed-developed negotiations, then, leaving the chips fall where they may would greatly favour the state with the greater bargaining power, producing lop-sided arrangements which we have reason to reject.

In contrast to developed-developed negotiations, then, when two non-developed states with similar capabilities negotiate with one another, I suggest that rough equality seems like a reasonable principle in such cases.⁸¹ Rough equality differs from equality in that, first, states have slightly different sets of claims depending on their place along the capabilities scale and, second, reasonable partiality allows some moderate deviations from equality (see below). Rough equality is preferable to letting the chips fall where they may, because the interests of each participating state are relatively urgent. Neither state would act justly if they sought to pursue a dramatically lop-sided arrangement, because they must recognise that their trade partners’ interests are as comparably pressing as their own. Each state can, nonetheless, attach some additional weight to their own interests on the basis of reasonable partiality, even where a state is better-off than their trading partner.

Let’s start with developing-developing trade relationships. Because we care more about the distribution of gains from a trade relationship in the case of two developing states compared with trade relationships between two developed states, we must also pay greater attention to differences between states in the same bracket. Whereas gains to a developed state should make little difference to how many of their citizens have access to justice, in the case of developing states, gains may translate much more directly into improvements in the realization of justice, so we ought to be more sensitive to the level of capabilities of each negotiating state. So is there any difference between the case where the developing state trade partners are equally capable and a case where there are sizeable differences? In the case of equally-capable states, the relative urgency of each state’s interests is a tie, so reasonable partiality is the variable that matters. Each state in such a

⁸¹ Note that this is not because equality is taken to be a plausible default, as it was for the authors discussed in sections 3.3. and 3.4.: see below.

negotiation is entitled to push for a deal which is slightly more advantageous to them than to their trade partner. But, of course, any deviation, any lop-sidedness, must be reasonable, and so must be moderate in significance. Where slightly more goes to one state than the other, they are entitled to keep these gains.

Where one developing state is worse-off than another, reasonable partiality and relative urgency push in the same direction for the worse-off state, and they are in tension for the better-off state. This entitles the worse-off state to be a little more self-interested still, and for the better-off states to be somewhat restrained. The restraint involved here is less demanding than it is when dealing with an LDC, and the self-interest that's acceptable must be more restrained relative to dealing with a developed state. So, again, rough equality seems like an appropriate aim, although it is acceptable if greater gains go to the worse-off state. The difference between the equal-capability case and the unequal capability state is that some element of lop-sidedness is acceptable if it falls to either party in the equal case, whereas it is only acceptable if it falls to the worse-off state in the unequal-capability case.⁸² Because they are already at least potentially capable of realizing justice as it is, both states within a developing-developing negotiation have discretion over how intensive their trade relationship is, and whether they even set up a trade relationship with one another at all.

LDC - LDC trade

Does the rough equality principle apply in the case of LDC-LDC trade negotiations as well? Yes and no. With regards to their negotiations, each LDC ought to recognize that they are both in urgent need of improvements to their current condition, which means that seeking a grossly lop-sided agreement would be a failure to appropriately recognise the other state as a bearer of demanding domestic duties. Where a state is able to force through such a lop-sided agreement in the face of their trade partner's very urgent needs, this is likely because either they have much greater bargaining power, which is a morally arbitrary reason for one state to benefit disproportionately, or else the other states' representatives are not responsive to their citizens' interests. Taking advantage in this latter sort of case constitutes a failure of recognition of the trade partner's duty of responsiveness. But regardless of what allows one LDC to extract a lopsided

⁸² While this particular facet of my account resembles James' formulation of his 'principle of international relative gains' (2102, 18) which Walton (2020) criticises as being ad hoc (see fn.63), it should be clear from the above that my reasoning towards this principle does not face the same charge. It is, like the rest of the discussion, based on the interaction between a state's reasonable partiality and the urgency of its needs relative to its trade partner's.

arrangement from another, doing so is certain to set back the realization of justice in the other state. Given this, in the process of negotiations, LDCs should pursue rough equality, though they will be entitled to place some priority on their own interests.

Yet it is also true that, where an LDC ends up benefitting by more than what equality requires, due to how things played out at the transactional level, it seems unreasonably demanding to require that LDC to give up some of those gains in order to equalise the gains between the two states. This is so even where the LDC that gains disproportionately is the more capable (or less incapable) of the two LDCs. By the definition used here, LDCs are incapable of providing the bare minimum of what their citizens are entitled to demand of their state. Until an LDC reaches a level where it is at least possible for them to realize their duties, we cannot expect them to forego any capability improvements that fall to them through legitimate means. Even if their trade partner fails to benefit proportionately, there are many other states who have greater responsibility to aid the LDC than another LDC. It seems, then, that rough equality is what LDCs should aim for, but that where inequality does end up being produced by the terms of the agreement, the LDC that benefits from this has no responsibility to rectify this inequality (so long as they did not act unjustly within the negotiation).

Finally, because they each have an obligation to seek out trade agreements which improve their status quo, and because they have urgent need to increase their capabilities as much as they can, LDCs ought to pursue trade relationships with one another, and they ought to set up terms of trade in all identifiable areas of mutual benefit between them.

4.6. Preference erosion, and multi-party arrangements

So far, we've looked at the principles which ought to regulate trade relationships between states as if there were only bilateral trade relationships. Starting here is the best way to get a clear view of the nature and relative stringency of states' claims against one another. However, without further work, this picture seems ill-fitting to the world we have today, where the majority of trade relationships are managed and conducted within regional and multilateral institutions (most significantly, the WTO), and where changes in one trade relationship has effects on some or even many other relationships. There are, then, two separate senses in which the bilateral principles developed above must be qualified; we must account for how states should interact with one another in the context of 'preference erosion', and how they ought to relate to one another in the context of negotiations with multiple states. Let's take these in turn.

Preference Erosion

We encountered the phenomenon of preference erosion in section 1.4, with the imagined case of Cuba and the US. Preference erosion occurs when A's market access into B becomes worse in relative terms as a result of changes in B's trade policies, thus undercutting A's competitiveness.⁸³ Preference erosion can occur when B gives another state, C, terms which reduce A's relative competitiveness (e.g. A used to be the only country that faced 0% tariffs on aluminium, but now C also faces a 0% tariff), or else when B gives A less favourable market access than A previously enjoyed (e.g. A used to face 0% tariffs, but now it's gone up to 5%).

Is a state ever entitled to undercut the benefits accruing to a trade partner? On the basis of the duty of stability, discussed in section 2.3., it might seem like there will always be something wrong with undercutting benefits, even if it is admissible when it conflicts with other demands of justice. Based on the arguments of this chapter, however, it seems like there will be cases where preference erosion is not only admissible, but required. Specifically, given the greater urgency of some states' interests, there will be a presumption in favour of preference erosion where it benefits a state in a lower bracket to the disadvantage of a higher bracket, and there will be a presumption against (non-trivial) preference erosion where its effect is the converse.

However, our judgement about when preference erosion is acceptable should be sensitive not only to the bracket of the state losing out and the state that's gaining at their expense (in the case above, A and C), but it should also be sensitive to the position of the state giving out the terms of market access (B). For the same reason that states in lower brackets are entitled to show greater self-interest in negotiations, they are also entitled to attach more weight to increases in their own wealth, even where this does erode the preferences of their trade partners. Insofar as LDCs need urgent improvements to their standing, it would be wrong to object to their actions if they signed an agreement that substantially improved their own status quo, regardless of the other states affected: so long as their gains are not ill-gotten, their reasonable partiality and the urgency of their needs speaks in favour of any improvement they can get to their status quo. For developing states, there is a balancing act of sorts: insofar as they are not required to maximise the benefits of their trade relationships with LDCs, there may be some cases where it is admissible to erode the preferences of an LDC for the sake of the developing countries' own gain. But both because of the greater urgency of LDCs' interests, and developing states' duties of stability to their LDC

⁸³ The use of 'preference' here relates to a state having previously been the beneficiary of preferential treatment (the value of which is now eroded), rather than referring to any kind of 'preference' in the sense of a state's wishes.

trading partners, the gains to the developing country would have to be substantially larger than the loss to the LDC, and some of those gains ought to go towards compensating the LDCs' losses.

Multi-party arrangements

There is a way of side-stepping, or even eliminating, the complications that arise from preference erosion, and that is to agree to the terms of a trade relationship as part of a multi-party agreement. The greater the number of states that agree to market access terms in coordination with one another, the less third-party states there are who can be given more favourable terms which serve to undercut another state's gains. At the extreme, if every single state negotiated the terms of their market access together in a single, multilateral trade organization, there would be no states left to give preferential terms to, and so the problem of preference erosion would be avoided (at least if states committed not to alter their trade policy outside the multilateral context).

Adjusting our principles to take into account multi-party arrangements may seem straightforward; extrapolating from the principles discussed earlier, states should negotiate towards providing maximum benefit to LDCs, ensure that all areas of negotiation are win-win for developing countries, and let the chips fall where they may with respect to developed countries. The only modification we would obviously need here is that we would have to treat each of these brackets as a class: we might be able to maximise the benefits of a trade agreement for LDCs taken as a whole, but we cannot maximise the benefits to each LDC, given that gains for one will come at the expense of another.

In fact, however, the move from bilateral to multilateral principles is a little more nuanced. First, we need to modify what was said about developed and developing states. I have argued above that a single developed state had no obligation to participate in trade with a single developing state, because developing states are at least potentially capable of fulfilling their duties of justice without such a trade agreement. What developing states do need in order to fulfil their duties of justice, however, is a set of favourable circumstances, including international economic circumstances. In the case of bilateral trade relationships, this simply entailed an obligation for developed states that, *if they did* trade with developing states, *then* they should manifest favourable conditions (by seeking an arrangement which gives the developing state across-the-board gains). One thing that changes in the case of multiparty arrangements is that, the larger the arrangement, the greater the obligation there is to include developing states within the arrangements. This is because, as multiparty arrangements get larger, they determine an increasing share of what international economic

conditions prevail, not just for members, but for outsiders too. Where multiparty arrangements are so large as to be de facto global arrangements (e.g. the WTO) it would be unjust to exclude any developing country, as being excluded would in effect amount to suffering from unfavourable international economic conditions, thereby setting back the likelihood of realizing justice.⁸⁴

Second, while developed states' legitimate claims are relatively easily satisfied within a multiparty arrangement, there is a conflict between the legitimate claims of both developing states and LDCs to the benefits from intensified trade. Given the pressing nature of developing states' own interests, the multiparty agreement as a whole cannot maximise the benefits to LDCs, as this would be to excessively disregard developing states' claims. Moreover, because they themselves have no obligation to maximise the benefits to their LDC trading partners, developing states are perfectly entitled to push for terms which constrain the benefits flowing to LDCs, in order to better protect their own interests. On the other hand, as both developing states and developed states must recognise, LDCs are entitled to more favourable terms than other states, as their level of dependence is especially great. Because of this, ensuring that the trade arrangement is merely beneficial for LDCs, even in an 'across-the-board' sense, is unsatisfactory: LDCs should be given better treatment over and above what other states, including developing states receive. Accommodating the specially-urgent interests of LDCs within the multiparty arrangement may, for this reason, justify deviations from 'across-the-board' gain for developing states in cases where their interests and LDCs' interests unavoidably pull in different directions, and where the deviation is not excessive. Given the discussion above, it is developed states that bear the largest burden for ensuring that LDCs benefit more than others; in bearing this burden, developed states must remain mindful of the pressing claims of developing states.

We can now sketch out the broader contours of what a multi-party arrangement should look like.⁸⁵ First, all states are entitled to push for some benefit to themselves, unless the cost that developed states must bear for lifting LDCs to the lower threshold outweighs the benefits the developed state gains from trading with developing and other developed countries. Where LDCs or developing countries lose out in absolute terms from an agreement, the terms should either be altered or, if the costs of renegotiation would outweigh the benefits, compensation of some sort is required from those who have benefitted beyond what justice allows. Second, all areas covered by

⁸⁴ A similar point applies, to only a somewhat lesser extent, to the largest developed-country markets, whose own economic policies go some way towards shaping the international economic environment for developing countries.

⁸⁵ In multiparty arrangements, there is no need to assume that each states' bilateral relationships should conform to the bilateral principles discussed in section 4.5. So long as the distribution of the system as a whole conforms to the standards described above, then a state that plays its role in creating and upholding that system is fulfilling its dependence-generated duties.

negotiations should benefit LDCs and developing states as a class. Where an area benefits these brackets as a class, but harms a state within one of those brackets, opt-outs, exemptions, and again compensation of some sort should be available. Third, agreement should cover as many areas that would benefit LDCs and developing states as can be identified, and should do so in as much depth as would serve states in those brackets.⁸⁶ Fourth, developed countries owe special duties to LDCs, which go beyond ensuring that each area covered is a ‘win’ for LDCs. In meeting these special duties, developed states must not lose sight of the interests of developing states in across-the-board gains.

We can also say something about adjudicating between potential multiparty arrangements where a number of them meet the four points mentioned above. This is because we are not entirely indifferent to how distributions fall between states in the same bracket. Where Agreement 1 and Agreement 2 would both treat each class fairly, but would have different distributive effects within each class, we can apply the principles discussed above to determine a relative ranking of the potential agreements. With regards to developed countries, we are somewhat indifferent so long as they each benefit (unless this comes at the cost of failing to sufficiently benefit LDCs). When choosing between Agreement 1 and Agreement 2, the one that produces more gains to less capable developing states seems preferable to one that produces more gains to more capable developing ones. While better-off developing states are entitled to pursue rough equality with worse-off developing states in the bilateral context, this is only acceptable because the importance of recognising the other state’s greater urgency is balanced by the better-off state’s reasonable partiality. Those reasons don’t apply to the other participants within the multiparty arrangement, so those other parties should prefer the arrangement where the less capable parties within the middle bracket benefit more, all other things being equal. With regards to LDCs, the urgency of each of their interests means that the calculation involved in choosing between Agreement 1 and Agreement 2 will be largely a utilitarian calculus: the preferable agreement is whichever one produces the most gains to the class of LDCs, gains of the sort that could lift them above the lower threshold. The urgency of LDCs’ interests mean that the quicker and more efficiently states can be lifted above this threshold, the better.

So, with the proviso that such tables oversimplify matters where political judgement is both inevitable and required, we end up with something like this in multi-party arrangements:

⁸⁶ This may seem a fairly bland point, but it has surprisingly demanding critical upshots. For one, the TRIPS agreement (see Chapter 7) is almost certainly ruled out by it. It also almost certainly requires the liberalisation of temporary migration laws.

	Profile of benefits from multi-party arrangement	Adjudicating between bracket members
Developed countries	Overall benefit	Mutual benefit, relative indifference
Developing countries	Across-the-board benefit	Weighted priority
LDCs	Demanding levels of across-the-board benefit	Utilitarian

[Table 2]

4.7. Conclusion

In this chapter, I've developed a shift-sufficientarian account of distributive justice in trade, where states must act on the basis of both reasonable partiality towards their own citizens' interests, as well as the relative urgency of their own and their trade partners' interests. For states in higher brackets of development dealing with states in lower brackets, the relative urgency of a trade partner's interests puts limits on self-interested bargaining. For states negotiating with trade partners in higher brackets, reasonable partiality and relative urgency pull in the same direction, so the state is entitled to negotiate self-interestedly. Where developed states negotiate with one another, they are entitled to pursue self-interest, as they know their trade partner is capable of walking away if the terms pursued are unpalatable. For developing states or LDCs negotiating with states of the same bracket, they ought to pursue rough equality. In multiparty agreements, every party should gain, non-developed states should (as a class) gain in each area covered, and developed states bear additional duties to ensure that LDCs receive substantial benefits.

One of the benefits of this account of distributive justice in trade is that it considers not only the duties of developed states, but also the duties that developing and least-developed countries have towards one another, a sorely neglected topic in the global justice literature. Another is that the tripartite distinction between states based on their position relative to the two thresholds, is the sort of approach that is capable of being implemented and acted upon in an institutional setting. Given the pre-eminence of multiparty organisations in trade, in particular the WTO, this seems vitally important if our theory is to be action-guiding. In the next chapter, I will put forward a proposal which, based on the above discussion, I argue should be implemented and acted upon

by developed countries within multiparty organisations like the WTO, as part of discharging their demanding obligations to LDCs.

Chapter 5: The Case for Quotas from Least-Developed Countries⁸⁷

5.1. Introduction

In this chapter, I argue that deeper trade integration between developed and LDCs can be a powerful instrument for reducing global poverty, and that developed countries have a consequent moral duty to increase the scope of such trade, but also to change its current composition. More specifically, I argue that, in order to fulfil their duties of justice to LDCs as described in the previous chapter, developed countries should impose a quota system on themselves, so that a high, but not crippling⁸⁸ percentage of their total imports by value (excluding natural resources like oil and minerals) come from LDCs. A quota system of this kind is supported by non-relational and relational reasons: it is owed simply because each state in the international order must be able to realize minimally-adequate standards of justice within their jurisdictions, but it is also owed as a matter of fairness, because LDCs have suffered from an inequitable distribution of both the opportunities and the risks of participation within the trade regime. Finally, an LDC quota presents a more effective way for developed states to fulfil their duties to LDCs than is offered either by a continuation of the current status quo, or a thoroughgoing commitment to free trade alone. This is so even if a free trade policy was coupled with generous provision of aid from developed to least-developed countries.

Because this chapter is more applied than the previous one, it requires more concrete discussion of the political economy of trade, particularly with regards to how developed states might plausibly facilitate LDCs' development. For this reason, my discussion of LDCs will also be more concrete, and I will assume for the sake of argument that the current designation of LDCs in trade today maps onto the conceptual understanding of LDC that I introduced in the previous chapter. I make a similar assumption with respect to developing and developed states. While I think the criteria currently used to identify LDCs gels well with what I said in the previous chapter, my arguments there are consistent with setting the thresholds separating LDCs from developing countries higher, lower, or using a different methodology than the ones currently used. Having said that, I think the

⁸⁷ This chapter has benefitted immensely from frequent discussion with Thomas Wells, with whom it will form the basis of a co-authored paper, currently in preparation. I thank him for letting me use our joint work for this thesis. Thomas contributed to the development of the LDC quota idea, as well as suggesting the tripartite structure of the argument in favour of the LDC quota (i.e. sections 5.4.-5.6.). I have taken the lead in writing all of the sections included in this chapter.

⁸⁸ While it's beyond the scope of this essay to determine what precise percentage would be the right one to set, believe somewhere in the region of 5-10% would be suitably demanding, yet still achieve the effects we are looking for. A crippling percentage would be one that threatened to send some developed states below the higher threshold, identified in the previous chapter.

discussion below shows that the countries currently designated as LDCs are indeed currently incapable of realizing minimally-adequate justice on any plausible level at which we could set such a threshold.

The argument will proceed as follows. In section 5.2., I will introduce the basic case for free trade policies, before noting a sort of standard position within the trade justice literature, with regards to which states are entitled to deviate from free trade, and which have obligations to trade more or less freely. In section 5.3., I put forward the LDC quota proposal, the advantages of which show the shortcomings of the standard position previously described. In section 5.4., I will explain the non-relational argument for an LDC quota: every state ought to be capable of fulfilling their duties of justice, and the LDC quota is a promising way of bringing this about. In section 5.5., I will discuss the relational argument: LDCs are entitled to something like the LDC quota from developed countries on the basis of their shared participation within the trade regime. In section 5.6., I will show why an LDC quota has a better chance of enhancing LDCs' capabilities in comparison to more orthodox trade measures, such as free trade, or Special and Differential Treatment (S&DT) as it is currently practiced. While these measures don't tackle the root of LDCs' developmental difficulties, the LDC quota proposal represents a promising way for developed countries to act on their duties to LDCs, by enhancing LDCs' short-term opportunities, as well as their long-term capabilities. Section 5.7. concludes.

5.2. Free trade and trade justice

According to a strong economic consensus,⁸⁹ international trade produces gains for each trading state, and thus it is almost always in each state's interests (as well as in the general global interest) to liberalise trade. States, on this view, should therefore adopt a free trade policy, whether unilaterally or in coordination with one another. The most well-known justification for free trade is based on the theory (or 'law') of comparative advantage. It was David Ricardo, in his *On the Principles of Political Economy and Taxation* (1821), who first demonstrated this law, by showing that all states can benefit from trading with one another by specialising in producing those goods which they are relatively good at producing, and trading for the rest. Even if one state is better at producing every good in absolute terms, they are still better off specialising in the production of those goods they have the lowest opportunity cost to produce, and trading for the rest with other states (who, in turn, specialise in the goods they're best at producing). By trading, and by taking

⁸⁹ Douglas Irwin claims that free trade has "achieved an intellectual status unrivalled by any other doctrine in the field of economics" (1998, 217).

advantage of the differences between states' productive endowments, we put labour, both national and global, to work more efficiently than were each state to produce all its own necessities. This serves as an argument for any amount of trade compared to an autarky baseline, but also as an argument for free trade: the less restrictions on international trade, the more efficiently labour can be put to work in its respective niches.

The case for free trade is not solely a matter of productive efficiency, however: the dynamics which free trade sets in motion can play a role in bringing about not just poverty alleviation but also, in the long run, international equality (recall the discussion on Kapstein, 2006, in section 3.4.). With no artificial barriers to the flow of technology and knowledge, worse-off states can use these to catch up faster than advanced countries can push the frontiers of knowledge and technology forward: it's faster to copy than to innovate. Moreover, when countries trade freely, the prices that inputs into production ('factors of production'; e.g. capital, labour) receive ought to converge globally. Where, for instance, there are differences in the cost of labour across two countries, market actors are expected to move in to take advantage of this, which in turn will raise the price of the initially-cheaper labour. This dynamic will continue until there is no more price advantage to be had from arbitrage between the two countries, after market demand having equalised the price of labour in both. As labour, by and large, is the abundant factor in non-developed countries, their comparative advantage typically lies in labour-intensive industry. As a result, when developing countries integrate into world markets, the above-described dynamics are expected to greatly benefit them, moving their own wages up over time towards the wages received in developed countries (Samuelson, 1948).

While we are still quite far away from a free trade world, the international trade regime is more open than it has ever been (Ortiz-Ospina et al., 2019).⁹⁰ Importantly, the historical record appears to have largely borne out the claims made for in favour of free(r) trade, at least in broad strokes. Trade openness and liberalisation have played a part in all of the most dramatic development stories in recent generations (Panagariya, 2019), and states open to trade have consistently outperformed more closed states in terms of growth.⁹¹ To give just one illustration, Dollar and Kray (2004) show that the developing countries that cut their tariff rates the most over the last 30 years grew by approximately 5% per year, in comparison with the rest of the developing states, which grew by about 1.4%. While there are a number of important wrinkles and exceptions, the

⁹⁰ So long as we don't measure it over too short a time-horizon; trade is less free today than it was three years ago, as a result of the current US administration's trade policies and the restrictions that have been prompted by the COVID crisis (see WTO, 2019b; WTO, 2020a; Evenett, 2020)

⁹¹ For a detailed and robust defence of the record of free trade against various critiques, see Irwin (2005)

link between trade and growth, and between growth and poverty reduction has significant empirical support; Tesón claims that ‘the evidence for this proposition is overwhelming’ (Tesón, 2012, 131; see also Krugman et al., 2015, 704-706).⁹²

When philosophers discuss free trade (or ‘trade liberalisation’), and whether states ought to implement such policies, they are usually contrasted with restrictive or protectionist policies (Suttle, 2017; Goff, 2020). In turn, the relative merits of each are often considered with respect to the interaction between ‘rich’ and ‘poor’ countries, or else ‘developed’ and ‘developing’ countries (see e.g. Brock, 2009, 220-244; Tesón, 2012; Armstrong, 2012; Risse and Wollner, 2019). At an admittedly high level of generality, the trade justice literature can be seen to centre around the questions of when developed and developing countries respectively can, or must, pursue free trade policies, or protectionist policies.

On such questions, there is something like a standard position. On the one hand, most authors argue that developing countries are entitled to erect protectionist barriers where they see it as being in their interest.⁹³ In part, this is because developed countries would seem to have weaker claims against being harmed by developing country protectionism than vice versa (see e.g. Suttle, 2017). But it is also grounded in respectable economic arguments to the effect that, if used judiciously, enacting protectionist policies can help to improve developing countries’ competitiveness in the long-run, relative to a thoroughgoing free trade policy (Rodrik, 2007). Because some industries are subject to increasing returns to scale (or ‘economies of scale’), early entrants to a market have a major cost-advantage relative to new entrants. By temporarily shielding domestic producers in such industries, developing countries can nurture their ‘infant industries’ so that they can grow in size and efficiency to a point where they themselves reap economies of scale, after which they no longer need to be protected from international competition. Often, authors who defend developing states’ entitlement to use protectionist policies point to the fact that a number of the Asian Tigers, as well as China, adopted a mix of free trade policies and selectively protectionist policies (see e.g. Brock, 2009; Moellendorf, 2009).⁹⁴

On the other hand, it is generally assumed that, in most circumstances, developed countries will not be justified in enacting protectionist policies, and so should adopt broadly free trade policies. Because protectionism restricts other states’ access into a developed country’s markets, it reduces

⁹² See e.g. Bhagwati and Srinivasan (2002). Creating a direct line from trade to poverty alleviation is more difficult. See Brock (2009), for a critical discussion, relying heavily on Winters, McCulloch and Kay (2004)

⁹³ For an exception, see Teson (2012).

