GLOBAL JUSTICE AND TRADE: A PUZZLING OMISSION

Fernando R. Tesón

Jonathan Klick[1]

Table of Contents

---

[1]Fernando R. Tesón is the Tobias Simon Eminent Scholar and Professor of Law at Florida State University; Jonathan Klick is the Jeffrey Stoops Professor of Law at Florida State University. We are grateful to Matthew Brown, participants in the Georgetown Law School International Law Workshop, especially Carlos Vazquez and Steve Charnowitz; participants in the Duke Global Law Workshop, especially Jost Pauwelyn and student comments; participants in the Conference on Global Justice at the University of Virginia, in particular Loren Lomasky, Allen Buchanan, Peter Boetke, and Julia Mahoney; and Eduardo Rivera López of the Universidad Torcuato Di Tella, and Marcelo Alegre, of the Universidad de Palermo, for helpful comments and criticisms.

I. Introduction

Virtually everyone agrees that world poverty is a major scourge and that alleviating it should be a priority of international law and national policies of developed and developing nations alike.[2] People disagree, however, about the best way to do this. In this article we claim, following the general consensus in the economic literature, that liberalizing trade would go a long way toward reducing poverty.[3] In presenting our argument, we criticize recommendations from the philosophical literature on global justice (hereinafter "philosophers"). We conclude that those recommendations are deficient precisely because they overlook the role of free trade in alleviating poverty--a role underscored, with little dissent, by reliable economic research.

Philosophers ignore and even sometimes reject the crucial finding that, generally, free trade *helps* the poor. Because free movement of goods, services, and persons will go a long way toward alleviating world poverty, any theory of global justice should encourage and promote the establishment of free trade and the reduction of barriers to immigration. Yet none of the major scholars on distributive justice or socio-economic rights, that is, those *concerned with poverty*, recommend unrestricted trade;[4] indeed, many of them claim that free trade *hurts* the world's poor.[5]

---

[2] For a general survey of the magnitude of the problem, see WORLD COMM'N ON THE SOCIAL DIMENSION OF GLOBALIZATION, INT'L LABOUR ORG., A FAIR GLOBALIZATION: CREATING OPPORTUNITIES FOR ALL (2004), *available at* http://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/adhoc.pdf (accessed on accessed on February 27, 2007)

[3] We also briefly claim that liberalizing immigration would likely have similar beneficial effect on poverty, see Section below, but a full defense of that claim requires a separate article.

[4] Surprisingly, the United Nations General Assembly, not known for its extreme sympathies to economic or political liberalism, has taken a better view of the issue. *See* U.N. MILLENIUM PROJECT, UNITED NATIONS

Instead, these scholars propose (with little dissent) various global redistributive schemes, typically comprising universal foreign aid and including, in some versions, a global regulatory agency that would transfer resources collected through universal taxation from the rich to the poor, as well as establish global regulatory standards (on labor, health, and the environment) restrictive of trade.[6] Some other versions advocate a trade system where poor nations, but not rich nations, should be allowed to enact protectionist measures.[7] Unfortunately, this neglect is not just a scholarly failure. The anti-globalization movement leads a worldwide struggle against free trade partly *in the name* of protecting the poor.[8] This academic and political hostility to free trade aggravates, we think, the harm that protectionism, and the rent-seeking activities that almost invariably accompany it, inflict on the world's most vulnerable.[9]

Our argument proceeds in several parts. In Part I, we define the problem as the need to improve the situation of the world's poor as a class. In Part II, we review the

---

DEVELOPMENT PROGRAMME, INVESTING IN DEVELOPMENT: A PRACTICAL PLAN TO ACHIEVE THE MILLENIUM DEVELOPMENT GOALS, OVERVIEW XIII (2005), *available at* http://www.unmilleniumproject.org/documents/overviewEngi-1LowRes.pdf (proposing to fight poverty by, *inter alia*, "[d]evelop[ing] further an *open* rule-based, predictable, non-discriminatory trading and financial system ([which] includes a commitment to good governance, development and poverty reduction—nationally and internationally)" (emphasis added) (last accessed on February 12, 2007).

[5] *See infra*, Section VI.

[6] For a defense of the WTO's pro-trade functions and a criticism of proposals to establish an global regulatory agency, see John O. McGinnis and Mark L. Movsesian, *The World Trade Constitution*, 114 Harv. L. Rev. 511 (2000).

[7] *See infra*, Sections VI and VII

[8] *See, e.g.*, Jerry Mander, Debi Baker, and David Korten, *Does Globalization Help the Poor?*, 1 INT'L FORUM ON GLOBALIZATION BULL. Issue 3 (2001), *available at* http://www.thirdworldtraveler.com/Globalization/DoesGlobalizHelpPoor.html (last accessed on April 26, 2006). For cogent answers, see JAY MANDLE, GLOBALIZATION AND THE POOR 100, 121-32 (explaining the economic misconceptions underlying much of the anti-globalization movement) (2003), and JAGDISH BHAGWATI, IN DEFENSE OF GLOBALIZATION 51-72 (2004) (claiming that globalization helps the poor). *See also* the discussion *infra*, Section IV (1).

[9] We do not discuss here international trade lawyers. While, in general, their views tend to be more sympathetic to free trade, they do not entirely do justice to the economic literature. For example, a leading trade legal scholar, John J. Jackson, cautions against embracing unrestrained trade because he thinks that states may legitimately pursue "non-economic" policies. *See* JOHN J. JACKSON, THE WORLD TRADING SYSTEM: LAW AND POLICY OF INTERNATIONAL ECONOMIC RELATIONS 18-25 (1997). In this article, however, we assume that any trade policy *should* enhance the welfare of the poor. Whether in Jackson's term this goal is economic or noneconomic is a semantic choice.

status quaestionis on the effects of trade liberalization on growth, especially on the poor, as it stands in mainstream international economics. Joining a nearly unanimous literature, we conclude that trade liberalization creates global and national growth and generally helps the world's poor. For this reason, any global justice proposal concerned with the poor, as well as any advocacy for so-called socio-economic rights should embrace what John McGinnis and Mark Movsesian have dubbed "The World Trade Constitution": a global system designed to eliminate the barriers to trade, and in particular to curb the influence of concentrated interest groups that benefit from protectionism, and in thus doing harm the poor.[10] The exceptions to this general proposition rely on very specific factual assumptions that are unlikely to obtain in the real world of national trade policy. It is fair to say, then, that the condition of the poor in developing nations would most likely improve if governments would allow them fully to participate in the global market as producers and consumers.

We then show how philosophers approach the question of poverty. Because they neglect economic theory, these scholars misdiagnose world poverty and recommend ineffectual, insufficient, or counterproductive solutions. Finally, we speculate about the reasons for such a scholarly omission, and conjecture that it may be a form of *discourse failure*, a pathology that afflicts political debate and, unfortunately, academic debate as well. Trade theory is particularly vulnerable to this discursive pathology.

II. Defining the Problem: Poverty, Equality, and Efficiency

[10] See McGinnis & Movsesian, *The World Trade Constitution*, supra note .

We must carefully define the problem we are addressing. This article is concerned with the predicament of the *world's poor*. We take as the proper object of moral concern and legal policy a group defined in some quantifiable way as those who have the lowest real income per capita, across nations.[11] This approach has several corollaries. First, we are not addressing the problem of *economic inequality* per se.[12] By this we mean inequalities between rich and poor nations or between different social groups within nations. Many people think that inequality is a serious problem, but it is not the subject of this article. We assume either that there is no injustice in disproportionate gains by rich countries or persons if the result is to lift the world's poor from their current predicament,[13] or that if inequality is an injustice, reducing it is a second order concern relative to alleviating poverty in absolute terms. This proviso is important, because often discussion about the effects of trade shifts imperceptibly from the question of whether trade helps the poor to the question of whether trade increases or reduces inequality.[14] While alleviating world poverty will most likely reduce inequality, our defense of free trade in this article does not assume this. We do not take a stance on whether trade reduces or accentuates inequality. We assume instead that the proper moral concern is to help the world's poor, and argue that free trade will do this, whatever the effects are on

[11]We bypass the difficult issue of how to measure poverty and, consequently, how to count the poor. We assume, however, that this can be done accurately and impartially. For contrasting views, see WORLD BANK DEVELOPMENT REPORT 2000/1, *available at* http://www.worldbank.org/wdr/2000/fullreport.html (2001) (last accessed April 26, 2006); and Sanjay G. Reddy & Thomas W. Pogge. *How* Not *to Count the Poor*, (April 21, 2003), available at http://www.socialanalysis.org (last accessed April 26, 2006).
[12] We assume that any defensible system of international ethics must include a principle of *moral* equality, such as that every person in the globe deserves to be treated with equal concern and respect. *See generally* FERNANDO R. TESÓN, A PHILOSOPHY OF INTERNATIONAL LAW (1998) (defending a Kantian theory of international law). In what follows, the term "inequality" denotes inequality of income or resources.
[13] Here we draw on John Rawls's famous assertion that "there is no injustice in greater benefits earned by a few provided that the situation of persons not so fortunate is thereby improved." JOHN RAWLS, A THEORY OF JUSTICE 13 (2nd ed. 1999).
[14] *See, e.g.*, GEORGE F. DE MARTINO, GLOBAL ECONOMY, GLOBAL JUSTICE: THEORETICAL OBJECTIONS AND POLICY ALTERNATIVES TO NEOLIBERALISM 10-11 (2000) (objecting to "neoliberalism" because its lack of commitment to equality).

the gap between rich and poor countries, groups, or individuals. Be that as it may, the view that reducing inequality should have moral *priority* over helping the poor in absolute terms is implausible, because it seems to favor arrangements that would *worsen* the poor in absolute terms, as long as they would reduce the gap between rich and poor.

Second, this article takes as the proper object of moral concern the world's poor *as a class.* This concept requires elaboration. Philosophers' distrust of free markets stems in great part from their rejection of *efficiency* as a goal of political arrangements. The goal of efficiency can be understood either as the goal of achieving the largest possible aggregate welfare gains (utilitarian efficiency) or as the goal of achieving a state of affairs where it is not possible to make someone better off without making someone else worse off (Paretian efficiency).[15] The argument against utilitarian efficiency is well known: efficient economic arrangements are indifferent to distribution along the efficiency frontier, so if free trade increases wealth and is thus efficient in this sense but worsens the lot of the poor, it is morally unacceptable. This is captured by the common wisdom in political philosophy that political and economic arrangements should be attentive to distributional issues. [16] If an appropriate theory of justice (say, Rawlsian) identifies the poor as the proper object of moral concern, then economic arrangements should not worsen the lot of the poor, even if they improve aggregate utility. [17] And because (the argument goes) the most that can be said for free trade is that it is utilitarian-efficient, international markets should not be allowed to operate freely but rather should

---

[15] For a discussion of the normative objections to standard notions of efficiency, see DANIEL M. HAUSMAN AND MICHAEL S. MCPHERSON, ECONOMIC ANALYSIS AND MORAL PHILOSOPHY 84-100 (1996).

[16] The literature is vast. For an excellent survey, see WILL KYMLICKA, CONTEMPORARY POLITICAL PHILOSPHY 10-52 (2ND ed. 2002).

[17] *See,* RAWLS, A THEORY OF JUSTICE, *supra* note 11 , at 24-30.

be constrained by transfer payments, or any such redistributive policy, in favor of the poor.

At first sight, Pareto-efficiency fares better from the standpoint of the poor, because it forbids worsening their situation for the sake of aggregate gains. But critics of efficiency point out that Pareto-efficiency unduly forbids institutional arrangements that improve the poor at the expense of the rich. That seems unacceptable from the standpoint of a theory of justice that focuses on the poor. Supporters of Paretian efficiency do not distinguish between different winners and losers: no one should be made worse-off. A theory of justice that focuses on the poor, in contrast, should distinguish between possible losers: economic institutions should improve the position of the poor, even at the expense of the rich.