⁹⁴ It’s not clear whether the arguments these authors give in favour of allowing developing states to implement protectionist policies against developed states should apply when developing states’ protectionist policies harm other developing states or LDCs.

the gains that those other states can make from trade. Given the relative urgency of the needs at stake, developed countries are assumed to act wrongfully when they put up such barriers to the detriment of non-developed states' export opportunities. While some authors are unequivocal about this (Kapstein, 2006; Tesón, 2012), others see a qualified, restricted case for developed-country protectionism in some cases, for example where this is necessary to protect workers from losing out as a result of other countries' human rights abuses, or where doing so is deemed necessary for protecting public health (Risse, 2012; Suttle, 2017). Still, Richard Miller is fairly typical of the literature when he claims that while justifying such policies on the part of developed countries is certainly not "impossible", it is "extremely difficult" (Miller, 2010, 75).

Framing discussions of trade justice around these two binary categorisations, however implicitly, overlooks two important considerations. First, it misses out on an important way in which states can shape the flow of trade. States aren't faced with a binary choice of either liberalising or shielding their economy: they can also *divert* trade, away from some producers and states, and towards others.⁹⁵ In trade, the competitiveness of a state's industry is partially determined by the terms of access they receive in other states' markets, relative to their competitors. Even the most efficient producers of a good won't be competitive in markets within which they face prohibitive trade barriers. Because states have the power to artificially raise or lower the costs of some producers at the expense of others, this gives them the ability to tilt the economic gains from trade in favour of some states, to the relative detriment of others.

The second nuance we must incorporate into trade justice debates is the qualitative difference between developing states and LDCs, both with regards to how they have fared from trade, and what they are owed by trade partners. There are good moral and practical reasons to treat developing and least-developed states differently. If each were given the same treatment, for example all non-developed states were granted unrestricted access into developed country markets, the greater competitiveness of developing states in the same areas of economic activity which LDCs would want to diversify into (e.g. light manufacturing) would mean that equal treatment in legal terms would amount to inequitable outcomes for least-developed countries. While unrestricted trade may be how developed states should treat developing states, I argue that developed states should actively divert a greater share of international trade towards the least-developed states, even if this is at the relative expense of developing states.

⁹⁵ Strictly speaking, diversionary trade policies are not a separate sort of policy option; they are a different *use* to which trade policies can be put. Whether a policy will be protectionist or diversionary will depend on whom the state is shifting the gains of trade towards, and with what motivation. It's also worth noting that what counts as a free trade measure, and what counts as protectionist, is not entirely free from value judgements; see Lang (2007).

5.3. The LDC quota proposal

The United Nations recognises 47 countries as ‘Least Developed’, based on their gross national income per capita, ‘human assets’ (nutrition, education, and health levels), economic vulnerability, and size (UNCTAD 2019). Currently 12% of the world’s population live in an LDC, mostly in Sub-Saharan-Africa, yet they account for less than 2% of world GDP, a mere 1% of world trade, and close to 40% of the world’s population living on less than \$1.90 per day. All of the countries which score lowest on the Multidimensional Poverty Index (MPI), and on the Human Development Index (HDI), are LDCs: poverty is more widespread, more intense, and more multidimensional in these countries than in developing or developed countries (Alkire and Robles Aguilar, 2012; Conceição, 2019). Due to their abject condition, LDCs have been the subject of targeted international assistance both because their people are impoverished, and because they face particular burdens in economic development due to their low financial and human resources, small domestic markets unable to support economies of scale, and vulnerability to environmental, economic, and political shocks. LDCs are also eligible for international development aid and special and preferential treatment in the multilateral trading system. However, since the designation of ‘LDC’ was introduced in 1971, only six countries have graduated to developing country status. This attests to how difficult the process of development can be. It also speaks to the fact that the international trade regime and the orthodox trade policy toolkit are doing a poor job of facilitating the development of LDCs.

To divert trade towards those countries that need it most, developed countries should make a public, binding commitment to having a demanding, but not crippling percentage of their imports, in value, come from LDCs. They should set a clear, ambitiously near-term date for when they would first meet this target, and they should continue to meet this target into the future. They should give an account of how they are working towards this target (i.e. transparency), and they should be held to account on the basis of their efforts (i.e. contestability).⁹⁶ They should exclude natural resource exports, such as oil and minerals, from the agreed-upon figure, as economies geared towards the export of these commodities have deleterious effects on long-term political and economic development. The goal, after all, is not that LDCs would gain in income terms, but that LDCs would be in a position where they would be capable of realizing a minimally-acceptable level of domestic justice, thereby ‘graduating’ to developing country status. Ideally, developed states should adopt this proposal within the WTO, where they are all currently members. This could serve as a ready-made forum within which they could coordinate, as well as give account of

⁹⁶ See section 2.4.

their progress, their failures, and their successes. However, where other developed states aren't willing to make a public commitment and bind one another to it, each individual developed state has a duty to adopt this commitment unilaterally.

Two elements of the proposal bear commenting on here, as they demonstrate its workings and specific advantages: the composition of the LDC exports, and the flexibility by which developed states reach their targets. First, the composition: it is vital to the success of an LDC quota that certain sorts of exports are excluded, specifically primary commodities such as oil, diamonds, coltan, and so on. There are two significant problems with these exports. Firstly, they are a poor way of getting the gains from trade to the ordinary inhabitants of a country, since they are industries that tend to employ few locals, and their export creates demand for local currency that reduces the viability of exports from other industries (such as textiles) that would employ more people (the so-called 'Dutch Disease'). Depending upon primary exports also ties a state's developmental prospects to international commodity markets, which are characterised by high volatility. The goal, then, should be to facilitate LDCs' abilities to specialise in more stable, dependable export sectors, where the gains would be shared more widely by the citizenry.

Secondly, the profits from natural resource exports go directly to governments as rents, because international law assigns governments the right to sell them (or borrow on them) at the market price and keep any difference over the costs of production. As Thomas Pogge and others have analysed, this 'international resource privilege' allows rulers to govern without having to collect taxes, therefore having little political incentive to be responsive to their citizens (Pogge, 2002; Wenar, 2015). Instead they can run the state for their own private interests, while maintaining power by doling out rewards to their security forces and political allies. This makes government an attractive prize for exactly those people least interested in using the power of the state to advance the public good. Altogether then, high natural resource exports in countries with weak institutions are a recipe for a self-perpetuating vicious cycle of bad governance, political conflict, and authoritarianism.

On to the flexibility of the LDC quota. The quota targets a particular outcome (rich countries dramatically increasing their imports from LDCs) while leaving open *how* this is achieved. Some developed country governments may choose to work with LDCs to improve their infrastructure, such as the (low-carbon) electricity supply to free trade zones or funding cross-border roads and automated customs procedures (for land-locked countries). Or they might provide technical, legal, and administrative assistance to aid LDCs' compliance with other markets' quality and safety standards. Others may decide that the easiest way to meet the quota is just to attach negative tariffs

on any goods imported from an LDC, making them artificially cheaper and hence more attractive for developed-country consumers to buy. Over time, if trade quotas succeeded in catalysing new industrial clusters in LDCs, such subsidies could gradually be scaled back, greatly reducing the costs of quotas to rich world citizens.

However, the more important virtue of the LDC quota's open-endedness is what we might call its epistemic function. By allowing states to pursue their quota target as they best see fit, they can each try out different sets of policies, depending on what they take to be the most promising route to development for LDCs, or depending on what seems most cost effective for them, given domestic political and economic circumstances. Over time, developed countries, as well as the LDC beneficiaries themselves, will have an increasing body of empirical information about what sorts of policies are effective in facilitating development, and which sorts end up producing unintended harms, resulting in a more complete picture of the structural constraints facing LDCs. Given how intractable the problem of development has been for LDCs, this increasing body of knowledge and experiment ought to prove invaluable.

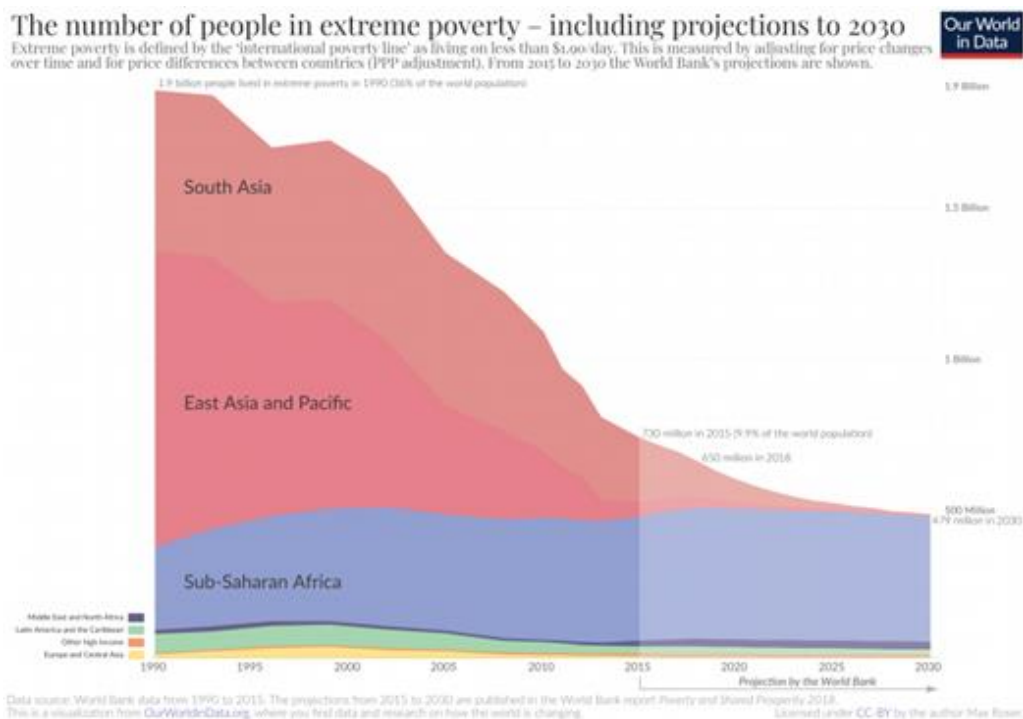
Given the strong dependence that the LDC quota would entail, developed states would have a demanding duty of accountability towards LDCs in this regard. Both elements of accountability, i.e. transparency and contestation, are vital for the LDC quota to be equitable and effective. First, transparency is necessary in order for LDCs to know what new opportunities are available to them, how other LDCs have been treated and benefitted, and so on. As mentioned previously, transparency is a two-way street: LDCs must have the resources, the wherewithal, and the data to be able to understand the effects of the LDC quota policy. Due to their low levels of human assets, as well as the cost of the information-gathering involved, developed states need to provide support and technical assistance in order for LDCs to be able to understand, interpret, and make informed conclusions about how they're being affected. This will include technical assistance in collecting and collating data concerning the effects of the LDC quota system within the LDCs themselves.

This final point is particularly important with regards to the second element of accountability, namely contestability. Without adequate information concerning how they've been affected, or stand to be affected, LDCs have no control over this process. This would risk not only overlooking important considerations and unintended consequences that LDCs would suffer as a result of some particular developed country policy; it would also risk turning the LDC quota into a means by which developed countries could facilitate the sorts of domestic changes that they wanted to see in LDCs, perhaps based on their own self-interest, regardless of what sort of economies and societies LDCs themselves wanted to foster. A public forum wherein developed states give account

of their actions should double as a forum wherein LDCs can give an account of the effects of certain policies, challenge the priorities of developed states, and the empirical bases underlying their decisions. A public forum, where LDCs themselves can contest the approaches that developed countries take to reaching their own quotas would give LDCs far greater say over the terms of their trade relationships than they currently have.

5.4. The non-relational argument for an LDC quota

The best and most intuitively-compelling argument for alleviating poverty is the sheer human suffering which such poverty causes, coupled with how easily we in the developed world could afford to alleviate it. In monetary terms, the threshold of extreme poverty is set at \$1.90 a day, considerably less than you'd spend on a fancy coffee from Starbucks. For reference, the UK's average income per capita is about \$128 a day (WorldBank, 2016). Despite the modesty of the absolute poverty threshold, around one in every ten people in the world live below it: the World Bank estimates that by 2030, on current growth trajectories, 87% of those living in extreme poverty will be in Sub-Saharan Africa, where most LDCs can be found (Roser and Ortiz-Ospina, 2019; see figure 1).



[Figure 1.] Source: <https://ourworldindata.org/extreme-poverty>

But poverty, as a human condition, goes beyond income deficiency: it is multidimensional, with some people suffering deprivations in some areas and not others. The multidimensional poverty index lists ten poverty indicators, covering health, education, and standard of living (Alkire and Robles Aguilar, 2012; Alkire and Santos, 2014). Malnourishment is perhaps the most striking illustration of deprivation. Still, in 2020, millions die every year from starvation, around one person every ten seconds or so. Even short of starvation, malnutrition, which affects around one and a half billion people (Robles Aguilar and Sumner, 2020), severely compromises the immune system, making sufferers more susceptible to illness, and is estimated to be an underlying cause in about half of all children's death in developing countries (Hassoun, 2012, 32). Lack of adequate shelter and sanitation render individuals vulnerable to floods, parasites, and horrific diseases such as cholera, as well as untold psychological distress. A lack of education undermines individuals' ability to learn, communicate, form plans, even to fully understand their level of deprivation. In many parts of the world, even a basic formal education cannot be taken for granted: Leif Wenar mentions the case of South Sudan, where "half of the civil servants lack a primary education and where a girl is more likely to die in childbirth than she is to learn to read or write" (Wenar, 2015, 7). The gap between our own lives and the lives of those in dire poverty is, by any measure, ghastly.

It's likely that the case for an obligation to eradicate dire poverty is overdetermined. Such an obligation could be argued for, for example, from a utilitarian (see e.g. Singer, 1972; 2016), contractualist (see e.g. Beitz, 1999; Brock, 2009), or a human rights standpoint (see e.g. Miller, 2007; Griffin, 2008). As Judith Lichtenberg has stated, "you don't need industrial strength ethical theory to know that it would be better if billions of people didn't live in dire poverty" (Lichtenberg, 2014, 119). And, while there may be debate over where to set the threshold of a minimally-adequate standard of living, that each individual is entitled to *some* standard, and that it is higher than that which many in the world can attain today, is hardly disputed (see e.g. Armstrong, 2012; De Bres, 2016a). This conclusion is reflected in the numerous international treaties, programmes, and institutions directed at ending extreme poverty, from article 25 of the Universal Declaration of Human Rights to the Sustainable Development Goals to the World Bank.

While the existence of a duty to tackle extreme poverty may be uncontroversial, the LDC quota may seem like an odd way of fulfilling it. In the case of extreme poverty, after all, we're concerned with individuals. The targeted beneficiaries of an LDC quota in contrast are, in the first instance, states. And, in numerical terms, there are more people in extreme poverty in developing states than in LDCs, at least currently. Why would we not focus our attentions, and gear our poverty-eradication solutions on developing and least-developed states alike?

This takes us to a point discussed in section 4.3.: states' positions along the capabilities scale may be subject to discontinuous jumps (or falls), and their positions certainly entail discontinuities in how we treat them. While it is true that, fundamentally, we're concerned with individuals, and there are more impoverished individuals in developing states than in LDCs, we ought to recognise the intimate connection between individual-level poverty on the one hand, and a state's wealth and institutional capabilities on the other. Lifting individuals from poverty involves facilitating societal development: it is, in a real sense, a collective achievement. With respect to wealth, Branko Milanovic has recently shown that we can account for more than two thirds of global inequality using one variable, namely the country where people live. Being born into an LDC in itself makes you many times more likely to suffer dire poverty. For example, simply being born in Sweden would on average leave you 71 times wealthier than if you were born in the Democratic Republic of Congo. Milanovic calls this the "citizenship premium" (2016, 132).

Once we broaden out beyond income, and start thinking about other dimensions of poverty, the need to focus on LDCs, to the relative detriment of developing countries, becomes clearer still. While wealth can conceivably be earned and acquired individually even in surroundings of dire poverty,⁹⁷ a number of other deprivations are difficult to eradicate without a functioning state, or at least some centralised authority. Education, access to healthcare, and decent sanitation are all public goods, which someone needs to provide and maintain, which in turn requires investment and continuous, competent management. The state, when it has the technical resources and motivation to do so, is the obvious agent to task with providing these public goods. Given their low human resources, this represents a significant capabilities shortfall on behalf of LDCs.

In contrast to LDCs, developing countries may suffer from poverty, but, as a class, their recent economic growth and their success in greatly reducing if not quite eliminating absolute poverty (see figure 1) show that, while more work needs to be done, the institutions within these states are functioning well, or at least well enough to allow for sustained economic growth. They also score better than LDCs with regards to their human assets, and are thus typically in a better position to manage and run the complex technical and bureaucratic challenge that is running a state. Alleviating multidimensional poverty requires states to have at least basic capabilities to provide the infrastructure necessary for securing minimally-adequate standards of living. The consistent failure of LDCs to reach even the modest thresholds that mark states out as 'developing' attests to a lack of such institutional capabilities. Recalling the discussion in section 4.3. concerning the

⁹⁷ Though retaining this wealth in the absence of well-functioning institutions is another matter.

jumps in states' capabilities, it is clear that developing countries have reached some minimal level of functionality, which allows them to uphold conditions of continuous economic growth.

An LDC quota is an appropriate response to LDCs' deprivations, both for economic and for broader political reasons. Economically, an LDC quota would help LDCs greatly expand their exports while diversifying their economies away from natural resource exports. Export-led growth, marked by high or rising shares of trade in total income, has been a characteristic of more or less all the developmental success stories of recent decades (Panagariya, 2019), successes which have cumulatively raised over a billion people out of absolute poverty in the last thirty years (see Figure 1). Not only that, but employment in export sectors tend to produce higher wages for workers in LDCs than they can receive working in other areas of the economy (Maksimov et al., 2017). The expansion of LDCs' export sector in non-resource areas ought to greatly enhance the availability of decent work within such LDC. Moreover, with respect to the broader deficits that LDC citizens face, it is worth noting that there is a statistically significant correlation between "exports per capita and three indices of development: Adult literacy rates, gross national product (GNP) per capita (PPP adjusted), and percentage of population living on less than \$ 2 (PPP) per day" (Moellendorf, 2009, 95; citing the work of Mandle, 2003). While we must acknowledge that these are only correlations, they are suggestive of the transformative potential of export-driven growth.

The LDC quota also encourages the reduction of LDCs' own protectionist trade policies, which are often detrimental to their development opportunities, by bolstering the political voice of non-resource exporters. Currently, producers within LDCs that are protected from international competition will already be domestically powerful constituencies with a shared interest in continued protection. In the absence of sufficiently strong export sectors, protected industries will be better able to mobilise for continued protection than prospective exporters and consumers who have a shared interest in liberalisation, but who are politically diffuse.⁹⁸ Where manufacturing exporters are not currently a key domestic constituency, and because LDC governments know other states are not likely to bring forward a legal challenge when an LDC raises protectionist barriers (they are typically too small a market, and it's not a good look to take a legal case against an LDC), there is little to be gained politically from liberalising the economy (Bown, 2010). The LDC quota changes this economic logic by bolstering the political voice of the (prospective) export sector: LDC exporters will know that a massive chunk of global wealth is there to be earned,

⁹⁸ While these are generalisations, and will not hold true for each LDC, recall that policy measures in multiparty arrangements should be evaluated with respect to their effects on development brackets taken as a class; even if this diagnosis does not hold true for each LDC, this is not a problem so long as the proposed solution nonetheless benefitted them substantially.

provided their state put them in a good position to compete with other LDCs. To put them in such a good position, in turn, would mean liberalising imports on intermediate goods, as well as funding training, education, infrastructure, and so on.

To summarise, we have a duty to alleviate extreme poverty, both in terms of wealth and understood more broadly. While there is extreme poverty in developing countries, which should certainly be eradicated, development is a societal achievement. An LDC quota is an appropriate and promising way of responding to the particular structural challenges and poverty traps that LDCs face, ones that developing countries have escaped.

5.5. The relational argument for an LDC quota

In the previous section, I've argued that developed states owe favourable treatment to LDCs as a matter of justice, on the basis that each state ought to be capable of realizing minimally-adequate standards of living for their citizens. On this picture, LDCs would be owed favourable treatment from developed states regardless of any pre-existing relationship between the two sets of states. However, developed states don't owe LDCs something like an LDC quota purely on the basis of the LDCs' claim to a global minimum: LDCs also have a claim from fairness. LDCs, as participants within the trade regime, have borne an inequitable share of the risks of economic integration, and received an insufficient share of the economic opportunities that such integration presents.

In order to realize minimally-adequate levels of domestic justice, LDCs are quite clearly dependent upon their trade partners: they rely upon favourable international conditions, export opportunities, cheap electronics and other essential infrastructure, and so on.⁹⁹ This has been the case for decades, decades in which they have been fellow participants in trade relationships with developing and developed countries. Developed and developing countries have accepted the benefits of trading with LDCs, particularly with respect to their natural resource exports; our economies are powered by the cheap availability of commodities like copper, coltan, oil, and, of particular concern to academics, lots of coffee. Even in cases where we're not directly importing these natural resources from an LDC, the fact that LDCs are exporting them at all reduces the world price for each of these commodities, and reduces (though hardly eliminates) the market power of the largest natural resource exporters.

⁹⁹ Recall that, just because A is dependent upon B, does not mean B will actually be dependable and play the role that A hopes that B will.

Despite this, LDCs have been treated as something of an afterthought in constructing and shaping the international trade regime. A few examples will illustrate this. First, negotiations conducted within the GATT, and subsequently the WTO, have been driven primarily by the developed countries and, increasingly, the largest developing countries. States with the largest markets, as well as the primary exporters and importers of certain goods, have been the key players in trade liberalisation, as it is their commitments which are most lucrative. As a result, bargains struck between developed states have thus been taken as the benchmark commitments. Given their differing needs, developing states and LDCs are subsequently granted S&DT which, in the context of states' exchange of liberalisation commitments, is understood as a scaled down, less demanding set of liberalisation commitments, relative to the benchmark set by the more powerful countries (Rolland, 2010). This is problematic as it marginalises LDCs' voice in trade, and also reduces both the international and domestic pressures they face to liberalise their economies, even when it would be in their interests to do so (see above).

Second, LDCs face the problem of escalating trade tariffs. While LDCs typically face relatively low tariff barriers for exporting raw, unprocessed goods into developed countries, they face increasingly high tariff levels for exports which are higher up the value-added chain (Kapstein, 2006, 67-68; Bown, 2010, 24-27). This makes it more difficult for LDCs to escape from lower value-added sectors of the economy, and thus constrains their development: it is, in some ways, precisely the wrong incentive structure for facilitating positive trade for LDCs. In the face of escalating tariffs, and absent the opportunities to diversify their economies, LDCs are particularly vulnerable to changing international conditions (Ronzoni, 2009). Despite the fact that they are the participants most in need of improvements to their current condition, and so are most dependent upon trade-generated opportunities, LDCs' share of global trade has declined over the course of the post-war era, and a number of LDCs have failed to grow at all (Milanovic, 2016). This is hardly a just return on LDCs participation in, and subjection to, the trade regime.

We saw in previous chapters that, where states come to depend upon a trade partner, that trade partner has duties with respect to how they act in the context of their relationship. Those duties include creating and upholding stable and dependable trade conditions, but they also include a duty to recognise the differential level of states' current capabilities in realizing their own duties of domestic justice. In the last chapter we saw that this entails that developed countries have demanding distributive duties towards LDCs, and comparatively less demanding duties to developing countries. We also saw that developing countries themselves have duties to LDCs, but they are comparatively less demanding than the ones that developed countries must fulfil. It's clear from the above that LDCs have not received the treatment they're entitled to within multiparty

trade arrangements such as the WTO. What we must now show is that the LDC quota is a reasonable way of fulfilling each bracket of states' duties in trade.

Let's start by looking at developed countries' duties to adopt the proposal. In the case of developed states, the LDC quota requires them to absorb a non-trivial amount of costs. Developed states do, however, have significant slack in their abilities to realize domestic justice, and are therefore capable of bearing such costs, so long as they are not crippling. Moreover, the in-built flexibility of the LDC quota proposal means that even the least-capable developed countries should be capable of implementing the LDC quota without falling below the higher of the two thresholds: where absorbing costs in one area would risk injustice, the developed country can simply move the cost-burden elsewhere. So, while they are entitled to expect reasonable partiality from their state in trade negotiations, it will not typically be reasonable for developed-country citizens to object to the levels of redistribution required by a fairly high LDC quota, given the relative urgency of the needs at stake, and their flexibility in meeting those needs. Indeed, even aside from the relative weight of interests at stake, developed states, as beneficiaries of LDCs' participation, as the primary architects of the current trade regime, and as the states still most capable of adjusting the flows of trade in the global economy, bear an overdetermined duty to rectify the ongoing marginalisation of LDCs in trade.

Next, let's look at developing countries. Here, two things need to be explained. First, why developing countries aren't entitled to something like a quota proposal, and second, why they aren't required to adopt an LDC quota. The answer to the first part is fairly obvious, but illuminating nonetheless. On the one hand, developing countries on the whole have benefitted immensely from participation in trade. Extreme poverty has fallen precipitously outside of every region other than Sub-Saharan Africa, where most LDCs are located. International trade has been a key driver in this. While this does not suggest that other states have fulfilled their distributive duties in full to developing countries, it suggests that something like an improvement to the status quo is sufficient for meeting such duties. This is in contrast with the duties towards LDCs, the fulfilment of which requires expanding our economic toolkit. On the other hand, LDCs and developing states are in direct competition in the sorts of industries which LDCs should want to promote, i.e. light manufacturing which is subject to economies of scale, and where low cost of labour is central to the business model. The importance of recognising the differences between LDCs and developing countries is that if we fail to do so, and give them a level playing field in which to duke it out, developing countries will continue to outcompete LDCs, further entrenching LDCs' marginal position in the global economy.

In order, then, to divert trade flows to LDCs who have been thus far excluded from sharing in the benefits of international economic integration, they need to be diverted away from developing countries. Recognising the fact that LDC exports would displace developing exports, and thus result in losses to developing countries, we can see why insisting that developing countries adopt an LDC quota is excessively demanding: doing so would amount to a double hit. A responsible representative of a developing country may have a duty to accept and acknowledge that LDCs are, given their structural and developmental challenges, entitled to some special treatment, and that developed states have reason to give LDCs more favourable treatment than the developing country themselves receives. However, given their own condition, a responsible representative of a developing country would not be acting justly towards those whom they represent if they were to refrain from pursuing favourable economic conditions for their own citizens. Given that developing states themselves are often in a position where they're unable to realize justice at home, and may have many people still living in poverty, expecting such states to absorb the costs involved in implementing an LDC quota is excessively demanding. Finally, it is worth noting that, because the LDC quota requires developing states to take a hit, relative to their current level of competitiveness, they have good reasons to demand that the LDC quota be part of a broader package of trade reforms on the part of developed countries, so that the losses they face from the LDC quota would be outweighed by additional gains in other areas.

5.6. The effectiveness argument for an LDC quota

To complete the argument, I need to explain why an LDC quota represents a better way for developed states to respond to their duties to LDCs than any other trade policy. Many of the arguments above, after all, speak in favour of better trading terms, but don't necessarily imply that a quota system is the right way of providing those better terms. Broadly, there are two alternatives available to developed states: they could provide a more ambitious version of the current S&DT terms which they currently offer to LDCs, or they could commit to free trade across the board. Both alternatives ultimately face the same problems, but it's worth saying something about how they differ from each other.

On the first alternative, developed states would offer something close to free trade terms to LDCs, while maintaining protectionist barriers against developing and fellow developed states. This artificially improves the competitiveness of LDCs, and does so in a way which is broadly in line

with current WTO understandings of what S&DT consists in.¹⁰⁰ We'd have to assume that developed states would, as part of this, remove all or most of their non-tariff barriers which currently hinder LDCs' abilities to export. Here, then, LDCs would have close to frictionless trade with developed states, and would therefore have an advantage over states who received less favourable market access terms, but there would be no active steps taken to facilitate their trade growth, e.g. subsidisation or capacity building.¹⁰¹ On the second alternative, developed states adopt a thoroughgoing commitment to free trade, including towards developed and developing states. While this reduces the relative advantage that LDCs might have over their competitors, it also maximises aggregate gains from trade. Not only should some of the benefits of this spill over to LDC, but, more importantly, it would create a greater social surplus which could then be funnelled into providing aid to LDC which would facilitate their development, without sacrificing global efficiency.

It's worth noting that the LDC quota is not *necessarily* in conflict with either of these policies. If a developed state thought that giving this sort of intensified S&DT, or committing to the free trade alternative, would help them meet their quota target, then they are free to try. However, what is different about the LDC quota is that the success of each of these policies would then be measured directly in terms of whether or not it did, in fact, improve the LDCs' export performance. And, importantly, developed states would have to give an account of why they thought this was a plausible route to improving LDCs performance, and be held to account on the basis of its success and failures.

On that score, there's good reason to think that, on the whole, these sorts of policies would fail to get developed states to their quota. The main failing of such policies is that neither of them facilitates the internal domestic change that is required within LDCs in order for them to develop. While their international situation is improved by either of these alternatives, relative to the current status quo, there is nothing within these policies which would entail that LDCs would be able to diversify their economy, away from agriculture and natural resource exports in particular, both of which are highly vulnerable to shocks. Moreover, there is nothing within either of these policies which is capable of encouraging the reduction of LDCs' own protectionist trade policies, which themselves are detrimental to their development opportunities, by making goods, particularly

¹⁰⁰ While WTO members are required to offer their fellow WTO members Most-Favoured Nation treatment (see section 2.3.; see also section 7.2.), there is an exception which allows states to voluntarily grant developing and least-developed countries 'greater-than-MFN' access to their markets, meaning they face lower barriers to trade.

¹⁰¹ Note that this version of intensified S&DT would not improve developing countries' situation, so would represent a neglect of their claims.

intermediate goods, cheap enough to give their domestic exporters an opportunity to be internationally competitive (Bown, 2010).

LDC-quotas, it should be noted, are not an improvement upon free trade in terms of the benefits to the countries adopting the quotas, nor in terms of maximising global aggregate wealth. This is not a mark against such quotas, but rather it suggests a gap in the justificatory perspective that economists typically adopt when advancing the case of free trade (see James, 2012, 62-68): we might well prefer a smaller pie if that pie is more equitably distributed, and this applies to international distributions as well as domestic. The LDC quota would, at least in the short term, reduce global aggregate wealth, but it would do so in a way which directed the opportunities of trade towards those with the most demanding claims.

A defender of free trade might object that, simply *because* LDC quotas reduce global aggregate wealth, we should prefer free trade: rather than artificially shrink the size of the global economy, we'd be better off increasing it, and then subsequently redistributing the additional wealth. The 'free trade plus redistribution' alternative, however, will still be worse than the LDC quota. For starters, it does nothing to alter the structure of the international division of labour; it still leaves LDCs consigned to their current comparative advantages of high-volatility, often low-return raw commodities. Second, the gains from LDC quotas still accrue to the LDC businesses that are internationally competitive, and who receive these benefits on the basis of producing goods that people need and desire. There is a self-respect dividend here, relative to receiving aid, but it also maintains the competitive incentives that generate economic gains in the first place. While their competitiveness relative to developing countries will be artificially improved, LDC exporters will still have to compete with one another for the windfall gains available.

The 'free trade plus redistribution' advocate might respond to these points by noting that compensation could, of course, be apportioned along similar lines, i.e. in order to make LDC industries more competitive, or to help kick-start LDC industrialisation in higher value-added sectors. Even here, however, there are good reasons to want a quota policy. A quota policy provides the right sorts of incentives and motivations for those who are allocating funds for this purpose. Aid can be doled out generously, after which states may feel like they've fulfilled their duties to LDCs by doing so. Yet that aid may do very little good, depending on circumstances, and states may underestimate how much support is needed in order to help LDCs overcome their structural barriers. In contrast, adopting a quota gives developed states an incentive to take steps to ensure that, however they go about helping LDCs meet their target, funding is being allocated in a way which fosters the sort of job-creation that LDCs need in order to develop. It also gives

them a metric against which to judge whether their aid has been effective. Finally, a demanding LDC quota, offered on the part of developed countries, has a vital communicative element. It sends a signal to LDC exporters and prospective exporters, as well as to their governments: 'put the right conditions in place, and you'll have privileged access to the wealthiest markets in the world'. This ought to mobilise and encourage the development of export-sectors in areas of the economy with more salutary domestic spill-overs compared to specialisation in natural resource exports, in turn facilitating positive changes in the political economy of LDCs. The key here is that poverty alleviation, and domestic justice more generally, requires structural transformation. The LDC quota facilitates this; free trade, even coupled with redistribution, does not.

5.7. Conclusion

In this chapter, I've put forward a proposal which would allow developed states to discharge their demanding duties to LDCs within the trade regime. While an improvement to the status quo might be sufficient to discharge their duties to developing states, developed states owe LDCs something which goes beyond the current toolkit of orthodox trade policy. I've argued that developed states ought to commit to acquiring a demanding, but not crippling percentage of their imports from LDCs, a proposal grounded in relational, and non-relational reasons, and well as comparative effectiveness. Of course, this chapter can only be the beginning of an investigation into LDC-quotas; there is much discussion to be had about the specific shape and scale of the quota scheme, how it should be institutionalised and enforced, and so on. Figuring out what the best way of enacting the quota system would be is a complex interdisciplinary task, requiring legal, economic, political, as well as philosophical expertise.

Part 3: Procedural Justice

Chapter 6: Domination and Trade Justice

6.1. Introduction

So far in the thesis, we have discussed what it is about trade relationships that ground justice claims between participants, we have identified three duties of justice that apply within such relationships, and we have looked in detail at what distributive justice requires between states with different levels of capability in realizing domestic justice. I have argued that states' dependence upon one another in trade negotiations grounds distributive demands which are shaped by each state's relative capabilities, as well as by their entitlement to show reasonable partiality towards their own citizens' interests. Where states are strongly dependent upon improvements to their status quo, this generates more demanding duties against trade partners than when a state is only weakly dependent.

But dependence does not just generate distributive duties between trade partners; it also generates procedural duties, pertaining to how states manage and uphold their trade relationships. The remaining three chapters of the thesis will turn more explicitly to the procedures of the trade regime, and in particular the institutions in which states ought to negotiate and regulate their trade relationships. While trade is regularly evaluated in terms of distributive outcomes or opportunities, concern with the institutional configuration of the trade regime and the extent to which states have control over the agreements to which they're subject, is a less well-established concern.¹⁰² This oversight is surprising, as trade relationships have profound impacts upon what options remain open to states and their citizens in regulating their economies. Insofar as the international order does not operate in some nebulous political space, unmoored from how citizens and states order their own politics, questions about power, influence, and control within states' trade relationships must form a key part of any theory of trade justice.

In the final two chapters, I will analyse the institutional configuration of trade through the lens of domination, a concept most closely associated with the republican tradition of political philosophy. In those chapters, I will focus on whether we're better off pursuing non-domination in trade through a pre-eminent multilateral forum, such as the WTO, or whether we ought to embrace the gradual shift away from multilateral pre-eminence and towards a proliferation of regional and bilateral agreements which result in a more complex trade regime, with states pursuing their aims through a number of different forums simultaneously. The task of this chapter is to introduce the

¹⁰² Important exceptions include Brandi (2017) And Risse (2017).

notion of domination, and explain why it is apposite to the account of trade justice that I'm developing in this thesis.

The chapter will proceed as follows. Section 6.2., will introduce the concept of domination, as developed by neo-republicans such as Philip Pettit and Frank Lovett. The next two sections will look at two areas of disagreement between those two authors over what constitutes dominating power. Section 6.3. will argue that we should understand arbitrary power as 'uncontrolled', rather than merely 'unconstrained', power. Section 6.4. will argue that the ability to improve an agent's position is a power capable of generating domination, even where this is not coupled with an ability to worsen an agent's position. Section 6.5. will explain the pertinence of the concept of domination to trade, and the link between non-domination and trade justice. I will argue that the notion of domination not only allows us to link questions of distributive and procedural justice into a broader notion of political justice, but it also captures a salient danger that comes with any significant degree of dependence. Pursuing non-domination is a necessary component of pursuing trade justice. Section 6.6. concludes.

6.2. The concept of domination

Before starting in earnest, there is just a little conceptual housekeeping to get through. I'll be assuming some version of what I'll call the 'orthodox' republican conception of domination, where an agent is dominated when they are subjected to the arbitrary power of another agent. The two most prominent accounts in this vein are those of Philip Pettit (e.g. 1996; 1997; 2008; 2012; 2014) and Frank Lovett (e.g. 2010; 2012), both of whom I draw upon at various points throughout the remainder of the thesis. Where I do so, I take this to be unproblematic given the affinity between their respective accounts.¹⁰³ However, two important conceptual divergences will be discussed in the following two sections, and I'll end up endorsing something of a hybrid between the two accounts (siding in the next section with Pettit on the question of what makes power arbitrary, and siding with Lovett in the section after that on the question of what sorts of powers can generate domination). Because there are also differences in the terminology they use to unpack domination, I should make explicit that I will be adopting Lovett's framework¹⁰⁴ throughout. This choice largely rests upon the arguments made later, in section 6.4. For now, though, it is enough to say that some

¹⁰³ This affinity is something both authors acknowledge (Lovett, 2010, ch. 4; Pettit, 2012, 58). It is also evident in their belief that they are engaged in a joint research program (Lovett and Pettit, 2009).

¹⁰⁴ I make use here of a distinction between a theorist's *account* (their arguments, commitments, etc.) and their *framework* (the way concepts are assembled and deployed). Because it can incorporate the change I believe ought to be made to his *account*, I can adopt Lovett's *framework* throughout.

features of Pettit's framework are quite firmly wedded to the contexts of domination with which he is largely preoccupied (i.e. domestic citizens within the state). This makes applying it to other cases somewhat messy.¹⁰⁵ Lovett's conceptual building blocks are more general, as the title of his book, *A General Theory of Domination and Justice* (2010), suggests.

As per Lovett's framework, then, dominating relationships are characterised by three core features: an imbalance of power, dependence, and arbitrariness (Lovett, 2010). Let's take each of these in turn. B has power over A where B has the ability to reliably change A's preferences or actions. There can be many different sources of such power: B may be capable of deceiving, coercing, or enticing A in ways which are decisive in changing what A wants to do, making some options more attractive and accessible, and others less so. When A doesn't have a reciprocal power of this kind over B, B holds an imbalance of power over A. Next, as has been covered already, A is dependent upon B to the extent that B plays an integral role in how A will, or hopes to realize their core goals or functionings.¹⁰⁶ When A is dependent in this sense, exit from the relationship with B is prohibitive, or else inaccessible. Finally, the third constitutive feature of domination is that the power B holds over A is arbitrary. When power is arbitrary, it is unchecked; where B can determine when and how to interfere with A at their own discretion, B holds arbitrary power. Arbitrariness is a matter of degree; how arbitrary B's power is will vary according to the reliability, effectiveness, and accessibility of resources and safeguards which protect A from unwelcome exercises of B's power.

On this account, domination refers to something about the structure of unequal relationships. It is not an outcome-based concept; B can dominate A even if B doesn't exercise their power so as to worsen A's condition. Of course, B having control over A makes committing certain further wrongs easier, such as the exploitation, coercion, or marginalisation of A. But there's no inconsistency between B having A's best interests at heart, yet nevertheless dominating A. Pettit occasionally uses the character of Nora from Ibsen's play *A Doll's House* to illustrate this. In the play, set in 19th century Denmark, Nora's husband Torvald has enormous legal power over how Nora can act. He does not exercise this power often, except to ban her from eating macaroons. In fact, Torvald dotes on her, and gives her great latitude in what she does. Still, according to Pettit,

¹⁰⁵ Pettit's more recent writings (e.g. 2010; 2015; 2016) on international domination might suggest that this concern is misplaced. Nevertheless, I remain unconvinced of his account's generalisability. For example, far greater argument is needed to show that thinking about domination in terms of interferences in an agent's 'basic liberties' is not uniquely suited to the case of individual citizens within the domestic state.

¹⁰⁶ Lovett discusses dependence in slightly different terms, focusing more on exit options (see next sentence), though the substance is the same. I've used this framing to maintain consistency with the definition of dependence introduced in Chapter 1, and subsequently used throughout the thesis. Lovett believes that domination is only present when there is what I've called 'strong dependence'. I concur.

Nora is nonetheless under Torvald's power, and her freedom comes only at the behest of her husband; "she is a doll in a doll's house, not a free woman" (Pettit, 2014, xiv). In such cases, even where a dominant agent B has every intention of treating A benignly, A may have good reason to feel insecure about how reliable B's continued good favour is. Such insecurity may lead to what Lovett calls "strategic anticipation" (Lovett, 2010, 77); A may pre-emptively act in ways that they believe B wants them to behave. Because penalties or censure might be attached to delayed or non-compliance with B's wishes, such behaviour may be rational for A, minimising risk of injury. Absent the ability to control how B exercises power, this may be A's optimum strategy.

However, it is equally true that, because it refers to the structure of the relationship and not its outcomes, domination need not entail that the powerful agent within a relationship gets everything their own way. When A is 'obstinate', i.e. when A defies B's preference for how A should act, B may nonetheless find it easier or desirable in the long-run to let A have their way in a given instance. Just like A's ability to exit from a relationship can come in degrees, the cost involved in B's ability to intervene in A's choices will also come in degrees, and sometimes the cost will be higher than B is willing to bear. So, slaves may well win a day's rest against the direct interests of their master. Colonies may well resist the metropolis' dictates in a certain matter. This is entirely consistent with the idea that they are dominated. When the more powerful agent has some interest in continued association, they may well find that losing a particular battle is an acceptable cost. To say that B has dominating power, it is enough that, were B to consider making their full weight felt on the issue, A would not have the institutional, social, and material resources to successfully resist.

6.3. What makes power arbitrary?

We can call the resources which A can effectively utilise in order to secure themselves from domination *countervailing powers*. Which sorts of resources count as countervailing powers and thus can secure non-arbitrariness is a matter of some debate, and hinges upon whether we ought to consider arbitrariness in substantive (e.g. Pettit, 1997; 2012) or procedural (e.g. Lovett, 2010; 2012) terms.¹⁰⁷ Lovett adopts a procedural conception where, for power to be non-arbitrary, it is enough that its usage is bound by effective constraints, which are reliably enforced by something or someone external to the source of power itself. The obvious example of such a procedural constraint is the reliable, effective enforcement of a publicly-known law. When power must be exercised according to a set of publicly-known, reliably enforced laws, agents need not engage in

¹⁰⁷ The distinction between procedural and substantive versions of arbitrariness is Lovett's own (2010, 111-113).

any kind of strategic anticipation: to avoid intervention in their choices, all agents need to do is adhere to the laws to which they're subject. Lovett uses the following imagined case to support his view that reducing procedural arbitrariness amounts to reducing domination:

Suppose...one group in some society manages to acquire a preponderance of social power, which it wields over the other groups in that society directly and without constraint, much to its own benefit (naturally). Since the disadvantaged groups are in no position to directly challenge the social position of the powerful group, they instead demand only that the various rights and privileges of the latter be written down, codified, and impartially enforced by independent judges. Let us suppose that, in time, the powerful group accedes to this demand, on the view that since the rules will, after all, be designed to benefit itself, there will be no significant cost in doing so. Now according to the democratic account of substantive arbitrariness, it would seem that this change does nothing to affect the levels of domination present in the society [...]. But in my view, the situation has indeed changed, and in an important way. Members of the disadvantaged groups now at least know exactly where they stand: they can develop plans of life based on reliable expectations; provided they follow the rules, they need not go out of their way to curry favor with members of the powerful group; and so on.

(Lovett, 2010, 115-116).

Certainly, Lovett is right to think there is at least something valuable about procedurally constrained power. As discussed in Chapter 2, stability is indeed an important value, which allows participants within a relationship to make plans, and to have some assurance that their plans will not be thwarted. In turn, this may put them in a position where they can be more assertive in holding more powerful agents accountable for wrongdoings, knowing that such assertiveness is not the sort of thing which can deprive the weaker agent of the protections granted under the scheme of rules to which they're subject.

However, what Lovett overlooks is that, while making power more rule-bound will often be a boon for non-domination, it will not necessarily be so; making power relations more stable will not always be a good thing, and may sometimes even exacerbate domination. There are two related senses in which this is so.¹⁰⁸ First, in cases where we are concerned about domination, pursuing procedural non-arbitrariness may produce the wrong sorts of solutions. Take the example of social

¹⁰⁸ See Lazar (2019) for an additional critique, that the procedural account cannot explain the domination inherent within 'total institutions', e.g. highly regimented prisons.

welfare payments: in order to receive income supports from the state, let's say putative recipients need to make the case that they've been diligently and earnestly pursuing work, and that it is up to their social welfare officer to determine whether someone's efforts have been sufficiently 'diligent' and 'earnest'. The vagueness of these terms, and how to apply them, gives the social welfare officer significant discretionary power over recipients. We could make this system less procedurally arbitrary, by having a very clear set of instructions: in order to receive income support, one must be able to produce three stamped confirmations from workplaces where one had interviewed for a job in the last month. Through the rigorous enforcement of this system, the power of the social welfare officer has been rendered procedurally non-arbitrary. Yet this system would be much worse for many individuals, who may not be able to get interviews because their dyslexia makes employers less likely to invite them to interviews, or employers may have prejudices against hiring someone from a certain ethnicity or region, and so on. Rendering the system less procedurally arbitrary in this way could have the effect of excluding dependent individuals from receiving support.¹⁰⁹

Second, stabilising the exercise of power, by rendering it rule-bound, may not always reduce domination, but may also entrench, and perhaps even exacerbate domination. Return to Lovett's imagined case. Let's assume that the relationship between the two groups, dominators and dominated, is something akin to slavery. Prior to the moment of codification, it is a slavery enforced by sheer power. Afterwards, it is a slavery which is constrained by rules. While the lives of the dominated are made more stable through codifying the rules which regulate the interactions between dominators and dominated, it also renders life more stable for the dominators. Having a set of rules determining what the dominated must do, how many hours they must work, what sanctions they're liable to, and so on, may serve to significantly reduce the transaction costs involved for the group of dominators in how to enforce their collective interests. Instead of constantly having to be alert, and spontaneously coming to one another's aid where it seems needed, codifying the rules of the social system makes coordination easier, may make compliance easier to secure, and may over time even serve to legitimate the system in the eyes of those who are obeying and upholding the rules. Note, then, that on Lovett's understanding of the term, significant levels of non-arbitrariness are wholly consistent with highly-regulated forms of deeply imbalanced power relationships, up to and including highly-regulated forms of slavery (Ahlstrom-

¹⁰⁹ Indeed, when access to an entitlement is made conditional upon meeting certain requirements, it will often be those who are most disadvantaged who will be excluded. This is both because disadvantages often overlap (i.e. those who are most in need will also be those least capable of meeting burdensome bureaucratic requirements), and because disadvantaged groups will often lack political representation, so their interests are less likely to be taken into account when formulating the requirements. This point supports the need for substantive non-arbitrariness; see below.

Vij, 2012).¹¹⁰ Given this, we must conclude that the procedural conception of arbitrariness rests upon an overly-simplistic contrast between rules-based and power-based ways of operating. It overlooks that rule creation and rule enforcement are themselves expressions of power, and can serve to entrench and codify the advantages of dominators against the dominated.

Non-domination appears to require, then, a substantive conception of non-arbitrariness, i.e. one which demands that constraints on power meet some further condition regarding either the content or the creation of such constraints. On Philip Pettit's account, we should consider power to be non-arbitrary only when those subject to it have some control over its exercise. The countervailing powers that reduce arbitrariness are those institutional, material, or social resources which allow an agent to have greater control over how power is wielded in relationships to which they're subject. To give an example, the power that doctors hold over ill patients is made non-arbitrary through doctors' requirement to obtain informed consent before performing certain medical procedures. Patients are also capable of filing complaints against doctors to the General Medical Council and, in extreme cases, to the police. These sorts of institutional safeguards represent countervailing powers which can give patients a degree of control over the interventions to which their poor health makes them subject. Again, how arbitrary power is, and how much control agents have over it, will come in degrees; requirements of informed consent mean that control over such medical interventions is fairly robust. The control a citizen has over their government's exercises of power is significantly weaker. But even here, there are mechanisms in place which can force the state to listen to them, and which can steer the state in a particular direction (at least in some states): one can take legal challenges against a piece of legislation, one's vote must be counted, one's local politicians must hold office hours which you are entitled to attend, and so on. On the substantive account, the degree of non-arbitrariness realized within a relationship will be determined by the extent of A's countervailing powers, and how effectively they can be wielded in order to shape their relationship with B.

Unlike with the procedural account, enhancing substantive non-arbitrariness within a relationship does indeed seem to suggest plausible solutions to dominating power, and it does not seem liable to entrench domination within relationships either. Greater control makes A more capable of directing B's power towards aims that A can share, or else blocking it in areas where A would rather pursue their plans unimpeded. The substantive account also suggests a more plausible understanding of why domination matters. The procedural conception captures one element of this: it is important that an agent's ability to access their own entitlements, and the ways in which

¹¹⁰ See also Arnold and Harris (2017).

they pursue their goals, are not subject to the whim of another agent. But it overlooks something equally important: we have an interest not only in being unobstructed, but also in shaping our environment, and co-creating our relationships. Where A and B are part of a relationship which establishes and enforces obligations, control ensures that A's obligations are the product of mutual deliberation, rather than one-sided imposition.¹¹¹ Where interdependence is either unavoidable, or produces needed benefits (or both) for the parties involved, the ability to shape and reform the terms of interdependence is essential.

6.4. Which capacities can generate domination?

We cannot fully determine which relationships are dominating without confronting the question of whether B must be capable of actually worsening A's options in order for B to hold dominating power over A. We must ask, in other words, what sort of power is capable of generating domination. Insofar as trade negotiations consist in the making and withholding of concessions (i.e. offers), if these behaviours cannot be categorised as exercises of dominating power, then the applicability of the notion of domination to trade would be greatly limited. By adopting Lovett's framework, up to this point we've been able to assume that any sort of power that allows B to shape the preferences of A can generate domination. This position entails that "being dependent on a person or group with the power to arbitrarily withhold the goods or services needed to meet basic needs[...]amounts to suffering domination" (Lovett, 2009, 824). In contrast, Pettit claims that for B to dominate A, it must be the case that B has a more specific type of power, namely the capacity to interfere in A's option-set. B interferes with A when B "removes, replaces or misrepresents an option" (Pettit, 2012, 295). The addition of an option to A's option-set does not count as an interference (at least not when the added option is rejectable).¹¹² Thus, for Pettit, without an attendant interference-capacity, the sort of power we might call *improvement-capacity* is insufficient for generating domination.