Our argument in this article sidesteps those criticisms because it agrees with their normative premise. We endorse neither a standard of utilitarian efficiency nor a standard of Paretian efficiency, although we believe that, all things being equal, efficiency and economic growth are important instrumental values. Economic growth is valuable for many reasons, but for the purposes of this article, it is valuable *because* it has a positive effect in the alleviation of poverty. Our defense of trade is based, not on the fact that it is utilitarian- or Paretian-efficient, but on the fact that *it helps the world's poor*. This approach requires us to further specify in what sense the group defined as "the world's poor" is the proper object of moral concern of a theory of global justice, and, consequently, of morally justified international rules and institutions.

Possible standards to evaluate international economic arrangements, such as free trade, include the following:

(1) <u>The arrangement is desirable if it increases utilitarian global efficiency, understood as aggregate *global* wealth.</u>

While aggregate global growth has undoubtedly many beneficial effects, under our definition of the problem (concern for the world's poor) this standard may be insufficient, as it is possible that the gains from the arrangement go only to the rich (nations or persons) and the middle class while worsening the poor. As we show below, free trade indeed increases aggregate global wealth.[18] Yet, as we saw, a critic of free trade could still point out that the free trader has not met the burden of showing why an advocate for the poor should support free trade, given the distributional indifference of the arrangement.

(2) <u>The arrangement is desirable if it increases national efficiency, understood as aggregate *national* wealth.</u>

This standard is better from the standpoint of the poor, as it posits that each country, *considered aggregatively*, gains from the arrangement. As we shall see, in virtually every situation free trade achieves this: trade is almost always Pareto efficient when the units considered are nations.[19] If this is the case, philosophers should welcome free trade even if aggregate national growth would be its only virtue, for in that case governments would have greater resources to combat poverty. They should welcome free trade even if they did not believe that unfettered *domestic* markets would help the poor. Either these scholars believe that domestic free markets help the poor or they believe, on the contrary, that domestic markets fail and government redistribution is required by justice. In *either case* they should welcome national economic growth. If they trust markets, they should

---

[18] See infra section III..
[19] See infra section III..

welcome trade-generated growth for obvious reasons; if they distrust markets, they should still welcome trade-generated growth so governments can implement the social programs they favor. Put differently, national economic growth is *always* desirable.[20] Free trade causes economic growth, and economic growth is desirable, even before worrying about distribution of the gains from trade, so it is surprising that philosophers fail to embrace free trade. No serious person working on development issues denies that it would be very good if developing nations *grew*. Indeed, getting poor nations to develop is a main goal of the relevant international institutions and, one would assume, of philosophers. Their silence on the beneficial effects of trade (or worse, their occasional rejection of free trade) is, therefore, disconcerting.

Having said that, national growth may conceivably fall short of the goal we are considering, helping the poor. The critic of free trade may say that it is possible that trade-generated national growth will go to the rich and the middle class *within each country*. National growth in each trade partner is compatible with the reduction of the income of the poor in both countries, or in one of them.

(3) <u>The arrangement is desirable if it increases the income of the poor, considered as a class, within a country.</u>

This standard fares better, as it focuses on the poor. However, it is still inadequate because it is indifferent to the effect of the arrangement on the poor in *other* countries. The standard has a nationalist flavor; it recommends those arrangements that help the poor in one's country whatever their effect on foreign persons. Many, but certainly not all, philosophers have pointed out that this distinction is largely arbitrary, and that

[20] We bypass here *noneconomic* reasons to favor growth. *See generally* BENJAMIN M. FRIEDMAN, THE MORAL CONSEQUENCES OF ECONOMIC GROWTH (2006).

international arrangements should try to benefit the world's poor, not just the poor in some country.[21] The standard, in other words, is insufficiently cosmopolitan. While we do not provide a defense of cosmopolitanism, we assume some version of it, and show that cosmopolitan philosophers concerned with poverty should support free trade in the light of their own values.[22]

(4) <u>The arrangement is desirable if it increases the welfare of *every single poor person in the world.*</u>

This standard is ideal in an aspirational sense, because a strict non-aggregative approach to distributive justice should focus exclusively on individuals; arguably, no one should be sacrificed so that others may prosper. Under this standard, free trade is desirable if it benefits *each* poor person in the world. The problem with this exacting standard is that it is impossible to meet. Free trade falls short of this standard, but so does every other public policy. No feasible international or domestic policy of any kind can conceivably improve the welfare *of each person in society*. Some people, including some poor individuals, would be left worse-off as a result of *any* economic policy, including free trade. For example, universal health insurance may perhaps secure a minimal level of health care for everyone, but the government may end up with fewer resources to address homelessness or unemployment. If so, some poor persons (healthy homeless persons, for example) will suffer as a result of a universal health care policy. And this is just considering government social programs. Universal health insurance may create

[21] *See, e.g.*, DARREL MOELLENDORF, COSMOPOLITAN JUSTICE 38-44 (1990).

[22] We sidestep here the objections from anti-cosmopolitan writers and provisionally accept the cosmopolitan view that we have a duty to support institutional arrangements that improve the world's poor. For non-cosmopolitan views regarding distributive justice, see JOHN RAWLS, THE LAW OF PEOPLES 113-120 (1999); and Thomas Nagel, *The Problem of Global Justice*, 33 PHIL. & PUB. AFF. 113, 113-147 (2005). See the discussion infra section VI..

distortions in various (and unexpected) sectors of the economy, leading to a loss of jobs and so on. Our point is not that universal health insurance is a bad idea; we express no opinion on that. The point is rather that *every national or international economic program or institution requires trade-offs among persons*. Leading political philosophers, sensing this problem, have correctly treated the poor as a class, not as individuals.[23]

(5) The arrangement is desirable if it benefits the *poor as a class, across countries*.

Because, as we just saw, every institutional economic arrangement involves trade-offs among persons, the proper object of concern for global justice should be the world's poor, considered aggregatively. Whether free trade is desirable from a moral standpoint should be determined by whether it helps the world's poor *as a whole*, even if trade worsens the situation of some of those persons. If free trade has that effect, then it is no longer open to the criticisms that have been leveled against efficiency as a goal of distributive justice. A theory that recommends free trade *on the grounds* that it helps the poor is appropriately qualified from the distributional point of view. It focuses on improving the condition of the world's poor. It does not focus on each individual person, for the good reason that no policy, national or international, could possibly do that. Instead, it properly focuses on the world's poor as a class. We conclude that the only way those concerned with poverty can plausibly oppose free trade, then, is to deny that it helps the world's poor as a class.

To make our case, we first review the economic literature on trade, growth, and poverty. As we will see, the issue is complex, and a dispassionate assessment of the effect of trade liberalization on poverty requires making a number of important distinctions.

[23] *See* JOHN RAWLS, A THEORY OF JUSTICE *supra* note 11, at 67-68 (identifying the class of unskilled workers as a plausible candidate for the worst-off in society).

However, we hope the survey will show that free trade not only increases global and national welfare (something that is rarely disputed). As we shall see, given reasonably good domestic institutions, free trade has good distributional effects (that is, effects that are morally superior to the distributional effects of maintaining trade barriers). And even in the *absence* of reasonably good domestic institutions, protectionism tends to compound the problem of poverty. Trade liberalization and freer immigration generally help the world's poor; protectionism anywhere (that is, in rich and poor countries alike) tends to hurt them.

V. Some Caveats

We offer four major caveats to our argument in this article. First, we do not have a primarily moral disagreement with those who are the targets of our critique. We assume, as they do, that persons, governments, and institutions have some duty (the basis for which we do not address here) to contribute to poverty relief. Rather, we differ on the means to discharge that duty. Philosophers think that the way to do this is to universalize foreign aid (perhaps by means of a global redistribution agency) while sometimes allowing developing nations to erect trade barriers in order to redress what these authors regard as "inequities" of trade. We, on the other hand, think that the condition of the world's poor would dramatically improve if nations abolished all barriers to trade and most barriers to immigration. Yet, many people oppose liberalization proposals even when the rationale is the alleviation of poverty. We suggest below an explanation for this curious attitude.[24]

Second, because free trade alleviates poverty, we agree with those who have defended the role of the World Trade Organization in enforcing the trade non-

---

[24] *See infra* pp. (#).

discrimination rule that in turn has resulted in a dramatic lowering of tariffs and other trade barriers in the last fifty years or so.[25] On the other hand, while the current WTO regime is preferable to a generalized protectionist regime, it has a number of imperfections from the standpoint of justice and efficiency. First, current arrangements allow governments to over-protect, thus hampering the chances that the poor will participate in the world economy. One problem with the WTO treaty, therefore, is that it *does not liberalize trade enough.*[26] Secondly, although generally structured to gradually lower trade barriers, the WTO regime is partly predicated on outdated mercantilist notions: governments seek to secure foreign markets access for exporters, thus treating access to *their* markets as a bargaining "chip."[27] Because imports benefit consumers, the notion that granting access to one's markets is a *concession* to other countries is false: lowering one's tariffs helps one's citizens.

So, while current vocal criticisms of the WTO should be rejected, the organization is suboptimal from the standpoint of global justice. The WTO is certainly inferior to more liberal alternatives, like unrestricted trade.[28] Yet, however bad the present system may be, protectionism is likely worse. Current critics of the WTO, in contrast, while criticizing protectionism in rich countries, are most likely wrong to claim that developing nations

---

[25] See McGInnis & Movsesian, *The World Trade Organization*, supra note , at 529-47

[26] For an earlier appraisal of the protectionist features of the WTO (then the GATT), see Jagdish Bhagwati, *Protectionism*, in THE CONCISE ENCYCLOPEDIA OF ECONOMICS, 9-15 (1988), available at http://www.economlib.org (last accessed on January 2, 2007). Our criticism of the WTIO, therefore, is diametrically opposed to the criticism by the anti-globalization forces: the latter blame the WTO for being too biased toward free trade; we, on the other hand, believe it does to little to advance free trade principles.

[27] *See* Kyle Bagwell & Robert W. Staiger, *The WTO as a Mechanism for Securing Market Access Property Rights: Implications for Global Labor and Environmental Issues*, 15 J. ECON. PERSP. 70 (2001). Professors Bagwell and Staiger still believe that the WTO can be defended on non-mercantilist grounds. *See* KYLE BAGWELL & ROBERT W. STAIGER, THE ECONOMICS OF THE WORLD TRADING SYSTEM 57-70 (2002).

[28] *See* Amartya Sen, *How to Judge Globalism*, AM. PROSPECT 2 (WINTER 2002), ("Global interchange is good; but the present set of global rules needlessly hurts the poor."); Reddy & Pogge, *supra* note 9, at ##.

can help their economies by enacting protectionist measures.[29] The institutional solution that could bring the world closer to the ideal of unrestricted trade is a WTO-like organization whose sole purpose is to ensure that nations liberalize trade. On the other hand, excessive international regulation *restrictive* of trade, even if meant to address a market failure, may often be counterproductive with regard to the poor.[30]

Third, free trade does not necessarily mean total absence of regulation. We define "free trade" simply as the absence of barriers to trade. These barriers include, on one hand, tariffs, quotas, and subsidies and, on the other, government procurement, quality, sanitary, fiscal, health, environmental, and labor rules where the protectionist effect is not justified by the underlying rationale, or market failure, that these rules attempt to address. We do not object in principle to regulations that may be valid responses to genuine market failures (such as, perhaps, international regulations to curb emissions that cause global warming), although we recognize that often those measures conceal protectionist designs.

Consider environmental regulations. Many critics of trade argue that unrestricted trade creates incentives for environmental harm. As nations compete with one another to attract capital and increase trade, they tolerate bad environmental standards in their efforts to reduce costs. That is, they "race to the bottom." Therefore, the argument goes, we need to allow vigorous national or international environmental regulation.