Certainly, the interference-based account of domination has intuitive pull when we think about domination in terms of the isolated actions of individual agents, and what might constrain such agents in a given choice. If B can't possibly remove or worsen any options that A faces, it may seem implausible to suggest that A's control over their decisions is jeopardised by B's ability to add even more options (i.e. offers); no option that A had before B's intervention is any less open

¹¹¹ For an account of domination which shares this focus on control over the creation of common obligations, see Bohman (2015).

¹¹² Rejectable is used here in a thin sense, i.e. the agent has the option of rejecting it.

than it was before. Pettit is surely right that improvement-capacity will not ordinarily be sufficient to generate dominating power: this would have the implausible upshot that quotidian failures of generosity amongst agents come out as exercises of dominating power.

I believe, however, that there are certain cases where we do want to say that the relationship between two agents is a dominating one, even if the dominator has no power to worsen the other agent.¹¹³ In discussing such cases, we can start with an instructive exception which Pettit makes to his own claim that making and withholding offers doesn't constitute interference-capacity. Pettit holds that when A's receiving a benefit from B becomes part of the ordinary course of events, B may dominate A if B can subsequently withhold this benefit (Pettit, 2012, 73). In such a case, withholding the expected benefit represents, on Pettit's view, an interference. This seems plausible: to the extent that A expects B's provision to continue, and begins to develop plans upon this expectation, the potential withdrawal of such benefit may well give B sufficient leverage over A to dominate A. But it should be clear that what is doing the heavy philosophical lifting in this case is not simply that B's provision of a benefit has become part of A's ordinary course of events. On its own, a benefit being part of the ordinary course of events is clearly insufficient for generating domination. B's recurrent provisions will only convert into dominating power when the loss of such provision is particularly injurious, i.e. when A is dependent upon them.

As was made clear in 1.3. (and reiterated in 6.2.), however, where the costs of exit stems from doesn't, in itself, matter for judging the degree of dependence present within a particular relationship. Hence, once we recognise that it's not *recurrence*, but rather *dependence* that matters, it seems only a short step towards recognizing that the ability to give and withhold benefits can also generate domination even when such benefits are infrequently given, or even once-offs. This is because, even when B has not provided A with recurrent benefits in the past, it may be prohibitive for A to exit a relationship with B when B is nonetheless A's best or only hope of securing a minimally-adequate condition. For example, we might think that a lecherous millionaire dominates the mother of a sick, dying child when he makes an indecent proposal to her. While exploitation may be the most striking wrong committed here, we can imagine a nearby case, where a millionaire promises to provide for the child's medical bills, no strings attached...but can only provide the money in two months' time. Further, let's say such a promise is not legally binding, and that no similar offers are forthcoming. For two months, the mother has urgent reasons to stay on the millionaire's good side. At any given moment, he might change his mind, and thus act in such a

¹¹³ Though he eschews the 'arbitrariness' condition, and thus the republican conception more generally, Vrousalis (2013) also argues that offers, or improvement-capacity, can be dominating.

way that the mother's (and her child's) most basic interests remain unmet. Her position is deeply insecure, and beholden to his whim. Even if the mother is fully protected in her rights by an effective state, the millionaire's ability to walk away makes it reasonable for her to regulate her behaviour according to what she perceives to be the millionaire's interests. The millionaire is able to make an indecent proposal at any time, and even though making such an offer only increases the options available to the mother, rejecting this offer would be prohibitively costly. In short, the mother is dominated. This is so even if the millionaire neither waives in his commitment to provide, nor intends for the mother to fret or worry.

Alongside dependence, the second condition which causes improvement-capacity to generate dominating power concerns how A stands in relationship to B. For domination to arise from B's improvement-capacity, B must occupy the role of a *gatekeeper*. B will hold the role of a gatekeeper to A when A identifies the prohibitive nature of exiting their relationship as being based not on facing any sort of penalisation, but rather on the prolonged deprivation of urgently-needed goods. Often, B need not do anything to be perceived as a gatekeeper by A, when this is inscribed in the nature of their respective social positions. This may be the case where someone has significant discretion in giving out raises within a business where most workers are paid well below what would be considered a minimally-acceptable wage. It is also plausibly true of the trading system, where states rely upon international markets but where most of the world's wealth, and thus much of the potentiality for alleviating severe poverty, is enclosed within a small handful of members' economies. In both these examples, the degree of domination felt by an agent dependent upon one of these gatekeepers may be exacerbated by the presence of many other dependent agents competing for the goods which the gatekeeper has control over. The presence of other deprived agents gives A greater reason and urgency to engage in strategic anticipation, for fear of falling out of favour or being neglected relative to any competing agents.¹¹⁴ But B can also actively create a relationship with A where B stands as gatekeeper (whether or not this was their intention) to A, so that deprivation-stricken A identifies B as their best (or only) hope of acquiring urgently-needed resources. This may occur where wealthy benefactors wield their resources in such a way as to draw the attention and hopes of specific agents, as in our example of the generous millionaire. It also occurs when a specific well-off, or particularly large state (or both) enters into, or floats the possibility of entering into trade relationships with LDCs and developing states that are closer to the lower capability threshold.

¹¹⁴ Though equally, when there are more B's competing for the favour of fewer A's, their ability to collectively organise and attempt to bring A's power under control may increase; see Chapters 7 and 8.

Once we start thinking about cases where A and B are participants in a collective decision-making body, where control over proceedings is broadly zero-sum, it becomes even less plausible to dismiss the importance of improvement-capacity. Every power that B has to change other agents' preferences within this decision-making context increases B's control over decisions, and, all other things being equal, thereby proportionately reduces A's. Because A needs to have some effective control over outcomes in order to ensure that the power they are subject to is non-arbitrary, if B has far superior ability to provide attractive offers or incentives to other participants than A does, this represents a grave threat to A's ability to shape outcomes. In the case of trade, A's significantly lower improvement-capacity, compared to a better-off, larger B, may in itself represent a threat to A's ability to shape the terms of their trade relationships according to their citizens' values and priorities. To consider only B's interference-capacity is to turn a blind eye to a significant determinant of who gets to dictate the terms and outcomes of interdependent cooperation. Note, though, that B's greater improvement capacity may not extend to domination if no agent is greatly dependent upon improvements to their status quo, as such states will be able to walk away from terms which are not equitable. Here, we see a procedural consideration in favour of getting states up to the higher threshold identified in Chapter 4: states at this level are not only capable of realizing their duties of domestic justice in all ordinary circumstances, but they are also capable of walking away from trade deals where they were not given the opportunity to shape its terms.

6.5. Domination and trade justice

Plugging the substantive conception of arbitrariness into Lovett's framework then, we can say that A is dominated when they are dependent upon a relationship within which they have little-to-no control over how a more powerful agent, B, exercises power over A. B's power may stem from their interference-capacity, their improvement-capacity, or both. While above I've noted a number of times how domination may be present within trade relationships, it is now time to turn explicitly to the connection between domination and trade.

Pettit, undoubtedly the pre-eminent scholar within the republican research program, has recently argued that the ideal of non-domination (i.e. the absence of domination) can serve as our normative lodestar at both domestic and international levels: we can determine what's required by justice, and what justice rules out, just by attending to questions about what sorts of institutional arrangements reduce the domination of individuals and states (Pettit, 2014). This claim is too strong. For one thing, in contexts where no single agent has primary responsibility for realising it, non-domination alone cannot tell us how much each agent has to do in order to bring about a

non-dominating international order: it could not, for example, produce the sort of theory of distributive justice put forward in Chapter 4. Moreover, non-domination alone won't tell us what justice requires among equals, who may not dominate one another, but who can nevertheless harm one another in unjust, or inequitable ways.

Perhaps most pertinently to the remaining chapters, we should caution against the idea that attending to the ideal of non-domination alone could determine with any sort of finality or conclusiveness the sorts of institutional arrangements which we should pursue.¹¹⁵ As Miriam Ronzoni (2017) has pointed out, non-dominating institutions (whether domestic or global) must fulfil a number of different desiderata all at once: they must avoid accumulating excessive concentrations of power, bring subjected agents' arbitrary power under institutional control, and further (or at least not enfeeble) the control that citizens have over the states to which they're subject. The difficulty is that these desiderata can pull in different directions from one another. Take the case of global governance institutions. If an organisation like the UN were capable of bringing states' arbitrary power over one another under control, this may lead to an excessive concentration of power within the UN's own hands, one which is not subject to the control of any citizenry. Alternatively, we might want to maintain a fairly weak UN, but this would leave the dominating power that states currently have over one another untouched, and it again allows states that dominate their own citizens free to do so. The upshot here is that realizing non-domination points to no single end goal, but requires a constant and careful balancing act, based on what we take to be the gravest threats to agents' autonomy at any given time. Our recommendations concerning the pursuit of non-domination will need to be context-sensitive, and will necessarily involve judgement calls about the relative dangers of any given institutional reform.

While we need not adhere to Pettit's strong claims about how much work the concept of non-domination alone can do, I do believe that thinking about political justice (see Introduction) through the lens of domination is, in a number of ways, a good fit. Non-domination can present a unifying thread for the distributive and procedural elements of our theory of trade justice. There are a number of reasons for this. First, the concept of domination directly connects questions of justice with questions of power: for an institution to be non-dominating, it must allow its participants to constrain, control, and channel power in the right ways. These are the sorts of concerns we ought to have with respect to the powers that states have over one another within

¹¹⁵ Pettit's writings on domestic justice especially seem to imply that there are such conclusive answers to what sorts of institutional configurations are non-dominating; see e.g. Pettit (2012).

their trade relationships. Where some states are capable of exercising power in such a way as to dictate the terms of interaction, this effectively disenfranchises the citizens of weaker countries.

Second, domination is not an outcome-based concept; to know whether an agent is dominated, we need to know about the structure of their relationships, rather than simply the outcomes that the relationship produces. This is important, as it allows us to gain some critical purchase on questions of institutional change and reform, which often characterise debates about the future of the trade regime (see e.g. Bown, 2010; Hoekman, 2012; Wilkinson, 2014; Jones, 2015). Because of the relative autonomy of the transactional level of trade from the governmental level, a focus on distributive justice alone is not capable of generating decisive positions in favour of some forms of governance over others. Moreover, thinking about trade in terms of the pursuit of non-domination not only allows us to critique various institutional configurations (see Chapter 7), but may also play a constructive role, by giving us a framework for thinking through what sorts of changes could give weaker states greater control over their terms of economic integration (see Chapter 8).

Third, the ideal of non-domination connects questions of procedural justice with questions of distributive justice. Giving more resources (broadly defined) to the weaker party in a relationship can be one way in which to enhance their control within a relationship, and give them a better chance at shaping the terms of future interactions. We mentioned above that greater levels of capabilities allow states to walk away from deals which they take to be unpalatable. But this ability to walk away from a negotiation also gives states power *within* negotiations: if a prospective trade partner can easily walk away if we don't give it equitable terms, we need to accept such equitable terms if we ourselves want to reach a deal. Distributive justice, then, supports procedural justice. The converse is also true. While, for example, developed states could fulfil their full suite of the distributive duties to LDCs discussed in Chapters 4 and 5, this may create a deeply objectionable relationship between the two states where there are no procedural safeguards in place. Where developed states only fulfil their distributive duties through setting up voluntary, unilateral preference schemes, the LDCs' dependence can be leveraged as a means by which the developed state can exert control over the LDC (see section 2.3.). Similarly, we noted the importance of accountability within a scheme such as the LDC quota; without LDCs being given the opportunity to examine, participate in, and contest the way such a scheme was being enacted, the LDC quota could be a way for developed states to shape LDCs' economies according to their own self-interest, and to the neglect of how the LDCs' citizens want to shape their economic and social life.

Finally, domination is a particularly pertinent concern in the case of trade because both trade and domination necessarily involve dependence. Insofar as dependence is both inherent in the practice of trade, and because that dependence is not something we want to get rid of or even necessarily reduce (as doing so would amount to foregoing the benefits of trade), we need to think carefully about how to prevent trade-generated dependence being turned into domination. Or, more pessimistically, we need to think about how to alleviate the degree of domination already present within trade relationships.

Here, we should opt for this more pessimistic interpretation of our task: preventing or eliminating domination in trade entirely is simply not feasible within the current state system. We've already mentioned that dependence between states is unavoidable in the context of trade. The same can be said for the other two features of domination. The institutional configuration of the trade regime can do little in terms of the existence of an imbalance of powers between states in general. Unlike the relationship between citizens within a state, where the legal architecture is largely constitutive of the powers that those citizens hold against one another, states enter into trade bringing with them heterogeneous bundles of resources, expertise, diplomatic experience, military strength, and allies, all of which are largely independent of the workings of their participation in trade. States such as the US, China, and Russia will continue to hold sizeable imbalances of power relative to Honduras, Laos, and Georgia. And arbitrary (i.e. uncontrolled) power is perhaps even more inherent in the state system; it is simply the upshot of states' sovereignty and self-determination. Certainly, states may be able to set some limits to the range of choices within which they can each dictate their own policy unilaterally. But we cannot actually eliminate the possibility of such unilateralism, without moving from a state-based system to something else. While elements of the sovereign state system may well be undesirable, wishing it away would prevent us from producing action-guidance suitable to the real world, inequities and all. The task, then, is to determine how to minimize the domination present within trade relationships between the states we have, with more or less the powers that they have.¹¹⁶

Even if states are not under a duty to *realize* non-domination (because to do so would essentially require the largest, most powerful states to dissolve themselves), they nevertheless have a duty to *reduce* domination insofar as is possible within the confines of the current state system. The reason

¹¹⁶ See also fn.12.

for this is that the presence of domination undermines the realization of the three duties of trade justice discussed in Chapter 2.¹¹⁷ To see why, let's take each of the three duties in turn.

First, with regards to stability, a state fulfilling its duty, by continuing to play their role within the international division of labour, is entirely consistent with it dominating its trade partner. While this is true, it is also the case that their dominating position means that the trade partner can never be entirely assured of this as the dominant party likely faces low costs if they decide to fail to play their role. Moreover, the dominator is in a position to make credible threats at any time they so choose, and to thus wield their trade partners' dependence for their own advantage. An agent's dominance within a trade relationship allows them to act so as to minimize their own vulnerability to shouldering the burdens of economic vulnerability, at the expense of weaker partners.

The relationship between accountability and domination is clearer still: the greater the imbalance of power between a dominator and a dominated state, the less likely the dominated state is going to be able to effectively contest the actions of the dominator. Effective contestation requires an ability to attach some costs or sanctions to a state when it violates its duties. Where one state is deeply dependent upon a more powerful trade partner that is not symmetrically dependent, the state may have little-to-no ability to hold the powerful trade partner to account. Indeed, even the limited countervailing powers the state do have, in the shape of formal dispute settlement mechanisms, may not be made use of where the weaker state is concerned that using these powers would jeopardise the state's future relations with the powerful trade partner.

Finally, while a dominant state may act virtuously by recognising a trade partner's duties of justice and responsiveness, it is nonetheless the case that the state's dominance undermines the other state's ability to participate on terms of parity, just by virtue of the power differential involved. Even if the dominated state is treated equitably in any given negotiation, the extent to which this is true will nevertheless be determined by the whim of the more powerful state, and this will be common knowledge to the parties involved. Pushing for maximally beneficial terms of trade, as a least-developed state may be entitled to do on the basis of its distributive claims (see Chapter 4), will be a dangerous strategy to pursue when doing so conflicts with the preferences of a dominant trade partner. As a result, even where the dominant party treats the dominated party as equitably as possible, the mere presence of domination may be sufficient to cow the weaker state into accepting an inequitable bargain.

¹¹⁷ Even if it were possible, realizing non-domination would not in itself be sufficient to realizing trade justice. States could fail to provide recognition, stability, and accountability even if they were equals with their trade partners, and thus not dominant.

In short, the presence of dominating power in trade undermines the realisation of trade justice. While trade relationships between dominated and dominating states may at times approximate conditions of stability, accountability, and recognition, the fact that these conditions only prevail at the behest of the more powerful states means that even this will be a fragile state of affairs.

6.6. Conclusion

In this chapter, I have introduced the concept of domination, which will be central to the remaining two chapters of the thesis, and highlighted its pertinence to the account of trade justice which I'm developing. I have argued for a conception of domination which requires weaker agents to have control over the power to which they're subject if that power is to be rendered non-arbitrary, and further argued that the ability to improve an agent's status quo can generate domination, even when this ability is not coupled with the ability to worsen an agent. Finally, I have argued that domination undermines the realization of each of the three duties of trade justice, some more directly than others. As a result, states have a duty to pursue non-domination in trade. Unfortunately, because some degree of domination is inherent to the current inter-state system, this sets limits to what can be achieved within trade. But while there are limits to the extent to which we can realize non-domination internationally, there is nonetheless a duty to make the trade regime *less* dominating. How we go about reforming the trade regime in light of this will require careful judgement, and sensitivity to the context of states' trade relationships.

As we move on to consider procedural justice in more detail, the reader will note a change of language between Part 2 and Part 3 of the thesis. Whereas in Part 2 we divided states into developed, developing, and least-developed, in the following two chapters much of the discussion will centre around the interactions between 'powerful states' and 'weaker states'. Because developed states will often be powerful (they can easily walk away from negotiations, and they are attractive trading partners), and non-developed states will often be weak (many of them are small, and often desperately poor), at times in the remainder of the thesis it will still be suitable to frame points in terms of developed, developing, and least-developed states' interests. However, the two ways of categorising states come apart in certain instances: India and China are powerful players in trade, whereas Singapore and New Zealand are less so.

I make no effort to delineate precisely which states in trade are 'powerful' and which states are 'weak'. A very basic way of distinguishing the two is to say that powerful states can reliably shape their trade relationships, and weaker states cannot. In the context of bilateral and regional trade

relationships, we can take this to mean that powerful states are capable of reliably attracting potential trade partners outside of their own geographical region¹¹⁸, through offers of improved market access. In the context of multilateralism, where it is not necessarily a case of ‘attracting’ trade partners, we might instead say that powerful states’ offers of improved market access are reliably capable of changing other states’ preferences and their decision-calculus within multilateral negotiations (recall the basic definition of power mentioned in the Introduction). Out of 164 WTO members, and about 200 states, I take it that only a relatively small handful would come out as ‘powerful’ on this understanding.

In a world characterised by vast asymmetries of power between states, as well as profound (very often beneficial) dependence of some states upon others, it would appear that the most promising avenue for reducing domination in trade is to ensure that more powerful states exercise their powers in a non-arbitrary fashion. If this is the case, then trade justice requires powerful states to subject some of their powers to international discipline, in forums where dependent states are capable of enacting control and reliably shaping the terms of their interactions. We might see the aspirational function of at least some intergovernmental institutions in this light, i.e. as providing sites or forums wherein states’ interactions can be regulated, and where states can co-create the terms of their relationships. With this in mind, in the next chapter I’ll consider whether the current shift in focus away from the WTO, and towards regional agreements, is a good thing from the perspective of non-domination.

¹¹⁸ States will often find it in their interest to reduce trade barriers and enhance cooperation with neighbouring states, even the smallest ones.

Chapter 7: Domination in Regional and Multilateral Trade

7.1. Introduction

In this chapter, I discuss the institutional configuration which is likely to be most conducive to the non-domination of states in trade. More specifically, I discuss the non-dominating credentials of two alternatives: a pre-eminent multilateral forum (i.e. the WTO) which limits regional agreements and subjects them to collective oversight, and; a more complex trade regime, marked by an increasing proliferation of regional arrangements. I argue that the first alternative is preferable, and that states should therefore regulate their trade relationships within an organisation like the WTO. However, while multilateral trade governance is desirable from the perspective of non-domination, the WTO as it is currently constituted does not score well on this metric. By showing how WTO negotiations currently facilitate the domination of weaker states, this chapter lays the groundwork for the final chapter, where I investigate the possibilities for reforming trade rounds within the WTO in order to better approximate the ideal of non-domination in trade.

The chapter will proceed as follows. Section 7.2. describes the current shape of the trade regime, with respect to the institutions which regulate states' trade relationships. Section 7.3. suggests that the trade regime is at a juncture which presents us with a choice between two viable institutional possibilities; I will give three reasons why we ought to favour a pre-eminent multilateral regime, rather than a more complex trade regime where regional agreements proliferate. Section 7.4. describes the WTO as a negotiating forum, paying particular attention to those features which may empower or enfeeble weaker states. Section 7.5. shows that, while the use of consensus decision-making may give weaker states the formal power to block agreements, it fails to give such states any effective control over negotiations. The conclusion, 7.6., will restate key points.

7.2. Trade: the post-war era and today

After the Second World War, the Allied Powers, led by the United States, were keen to learn what they thought were the lessons of the interwar years. Central to this was avoiding the sort of downturn which they believed triggered the economic balkanization which, in turn, contributed to the re-ignition of armed conflict. To prevent such balkanization from re-occurring, the Bretton

Woods institutions¹¹⁹ were set up as a means of providing order and stability to the international economic environment, and to facilitate the recovery of a war-ravaged Europe. Alongside the International Monetary Fund (IMF), and the International Bank for Reconstruction and Development (now a part of a larger World Bank Group), The General Agreement on Tariffs and Trade (GATT) was negotiated and signed by 23 countries as part of a broader process of trade negotiations, which was meant to culminate in the creation of the third Bretton Woods institution, the International Trade Organisation (ITO). While the ITO was stillborn after the US Congress refused to ratify the US's participation, it was still seen as being in the US's and Europe's interest to liberalise trade amongst themselves (and a number of other countries). The GATT, despite being a fairly skeletal agreement, proved a useful framework within which these countries could negotiate reductions of tariffs and liberalise their economies, albeit slowly at first (Jackson, 1997; Wilkinson, 2014).

Initially, the club of states working within the GATT framework were a small club. Many states turned inwards after the war, most notably the communist states of USSR and China, but also many African and Latin American countries, motivated by differing ideologies which nonetheless shared a deep suspicion of integration with the Atlantic powers (Findlay and O'Rourke, 2009). However, partially as a result of the unequivocal successes of some of the more open developing countries (most notably the Asian Tigers), and partially for broader structural economic reasons (such as the sovereign debt crisis and the resultant need for foreign currency), from the 80s onwards economic liberalisation was pursued by an increasing amount of states. By the turn of the millennium, the majority of humanity lived in economically open societies. The GATT remained the vehicle wherein much of this liberalisation took place for a number of decades, as members become more integrated, and more and more countries sought to join.

The nature of negotiations within the GATT changed and adapted over time, but the basic contours remained constant throughout: negotiations were conducted within 'trade rounds' with a defined beginning and end. During these rounds, nothing was agreed until everything was agreed, i.e. agreement in one area was linked to reaching agreement in other areas. The process through which negotiations occurred was one of 'competitive bargaining' (Wilkinson, 2014) wherein states would push their trading partners to get concessions in one area, and could themselves expect to be pushed to make concessions in areas in which their trade partners had an interest. Where states made concessions and granted a certain level of market access to a partner, the GATT's use of the

¹¹⁹ I.e. The International Monetary Fund, The International Bank for Reconstruction and Development (now the World Bank), and the trade organisations I discuss here.

Most-Favoured Nation (MFN) rule entailed that this level of market access would be ‘multilateralised’, i.e. granted to all other GATT members. It is this rule, which has the effect of ensuring that all GATT members get the best available terms of access into other members’ markets,¹²⁰ which explains the attractiveness of GATT membership. Bargains were conducted on the basis of reciprocity, where reciprocity referred to equivalence in the levels of concessions made and received, though the precise meaning of this has changed over time (see Brown and Stern, 2012), and there has long since been some allowance for Special and Differential Treatment (S&DT) of non-developed countries. Finally, decisions in the GATT would be taken on the basis of negative consensus, i.e. a proposal would only be accepted “if no Member, present at the meeting when the decision is taken, formally objects to the proposed decision” (WTO, 1994a, fn.1).

On January 1st 1995, the GATT was replaced by the World Trade Organisation (WTO). At the time of this change-over, there were 128 GATT members; today, there are 164 members of the WTO, including all the world’s largest economies. The WTO operates on largely the same working principles as its predecessor (with the important exception of dispute settlement; see below). Often, pivotal discussions on sticking points within negotiation will take place among small groups of states invited by the Director-General, in what are called Green Room meetings. Because deals stand little chance of progressing without their support, these meetings typically involve the largest and wealthiest members. Such a process is often justified as a necessity when trying to achieve consensus amongst such an enlarged membership (Jones, 2009). Drafts or bargains are subsequently tabled at more inclusive meetings, or at plenaries, where they can be challenged by any member. Drafts go through repeated iterations of this process as disagreements are ironed out and a consensus is formed. This approach gives a flexibility to negotiators which may be vital to securing complex agreements which cover many policy-areas.