We concede the argument's main point, namely that, because of collective action problems, environmental improvement often will not happen spontaneously but rather

[29] *See* quotations infra .
[30] See McGinnis & Movsesian, *The World Trade Constitution*. See also infra, pp.

requires government action.[31] However, that argument does not justify environmental regulation that does not address a market failure but instead has the primary effect of protecting local industries. In other words, regardless of rhetoric, covert protectionism is *not* legitimate environmental regulation. This covert protectionism is widely prevalent.[32] Further, erecting trade barriers to keep out products manufactured under low environmental standards may not be justifiable from the standpoint of the welfare of the poor. The poor in developing countries should be allowed to trade off environmental quality for economic advancement.[33] Lastly, as Jagdish Bhagwati has observed, "if we put in place an appropriate environmental policy, we get back to free trade as the appropriate trade policy."[34] The reason for this is that environmental problems are best addressed at their source, and not through indirect linkages such as trade.[35]

Even conceding the legitimacy of a number of environmental (and, *mutatis mutandi*, labor, health, etc.) regulations, once the market failure has been addressed, the

[31] See Scott Vaughan, *Special Studies* 4: *Trade and Environment* 3, 52 (1999), available at http://www.wto.org/english/res_e/booksp_e/special_study_4_e.pdf

[32] See McGinnis & Movsesian, *The World trade Constitution.*

[33] See MOELLENDORF, *supra* note 19, at 60 (noting that citizens of states lacking environmental enforcement are not clearly disadvantaged)

[34] JAGDISH BHAGWATI, FREE TRADE TODAY 62 (2002). We also agree with McGinnis and Movsesian that, where environmental regulation is legitimate (when it is not covert protection) it should be promulgated by national governments and not by an international institution like the WTO. The reason is that "members of the WTO vary widely in their levels development [and as a result] they will rationally choose different regulatory standards." McGinnis & Movsesian, *The World Trade Constitution*, supra note, at 552-3.

[35] See *Trade and Environment*, supra note, at 3. This report explains:

> One conclusion that arises from these case studies is that environmental problems are best addressed at the source, whether they involve polluting production processes or undefined property rights over natural resources. What is more, tackling the problems by targeting some indirect linkage, such as imports or exports, may divert attention from the underlying problems. In some cases, putative trade remedies may even aggravate the problems. This may be the case, for example, with tropical deforestation, where trade barriers on forest products may increase deforestation pressure by forcing people to convert land into alternative sources for employment, such as agriculture and ranching. As a general rule, whenever we sidestep the first-best principles of environmental policy, i.e., policies directed at the source of the problem-the benefits do not only become difficult to predict, but we also impose unnecessary costs on the society. This would not just be poor economics, but potentially bad for the environment as well, by making the costs of environmental polices look higher than they actually are were we to use the most efficient instruments available.

default rule should be free trade. Also, the empirical assumptions of the argument are questionable: on one hand, the evidence does not clearly show that polluting industries have moved to developing countries with lower environmental standards,[36] on the other, far from preventing a race to the bottom, international regulation would allow interest groups to capture the regulating agency and skew regulation in their favor.[37]

Our fourth caveat is that free trade is not a sufficient condition for growth and, consequently, not a sufficient condition for the alleviation of world poverty. Nations need, in addition to open trade, good domestic institutions.[38] More specifically, in order to grow, nations need, at the very least, well-defined property institutions and, arguably, good contract institutions. But we are agnostic about what *other* government programs should accompany trade liberalization.

For example, consider the issue of how to address the situation of workers hurt by trade liberalization. Liberal egalitarians support government re-training programs to help those who suffer from trade liberalization. [39] Libertarians, on the other hand, suggest that the costs of trade readjustment should be borne by workers and producers of the inefficient, formerly-protected industries.[40]

---

[36] See Trade and Environment, supra note , at 5. One explanation may be that many workers are prepared to accept lower wages in exchange for valuable public goods such as a clean environment. Id. As McGinnis and Movsesian show, these objections to the race-to-the bottom argument suggest that jurisdictional competition (and hence national regulation) is preferable to international regulation. Id. And, of course, international regulation, far from preventing a

[37] Id. At 518.

[38] This is well established in the literature. See the discussion infra

[39] Amartya Sen, for example, has recommended various forms of government intervention to help workers hurt by trade, but he (like many others) explicitly warns that protectionism is a bad remedy. *See* AMARTYA SEN, DEVELOPMENT AND FREEDOM 121 (2000) (calling protectionist measures, in contrast to non-protectionist government intervention in markets, "precapitalist"). In the United States, training of workers hurt by trade is federally subsidized. *See* Trade Adjustment Assistance Reform Act, 19 U.S.C.S. § 2401 et seq. (2002).

[40] A classic locus for this position is Gary S. Becker, *Investment in Human Capital: A Theoretical Analysis*, 70 J. POL. ECON. 9 (1962). For a reply, see R.S. Eckaus, *Investment in Human Capital: A Comment*, 71 J.

Our argument is consistent with either view. It simply rests on the proposition that *whatever else* government can or should do to aid the poor or help those hurt by trade liberalization, enacting protectionist laws is a bad remedy. Free traders do not simply claim that the benefits of capitalism will "trickle-down" to the poor. Rather, they accept that, depending on the circumstances, free trade may be consistent with some role of government both in stimulating growth and making public expenditures, on social programs and similar schemes, to alleviate the plight of the poor –as long as these measures do not impair private property rights to a degree incompatible with growth. This is very important, because if the argument in this article is right, free trade *should be supported by defenders of the welfare state (as long as they support property rights) and of laissez-faire economics alike*. The fact that open trade makes the country as a whole richer, and that as a consequence its government has more resources to fight poverty, should make both sides favorably disposed toward free trade.

III. Trade, Growth, and Poverty: The Theory

It is not possible to work responsibly on global justice or socioeconomic rights without knowing how international markets work and what effects trade has on different social groups, especially on the poor. Plainly, before proposing ways to alleviate world poverty, we must get our social theories and facts right. Thus, we must examine what international economists have to say about the effects of trade liberalization on growth

---

POL ECON. 501-504 (1963). For a more recent survey of the literature, see Mark A. Loewenstein & James R. Spletzer, *Dividing the Costs and Returns to General Training*, 16 J. OF LAB. ECON. 142-71 (1998).

and poverty. The literature has a theoretical and an empirical component, which we summarize in turn below.

III (1) Theoretical ***Background***

Modern economic models of international trade generally fall into three categories. Models based on comparative advantage arose first historically in 1817 and have remained important in the academic literature.[41] The phenomenon of trade among similar countries, especially international intra-industry trade, led some theorists to consider the effects of scale economies on trade patterns. These increasing returns models constitute the second major category of trade models. Models from both categories broadly support the view that liberalized trade is good for general economic growth, as well as creating benefits for the poor in particular. Later, trade is incorporated in endogenous growth models in which a country's long run comparative advantage is determined by research and development and learning-by-doing. Thus, there may be long run gains to be had from short term trade restrictions. These models are more sophisticated versions of the infant industry arguments for trade restrictions,[42] and they constitute the strongest theoretical case for supporting trade barriers in the name of helping the poor.

---

[41] *See* ROBERT FEENSTRA, ADVANCED INTERNATIONAL TRADE: THEORY AND EVIDENCE (2004). This state-of-the-art graduate text in international trade indicates that "[T]he Ricardian model is as relevant today as it has always been." *Id.* at 1.

[42] The infant industry argument for protectionism asserts that "a temporary tariff is justified because it cuts down on imports while the infant domestic industry learns how to produce at low enough costs to compete without the help of a tariff." THOMAS A. PUGEL & PETER H. LINDERT, INTERNATIONAL ECONOMICS 171 (11th ed. 2000). For a historical discussion of the infant industry argument and replies to it, see DOUGLAS A. IRWIN, AGAINST THE TIDE: AN INTELLECTUAL HISTORY OF FREE TRADE 116-137 (1996).

Of these major categories of models, those based on comparative advantage offer the most unequivocal conclusion that open trade will generate economic growth, improving aggregate welfare and, in virtually every case, improving welfare in *each* trade partner. However, some versions do suggest that free trade might leave a subset of *individuals* worse off *within* nations, at least in the short run, absent some domestic redistribution of the gains from trade. This is largely true for the increasing returns models as well, while the distributional effects of trade implied by the endogenous growth models depend on the particular assumptions made within a given model.

In this section, we provide broad overviews of the three kinds of models, as well as a more precise discussion of the major representatives of each class. We focus both on the aggregate effects of trade on economic growth implied by each model, as well as distributional issues.

III. (1) (a) ***Comparative Advantage***

David Ricardo is the first economist[43] to formalize the idea that nations trade because technological differences lead each to specialize in the production of the good in which it has a comparative advantage.[44] Specifically, in a model in which there are two countries and two goods, Ricardo demonstrates that even if a country can produce one of the goods more cheaply than the other country, it still may import that good if doing so

[43] The model is generally referred to as the Ricardian model; however, some argue that Robert Torrens described the idea intuitively a few years before Ricardo's publication in his *Essay on the External Corn Trade* (1815). For a discussion of this debate, see John S. Chipman *A Survey of the Theory of International Trade: Part 1, the Classical Theory*, 33 ECONOMETRICA 477 (1965).
[44] DAVID RICARDO, ON THE PRINCIPLES OF POLITICAL ECONOMY AND TAXATION, § 7.15 (3d ed. 1821), available at http://www.econlib.org/library/Ricardo/ricP.html.

frees up its resources to produce a good in which its trading partner has an even greater cost disadvantage.

Country 1 has a comparative advantage in the production of good A relative to Country 2 if its opportunity cost of producing good A (i.e., how many units of good B it can no longer produce if it produces an additional unit of good A for a given stock of resources) is lower than Country 2's opportunity cost of producing good A. Or, more succinctly, Country 1's marginal rate of transformation between Good A and Good B is lower than that of Country 2. Ricardo offers an example in which England and Portugal both produce wine and cloth. If it takes 100 English workers one year to produce quantity X of cloth and 120 English workers one year to produce quantity Y of wine, and it takes 90 Portuguese workers to produce X units of cloth and 80 Portuguese workers to produce Y units of wine in the same time period, Ricardo claims that Portugal will import its cloth from England and export wine to the country. To see this, if Portugal allocates its 90 cloth workers to wine-making, in principle, it can ship $\left(\frac{9}{8}\right)Y$ units of wine to England. In turn, England can now allocate its wine workers to cloth production, sending $\left(\frac{6}{5}\right)X$ units of cloth in return to Portugal. After this trade, employing the same total amount of workers as before, Portugal has 20 percent more cloth than it previously produced (and the same amount of wine), and England has 12.5 percent more wine than it previously produced (and the same amount of cloth).

While the exact split of the surplus generated by the trade will differ depending on the relative demands for wine and cloth in the two countries,[45] in Ricardo's example both countries have the potential to expand their consumption of both goods without using more resources. Joint consumption of both goods across the two countries is guaranteed to rise even though Portugal can produce both goods more cheaply than England can. That is, economic growth occurs even if Portugal has an absolute advantage in the production of both goods. Earlier, Adam Smith had argued the case for free trade when a nation has the opportunity to trade with a country exhibiting an absolute advantage in desired goods.[46] In terms of modern micro-economic tools, by specializing in the good in which its comparative advantage lies, trade effectively allows both countries to shift their production possibility frontiers outward.[47]

Extensions of the Ricardian model increase the number of countries, the number of goods traded,[48] and include transportation costs and tariffs.[49] In general, for all of these extensions, the theory's predictions are robust: trade continues to increase welfare among the trading partners in the way we already observed. However, in the models including trading costs, it is possible to generate no-trading equilibria if transportation costs or tariffs are set too high even when trade would otherwise be beneficial.

---

[45] The Ricardian model makes no specific assumption regarding demand functions. The only constraint is that economy-wide spending equals income. *See* JAGDISH BHAGWATI, ET AL., LECTURES ON INTERNATIONAL TRADE 9 (2d ed. 1998).

[46] *See* ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 12 (Book IV, 5th ed. 1904), *available at* http://www.econlib.org/library/Smith/smWNO.html ("[i]f a foreign country can supply us with a commodity cheaper than we ourselves can make it, better buy it of them with some part of the produce of our own industry employed in a way in which we have some advantage.").

[47] For graphical and algebraic expositions of this point, see BHAGWATI, ET AL., *supra* note 34, at ch. 2.

[48] In fact, the Ricardian model is extended to encompass a continuum of goods in Dornbusch, et al., *Comparative Advantage, Trade, and Payments in a Ricardian Model with a Continuum of Goods*, 67 AM. ECON. REV. 823 (1977).

[49] For a formal presentation of all of these extensions, see BHAGWATI, ET AL., *supra* note 34, at ch. 4.

While the Ricardian model relies on differing technology to ground the concept of comparative advantage, a separate comparative advantage-based explanation for why nations trade relies on differing factor endowments across countries. Specifically, even if both countries have the same level of technology, they will still trade, given the opportunity, if the availability of productive inputs differs between the countries.