The foundation of the WTO involved members re-establishing their GATT commitments, alongside a range of additional commitments. These additional commitments moved beyond the traditional concerns of trade agreements (primarily tariffs and quotas¹²¹), to include intellectual property rights, services, sanitary standards, investment, and a number of other areas that reached

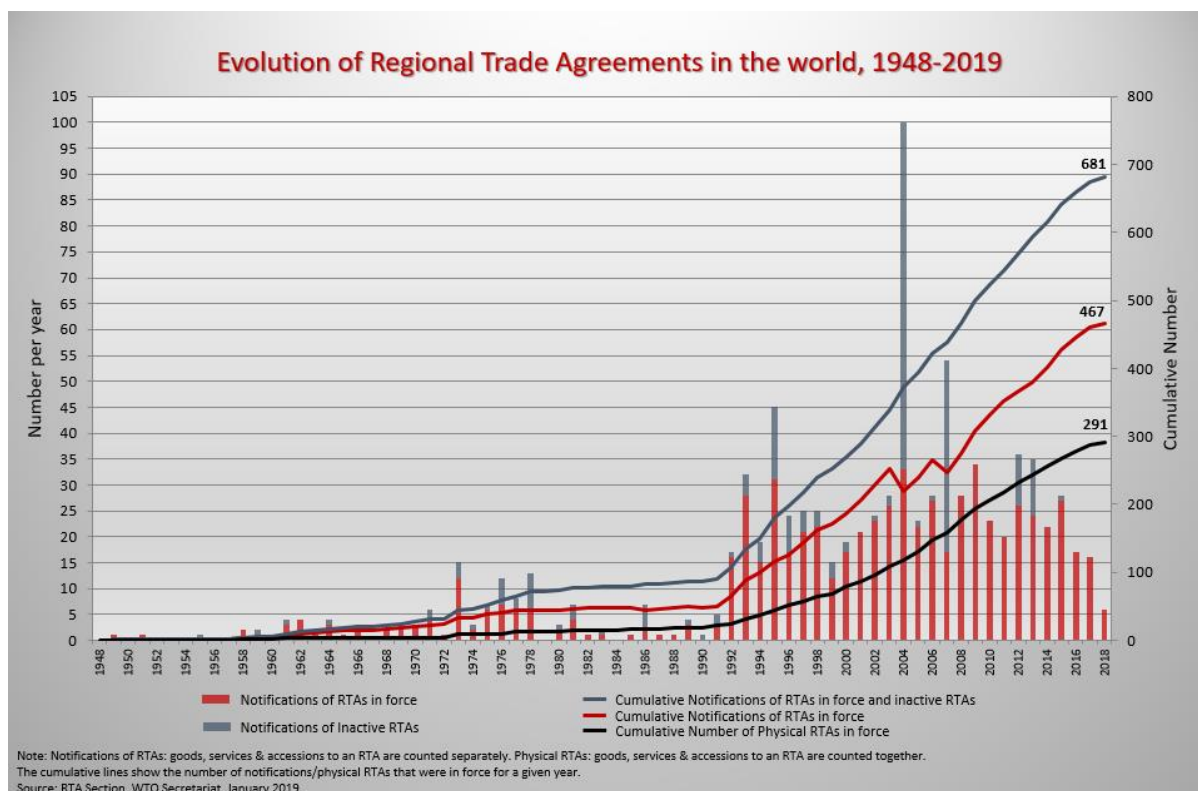
¹²⁰ Though there are important exceptions to this: MFN treatment need not be extended to other WTO members when favourable terms are given to a state as part of a free-trade agreement concluded outside the auspices of the WTO. Such agreements are WTO-compliant so long as trade restrictions are lifted on “substantially all the trade” amongst participants (see WTO 1994b, Article XXIV). Equally, states are permitted to unilaterally grant favourable terms of market access to developing and least-developed countries, under what is called the Generalised System of Preferences (GSP).

¹²¹ Note that the way quotas have been used historically in trade policy is as setting maximum for how much of something a state would import or export, rather than setting an a minimum, like the LDC quota proposal put forward in Chapter 5.

‘behind the border’ and into a state’s traditional regulatory space. The volume of global trade, as a percentage of global GDP, continued to rise after the foundation of the WTO, but in recent years has remained stable at around 30% (WTO, 2018). Due to the breadth of its membership as well as the depth of commitments which membership involves, the WTO must count amongst the most significant of all intergovernmental institutions in terms of how it shapes governance across the globe (Shaffer, 2015).

According to the WTO’s own figures, “98 per cent of world merchandise trade took place under WTO rules last year” (WTO, 2018, 5). While this might suggest that the WTO is more or less the only game in town, there is an element of obfuscation in this figure. Trade counted as taking place ‘under WTO rules’ includes trade that takes place under rules that were negotiated outside the auspices of the WTO, so long as it was between members of the WTO and the agreement was allowed under WTO rules. The element of obfuscation involved here is that, while the WTO formally reserves the right to review them, in practice the degree of scrutiny of the trade agreements that states sign outside the WTO is vanishingly small (Chase, 2006). So, while it is in one sense true that nearly the entirety of trade is conducted ‘under WTO rules’, the amount of trade that is conducted under rules which were formulated within, and enforceable at the WTO is significantly smaller. According to the WTO’s 2011 World Trade Report (which looked at the relationship between the WTO and preferential¹²² trade agreements) intra-regional trade represented about 35 per cent of total merchandise trade (WTO, 2011). And there is reason to think that the trend towards regionalism will continue. The WTO, as a rule-setting forum, has long suffered from stasis: while a new round of WTO trade negotiations, the Doha Development Agenda (DDA), was announced in 2001, this round has not yet been concluded, nor has a successful conclusion ever really been close. There are a number of reasons for this stasis, including, but not limited to, the increasing complexity of the issues covered, the vastly-expanded membership of the organisation, and changes in the balance of global economic power. With WTO negotiations having stalled, the number of regional trade agreements (RTAs) in force has continued to grow:

¹²² This is the title of the report, though ‘preferential’ agreements here refers to what the WTO currently calls regional agreements; for the newer terminology, see below, and also next footnote.



[Figure 2]: Source: https://www.wto.org/english/tratop_e/region_e/region_e.htm

RTAs, in WTO parlance, are “reciprocal trade agreements between two or more partners” (WTO, 2019a).¹²³ RTAs include all bilateral agreements that states sign outside the auspices of the WTO, as well as larger agreements amongst several states; some notable examples of the latter sort of agreement include the EEA, ASEAN, the USMCA,¹²⁴ and MERCOSUR. Today, the WTO has been informed of over 200 regional trade agreements. Over the last decade or so, there has been a marked trend towards states negotiating even larger regional agreements than before, often dubbed ‘mega-regionals’; examples of this include the US-EU Trans-Atlantic Trade and Investment Partnership (TTIP), The Transpacific Partnership (TPP), ASEAN-China Free Trade Agreement (ACFTA), and the EU-MERCOSUR agreement. Not only is this development deeply troubling for anyone who dislikes acronyms, it also presents, according to some observers, the first genuine challenge to the WTO’s pre-eminence as a standard-setting body in the trade regime. On this score, particular attention had been paid to TTIP, a negotiation undertaken by the US and the EU, currently the two largest economies in the world, as well as the two most active litigants within

¹²³ This contrasts with ‘preferential trade agreement’, a term which is now more commonly used to refer to unilateral trade preferences afforded to a trading partner, such as the treatment LDCs and some developing states receive from developed countries (WTO, 2019a).

¹²⁴ Which recently replaced the North American Free Trade Agreement (NAFTA).

the WTO (Larik, 2016). Prior to Donald Trump's election in the US, and the subsequent pivot in US trade policy which this heralded, some had seen the prospect of these economies concluding an agreement not simply as a means for them to realize economic gains which are proving hard to reap at the WTO, but rather as an alternative way of constructing the very rules of the trade regime. As Elisasson and Garcia-Duran put it, "the objective is not to substitute multilateralism with bilateralism but rather to create an alternative to established multilateralism"; they go on to say that TTIP "is the first time the WTO faces such a challenge" (2017, 1525)

This view was not restricted to academics; it was an explicit aim of TTIP, at least according to one side. Below is the view of former US Trade Representative, Michael Froman:

We see TTIP as providing an opportunity for the US and the EU to not only deepen the transatlantic space that reflects our shared interests and values, but to work together to strengthen those values beyond our borders. TTIP is an opportunity to articulate and promote globally our shared values on the rule of law, transparency, public participation, and accountability [...] It's about shaping a global system – one with our shared values at the core.

(quoted in Meunier and Morin, 2015, 184).

In the current political and economic climate, it would appear that the challenge to the WTO from mega-regionals has subsided. It's impossible to know the long-term economic ramifications of COVID-19, but in the short-term it has led to a predictable and swift contraction of trade volumes (WTO, 2020a). With the possible exception of a post-Brexit UK, there is little appetite amongst countries for signing big, ambitious RTAs right now. But with the hobbling of the WTO's judicial functions (due to the inability to appoint new judges to its Appellate Body, as mentioned in the Introduction), and with the increasing moves by major powers towards protectionism and unilateral action in trade, multilateralism in trade is hardly itself in rude health. All of this is to say that the trade regime is currently in a state of flux, and how states respond to this, and within which forums they do so, will go a long way toward shaping the international economic order of subsequent decades.

7.3. Three arguments for multilateral pre-eminence

There are four ‘settings’ in which states can determine their trade policy: they can do so unilaterally, bilaterally, regionally, or multilaterally.¹²⁵ In contrast to WTO usage, I have differentiated bilateral settings (between two states) from regional ones (between three or more states): the reason for this is explained below. Each of these ‘settings’ plays some role in shaping the current regime and, to a greater or lesser extent, each one is likely to continue to play some role for the foreseeable future. When determining the most promising institutional configuration for the pursuit of non-domination in trade, then, we shouldn’t think that we choose one of these ‘settings’ to the total exclusion of all the others: even with a strong multilateral trade regime, states will still have significant powers to unilaterally change their trade policies, and some RTAs (such as those which regulate intra-European trade) are entrenched parts of the trading system. Similarly, even if states intensify their unilateralism and their pursuit of bilateral and regional agreements, states are unlikely to repeal their multilateral commitments entirely, given the benefits of having favourable access to so many markets. So the question at hand is not ‘which setting is best?’, but rather, ‘which setting should predominate?’

In Chapter 2, I suggested that both unilateral as well as bilateral settings are problematic ways of managing trade relationships: unilateralism gives trade partners no assurance of stability in their trade relationships (section 2.3.), and bilateral trade arrangements between unequal states will make it difficult for the weaker state to effectively contest the actions of their more powerful trade partner (section 2.4.). Where two states interact directly, outside of any mediating institutional setting, there are fewer (or perhaps no) opportunities to set up countervailing powers which the weaker state could use to protect their interests. Given the differences in the size of states, pursuing non-domination of weaker states in trade requires such countervailing powers, meaning that we have good reason to favour trade policy settings which involve several participating states. This is why it is important to separate out ‘bilateral’ from ‘regional’ trade agreements. Bilateralism pits the powers of two states directly against one another. RTAs, on the other hand, involve several states and, likely, some mediating institutions between the states. An RTA could, for example, conceivably involve one very large and many smaller states. If there are institutional rules which allow the smaller states to collectively act so as to hold the larger state accountable in the case of treaty violations, and the smaller states acting collectively present a credible threat of injury to the

¹²⁵ One might also include ‘plurilaterals’ which, on the terms used by the WTO, are agreements negotiated within the WTO among a subset of members on a voluntary basis. Because such agreements still need to be consented to by all multilateral members, plurilaterals have similar advantages and drawbacks to the multilateral setting, so I do not consider plurilaterals separately here.

larger state, then size differentials between any two states within the RTA need not translate into domination. Admittedly, accountability mechanisms in trade today are far from capable of constraining powerful states as dramatically as this hypothetical example suggests. But, for present purposes, we are not seeking to identify which trade relationships *are* currently non-dominating; we are asking how we can best *pursue* non-domination. Given this, just the reasonable possibility of instituting such effective accountability mechanisms matters, and makes RTAs preferable to bilaterals.

Given that we should seek to limit both unilateralism and bilateralism, the question is whether we ought to move towards a trade regime with a more pre-eminent multilateral organisation, or towards one where there are an increasing number of regionally-organised trade relationships.¹²⁶ I will give three arguments for why we ought to favour multilateral pre-eminence. The first relates to weaker states' ability to enforce whatever rules they have had a hand in shaping, the second relates to weaker states' ability to enhance their collective rule-shaping power, and the third relates to more powerful states' ability to weaken the collective rule-shaping powers of weaker states.

Dispute settlement

The first reason to think that the multilateral setting, i.e. the WTO, presents a more promising route to non-domination, relative to a trade regime where regional agreements are prevalent, is the strength and relative success of its judicial wing. The Dispute Settlement Mechanism (DSM) is widely recognised as the crown jewel of the WTO system, being one of the most authoritative and adhered to dispute mechanisms in international law (Hopewell, 2016, 55; Bown, 2010). In contrast to the weak GATT dispute resolution system, where the violating state itself could block the establishment of judicial panels or the adoption of panel rulings (Elsig et al., 2012), the WTO's DSM establishes a right to such a judicial panel. This means that weaker states can reliably compel their trade partner to come to the table for consultation and, where consultation is unsatisfactory, can have their case heard by an arbitration panel. Where one of the parties to a dispute subsequently challenges the judgement of the arbitration panel, there is an Appellate Body that rules on cases, where the Appellate Body's rulings are binding (so long as it is not unanimously rejected by all WTO members, including the winning state). While we've already noted that the existence of rules, even reliably-enforced rules, is insufficient to ensure non-domination, it is also

¹²⁶ Note that we are not concerned with answering the question of which way the trade regime should be shaped if we were starting from scratch. We are asking, given the states we have today, and given their current trade-based dependence, how best can we pursue the non-domination of weaker states.

the case that any control that weaker states *are* able to exert on the formation of rules may come to nought if they cannot subsequently get more powerful parties to adhere to those rules. Access to a reliable rule-enforcement mechanism may therefore be an essential countervailing power.

In contrast to the WTO's DSM, dispute settlement within RTAs differs depending on the RTA in question: how future disputes are to be settled is one of the terms that states will bargain over when negotiating an agreement. There is an obvious worry here: where negotiations are conducted between radically-unequal states, the more powerful state may not only use their greater power to extract unreasonable terms, but also to ensure that dispute settlement procedures favour their own interests as well. The greater the asymmetry of power between states, the easier it would be for the more powerful state to insist upon this. This is precisely what has happened in a number of RTAs, where dispute settlement is conducted through non-binding dispute settlement resolutions. Where this is the case, a judicial panel's decision on a trade dispute does not require a change in the violating state's policy, but instead simply forms the starting point for a settlement between the parties involved. Where regional agreements involve great discrepancies of power between members, and the powerful state has managed to institute such a non-binding dispute settlement mechanism, weaker states may be less likely to pursue redress through a dispute settlement mechanism where they know the final outcome of a dispute will be determined by a negotiation where they have to sit across the bargaining table once again with their more powerful partner (for discussion on these points, see Garcia, 2018, 66-105, esp. 85-89). Absence of a binding, independent dispute settlement mechanism presents yet another opportunity for economic power, rather than legal argument, to shape outcomes. Partly because of this, it is not uncommon for larger states to unilaterally adopt policies which violate their regional commitments and to subsequently refuse to discuss or renegotiate the relevant trade issue (Davis, 2006).

The point here is not that all regional trade agreements will be characterised by poor dispute settlement mechanisms: all states have an interest in having effective enforcement of their trade partners' commitments, so will seek to enshrine effective mechanisms within their trade relationships. The problem is that it will be relatively easy for powerful states to insist on dispute settlement processes which suit their own interests in the very sorts of relationships which we're most concerned with, i.e. where there are vast asymmetries of power and dependence between trade partners. A trade regime which is hospitable to the proliferation of RTAs gives the largest states the ability to set up such procedures within regional agreements which they dominate, even if they don't choose to exercise this ability in each instance. By contrast, in the multilateral setting, the fact that the same legal architecture must regulate the relationships between the most powerful states with one another, and their relationships with weaker states, means that weaker states have

far more secure access to impartial dispute settlement and enforcement procedures than they do where their relationships with powerful states are regulated through regional agreements. This is one reason for maximising the amount of trade relationships which are settled within the WTO's legal infrastructure, at least between unequally-powerful states.

Cultivating collective power

The reasonable effectiveness of an impartial dispute settlement mechanism only amounts to a countervailing power if weaker agents have a hand in shaping the rules to which they are subject. In order for the previous argument to speak in favour of multilateral pre-eminence, then, we must have reason to think that weaker states have as good or a better chance of shaping the terms of their economic integration within the WTO as they would have in a more complex trade regime. There are good reasons to think this, both because multilateral forums present opportunities for weaker states to enhance and cultivate their own power, and because the availability of regional agreements enhance more powerful states' abilities to evade the constraints that weaker states, acting in concert with one another, might otherwise be able to apply.

The reason that a pre-eminent multilateral forum gives weaker states opportunities to cultivate their own power is because it facilitates the creation and maintenance of coalitions, whether issue-specific or cross-issue ones. Weaker states' ability to form and act in co-ordinated fashion is one of the most promising avenues through which to enhance their power within relationships with powerful states, and has been seen by some as a non-domination strategy which is "distinctively republican in its origins" (Pettit, 2015, 61; see Deudney, 2007). In trade, not only can states' participation in coalitions allow them to leverage greater levels of market power than they would be able to leverage by acting in isolation; as coalitions get larger, and come to include a significant percentage of trading states, it gives coalitions the ability to convincingly put forward their collective positions as being based on the common interest of trading states (see section 8.2.). This, in turn, can generate greater support for a coalition's positions outside the organisation, for example from social movements and NGOs.

Of course, the ability to form coalitions works both ways; large, powerful countries can, and often do, form coalitions with one another, which can enhance their own collective power within negotiations. Indeed, most trade agreements that have been agreed at the GATT could at least plausibly be viewed as being the result of 'coalitions' of the larger states (e.g. 'the Quad' of the EU, the US, Canada, and Japan) reaching a mutual accommodation. So coalition-formation is not

inherently a boon for non-domination. But coalition-formation is, in present circumstances at least, more essential for weaker states than it is for more powerful ones, and can make more of a qualitative difference to the power weaker states hold. Powerful states are capable of shaping the terms of their economic integration whether or not they are part of a coalition, as they are attractive enough trade partners that they can entice other states to the negotiating table in bilateral and regional settings, and they are significant enough that they are assured a seat at the table in multilateral settings. In contrast, weaker states with smaller economies are not, on their own, attractive enough to reliably entice other states to become trade partners, and may be unable to reject inequitable trade agreements when they are offered. And, taken individually, none can be assured of a seat at the negotiating table; they each represent too little a share of global trade to be regular participants in Green Room meetings. Where weaker states are capable of forming a united front, however, and thereby express a shared interest in certain outcomes, procedures, or purposes, they may be collectively formidable enough to have their voices listened to.

Such collective power matters also in the context of enforcement, and efforts to hold other states accountable more broadly. As was noted in section 2.4, some states, because they are so much larger than others, will be relatively immune from the challenges of individually-weak trade partners, in which case the weak partner will have little ability to do anything to reliably ensure the more powerful state complies with its commitments, or its more general duties of justice. The more capable weaker states are of forming a united front in order to push larger trade partners into adhering to their commitments, and fulfilling their trade duties more generally, the more likely that united front will be able to succeed. Here, sheer numbers is an important consideration: the more states that are obstinate in the face of a powerful state, the more costly it is to economically sanction them all, the more difficult reputational sanction becomes, and the more diffusely coalition-partners could share out the burdens of contesting the unjust actions of their more powerful counterparts. On this score, it is a promising sign that WTO coalitions have been reasonably successful both in their ability to adopt cogent, detailed positions, and at maintaining unity in the face of external pressures (Narlikar, 2005; 2012).¹²⁷

In contrast, if regional agreements proliferate further, and trade relationships become regulated through an increasing number of separate forums, collective action amongst the weaker states becomes far more difficult to coordinate. This is for two separate reasons. First, weaker parties may be played against one another, with some being given favourable trade terms for breaking

¹²⁷ See Eagleton-Pierce (2013, ch. 4 & 5) for two detailed, contrasting case studies of how coalitions fared in the face of pressure from more powerful members. See Hopewell (2016, ch. 4) for discussion of how India and Brazil boosted their power within the WTO through strategic coalition-formation.

ranks, thus testing the limits of states' collective discipline and solidarity (see Guzman, 1998). Where favourable agreements are offered to states that are unable or barely able to realize justice, they will be difficult to turn down. As a result, any sort of collective position that a group of weak states adopts which goes against the interests of stronger parties may be difficult to sustain. Imagine, for example, that LDC states saw it as being in their interest to push for something like the LDC quota (Chapter 5). Rather than face the collective power of LDCs acting in concert, powerful states that have no interest in adopting an LDC quota might pick off a few LDCs, giving them favourable terms of access, or even a fairly low individual quota, in order to weaken the collective resolve of LDCs taken as a whole. Where one or two LDCs benefit from breaking away from the pack, and signing up to regional agreements with powerful states, other LDCs may feel their interests are better served by doing the same, and becoming pliant trade partners, rather than obstinate ones.

Second, and perhaps more straightforwardly, it is likely far more difficult to determine, and to pursue, collective positions when this requires cross-institutional coordination. Again taking the LDC quota, it is clear how LDCs could push for this in the WTO, whether or not they would be successful in doing so: during ongoing negotiations in areas of interest to developed states, LDCs would make their support for the negotiations conditional on developed states' commitment to a demanding LDC quota. Moreover, a multilateral trade forum which all LDCs are a member of would give them a ready-made forum within which to discuss, plan, and co-ordinate their efforts. In a more variegated trade regime of the sort which a proliferation of RTAs would bring about, by contrast, it is difficult to see how LDC states could form a collective position on, and subsequently push for, something like an LDC quota. Without shared membership in a particular trade forum, the costs and difficulties of co-ordinating concerted, long-term collective action increase substantially. States that pushed for demanding commitments like the LDC quota could easily be excluded or marginalised by the states that had no interest in making the relevant concession. What makes coalition-formation promising in multilateral contexts, and less so in other contexts, is that the coalition cannot simply be entirely excluded from deliberations and decision-making: decisions have to go through them, so to speak.¹²⁸

¹²⁸ It's important to note that many of the weaker states will have very divergent interests. What I believe they have a common interest in however, is a more non-dominating trade regime, one which is more responsive to their (often urgent) needs.

Preserving collective power

It is not just that a move to a more region-centric trade regime raises the difficulties of maintaining collective discipline on the part of weaker states. Regime complexity also enhances the ability of powerful states to pursue their own interests without constraint, and to actively undermine the efforts of other states to cultivate their countervailing powers. Brandi (2017) has convincingly argued that the proliferation of regional, and in particular mega-regional agreements, facilitates the exercise of dominating power because it allows countries with the largest markets to shop around for the forum which will give them the most favourable hearing. We can see this occurring in the case of intellectual property (IP). *The Agreement on Trade-Related Intellectual Property Rights* (TRIPS), which is the core international IP agreement today, was one of the new agreements that states had to sign up to as part of joining the WTO. We saw in Chapter 1 how the EU and the US pushed their trading partners into joining the newly-constituted organisation, by absolving themselves of all prior trade commitments to fellow members of the GATT: this meant that their trade partners would have to join the WTO, and sign up to all of the agreements which this involved, if they were to retain EU and US market access upon which they had come to depend. This in itself was an instance of forum shopping on the part of the EU and the US. Unable to enforce their interests in enhanced international IP protection within the World Intellectual Property Organisation (WIPO), they resultantly pushed for IP enforcement to be considered a ‘trade issue’, which was far removed to how it had previously been conceived (Sell, 2003).

It only took a few years of TRIPS implementation for its full ramifications for poor countries to become clear, as the costs of its implementation stacked up, and the prices of IP protected goods shot up, most dramatically in the case of life-saving pharmaceuticals (Pogge, 2012). Many developing countries, flanked by outcry and mobilisation from NGOs and other social movements, called for a relaxation of the demands that TRIPS placed upon them, particularly with regards to essential medicines. Since then, within the multilateral regime, some concessions have been granted to developing states, including notably *The Doha Declaration on the TRIPS Agreement and Public Health* in November 2001, which, among other things, affirmed states’ flexibility in using compulsory licencing to acquire generic versions of essential medicines.¹²⁹ These concessions were won by a large coalition of non-developed states that, while ostensibly lacking much bargaining power to speak of, “achieved significant, unexpected gains despite careful opposition from powerful transnational corporate firms and their home governments” (Odell and Sell, 2006, 85)

¹²⁹ A further declaration was adopted in 2005, which included the import and export of generic essential medicines within the TRIPS waiver.

This outcome can, at least in part, be explained by the fact that there was such a large coalition of states within the WTO who have a shared interest in more relaxed IP protection in medicines, and very few states in the world produce much pharmaceutical goods. In addition, the centralised nature of the WTO, as a pre-eminent trade forum and thus a tangible target of critique, made mobilisation easier on the part of social movements and NGO. It is no coincidence that one of the founding moments of what is sometimes called the anti-globalisation movement, the ‘Battle of Seattle’, involved tens of thousands of direct action protesters attempting (successfully) to shut down a WTO ministerial conference in 1999 (for discussion, see Blustein, 2009, 57-82).