The Heckscher-Ohlin model, formalized by Paul Samuelson, relies on differential factor abundance to generate trade among countries. In the simplest form of the model, two factors of production are assumed (labor and capital) to be used in the production of two different goods. One of the goods is assumed to be capital intensive and the other is assumed to be labor intensive, meaning that the marginal product of capital for good A exceeds the marginal product of capital for good B, while the marginal product of labor for good B exceeds the marginal product of labor for good A. Production functions are identical across countries, but one of the countries has a relative abundance of labor while the other has a relative abundance of capital.[50]

Before trade takes place (i.e., in a state of autarky), the domestic price of the capital intensive good will be lower in the country with an abundance of capital. Because the Heckscher-Ohlin model assumes perfect competition, the price of the capital intensive good will be competed down because of its relatively large supply owing to the abundance of capital in the country. The same will be true of the domestic price of the labor intensive good in the labor-abundant country. When trade is opened up, the capital abundant country will be induced to export the capital intensive good by the relatively high price of the good in the labor abundant country and vice versa.

[50] FEENSTRA, *supra* note 30, at 32.

As in the Ricardian model, in this model, trade generates increased aggregate consumption across and within countries. However, trade does cause domestic distributional problems as some residents win and some lose as a result of trade. Specifically, as demonstrated by the Stolper-Samuelson Theorem, derived from the Heckscher-Ohlin model, an increase in the relative price of the labor-intensive good generates an increase in the real return to labor in that country with a concomitant decrease in the real return to the country's owner of capital. The opposite relationship occurs in the other country.[51] Thus, in the movement from autarky to free trade, owners of the country's abundant factor are made better off, while the owners of its relatively scarce factor are made worse off. A corollary of this result is that as prices are equalized across countries, input prices (i.e., the return to capital and labor) will be equalized between countries too.

In welfare terms, trade in the Ricardian model is Pareto efficient at the micro-level. That is, all individuals in the trading countries are left no worse off after moving from autarky to trade (and many are made better off). The movement to free trade in the Heckscher-Ohlin model, however, is merely Kaldor-Hicks efficient at the micro-level. That is, while some individuals are left worse off after the change, the gains to the winners are large enough to offset the losses experienced by the owners of the relatively scarce factor of production. Whether the relevant compensation ever takes place is determined outside the trade model.[52]

---

[51] *See* Wolfgang Stolper & Paul Samuelson, *Protection and Real Wages*, 9 REV. ECON. STUD. 58 (1941).

[52] This criticism of the Kaldor-Hicks efficiency criterion has been advanced virtually since the criterion was developed in Nicholas Kaldor, *Welfare Propositions of Economics and Interpersonal Comparisons of Utility*, 49 ECON. J. 549 (1939), and J.R. Hicks, *The Foundations of Welfare Economics*, 49 ECON. J. 696 (1939). *See, e.g.*, William Baumol, *Community Indifference*, 14 REV. ECON. STUD. 44, 45 (1946). For trade to benefit the poor, however, a country needs to have reasonably good domestic institutions. *See* section ## below.

The Heckscher-Ohlin model is extended in many ways in the literature. Among the changes introduced are multiple goods and multiple factors of production. By and large, the primary theorems that follow from the model are robust to these extensions.

A third variant of the comparative advantage models involves "specific factors" models in which each good in a country has a fixed factor of production (e.g., specific capital) and there is a third factor of production (e.g., labor) that can move between products. In general, in these models, an increase in the price of a good in a country will increase the real return to the good's specific factor in that country, a decline in the real return to the specific factors for the other goods in the country, and the effect on the return to the mobile factor in the country is ambiguous.

All of the comparative advantage models imply an aggregate gain from trade liberalization. In the more refined versions, there are important distributional consequences. Given the aggregate gains, however, if a country has well-functioning institutions, everyone could be made better off as a result of trade through redistribution. Obviously, throughout the developing world, the assumption of well functioning institutions is not trivial. As regards the poor, in the absence of redistributive institutions, many of the refined models actually imply that the poor are the most likely to benefit from trade. As implied by the Stolper-Samuelson Theorem, since the poor are most likely to be the owners of the abundant resource in developing countries (i.e., labor), liberalizing trade will increase the return to the poor in those countries.

III.1 (b) ***Increasing Returns and Intra-Industry Trade***

Among the most famous and profound insights of Adam Smith's *Wealth of Nations* is that "the division of labor is limited by the extent of the market."[53] Essentially, Smith argued that a firm supplying a larger market would be able to exploit more efficiencies from specialization than could a firm supplying a smaller market.[54] An implication of this is that larger scale producers can generally achieve lower per unit costs than a smaller scale producer, and larger domestic economies can achieve greater relative productivity.[55] The intuition translates directly to the case of international trade. Expanding the market through trade, in principle, should allow domestic firms to achieve greater specialization-induced economies of scale.

This insight coupled with the observation that many similarly situated countries (with similar factor and technology endowments) in fact engage in trade, which often occurs across the same industry in two different countries, led a number of economists to consider how economies of scale lead countries to trade. In these models, countries specialize, not following any particular comparative advantage, but rather to reap the efficiency gains of large scale production.[56] The upshot of these models from a welfare perspective, in the aggregate, is similar to that of the comparative advantage models. All countries will gain from trade in the presence of scale economies since worldwide production will increase as trade generates larger markets. As Krugman points out, even in a world described by the Heckscher-Ohlin model, if scale economies are large enough,

---

[53] SMITH, *supra* note 35, at Book 1, Ch. 3, *available at* http://www.econlib.org/library/Smith/smWN.html (last accessed on March 8, 2006).
[54] *Id.*
[55] For a formal treatment of this argument in the domestic context, see Morgan Kelly, *The Dynamics of Smithian Growth*, 112 Q. J. ECON. 939 (1997).
[56] For an early formalization of this, see Paul Krugman, *Scale Economies, Product Differentiation, and the Pattern of Trade*, 70 AM. ECON. REV. 950 (1980).

the Stolper Samuelson results will not hold: the owners of all of the factors of production will be left better off under free trade.[57]