The fact that IP requirements on developing states have been relaxed within the WTO stands in sharp contrast to the increasing demandingness and rigidity of IP rules being enforced within regional and bilateral agreements (Baldwin, 2014). In recent years, the US and the EU have incorporated demanding IP protections into their bilateral and regional agreements with many countries, which go far beyond what was required in TRIPS. This is true both with respect to the demandingness of the protection involved (e.g. how many years would protection apply, levels of data exclusivity in testing), and the rigidity of protection (e.g. restrictive conditions for compulsory licencing, prohibitions on parallel importation). The protections sought are (as was noted in section 2.2.) often more demanding than the rich countries themselves are willing to grant to IP producers. While the enhanced economic significance of developing-country powers make it highly unlikely that any agreement more demanding than TRIPS could be implemented multilaterally today, the availability of regional and bilateral forums allows developed states to ratchet up the levels of protection afforded to their companies’ IP (Sell, 2010; Rodrik, 2018). As the gap between the wealthiest states and the rest narrows (see Milanovic, 2016), the interests of the weaker states are better served by aligning with one another (and, strategically, with powerful states that have shared interests), than they are by fending for themselves in an environment where other powerful countries get to pick and choose who they do business with and when.

There are, then, a number of reasons to favour a pre-eminent multilateral trade forum over a more complex regime where regional and bilateral relationships proliferate. The multilateral forum has a more reliable enforcement mechanism than weaker states may have access to in regional or trade relationships. The multilateral forum also creates opportunities for weaker states to cultivate their own collective power through coalition-formation, in a context where powerful states must reckon with such coalitions if they want to conclude an agreement. Finally, the proliferation of regional agreements generates readily-available opportunities for powerful states to marginalise obstinate trading partners, enhancing their hand in regional agreements in a way that would, given the changing balance of global power, be increasingly difficult to do in a multilateral setting. Because

of all this, we ought to favour the regulation and management of trade relationships within a pre-eminent multilateral forum, rather than within regional and bilateral contexts.

As mentioned above, and following from section 6.3., a rule-governed regime, trade or otherwise, is not a boon for non-domination unless each state subjected to the regime is capable of shaping the rules. Given this, whether weaker states have the ability to shape negotiations in trade is central to our evaluation of how effectively the WTO does in practice enhance the non-domination of weaker states in trade. In the following two sections, I will discuss and evaluate the countervailing powers that weaker states have available to them within WTO negotiations.

7.4. (How) does the WTO ensure members' control?

There are few rules, formulae, or restrictions on how powerful states engage with weaker ones in WTO negotiations. Were we to interpret arbitrariness procedurally, our evaluation of the WTO would not be good. Despite the bare-bones approach to procedural rules, though, there are reasons to be more optimistic in terms of the WTO's substantive non-arbitrariness. Some of this is down to the multi-lateral nature of the organisation itself, for the reasons suggested above: the fact that so many states negotiate within the same forum allows the weaker states to use their agency in coordination, which may greatly enhance their ability to ensure that their voices make a decisive difference on proceedings. Furthermore, and in contrast to other international economic organisations such as the IMF or the World Bank, the WTO works on the basis of sovereign equality. Every member is entitled to one vote each,¹³⁰ and they all have the same rights to table motions, to oppose agreements, or partake in meetings. While there are huge asymmetries between the size and wealth of members, this does not translate into a different formal status within the organisation. Finally, as mentioned previously, all agreements and decisions taken in the WTO are settled by negative consensus. This means that decisions only pass when no party expresses formal opposition, so that any member can ultimately hold up negotiations if they are unsatisfied with the terms. This, it would seem, is as strong a lever as a state could have in the formation of an agreement. If you can unilaterally block any proposal which doesn't satisfy you, then your preferences must be interpreted and accommodated. Because marginalising members or their concerns increases their likelihood of their obstruction of an agreement, the availability of this blocking power ought to greatly incentivise inclusive, co-operational approaches to negotiation.

¹³⁰ While there is provision for majority-voting in the absence of any forthcoming consensus, in practice, this has never been used.

The history of the GATT/WTO, however, seems to belie this optimistic picture. While passing such judgement is hardly straightforward, trade regulation appears to have persistently favoured powerful, developed countries' interests, with the needs of many weaker developing countries having been neglected. Average tariffs faced by developing states in developed ones, for instance, are significantly higher than they are for their developed counterparts. Markets and products most central to developed countries' interests have been liberalised much quicker (and at a far greater depth) than those products central to many developing states' economies (Khor, 2000; Wilkinson, 2014). This is most obvious when comparing the liberalisation trajectories of industrial goods and agriculture respectively. Developed countries have historically held comparative advantage in manufactured goods, and trade in this area has seen the deepest liberalisation (Baldwin, 2012). In contrast, agriculture, which is an area of significant comparative advantage for many non-developed states, is, as noted by Risse and Wollner, still subject to often prohibitively high tariffs, and the liberal use of subsidies often further protects developed world farmers from foreign competition, while rendering farmers in other parts of the world uncompetitive.¹³¹ Though developed countries' comparative advantage initially lay in industrial goods, when it shifted to services, the idea of regulating services markets through international agreement gained support within, and was pushed by, the US and other OECD states, gradually culminating in its inclusion as part of the Uruguay Round (Drake and Nicolaidis, 1992). The same trajectory explains the inclusion of IP, a market dominated by a small handful of developed states, in the WTO's purview.

TRIPS represents perhaps the clearest departure from what we'd expect of a system properly responsive to all WTO members. TRIPS, in effect, gives extended monopolies (usually in the region of twenty years) to developed states' IP producers, sheltering them from market competition, and significantly slowing the diffusion of knowledge and production technologies. Recall that it was precisely the sorts of benefits that stem from the free dissemination of technological and informational development which underlied Ethan Kapstein's and many others' endorsement of freer trade, and is essential for worse-off states' efforts of catching-up with those at the technological frontier. Moreover, many of the now-rich countries that we have today took advantage of lax IP protection in their past, on the way to becoming prosperous. It has been suggested, plausibly enough, that this is typical of a broader pattern where WTO (as well as regional) agreements have prohibited (or at least greatly restricted) the use that non-developed

¹³¹ To give an idea of the significance of these, according to Wolf (2004, 215), in 2001 farm subsidies going to farmers in rich OECD countries exceeded the entire GDP of Sub-Saharan Africa.

countries can make of policy tools which were central to many of the most historically-successful development stories (Chang, 2002; Wade, 2003).

Of course, as we've already discussed, domination is not an outcome-based concept. Outcomes cannot establish domination, even if they form the basis of reasonably sound inferences (seeing as agents will typically use whatever control they have to further their interests). If weak states had sufficient control over the process of negotiation, it would at least be conceivable to chalk up the above-mentioned pattern of outcomes as the result of bad luck, coincidence, or unconventional priorities, as opposed to domination. Thus, to make a judgement on the WTO in terms of its ability to constrain arbitrary exercises of power, we need to look in more detail at how differential levels of power affect the process of decision-making. On this front, given the paucity of other procedural constraints, it seems our evaluation of the WTO's current negotiating process hinges largely on how effectively the consensus process ensures substantive non-arbitrariness.

7.5. Negative consensus as a countervailing power in the WTO

The first thing to note regarding the use of consensus decision-making is that while every rule or binding decision requires consensus amongst all members, not every consequential decision in the WTO is of this kind. As was already alluded to, the key decisions regarding the construction of WTO draft texts typically take place in Green Room meetings, involving the largest and most powerful countries. While decisions in such settings still require consensus amongst all those present, this is a much lower threshold than getting consensus amongst all WTO members. Even if this is not just, there is a good organisational rationale to this; if the aim of the organisation is to facilitate reciprocal trade liberalisation, the concessions of larger, more powerful members are far more likely to bring others to the table than those of their weaker counterparts, and are therefore more likely to get the ball rolling in this direction. Large, powerful states are gatekeepers, whose commitments are significant enough to attract the interest and commitment of other states, which may be dependent upon better market access terms in order to fulfil their duties of domestic justice. Powerful states' greater national wealth, and thus their positions as gatekeepers of much-needed gains, gives them significant discretionary control over the early stages of negotiations. Immediately, then, we encounter a serious obstacle to the control that weaker states may enact, seeing as proposals developed at the early stages of negotiation have a tendency towards being sticky and difficult to substantially revise at later stages (Steinberg, 2002).

But, while the use of such Green Room negotiations appears to give weaker members little power over the ‘supply’ side of negotiations (i.e. what content goes into a draft), if they have enough power on the ‘demand’ side (i.e. if their acceptance or rejection carries enough weight), they may be able to compensate for their disadvantaged position in the initial stages of negotiation. Optimistically, we might think the requirement for consensus on agreements in the final instance gives weaker states precisely this sort of countervailing power. We might think this for two reasons. First, in contrast to other forms of decision-making where proposal-makers need only convince ‘enough’ members of a motion’s attractiveness, negative consensus demands that agreements be considered satisfactory by all. Thus, it may be the case that weak states’ views are sought out and incorporated during the process of drafting texts, so as to maximise the chances of an initial draft being supported. Second, consensus ensures that each member can make themselves heard when an agreement is unacceptable to them. At any given time, where a state feels like the proposed draft neglects their concerns, or unjustly disadvantages them, or simply desires that more thought goes into a particular formulation in the text, they can block consensus, regardless of whether or not any other states finds this congenial. Given that there is no withering away of their ability to dissent, and given that powerful members cannot force through any change to the status quo without their acquiescence, weaker members of the WTO may seem to have sufficient institutional clout to ensure that they have robust control over proceedings.

Unfortunately, this final claim is off the mark. Negative consensus, when paired with neither supply-side control over proceedings nor complimentary countervailing powers, is an insufficient guarantor of weaker agents’ control over decision-making. The position of weaker states in the WTO shows us two classes of reasons why this is so. The first class concern the hidden social and reputational costs attached to the (repeated) use of consensus blocking, given the juncture at which weaker agents can actually exercise this power. While there is no formal withering away of the ability to block consensus, for various reasons this can fail to translate into effective power of the sort required to enact control over decision-making. One aspect of this is that being given the ability to block consensus is importantly different from being given a veto (or at least some forms of veto). Unlike a veto, blocking consensus on a particular measure does not actually take the proposal off the table, nor does it guarantee that one won’t have to block a similar, or even identical, proposal sometime in the (near) future. Indeed, insofar as only some small number of agents block consensus, the proposal which they block will almost certainly still form the basis of future discussions, because it has achieved something close to consensus. Thus, attempting to alter the substance of a proposal which has the support of more powerful members would require a great deal of obstinacy.

This is made even more acute by the nature of actually using one's block. Unlike a vote, for example, where 'for' and 'against' a motion is explicitly canvassed, to block consensus is to take an active step and put one's head above the parapet. Such open obstinacy carries with it significant costs. If a member is seen to be openly blocking a proposal which other members appear at least tacitly satisfied with, this calls into question their reliability as a cooperative partner. In an interdependent world, where a great deal of a state's ability to effectively discharge its duties depends upon maintaining its good standing amongst the international community (Chayes and Chayes, 1995, 26-28), the burden this places upon dissenting states should not be discounted.¹³² Thus, in the WTO, the contrasting positions that weak and powerful states hold in the negotiating process (where the powerful play the role of drafters, the weaker of blockers), makes it prohibitively difficult for weaker agents to use their powers to efficaciously direct the negotiating process. Equally, for the powerful it makes wearing down the resistance of obstinate states a viable strategy.

The second class of reasons why consensus-blocking fails to translate into effective control has to do with the relative needs of participants, where the deprivation of some states contributes greatly to the dynamics highlighted in the previous point. Put bluntly, the fact that many countries fall so short of acceptable levels of domestic justice allows more powerful states to negotiate from a position of mere want, against those in a position of need. This can lead to a number of deleterious states of affairs, three of which I'll identify. First, weaker states may accept bargains which are deeply unsatisfactory from the perspective of both fairness and justice. Instead of holding out for what they take to be a just agreement, weaker states may accept deeply asymmetrical deals, if only to bring negotiations to a quick close with the intention of securing urgently-needed gains.

Second, wealthy states' economic position allows them to treat the WTO with relative neglect. Powerful states' ability to neglect an institution like the WTO is a far greater threat to its weaker trade partners than vice versa, insofar as powerful states, particularly the wealthy ones, are, on the terms introduced in Chapter 6, gatekeepers; a great deal of the world's wealth is available through their markets. In terms of neglect, it is more or less a mainstay of developed countries' negotiating arsenal to threaten a move to either more pliant negotiation forums or to work only with cooperative 'can-do' countries when multilateral negotiations stall (Miller, 2010, 72; Jawara and Kwa, 2004; Wilkinson, 2006). The proliferation of work going into mega-regional trade agreements can be seen as the most dramatic recent iteration of this long-standing trend. The fact that powerful

¹³² Acting obstinately may also be a dangerous strategy for states that are highly dependent upon aid, or else upon unilateral trade preferences of larger states, which can be revoked if weaker states are not sufficiently pliant.

states have frequently exercised the option of letting multilateral negotiating tables gather dust while they push on with amenable countries in other settings, makes neglect of the WTO forum a credible threat to weaker countries' interests.¹³³ Suggestive of such threat is the US Trade Representative's speech shortly before the Bali Ministerial, which saw a relative breakthrough in multi-lateral negotiations (the adoption of the Trade Facilitation Agreement). Just two months prior to the conclusion of the Bali Ministerial, the ever-quotable US Trade Representative Michael Froman gave a speech where he claimed that:

If Bali shows that the WTO is not a viable forum for negotiations, bilaterals and plurilaterals¹³⁴ will likely be the only avenue for trade negotiations. And this speaks, again, to the development goals. The loss of the WTO as a negotiating forum of course, would have the greatest impact on the smallest countries and the poorest economies. Big countries will always have options. Fair or unfair, that's a reality. We all want the WTO to be a vibrant negotiating forum — but small countries and poor countries would feel the loss the most.

(WTO, 2013)

Given that trade representatives hardly make such public statements carelessly, it is not unreasonable to assume that at least part of the motivation for making such statements is to give weaker members reason to consider revising their negotiating positions. Indeed, if such statements are made in public-facing speeches, one can only imagine what is said around the negotiating table. If weak members fear that the multilateral order will be neglected, or in the extreme case, abandoned, they may acquiesce to unjust proposals within the multilateral forum, just to ensure its preservation as a forum. Given that powerful countries are able to make such credible threats, and have done so often in the past, there is little reason to think that the rules that emanate from WTO negotiations are truly non-dominating; weaker states' ability to shape or control the terms of their subjection to the multilateral order is slight. For this reason, non-domination in trade requires substantial reform of the process of WTO negotiation.

7.6. Conclusion

A commitment to pursuing non-domination in trade speaks in favour of a pre-eminent multilateral trade organisation. There are three reasons this is preferable to a trade regime where regional

¹³³ Risse (2017) and Brandi (2017) separately express concern at this possible neglect of the WTO.

¹³⁴ In this context, it is clear that he is referring to what the WTO now call 'regionals'.

agreements proliferate: the WTO has a more reliably rule-based dispute settlement mechanism, it gives weaker states greater opportunities to cultivate their collective power, and gives them a better hope of preserving such collective power in the face of powerful states' potential efforts to marginalise them. Despite the arguments in favour of multilateralism more generally, the current process of trade negotiation within the WTO facilitates the domination of weaker states. Despite the vast asymmetries of power present, and the significance of the outcomes produced, there are few substantial or procedural rules constraining how proposals and drafts are formed. The formal ability to block proposals produced by such unconstrained bargaining is insufficient to provide weaker members with effective control over outcomes, insofar as they may often have good reason, whether reputational or material, to refrain from using this option. Blocking may be undesirable when a sub-optimal deal is urgently needed or unlikely to be improved upon. Blocking may be counter-productive when it discourages more powerful states' continued participation in multilateral negotiations.

Bearing in mind the broader international context, where states' capacities are institutionally pre-determined, we might agree with the analysis above, but deny that any potential features of the WTO could prevent any of this. To the extent that powerful states have realistic exit-threat, as was illustrated with their 'exit' from the GATT and into the WTO, the domination of weaker states within the international order is systemic, regardless of the institutional protections we might concoct. If the trade regime doesn't conform to powerful states' interests, they can just leave, and use their market size to entice weaker states into co-operating in more pliant forums. There is, unfortunately, some truth to this thought; indeed, I've noted in the previous chapter that there are some fairly hard limits to how closely we can approximate a non-dominating international order, so long as we have states of the shape and kind that we have today. Nevertheless, to say that the institutional configuration of international organisations makes no difference to the degree of domination present within its walls would be too quick. The above findings give all those concerned with trade justice reason to explore means of reforming the WTO with an eye to giving weaker states greater control over proceedings, thereby reducing their domination. It is to this task we now turn.

Chapter 8: Pursuing Non-Domination in Multilateral Trade Governance

8.1. Introduction

In this final chapter, I will look at the prospects for enhancing the non-domination of weaker states within the WTO. I focus in particular on WTO trade rounds which I, following Kapoor (2004), divide into a launch phase, a negotiation phase, and a conclusion phase. Due to the limited desirability of reducing states' dependence in trade,¹³⁵ and the limited feasibility of reducing asymmetries in power between states, the chapter will focus on the possibility of enhancing weaker states' control over proceedings at the WTO. While I suggest a number of reforms in the direction of non-domination in each phase of a trade round, the key suggestion is that states should collectively determine a set of goals at the launch phase which subsequent negotiations should further, informed by the common interests that states believe their participation in trade should protect or advance. This process has three key functions: it should serve to constrain states' deliberations at the negotiation phase, to discourage institutional neglect on the part of the powerful states, and to facilitate subsequent evidence-based contestation of policies which can, once implemented, be shown to thwart the realisation of states' collectively-determined goals.

I will assume, as a starting point, that the WTO should officially declare the Doha Development Agenda (DDA) dead, and should seek to launch a new multilateral trade round. As I'll argue below, the launch of a trade round is pivotal if weaker states are to have control over the trade regime; the WTO failed to get this phase right in the case of Doha (see below). For most of the discussion I will suggest reforms to the negotiation of trade rounds without assigning specific responsibility for these reforms to any one group: it is the responsibility of all relevant agents to support, where they can, the sorts of reforms I suggest. I will at times, however, mention specific agents' responsibilities where this clarifies how the recommended changes might be brought about. The main groups of actors for our purposes are powerful states, weaker states, and the WTO Secretariat. The prospects of realizing non-domination in trade depend in large part upon the ability of weaker states to coordinate with one another to cultivate their collective power, the willingness of the WTO Secretariat to facilitate such efforts, and on the sorts of internal reform of powerful states which serves to make them more sensitive to their international obligations.

¹³⁵ Dependence is desirable not only because of the gains that trade-dependence can generate: the more dependent powerful states are upon the total market opportunities which WTO membership secures them, then, plausibly, the more institutional changes would have to go against their immediate interests in order to make exiting the WTO an attractive alternative to participation. If this is right, economic dependence may ultimately be a precondition for economic justice

The argument will proceed as follows. In section 8.2., I will argue that the launch phase of negotiations is vital in furthering weaker states' control over subsequent negotiations, and that states should use the launch to set collective goals which the trade round should further. In section 8.3., I will argue that, due to the difficulties of preventing states from engaging in quid pro quo bargaining, substantially enhancing control at the negotiation phase will be difficult, at least without reforms to the launch phase of the sort I suggest in section 8.2. In section 8.4., I will argue that, while consensus decision-making at the conclusion phase is insufficient as a means of giving weak states control over proceedings, it is nonetheless a necessary safeguard to ensure powerful states cannot ride roughshod over weaker states' interests. Consensus decision-making during a trade round should, however, be complimented by enhanced powers of contestation once the rules have been implemented. A question which arises from sections 8.2.-8.4. is how powerful states could be made to support major reforms to the trade regime, which had the intended effect of reducing their own control over proceedings. The problem generalises: how can we go about reducing international domination when the necessary reforms would require support from the dominant states themselves? To conclude the chapter, I will briefly turn, in section 8.5., to this broader issue to consider two possible responses. I reject the idea that non-domination can or should be tackled through powerful states taking a 'leap into darkness' by using their dominating power to create a less dominating world. I suggest a more promising avenue for the pursuit of international non-domination is through internal reforms to states' decision-making mechanisms which would serve to make them more sensitive to their international obligations. Section 8.6. concludes.

8.2. Weaker states' control in the launch phase

In the launch phase of a trade round, WTO members set up a framework within which the ensuing negotiations occur.¹³⁶ Traditionally, what is decided during the launch phase includes the areas to be covered by the ensuing negotiations (e.g. trade in services, competition rules, export subsidies), and well as the parameters of agreement in these areas (e.g. whether non-developed states will be granted S&DT, whether there will be tariff formulas which require greater cuts to higher tariffs, how to weigh up reductions in tariffs compared to reductions in tariff 'peaks').¹³⁷ At this point, no

¹³⁶ Though there is no formal procedure stopping the subsequent negotiation from deviating somewhat from the framework specified at the launch: the decisions at the launch phase set soft constraints to the ensuing discussion, rather than hard constraints. The inclusion of TRIPS during the Uruguay Round is a case where the final outcome deviated significantly from the content of the launch. The proposed reform I suggest here should reduce the possibility of such deviations, at least deviations of an undesired kind.

¹³⁷ In the WTO, states have an applied tariff (the tariff they actually impose on a good), and a peak tariff, which sets the upper limit of what tariff they can apply on that good. There are often heated debates over how and whether to count cutting tariff peaks as a concession, especially in cases where the peak is far higher than the applied tariff.

state makes any specific commitments, nor does it seek any specific commitments from its trade partners. Because the launch phase doesn't involve haggling over the nuts and bolts of what an agreement will look like, no state at this point is confronted with any specific profile of onerous obligations, or the prospect of making insufficient gains from an agreement. As a result, market size has historically exerted far less of a gravitational pull over proceedings at the launch phase in comparison to the subsequent phases: indeed, non-developed states have consistently been able to ensure that the issues which they were interested in were included as part of the subsequent round, often in the face of developed-country resistance (Steinberg, 2002). The pay-off of a trade-round is too remote at this stage for developed states to wield their power as gatekeepers in a way which would weaken non-developed states' collective resolve.

From the perspective of non-domination, the launch phase might seem relatively unimportant in comparison to the latter two phases, where the rules are shaped, and subsequently agreed. I believe, however, that the launch phase may in fact be the most promising phase within which to reform proceedings in ways which would enhance weaker states' control. Recall that, in the discussion of the previous chapter, much of the problem of domination in negotiations was that states had little ability to shape draft proposals in the earliest stages of negotiation: they have no 'supply-side' control. If weaker states have the opportunity to set the parameters of a trade round, they can use this in such a way as to enhance their bargaining hand in subsequent phases, and to ensure a greater say in the shaping of the trade regime more generally.

How could we reform the launch phase with such a purpose in mind? I argue that the launch should include two steps which precede the usual, more technical deliberations which have typically characterised the launch. First, WTO members should work to identify a set of common interests that the trade round should serve, and publicly commit to furthering or protecting those interests through the ensuing round. An illustrative, non-exhaustive list of relevant interests in trade would include development, growth, sustainability, fair competition, self-determination, and economic stability. Second, on the basis of these common interests, states should set a number of concrete targets and goals in those areas of shared interest where success can be quantified (this may not be possible in some areas, e.g. self-determination). Again, these ought to be publicly declared as the targets which the trade round is intended to further or protect. The targets themselves ought to be achievable, yet ambitious.¹³⁸ States could determine these targets from

¹³⁸ It's important that the goals set are at least ambitious in order to better raise reputational costs against states when they act in ways which hinder the pursuit of the WTO membership's common interests (see below). Such ambition is also necessary in order to mobilise developed state citizens that are concerned with international justice (who could, in turn, pressurise their government to commit to negotiations).

scratch, or, where they are consistent with states' common interests in trade, WTO members could simply adopt ready-made sets of goals and targets such as the UN Sustainable Development Goals, or a selection of them (for a similar proposal, see Wilkinson, 2014). In short, members ought to set a purpose (or purposes) for the trade round, and set targets which can be pursued in a measurable sense.

In sites of collective decision-making, where agents are subsequently coerced into adhering to the rules produced, the only way to prevent such rule being dominating is to ensure that all agents are ruled on terms which they have accepted and acknowledged as relevant (Pettit, 1997, 52-58).¹³⁹ Put another way, decisions must be forced to track members' expressed common interests. Consensus process notwithstanding, it is not possible to ensure that each state in trade is satisfied with every particular rule imposed; even if this were to be true at the initial point of agreement, states and their citizens' preferences will change over time, meaning that agreement at one point is no assurance of acceptance at another point. Moreover, we have already seen that some states have little countervailing powers to ensure control over the rules they are subject to even in the moment that those rules are signed. While no reform at the launch phase can entirely prevent such an occurrence (this will be determined by the latter two stages), if the launch phase is designed so as to effectively set the parameters of subsequent negotiations, then weaker states can be assured that the rules they are ultimately subject to are ones which further interests which they recognise and accept as relevant to their participation in trade. Where a state loses out, in absolute or relative terms, as a necessary result of the collective's efforts to further interests which the state itself has acknowledged as relevant, it may feel aggrieved, but it ought not to feel dominated (see also section 2.2).¹⁴⁰ It is, in such a case, being ruled only on terms which it has itself endorsed.

A 'common' interest, in the sense of the word intended above, is not necessarily an interest which, if furthered, would enhance the condition of every state, relative to their status quo. What must be 'common' about an interest is that it is 'commonly-recognised', i.e. each participant recognises the interest as relevant when it comes to judging the suitability or acceptability of a certain rule or policy. This, in part, explains why reforming the launch process in the above suggested way would enhance weaker agents' control not only in later phases (see below), but also within the launch process itself. Where deliberation is framed in terms of commonly-recognised interests, this should

¹³⁹ This is a necessary, but not a sufficient condition for non-domination; the ability to contest decisions is another necessary condition; see section 8.4.

¹⁴⁰ Given the balancing-act involved in non-domination (see section 6.5.), perhaps a more qualified claim is appropriate: being ruled on the basis of interests one recognises in common with one's fellow participants is the least dominating alternative, relative to being ruled on a basis which is not forced to track any such interests, on the one hand, and, on the other hand, relative to being ruled on a basis which could only enforce collective obligations when subjected agents consented to each particular act of enforcement.

serve to give weaker states, particularly weaker LDC states, a special standing in discussions. The reason is that such states' interests are widely recognised as the most urgent within the trade regime, and they have long been granted S&DT on this basis. Whatever other interests the WTO membership recognise in common, at least one commonly-recognised interest amongst the membership is that LDCs face special challenges, and ought to be given ample opportunity to escape their current impoverishment.

Moreover, with respect to identifying and specifying common interests, weaker states have an in-built advantage over more powerful ones, simply on the basis that there are far more weak states than there are powerful ones. If a large collective of weaker states are capable of identifying a set of interests they share in common, and, following from that, a set of goals which they believe the trade round should pursue on that basis, their sheer strength in numbers would make it difficult to deny that such interests would qualify as common interests. In contrast, however great any individual state's market power happens to be, the fact it is only one voice amongst 164 members means that it would have little more power than any other state in identifying an interest as a commonly-recognised one. Framing the launch and the subsequent trade round in terms of the interests that are held in common amongst the membership, then, stacks the deck in favour of weaker, more numerous states, at least if they can co-ordinate their positions.

Framing a launch around the identification of common interests, then, gives weaker states an in-built advantage within the launch itself. With respect to the overall control that weaker states have over the terms of their participation in trade more broadly, a reformed launch phase serves three functions. First, it serves to constrain states' subsequent behaviour at the negotiation phase, by raising the reputational costs of engaging in flagrantly self-interested bargaining. Where states have already accepted the purpose of a trade round is to further a set of common-interest targets, this reduces the latitude they have to push for their own self-interest where this is inconsistent with the pursuit of such targets. And, given that all 164 members would have committed to the targets in question, each individual state that was planning on pushing for terms which set back the pursuit of the collectively-recognised interests would risk facing rebuke. In the previous chapter, I suggested that, where there is already agreement on a draft proposal amongst powerful states, for weaker states to block consensus at this stage this would amount to putting their heads above the parapet, in a way which many would be rightfully reticent to do. Here, the thrust of collective pressure is reversed; states that sought to wield power against commonly-recognised interests would risk widespread reprisal.

Second, by pre-committing states to furthering a set of commonly-recognised interests through the WTO, such a launch phase raises the reputational costs that powerful states would suffer (from e.g. their trade partners, NGOs, and concerned domestic citizens) for neglecting the trade round and pursuing their interests elsewhere, such as through further RTAs. To see this, compare a WTO trade round where the primary stated purpose is to liberalise trade (as the WTO currently portrays its function; see WTO, 2020b), to a WTO round which is framed around the pursuit of, say, sustainable development. If the WTO's role is framed in terms of facilitating ever greater liberalisation, then, if liberalisation is not forthcoming at the WTO, and it is achievable elsewhere, institutional neglect of the WTO does not seem particularly objectionable. If a WTO trade round truly served no progressive purpose, after all, then abandoning or neglecting that round may be a perfectly admissible move on the part of the powerful. In contrast, where states pre-commit to building greater environmental sustainability into the development trajectory of LDCs as the goal of a trade round, neglecting or abandoning negotiations of that round in favour of RTAs would require much greater justification. This would not be a case of seeking the same goal (trade liberalisation) in a different forum, after all, but would be an instance of turning one's back on a common goal, agreed upon by the entire membership.

Of course, it may be the case that RTAs do contribute to furthering goals which the WTO membership recognise as relevant. This relates to the third function that the reformed launch phase plays, which is to act as a yardstick against which to judge both prospective RTAs that members negotiate outside the auspices of the WTO, and the effects of the WTO trade round itself. Where an RTA appears to thwart, or be inconsistent with the common interests of the WTO membership, members could reject or request reform of that RTA on that basis. Not every RTA will require rejection. We have noted a number of times that there are many states that are in urgent needs for improvement to their current status quo. Where WTO negotiations do stall, it is unreasonably demanding to prohibit such states from pursuing these urgently-needed improvements in settings outside the WTO, such as within RTAs. Given that the common interests and targets that WTO members identify at the launch will likely (and should) have an in-built bias towards these badly-off countries, their RTAs may be admissible according the WTO membership's yardstick. Conversely, RTAs signed by rich countries, with no ostensible purpose other than to further enrich themselves, are less likely to be admissible. The goals identified at the launch phase can also provide a yardstick against which to measure the WTO's own agreement, once the round is concluded and implemented. Where some rules produced within the round can

be shown to thwart, rather than to further, the common interests of the membership, this fact can be used as a basis to revisit and subsequently revise the rule in question (see section 8.4).¹⁴¹

It might be objected that it is fanciful to think a reformed launch phase could serve the three functions mentioned above. To support such an objection, someone might point to the launch of the ‘Doha Development Agenda’. Despite being a round with the express aim of furthering development, no doubt a common interest in the relevant sense, it is precisely this round which has dragged on for almost twenty years, with no successful conclusion in sight. The WTO has been more or less completely sidelined as a serious negotiating forum for many years, as the major players in trade have sought trade gains elsewhere. Even before such institutional neglect, the early stages of negotiations in the Doha round were characterised by mutual hostility and intransigence on the part of developed and developing states, and a complete unwillingness on the part of developed states to prioritise development over their own trade interests (for countless examples, see Jawara and Kwa, 2004 xv-lxxxv). This hardly bodes well for efforts to enhance weaker states’ control through any sort of collective commitment-making during the launch.

Yet the lessons to be learned from Doha are not, I would suggest, quite so straightforward. The ‘Development’ part of the name ‘Doha Development Agenda’ was introduced by the WTO’s Director General, Mike Moore, at the last minute of the round’s launch, without any deliberation amongst the membership. The name “took the Americans by surprise; some of them fretted that putting ‘development’ in the name would reinforce the attitude among the most militant third world countries that they should not be required to contribute anything” (Blustein, 2009, 129). One can conceivably trace the acrimony between developing and developed countries in ensuing negotiations not necessarily to the ‘development’ agenda itself, but rather to the lack of clarity, and a lack of deliberation, about the significance of the ‘development’ element of the round (Narlikar and Wilkinson, 2004; Blustein, 2009). Because it was not based on extensive deliberation or on meeting any sort of measurable targets, the naming of the round, in part, contributed to the subsequent communication breakdowns and hostilities, as some states thought the development moniker suggested that negotiations would centre around unilateral concessions on the part of developed countries, and others thought it would, like previous rounds, continue to be conducted on the basis of reciprocity.

¹⁴¹ Note the structural similarity between these arguments for setting goals at the launch phase, and the arguments in favour of an LDC quota (see Chapter 5). A premise shared by the two proposals is that having a publicly-specified target allows states to hold one another to account and demand rectification for policies or oversights which have contributed to the failure to meet the target.

Rather than being seen as a reason to avoid identifying a purpose for trade rounds, WTO members should treat Doha as a (flawed) precedent, one which rightly recognised that trade rounds need to be tied to a normative purpose, but which failed to match such a purpose with a set of clear, concrete goals to be pursued. Such goal-setting is necessary both to avoid the sorts of communication breakdowns and misaligned understandings which set the tone of negotiations within the Doha round, and in order for the launch to serve the three functions mentioned above (constraining bargaining, enhancing costs of institutional neglect, and acting as yardstick for RTAs and outcomes produced). While there is, admittedly, little reason to think powerful states will be more cooperative than they have been in past negotiations, they do nonetheless retain a strong interest in concluding an ambitious, successful WTO round: in terms of sheer market access on offer, multilateral agreement remains by far the biggest prize available. In any case, whether they are likely to do so or not, powerful states have a duty to re-commit to the WTO, and to make ambitious commitments to developing and least-developing countries within such negotiations (see Chapter 4, and Chapter 7). The more powerful the state, the greater its duty to use that power to help re-invigorate the WTO as a negotiation forum.

In addition to weaker states, who ought to take a lead role in deliberating over the purpose of future WTO rounds, and in addition to powerful states, who have a duty to put their economic weight behind weaker states' efforts, the WTO Secretariat have an important role to play in facilitating a launch process of the sort I describe. To the extent that the WTO Secretariat has any autonomy from its membership, it ought to exercise this autonomy in such a way as to enhance the opportunities available for member states to reflect upon and co-determine the purposes they want the trade regime to serve. This seems particularly pressing at a time where the very architects of the post-war trade regime are increasingly acting in ways which call into question the fundamental assumptions which underpin that regime. While historically the Secretariat has proven to be more sensitive to the interests of powerful states, (see e.g. Narlikar, 2005, 45-50; Jawara and Kwa, 2004; Blustein, 2009),¹⁴² in the face of declining rich-world support for free trade and multilateralism, the WTO needs to re-invent itself, and to find a purpose which could command support from developed and non-developed states alike. Weaker states should take the lead role in identifying such a purpose, and the Secretariat should be willing to follow their lead.

¹⁴² Discussing the legitimacy of the WTO's Secretariat and its own actions is beyond the scope of the thesis. For present purposes, I simply assume that the Secretariat is entitled at least to act in ways which facilitate members' own efforts to reach agreements which are in line with the goals and aspirations of the organisation.

8.3. Weaker states' control in the negotiation phase

The negotiation phase of a trade round may initially appear to be the most urgent phase in which to tackle domination in WTO negotiations. It is during this phase that draft agreements are hammered out, and so it is at this point where equitable or inequitable terms are produced. Unlike at the launch phase, where a state's market size is not directly pertinent to what is being discussed, and unlike the conclusion phase, where market size makes no difference at least to the formal powers of states, in the negotiation phase a state's market size is central to proceedings: discussions centre explicitly and unavoidably around deciding the terms of market access that each state will give and receive. Determining whether the distribution of concessions and gains from a proposed agreement is equitable simply cannot be done without considering the size of each state's markets and its current level of capability (see Chapter 4). In this section, I will argue that, while the line between bargaining and deliberation is grey, which means it will be difficult to close the door entirely on exercises of dominating power in negotiations, a successful launch phase can curb the worst excesses of this.

The negotiation phase of a trade round is currently conducted on the basis of bargaining, where states' wielding of economic carrots and sticks is central to the process. This facilitates domination because, as we saw in Chapter 6, the wielding of both improvement-generating ability (carrots), as well as cost-attaching ability (sticks), can both generate domination between weak and powerful actors within collective decision-making. And, as we saw in Chapter 7, powerful states have been capable of successfully wielding their armoury of carrots and sticks within GATT/WTO bargains in order to make the trade regime more responsive to their own interests. Leaving the terms which structure a relationship up to the machinations of quid pro quo bargains effectively encodes the economic advantage of some states into the structure of the trade regime, and disenfranchises weaker states. When bargaining is the mode of negotiation, the states with the biggest armoury of carrots and sticks have the biggest say in determining outcomes, even when their interests are not the most pressing at stake.¹⁴³

Because bargaining allows morally arbitrary imbalances of power to sway the outcomes of collective decision-making, it is often contrasted (unfavourably) with deliberative decision-making (see e.g. Pettit, 1997, 187-189 ; Miller, 2010, 69-76; Kapoor, 2004). On a deliberative model, decision-making would proceed, not on the basis of who has the greater armoury of carrots and

¹⁴³ For an interesting discussion in the WTO context of how control over negotiations, when engaged in by self-interested bargainers, directly conflicts with what levels of control would be normatively desirable, see Christiano (2015)

sticks, but through an exchange of views among equals, with each party framing their arguments in terms that all participants can accept (or, to use the phrase introduced earlier, in terms of their common, avowable interests). Whereas bargaining treats interests and preferences as already-given, and decisions are taken on the basis of what concessions each side can make to one another, the deliberative model, at least one version of it, sees agents as engaged in a collective reasoning process, within which the preferences of participants are formed and revised through dialogue. Ideally, through the process of dialogue and reasoned exchange, parties would end up with “an expanded view that seeks the good of all” (Kapoor, 2004, 525). Here, the notion of some shared common good, or at least some overlap among participants as to what sorts of interests they can all collectively recognise, underpins the practice of deliberation: considerations in favour or against a proposal are admissible only when they appeal to plausible understandings of sorts of ends the collective decision-making process should serve.

A number of authors have used the ideal of deliberative decision-making, unsullied by differentials of bargaining power, as a basis against which to judge negotiations at the WTO and its track record (see Kapoor, 2004; Miller, 2010; Wilkinson, 2014; for a somewhat more positive take, see Higgott and Erman, 2010). As a standard of justification, the deliberative ideal seems entirely plausible: it rightly rules out as unacceptable all those outcomes which require concessions which “responsible representatives of some countries could only make under pressure of need, rather than in mutual accommodation to relevant justifications” (Miller, 2010, 70-71). Indeed, in the previous section, I have suggested that states ought to engage in deliberations of this sort during the launch phase, in order to frame the subsequent negotiation phase. In this sense, my arguments above are of a piece with this literature.

However, it is worth noting that, in terms of suggesting stand-alone institutional proposals, the deliberative ideal doesn't, in itself, help us much. Deliberation provides an ethics of trade negotiation by saying how states should interact with one another, but it doesn't suggest any particular institutional changes we might pursue to make the negotiation phase more conducive to deliberation, and relatively less hospitable to competitive bargaining. Without making any changes to the current structure of the WTO, states could engage with one another in a deliberative mode, but that wouldn't do anything to remove the dominant position of some over others. When powerful states engage with weaker states in deliberative dialogue, even when they do so in genuine goodwill, this does not change the fact that this is ultimately an act of self-restraint: they retain the option of reverting back to horse-trading if and when they so choose.

Indeed, it's hard to imagine how bargaining could be eradicated as a central feature of the negotiation phase. As representatives of their citizenries' interests and preferences, states will (and should) have their own aims and red lines in any given trade negotiation. While some such aims and red lines may be unjustifiable, there will be many areas of reasonable disagreement between states and their respective citizenries over what counts as a relevant and salient concern (see section 2.2). This means that whatever mode of negotiation we adopt must give states the space to express their preferences and pursue aims in accordance with responsiveness towards their own citizens. The problem this generates with respect to instituting a more deliberative mode of negotiation is that once we create such a space, there is nothing stopping states from using this space to bargain with one another, and to exchange offers instead of reasons. Of course, this will be true in any area of collective decision-making where representatives must be responsive both to a constituency and to their deliberative partners: in such cases, deliberative partners will need the power to be able to adjust any draft proposal, even if it's just along the lines of 'I accept that I have to give something up, but it would be a dereliction of my duties if I conceded on X, because X is an important issue to my constituency. How about I give up Y instead?' It's hard to see how the line between deliberation and bargaining would not become very grey in trade negotiations.

This is why something like I have proposed at the launch phase must precede negotiations if we are to realize anything approximating the deliberative model of trade governance. If members agreed to further a set of specific goals based on their common interests, this would serve to narrow the considerations that states could use when bargaining, and raise the reputational costs of pushing flagrantly self-serving positions. The launch phase effectively pre-commits states to engaging in deliberations over how to reach the goals and aims of the round, rather than leaving the choice between bargaining and deliberation up to the goodwill of powerful states themselves. Though elements of bargaining are likely inevitable at the bargaining phase, as states seek to adjust the distribution of benefits in their favour, ideational factors have played a role in legitimising hardnosed competitive bargaining of the sort which has characterised trade negotiations in recent decades. As Andrew Lang (2006; 2014) notes, when the goals of the trade regime during the GATT era were framed by the 'embedded liberalism' post-war compromise, states were concerned with protecting and ensuring domestic stability, and other participants recognised and respected that. Bargains took the form of mutual accommodation and coordination, as each state recognised that a commitment to both international openness and domestic stability required careful, sometimes ad hoc balancing. It was only with the development of what Lang calls a neo-liberal conception of the trade regime, where the regime was conceived as "the institutional foundation for a smooth-running political marketplace for the exchange of trade concessions" (2014, 417), that hard-nosed,

self-interested bargaining became a naturalised ethos within trade negotiations: “the notion of a collective purpose of the regime as such was replaced with an image of the regime acting as nothing more than a venue for bargaining between states with their own purposes” (2014, 417). Reimagining the WTO as a forum which can further some collective purpose(s) would serve to delegitimize the worst excesses of competitive bargaining.

Other than the salutary knock-on effects of a more ambitious launch phase, is there anything that can be done to reform the negotiation phase itself? On the more modest side of reforms, further steps towards more inclusive negotiation procedures, including more inclusive Green Room participation, could be formalised within the institution. Equally, further provision should be made to enhance the human assets of smaller non-developed states’ negotiation teams, through increasing legal and economic training, as well as perhaps subsidising their hiring of additional staff. Trade negotiations are highly complex, increasingly so since they’ve begun to cover behind-the-border issues such as regulatory standards, as well as intangible goods and services. Access to legal, technical, and economic expertise is key to any state being capable of understanding and communicating its interests, and thus for any sort of effective participation within negotiations.¹⁴⁴ The pursuit of weaker states’ control over proceedings also speaks against the centrality of high-intensity ‘ministerials’ in the WTO, insofar as these exacerbate the significant gaps in expertise and sheer man-power between states.¹⁴⁵

On the more ambitious end of potential reforms, the sequencing of the negotiation phase could be altered so as to give greater say to weaker states. Currently, the largest states shape early draft proposals, and these states’ proposed commitments are taken as benchmark commitments, after which other states’ less onerous S&DT commitments are derived as a function of this benchmark. There is nothing natural or inevitable about this. Sonia Rolland (2010) has suggested that this sequencing could be reversed, so that weaker non-developed states’ commitments would represent the benchmark from which larger states’ commitments would subsequently be scaled up. This reversal would have a number of effects on negotiations. The effect Rolland is concerned with is that it would produce deeper liberalisation commitments from both developed and non-developed states: non-developed states would have a strong incentive to make serious, deep commitments, in the expectation that developed countries would in turn be required to make even deeper

¹⁴⁴ In contrast to members such as China and Japan who have over 20 individuals working exclusively on WTO issues, including permanent delegates in Geneva, the majority of countries have less than five, with some (e.g. Armenia, Guinea-Bissau, and Namibia) having only one. Often, these delegates are also delegates of their country in other organisations located in Geneva, and sometimes their countries cannot even afford to keep delegates located in Geneva permanently. See Wilkinson (2014, 56–60).

¹⁴⁵ Blustein (2009), a chronicle of the main actors and actions of the first handful of WTO ministerials, constantly returns to the theme of all-night sessions, last-minute bargains, off-the-cuff draft proposals and so on.

commitments still. In addition to this distributive benefit, however, Rolland's proposal would give non-developed states the ability to shape the early stages of the negotiation, rather than being left in a position where they are constantly reacting to (and potentially blocking) drafts produced largely without their involvement.

While powerful states would be reluctant to give up the lead role in shaping negotiations, it is worth noting that they, too, would benefit from greater market openness on the part of developing and least-developed countries. Whether or not powerful states would be enthusiastic about Rolland's proposal, the WTO Secretariat should be sensitive to any efforts on the part of weaker states to take such a lead role, and it should be willing to use draft proposals formulated by weaker states as bases for subsequent deliberations. While the Secretariat would inevitably come under pressure from more powerful states if it recurrently favoured the voices of weaker states, a successful exercise of goal-setting during the launch phase might give the Secretariat a mandate for doing so, and might strengthen its resolve in doing so, at least where favouring weaker states' interests is consistent with the membership's publicly-declared goals (which it ought to be).

8.4. Weaker states' control in the conclusion phase

The conclusion phase of negotiations covers how binding decisions are reached amongst the membership. Broadly speaking, there are two sorts of decision-making procedure which can be used to conclude a trade agreement: consensus and aggregative decision-making, i.e. voting. Consensus and voting each have variations. By 'consensus', I refer to any rule where a state's objections to a decision cannot be overruled. On this definition, consensus includes unanimity, where a state's abstention blocks a decision, and negative consensus, where a decision is blocked only if a participant present during the decision expresses active opposition. As discussed in the previous chapter, negotiations in the WTO are concluded on the basis of negative consensus.

Voting, in contrast, allows for one participant's objections to be overruled, so long as enough others are in favour of the relevant proposal. The votes in favour of a proposal must reach a certain threshold in order for decision to be reached. Where this threshold is set can vary: decisions could be taken on the basis of a simple majority of participants being in favour of it, or it could require a supermajority, e.g. where 70% of participants would have to be in favour. The weight of participants' respective votes could also differ, for example on the basis of a state's population size, its wealth, or what proportion of global trade they are responsible for. Moreover, the conclusion phase could be designed so that multiple thresholds would have to be passed, e.g. a

decision would pass only if it was supported by at least 60% of states that, taken together, represent at least 70% of the global population.

In the previous chapter, I've argued that negative consensus does not give weaker states enough control over negotiations to shape the terms of their economic integration. The question to be considered in this section is whether moving towards a voting process in the conclusion phase would give weaker states greater control over proceedings than consensus does. Andrew Walton (2015) has recently given two arguments in favour of moving towards some kind of aggregative voting system in the WTO, both of which are relevant for our purposes. The first reason he gives is that consensus decision-making "requires considerable, often impractical, time and resources when the numbers involved are anything other than very small" (2015, 586). And, while negative consensus can be less resource- and time-intensive than unanimity, this ultimately comes at the price that negotiations can proceed while excluding certain parties from the process entirely (2015, 586). Where decision-making is deeply inefficient, like Walton takes consensus to be, it undermines the control not just of weaker participants, but of all participants: put bluntly, collective decision-making cannot be steered to any purpose at all if no decisions are ever reached.

The second reason Walton favours a move towards aggregative voting is that he believes consensus decision-making is unlikely to produce the substantive outcomes that are required as a matter of justice. Why does he think this? Because where a political institution is in the business of distributing obligations and entitlements, a just distribution will often involve making some agents worse off, in absolute as well as relative terms. This sort of concern is particularly relevant in contexts where justice requires rectification of background injustices or of inequitable bargains that have not yet been corrected. Both of these considerations apply to the WTO where many states are insufficiently capable of participating in negotiations as equals, and where this has been taken advantage of by more powerful states.

In his argument against consensus, Walton favourably quotes Pettit (1999, 179):

If the common interest is to be advanced [...] the decision-making procedure has to allow for some people to be treated less well than others. And a vetoing scheme would hardly fit the bill, since it would enable those from every quarter to rule out anything that damaged them.

While Walton uses Pettit to underscore the *likelihood* of unjust outcomes being produced by consensus, Pettit himself frames his objection to consensus in terms of non-domination: one of the features of consensus which is problematic is that it gives agents the *possibility* to rule out any

outcomes that damage them. By giving each agent the ability to block any decisions that they dislike, Pettit argues, this ultimately undermines the entire system, leaving every agent subject to the arbitrary will of every other participant. While their focus differs, what both Walton and Pettit agree on is that the consensus impedes the realisation of justice.

What are we to make of these two arguments against consensus, i.e. the argument from efficiency, and the argument from justice? With regards to the efficiency argument, there is certainly some truth to it. Reaching agreement through consensus is certainly difficult, and voting has at least the potential to reduce the instance of deadlock and stasis, by allowing some decisions to be taken even where some states would like to block them. But it's worth noting that, at the WTO, blockages could be reduced in other ways while maintaining consensus. Some of the difficulties of reaching agreement at the WTO have stemmed from the requirement that agreements are to be concluded on the basis of a 'Single Undertaking', on which 'nothing is agreed unless everything is agreed'. Rather than allowing decisions to be taken in their absence or against their assent, as voting allows, we might think that weaker states' non-domination would be better served by instituting a more itemised approach to negotiations.¹⁴⁶ This could be coupled with enhanced opportunities to use opt-outs for those states that count for less than a certain percentage of trade: giving such states greater opportunities to exit from certain aspects of WTO negotiations would greatly enhance their ability to only be subject to terms which they themselves accept, while doing little to take away from the overall level of gain created by reaching a deal. Both the more itemised approach to negotiation and the enhanced use of opt-outs would reduce the difficulties of reaching agreement, without making it the case that rules would bind states to terms which they explicitly rejected, as voting would.¹⁴⁷

Moreover, we shouldn't exaggerate the obstacles to consensus agreement. There are less than 200 members of the WTO, and trade agreements have the potential of making all states better off in absolute terms. This makes reaching a consensus at the WTO orders of magnitude more realistic than, say, attempting to reach domestic decisions through national consensus. While the membership of the GATT was much lower, and the areas covered by negotiations were more straightforward, the fact that several multilateral trade rounds have been concluded means that agreement through consensus is certainly possible. We've also seen successful consensus decision-

¹⁴⁶ Veiled US threats notwithstanding, the minor breakthrough at Bali (see section 7.5.) suggests that breaking agreements into smaller chunks may be the way forward for the WTO.

¹⁴⁷ This is particularly important in a context like the international trade regime, where states have limited ways of enforcing decisions. Consenting to a decision may signal a willingness to implement an agreement, even if it involves holding one's nose, whereas it may be in fact be quite difficult politically for a state to implement an agreement which they voted against. Uneven implementation of the rules may, in turn, undermine the authority of the WTO as a rule-setting forum, and with that any hopes of multilateral pre-eminence in trade.

making in other areas of international politics, most notably the Paris Climate Agreement., in an area of international politics which does not (in the short term) have the mutually welfare-enhancing properties that trade agreements are thought to have. Were powerful states to concentrate their efforts on the WTO, rather than an increasing proliferation of RTAs, there is no reason to think that consensus on a number of issues could not be reached. This is particularly true if they are willing to compromise on areas that, as a matter of justice, they ought to. What Walton overlooks is that stasis at the WTO can be attributed at least as much to intransigence and neglect on the part of powerful countries as it can be to the decision-making process itself.

The second point, that consensus decision-making undermines the pursuit of justice, is worth taking very seriously: where states can make effective use of their ability to block agreements, this may well be used by states as a means of blocking decisions which would (justly) impose costs upon them. But moving to an aggregative voting system has its own dangers. We've already established in previous chapters that the bargaining power of the largest states gives them a greater say in the production of negotiation drafts and, given the arguments in the previous section, the prospects of eliminating the importance of such bargaining power are not promising. Given this, we can expect powerful states to take the lead role in the negotiation phase for the foreseeable future. Changing the decision-making procedure from consensus to voting does nothing to impeach powerful states from this position; their markets are still the most lucrative, their lobbies still the most powerful, their negotiating teams still the most well-staffed. Each of these advantages can be used to great effect at the negotiation phase. If we cannot radically change this state of affairs, it's reasonable to think that whatever negotiation draft is ultimately being decided upon at the conclusion phase will be more in line with the interests of powerful states' interests than weaker non-developed states'.

Considered in this light, the pertinent question to ask about how to structure the conclusion phase is not which decision-making procedure would make it possible to override the interests of the most powerful states. The question instead is, given that the specifics of any given draft will likely continue to be structured by the most powerful states, what mode of decision-making will make it more difficult for those states to ride roughshod over the voices of weaker participants? Once framed in this way, I believe it's clear that we ought to favour consensus over voting. If powerful states are primarily determining the shape of agreements, then there is no reason for them to need a veto at the conclusion phase of negotiation, insofar as they will have had an opportunity to shape the agreement. The availability of an ability to block consensus is more valuable to weaker states, whose voices and interests are comparatively easier to marginalise and neglect at the negotiation phase. Moving from consensus to voting in the conclusion phase would create the possibility for

other WTO members to continue to exclude and marginalise these states, and to bind them to an agreement which they did not support.¹⁴⁸ It would allow states to create multilateral trade law while systematically excluding some states, so long as they gained support from enough others. We might consider here, the potential fate of states who want to pursue unorthodox economic policies or even unorthodox economic systems. While consensus protects such states' ability to be responsive to their citizens' values, albeit imperfectly, voting makes it possible that these states' preferences could consistently be overridden. On this basis, and while it's far from a panacea, it appears that consensus gives weaker states more robust control over the terms of their economic integration than voting does, because it gives them greater institutional power with which to counter their disadvantage at the negotiation phase.¹⁴⁹

One wrinkle worth adding to this story is that, along with having a slightly different take on the ills of consensus, Walton and Pettit consider the merits of consensus against different standards. While Walton is concerned with consensus as a mode of decision-making, and so contrasts it unfavourably with aggregative voting, Pettit is primarily concerned with consensus as a basis for legitimate political rule, and contrasts it unfavourably with the idea of contestation, i.e. the ability to effectively challenge decisions that have already been taken (see Pettit, 1997, 183-190; 1999). With respect to how states should structure trade negotiations, Walton's contrast is the more pertinent of the two, so it is the one I've been concerned with above. However, Pettit's contrast does give us pause for thought: if consensus and contestation are really at odds, then adhering to a consensus model of decision-making may result in a tyranny of the past over the present, where a single moment of consensus binds states to an agreement even where many of their views have changed over time. Given that different governments will perceive their national interest differently from previous incumbents, and given that citizens' values and preferences will change over time, this sort of 'temporal domination' is clearly problematic, as it presents that possibility that some governments would use the trade regime as a means of tying the hands of future governments, and resultantly future citizens (Howse, 2002; Guan, 2014).

Fortunately, however, Pettit's contrast is somewhat misleading: institutionalising avenues for effectively contesting an agreement after it is concluded is perfectly consistent with reaching the initial agreement through consensus. A commitment to consensus during the conclusion of an agreement does not commit us to requiring consensus in order to uphold a challenge. The

¹⁴⁸ Note additionally that powerful states would have greater capability of enforcing a decision that went against weaker states than vice versa, as they have greater economic muscle with which to sanction non-compliance.

¹⁴⁹ It is telling on this score that non-developed states appear to strongly support retaining consensus decision-making (Hoekman, 2012).

objection to repealing consensus decision-making in the conclusion phase was that, given inequalities in bargaining power, removing the ability to block consensus would present a greater threat to weaker states than it would to more powerful ones. The dynamics involved in revisiting a decision that has already been implemented are different; here, the context sensitivity of non-dominating policies comes to the fore (see section 6.5.). Unlike trying to force through a draft agreement, a mechanism that would allow states to challenge an existing rule would not require a state to have any significant bargaining power in order to set a challenge in motion; human resource issues aside, there is no reason smaller states could not be the ones ‘shaping’ a challenge to an existing rule, nor why they could not have a more or less equal ability to challenge decisions compared to otherwise more powerful states.

More importantly, there is a key difference between challenging a rule that’s already in place, and pushing for one to be included in an agreement: when a rule is being challenged, it has already taken effect, which means that there is an evidence base against which to challenge the rule, and to evaluate its effects. This is key, as it allows states to challenge rules on the basis that they undermine the values and goals that states pre-committed themselves to during the reformed launch phase. Where it could be shown with relative conclusiveness that a policy was clearly setting back some professed goals that the WTO members set for themselves, there is no reason to think that adjudicating this sort of claim, on the basis of, say, an expert review coupled with a supermajority of WTO members, would present a threat to states’ effective control over the WTO. States would still be subject to rules which were forced to track their common interests, even if in a particular given case they lost out as a result of this. The case for consensus during the conclusion phase of negotiations, then, need not extend to all aspects of the WTO’s operation.

8.5. Two strategies for reducing international domination

The above sections suggested a number of reforms to how trade rounds ought to be conducted within the WTO, and its outcomes subsequently revisited. Taken individually, each of the proposals is relatively modest. In combination, however, and coupled with a decisive shift away from RTAs and towards multilateral pre-eminence, I believe enacting them would substantially enhance the non-domination of weaker states in trade.

While I believe this is correct, there are two lingering questions. First, are even these fairly modest hopes realistic? Second, is there really nothing more ambitious for which we can hope, other than a few tweaks to WTO trade rounds? These two questions might appear at odds: the first suggests

that the above proposals are potentially asking for too much, while the second question suggests that we ought to ask for more still. In truth, the answers to both questions are intimately connected: the modest hopes of producing a less dominating international trade regime may well rest upon the prospects of more ambitious changes to the nature of the international order itself, including changes to the structure of the states which construct and uphold the trade regime.

As Richard Miller notes, the problem with trying to reform international institutions with the intention of counteracting global imbalances of power is that “the diagnosis condemns the cure” (Miller, 2006, 501):

[I]f the task is improvement of a current sphere of social life already regulated by institutions, and if inequalities of power are a main source of the harms to be mitigated, then it is an open question whether new powers for institutions linking the strong and weak are to be recommended. If the recommendations make any significant difference, the domineering influence of the top participants may make the new institutional powers further tools for domination.

(Miller, 2006, 502-503)

The existence of the very same imbalances of power that we’re concerned with countering, in other words, make it likely that any institutional reform will favour, or be redirected in order to favour, the powerful themselves. Certainly, we shouldn’t take this cautionary warning as ruling out *any* reform; Miller’s criticism is targeting ambitious reforms of the sort that would curtail the advantages of powerful states (the US in particular). There is little reason to think that the structure of the international order rules out piecemeal changes, such as an increased availability of opt-outs, for example. But the most powerful states may well resist any attempts to make deliberations at the launch phase more substantive, as I’ve suggested they should be. Equally, there is in all likelihood a gap between the demanding distributive duties that I attribute to states in Chapters 4 and 5, and the foreseeable outcomes of WTO negotiations, even if they were altered in the ways I above suggest they should be.

To conclude, then, I want to briefly consider two broader sorts of response to the prevalence of international domination, which would change the structure of the state-based order in such a way as to make it more conducive to realising the more ambitious elements of what trade justice requires. The first response involves a ‘leap into darkness’ (Smith, 2013), where dominant states would exercise their dominant power so as to inaugurate a non-dominating, or less dominating, international order. The second response involves what we might call ‘inward internationalisation’,

where the internal deliberations of states are altered so as to make them more sensitive to states' international obligations.

The first sort of response to Miller's challenge bites the bullet, and accepts that fundamental reform of the international order cannot and will not occur in ways which would cut against the grain of the most powerful states. Patrick Taylor Smith (2013) has recently argued that this is indeed the case: he claims that "we cannot help but dominate others with our current political institutions and yet any attempt to move towards a more acceptable political order will wrongfully disrupt the rightful relations between citizens of an internally legitimate national state", by subjecting such national states to international domination (2013, 200). Recognising that international domination is inevitable within the state-system we have, he suggests that those agents wishing to realize international non-domination must engage in 'revolutionary action', which would involve exercising dominating power in the hope that this would be retro-actively justified by the success of their actions. Smith calls such action "a leap into darkness" (2013, 230).¹⁵⁰

Smith illustrates his case for this sort of 'revolutionary action' through discussion of two cases, the Allied Powers' creation of the International Military Tribunal (2013, 246-252), and NATO's military intervention in Kosovo (2013, 252-264). A discussion of the first will suffice for our purposes. The International Military Tribunal, set up by the Allied Powers after the Second World War, conducted the Nuremberg trials of Nazi officers after Germany had been defeated. According to Smith, the Allied Powers used their dominant position over Nazi Germany in order to set up what was effectively an ad hoc criminal court, in order to try Nazi war criminals. While the criminal proceedings fell far short of due process norms typical of criminal trials in the domestic state, it is also the case, Smith argues, that the Allied Powers were engaging in an exercise of significant self-restraint, insofar as there was no need for them to set up any sort of due process trials. If they wanted to imprison putative Nazi war criminals without trial, there would have been nobody who could have stopped them. Smith argues that the Allied Powers' actions here constituted a leap into darkness, insofar as they had no authority to try war crimes in the way that they did, but through their revolutionary action, they established a precedent upon which future international courts, such as the ICC, would have authority to try such crimes. Put another way, Smith believes that the allies exercised their dominant power in a way which ultimately contributed to creating a less dominating international order. That this was the result of their actions justifies their actions after the fact; their moral risk paid off.

¹⁵⁰ It's worth mentioning that Smith adopts a Kantian account of non-domination, rather than a neo-republican one of the sort I utilise in this thesis. This makes no difference to the structure of the 'leap into darkness' idea, though it does shape some of the reasoning by which he ultimately justifies the leap.

The sort of leap into darkness that Smith is concerned with is arguably not alien to the trade regime. We might consider the allies' (more specifically, the US with the support primarily of the UK) creation of the Bretton Woods institutions as a similar sort of leap into darkness. As was discussed in the previous chapter, these institutions, including the progenitor of the WTO, were set up and designed by the global hegemon, the US, to regulate and provide stability to the international economy. Backed by the dominant US's financial and military power, these institutions underpinned the reconstruction of a devastated post-war Europe, the growing prosperity of the US and its allies, and gradually came to provide a rules-based framework for more or less the totality of the global economy. Depending on how we view the motivations of the EU and the US, and depending further on our judgement about the merits of it as an institution, we might also see the creation of the WTO as an instance of revolutionary action (though I believe this would rest on an implausibly-charitable interpretation of the EU's and US's motives).

The problem with the 'leap into darkness' strategy is that, fundamentally, it does nothing to solve the problem of international domination. As Smith acknowledges, the international order is most ripe for revolutionary action in times of a powerful hegemon, who can act as creator and enforcer of a new or revamped system. For any new international order to be upheld, and for the relationships it inaugurates to be stable, that hegemon cannot disappear from the scene, but must act as guarantor for the system, something Smith recognises, and as is clear from both of his case studies. Given this, however, it should be obvious that reforms of this sort do not fundamentally change the degree of domination in the international order, even if they change the degree of domination felt by some actors within particular spheres of action. That one state, or a set of states, has the power to create a set of institutions and to act as guarantor suggests that they can also refuse to play this role, or that they can subsequently alter, undermine, or diminish whatever order they created: think, for example, of how in 1971, Richard Nixon was able to unilaterally end the Bretton Woods' fixed exchange-rate system, by stopping international convertibility of dollars into gold. At the margins, hegemons may be able to set up new institutions entirely. Of course, it may be the case that no state is capable of playing this role in today's world; in that case, the leap into darkness strategy is simply a non-starter. But the general point stands: if a state or subset of states are capable of making a successful leap into darkness, this very fact means that those same states that act as enforcers and guarantors of new or reformed institutions would retain the power to re-reform those institutions they'd created. No single leap into darkness can exorcise domination from within the international system.

Yet it is not only that the leap into darkness strategy is inadequate as a means to removing domination: it is also politically objectionable. We are not in a time of stark hegemonic imbalance,

but instead we are living in an increasingly multipolar world, where the power of non-developed countries is rapidly rising. I've noted in Chapters 4 and 5 that non-developed countries' distributive duties are rarely discussed in political philosophy; such states are more commonly treated as moral patients rather than moral agents in the global justice literature. But political philosophy should not only take non-developed states' agency seriously with respect to distributive justice, but also with respect to procedural justice and the creation and development of new institutional forms. Dominant states do not bear all the responsibility for mitigating international domination, nor do they hold all the capability of instigating political change.

In this and the previous chapter, I've suggested that weaker, non-developed states ought to coordinate their efforts in order to enhance their collective voice within WTO negotiations. This suggestion generalises: the path to minimizing international domination likely goes through the efforts of non-developed countries to coordinate collective positions, in order to enhance their bargaining position against powerful and developed countries. However, this cannot be the whole of the story, and is only one part of the equation. In addition, there must be pressure within powerful countries, and, in particular, powerful developed countries, to accept their demanding duties to weaker, non-developed states. I want to propose that both the redoubled coordination of non-developed countries, and the strengthened voice of developed-country constituents favouring a more equitable foreign policy, can go hand in hand through a process which we might call 'inward internationalisation'.

Inward internationalisation fills a somewhat surprising gap in the global justice literature. It calls for (initially) modest structural transformation of the domestic state, so as to make domestic politics and constituents more sensitive to their obligations to dependent international partners. For the most part, suggestions for political reform in the direction of international justice target the international realm, by focusing on how to make international organisations more just, or the setting up of new international bodies or funding schemes. There is certainly value to this, and indeed it has been a focus of this third part of the thesis. However, it is still the case that states are the most powerful agents in the international order, and that the decisions taken by and within states are far more significant than most decisions taken by international organisations. Given this, a more just world is only likely to be brought about through the creation of more just states. Perhaps the reform of states is not thought to be the business of other states, insofar as it would impinge upon states' sovereignty and their self-determination. Yet, there is no reason that states could not, in coordination, commit to reforming their state systems so as to institutionally incorporate the voices of international partners within their domestic deliberations. This would be an expression of states' sovereignty and self-determination, rather than a violation of them.

This brings us back to a suggestion made in section 2.4., where states would have representation in the political institutions of their most intensive trade partners. Given the intensity of globalisation more generally today, we can expand this, and suggest something similar, where all states would have some political voice within each state's own domestic institutions. Every state could have some speaking rights in one of the chambers of each other state (or, in unicameral systems, there could be a second chamber set up), to scrutinize proposed legislation and voice their concerns. Where states set up citizens' assemblies to consider issues which touch upon their international obligations, potentially affected trade partners should be able to address the assemblies. As can be seen from the populist backlash against globalization that we're currently witnessing across the world, international reform has to be careful about eroding states' powers; indeed, the same backlash is part of the reason that we ought to consider state reform, rather than any sort of enhancement of the powers of international organisations. At least initially, then, states should only be given a voice of a consultative sort.

In Chapter 2, I suggested that if international partners had a voice in their trade partners' domestic deliberations, this would reduce the harms caused by ignorance and negligence, it would clarify the moral situation of states' duties to other states in an interdependent world, and it would have the potential to cultivate an appreciation of states' duties amongst domestic constituents. It could do this by making it easier for journalists to gather stories and information about our states' effects on others, and through making the plights of other states more immediately visible both to concerned citizens and to potentially sympathetic NGOs. Here, I want to suggest that this sort of inward internationalisation has an additional benefit, namely that it doesn't require non-developed states to wait for the most powerful states in the world to act in order to bring about a less dominating world. They can get the ball rolling in coordination with one another.

Let's say that a large coalition of non-developed states (say, the countries of the African Union, the Pacific and Caribbean states, and some South-East Asian states) recognised that, notwithstanding all their divergent interests, they have a shared interest in a global order which was more responsive to them, where their voices could be heard in those issues areas which mattered most to them. They could agree to give some non-binding voice within their domestic deliberations to all their international partners, with the stated expectation that the same treatment would be reciprocated by their partners.¹⁵¹ This institutionalised voice could be given just to those

¹⁵¹ Of course, inward internationalisation would not actually require states acting in coordination: one state could be a policy entrepreneur and decide unilaterally to reform its domestic polity in this direction. But it would be easier to dismiss this, and it would be harder to push powerful states to reciprocate with their own inward internationalisation if only a few states acted as unilateral policy entrepreneurs in this way.

states that already agree to reciprocate, but perhaps it would be better still to offer this to all international partners; in effect, the ambassador of every state might be invited to take a formal, public seat within one of the domestic debating chambers. Perhaps not all states would accept this seat, insofar as they might then feel bound to reciprocate the offer. But this is no reason for states that want to encourage inward internationalisation not to invite all other international states a seat anyway, and thus increase the pressures to reciprocate. This act of inward internationalisation on the part of a large enough group of states might, in turn, give many diverse NGOs that are concerned with international justice a cause around which to unite and pressure their own governments to commit.¹⁵²

Over time, as more states committed to inward internationalisation, the pressures on hold-out states would increase, both from international partners who would like a voice in those hold-out states' domestic deliberations, and from domestic constituents who gradually come to see inward internationalisation as a morally necessary response to our interdependent world. Eventually, the hope is that, through coordinated domestic reform, and through coordinated international pressure, states could push their international partners to adopt some form of inward internationalisation, and over time this would spread through a process of norm diffusion amongst states. Perhaps, if enough states adopted domestic reforms of this sort, states would feel the need to commit to inward internationalisation even where they feel like this is against their interests and where they have no intention of becoming responsive to the voice they give their international partners. The analogy here is with election monitoring: initially something that only a few states made provision for, over time states felt obliged to make provision for monitoring of their elections even where they had no intention of running free and fair elections (Hyde, 2011).

It's worth noting that, at least initially, inward internationalisation would do little to reduce international domination. It would allow weaker states to increase the costs of certain actions, as it would enhance their ability to reputationally sanction more powerful states within their own domestic deliberations for their unjust actions and inactions. But, in the short term, it may do little else to mitigate international domination. In this sense, the leap into darkness might appear the more radical suggestion and, if we believe justice requires radical reform of the international order, it might therefore appear the more attractive solution. Yet international reform will inevitably be gradual and piecemeal: there is no Bastille to storm, no military coup which can simply 'take over'

¹⁵² Miller (2006) himself pins his hope for progressive change on the mobilisation of social movements. Such social movements, however, uncoupled from institutional change which can reliably mobilise the broader citizenry's concern for their state's adherence to international justice, doesn't seem sufficient to support the long-term, gradualist project that is involved in structurally reforming the international order (see below). Social movements and institutional change must be mutually-supporting parts of the reform process.

the levers of international power. As Smith himself acknowledges, such reform requires institutional creation, which in turn requires piecemeal change, supported and upheld by “coordinated efforts across many polities and generations” (Smith, 2013, 265). Because of this, any proposal to reform the international order in the direction of justice has to have a story about why the domestic states that we have today would be willing to reliably cooperate over time to uphold and support such reforms. In other words, the pursuit of a non-dominating international order requires domestic states themselves to be more amenable to acting on the basis of their international demands, and reliably so. Inward internationalisation should be seen in this light: it would be intended not to eliminate domination overnight, but rather to gradually change the nature of domestic politics, to enhance support for international reform which, in turn, would gradually erode inter-state domination, as domestic constituents would come to recognise and appreciate their responsibilities to others. Inward internationalisation is intended to create the conditions which, over time, increase the possibilities of progressive political changes that are currently unrealistic.¹⁵³ It puts in place the building blocks upon which a more just international order can be founded.

8.6. Conclusion

In this chapter, I have discussed the prospects of reforming the WTO so as to enhance weaker states’ control over the terms of their economic integration, by looking at the three phases of a WTO trade round. I have argued that the launch phase is the most promising phase for enhancing states’ control. This phase’s relative insulation from bargaining and power dynamics makes it conducive to actions which would constrain arbitrary power in later phases. At the launch phase, states ought to set clear targets for the subsequent round, based upon WTO members’ common interests, so that states’ bargaining in subsequent phases would be conducted under the shadow of these goals, institutional neglect would involve enhanced reputational costs, and trade agreements’ terms could be evaluated and revised on the basis of these goals.

To conclude the chapter, I zoomed out in order to look at whether there are more fundamental changes that we could make to the international order as a whole which would reduce inter-state domination, both in trade and elsewhere. I considered two strategies, the ‘leap into darkness’ and ‘inward internationalisation’, and argued that the leap into darkness both fails to resolve the

¹⁵³ There are clear resonances between this element of the inward internationalisation proposal and Gilibert’s dynamic approach to political feasibility (2017).

problem of domination, and fails to take seriously the agency of all but the most powerful states. In contrast, inward internationalisation puts in place the conditions which would, over time, make it more likely that states would be willing to uphold and support international reforms which would in turn reduce inter-state domination. Moreover, states that have an interest in reducing inter-state domination do not need to wait for the most powerful states to act in order to bring about international change: any state, acting unilaterally or in coordination with others, can make the requisite changes, encouraging others to reciprocate. Over time, inward internationalisation has the potential to spread as a result of norm diffusion, until all but the most recalcitrant states would give international partners an institutionalised voice within domestic deliberations. The prevalence of inwardly internationalised states would enhance the feasibility of ambitious reforms to the international order, and to the international trade regime more specifically, reforms of the sort I have put forward in this chapter, and throughout the thesis.

Conclusion

This thesis was divided into three parts, with each part making a distinct contribution to the trade justice literature. In the first part, I argued that dependence, rather than cooperation or coercion, is what grounds relational duties between trade partners (Chapter 1). The dependence account of trade-generated duties does a better job than rival accounts of explaining the nature of the change which participation in trade involves for states. This account of grounding also suggests that a broader set of trade-based duties exist than authors in the trade justice literature have typically identified. I identified three duties of trade justice; the duty of recognition, the duty of stability, and the duty of accountability (Chapter 2). Each of these duties has at least some distributive as well as procedural implications, and they should therefore be understood as ‘political duties’, in the capacious sense of the term proposed in the Introduction. States must adhere to each duty throughout their trade relationships, in order to ensure that their participation in trade is characterised by reliable, justice-enhancing interdependence.

In the second part of the thesis, I put forward a shift-sufficientarian account of distributive justice in trade (Chapter 4). On this picture, what states are owed by their trade partners is a function of where each of the states stand in relation to two distinct thresholds along a single scale, representing states’ level of capability in fulfilling their duties of domestic justice. When a state passes one of these thresholds, there is a discontinuity in their trade partners’ reasons to benefit that state further, with trade partners’ duties becoming less demanding as the state’s capabilities increase. This account explains how demanding distributive duties apply to states’ participation in trade, while avoiding the conceptual and normative problems that come with applying egalitarian standards to trade (Chapter 3). The shift-sufficientarian account of distributive justice represents an important contribution not only to the trade justice literature, but also to the broader global justice literature, because it accounts for the distributive duties of developing and least-developed states. Additionally, it shows the normative importance of distinguishing between these two groups of states, and provides theoretical support for trade policies designed to facilitate the structural transformation of least-developed countries, even where implementing such policies comes at the relative expense of developing countries (Chapter 5).

In the third part of the thesis, I moved beyond the focus on distributive outcomes which characterises much of the current trade justice literature, by looking at procedural justice and the appropriate institutional configuration of the trade regime. I argued that the concept of domination provides an insightful lens through which to view such matters, because it connects questions of

justice with questions of power, and highlights a particular danger that dependent relationships generate (Chapter 6). I argued that the WTO presents the most promising institutional avenue through which to pursue the non-domination of weaker states, both because of its dispute settlement mechanism, as well as the opportunities it presents for weaker states to cultivate their collective power (Chapter 7). Due to a lack of countervailing powers available to them, however, the WTO, as it's currently constituted, doesn't do enough to empower weaker states within negotiations. For this reason, the way trade rounds proceed at the WTO ought to be reformed; most notably, trade rounds ought to be launched on the basis that they will target a set of policy goals, which are based on WTO members' common interests. Such a process would serve to constrain the worst excesses of competitive bargaining, raise the reputational costs of neglecting the WTO as a negotiating forum, and act as a yardstick against which RTAs and the trade round's own outcomes could be judged, and subsequently revised (Chapter 8).

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