However, the development of these increasing returns to scale models generated some interest in how countries might be able to use trade policy strategically to make sure its industries reached the efficient scale in particular industries first. For example, some theorists offered models in which governments could improve domestic welfare by offering export subsidies to industries that were particularly profitable.[58] However, while domestic welfare is generally improved in these models, the equilibrium in which all countries act strategically, is sub-optimal in the aggregate (that is, international economic output is lower than the situation in which no country uses strategic subsidies). Implementing these strategic trade policies to generate domestic improvements requires a detailed understanding of the underlying market structure that governments are unlikely to have.[59] Further, empirical studies of this type of strategic trade policy suggest that the gains in practice are small.[60] Krugman suggests that while free trade may not be the perfect policy in the face of increasing returns to scale, it is the most sensible policy given the potential for errors and rent seeking involved in deviating from free trade on strategic grounds.[61]

III. 1 (c) **Endogenous Comparative Advantage**

[57] Paul Krugman, *New Theories of Trade Among Industrial Countries*, 73 AM. ECON. REV. 343, 345 (1983). *See also* Paul Krugman, *Intraindustry Specialization and the Gains from Trade*, 89 J. POL. ECON. 959 (1981).
[58] *See, e.g.*, Barbara Spencer & James Brander, *International R&D Rivalry and Industrial Strategy*, 50 REV. ECON. STUD. 707 (1983).
[59] On this point, see Paul Krugman, *The Narrow and Broad Arguments for Free Trade.*, 83 AM. ECON. REV., 362, 363 (1987).
[60] *See, e.g.*, ELHANAN HELPMAN & PAUL KRUGMAN, TRADE POLICY AND MARKET STRUCTURE (1989) and PAUL KRUGMAN & ALASDAIR SMITH, EMPIRICAL STUDIES OF STRATEGIC TRADE POLICY (1993).
[61] Paul Krugman, *The Narrow and Broad Arguments for Free Trade*, 83 AM. ECON. REV. 362, 364 (1993).

To the extent the literature on endogenous growth theory includes trade in its models, it does so through a channel similar to increasing returns. While some of the scholars in this area do not argue the point that free trade is likely to improve growth and welfare,[62] they are concerned that trade, under some circumstances, could effectively displace growth-enhancing research and development. That is, if comparative advantage induces a country to specialize in a low tech industry, there may be fewer technological spillovers emanating from the research that would have been carried out in the country had it not specialized. This view was first formalized by Paul Krugman.[63] However, Rivera-Batiz and Romer argue that increased scale occasioned by trade can generate increased opportunities for research and development as well as learning-by-doing, and these cumulative effects could be very large over time.[64]

Much of the work in this area relies heavily on specific assumptions regarding the patterns of specialization. For example, Ben-David and Loewy offer an open-economy endogenous growth model with knowledge accumulation that builds from the standard neo-classical growth model.[65] In their model, knowledge accumulation is determined by the extent of trade among countries. Even if a country liberalizes trade unilaterally, all countries subsequently improve their steady state (that is, their dynamic equilibrium path or the stable rate of economic growth.) Moreover, the growth is most pronounced in the

---

[62] *See* PHILIPPE AGHION & PETER HOWITT, ENDOGENOUS GROWTH THEORY 392 (1998).
[63] Paul Krugman, *The Narrow-Moving Band, the Dutch Disease, and the Competitive Consequences of Mrs. Thatcher: Notes on Trade in the Presence of Dynamic Scale Economies*, 27 J. DEV. ECON. 41 (1987).
[64] Luis Rivera-Batiz & Paul Romer (1991). *Economic Integration and Endogenous Growth,* 106 Q. J. ECON. 531-556 (1991).
[65] Dan Ben-David & Michael Loewy, *Knowledge Dissemination, Capital Accumulation, Trade, and Endogenous Growth*, 52 OXFORD ECON. PAPERS 637, (2000).

liberalizing country[66] (an insight that contradicts the folk belief, inexplicably adopted by much of the global justice literature,[67] that the country that liberalizes unilaterally is the "sucker" in the international trade game).

However, under different assumptions concerning the form and extent of knowledge accumulation, the general theoretical predictions about the effect of trade liberalization can be reversed. For example, the long tradition of the "infant industry" rationale for protectionism stems from the idea that in developing countries protected industries will improve in productivity over time, eventually becoming competitive on the world market. If the long term improvement in growth yielded by developing a comparative advantage in the previously protected industries is large enough, it could justify the short run loss in efficiency generated by foregoing free trade.[68]

While, at a broad level, these arguments are theoretically plausible, implementing an infant industry policy presents numerous obstacles. First, it requires planners to be able to predict which industries will in fact generate large long-term gains, without falling victim to the special interests seeking rents. Further, there is some question whether firms within the protected industries will have an incentive to improve their productivity. Lastly, protected industries may not be able to develop the scale necessary to maximize productivity.[69] Beyond those purely economic concerns, there is significant tension in trading off current costs (that is, foregone current benefits of trade) with uncertain future benefits (that is, the potential for achieving a higher long run growth rate by developing a different comparative advantage). Perhaps owing to these problems, or perhaps due to

---

[66] *Id.* At 646.
[67] See infra (?)
[68] *See, e.g.*, Murray Kemp, *The Mill-Bastable Infant-Industry Dogma*, 68 J. POL. ECON. 65 (1960).
[69] *See* Mitsuhiro Kaneda, *Policy Designs in a Dynamic Model of Infant Industry Protection*, 72 J. DEV. ECON., 91, 115 at note 4 (2003).

uncertainty regarding the ways in which knowledge accumulation is affected by trade and protectionism, the empirical evidence on the growth effects of infant industry protection is mixed.[70]

Rather than reviewing the huge theoretical literature on infant industry models of economic growth, we will focus on two new innovative models in this tradition. Greenwald and Stiglitz offer an "infant economy" rationale for protection in which they develop a simple model of an economy with two sectors: industrial (or modern) and agricultural (or traditional).[71] Their model hinges on four assumptions: 1) the industrial sector generates positive externalities for the agricultural sector in the form of knowledge spillovers; 2) knowledge spillovers are limited geographically such that country A's agricultural sector cannot learn from country B's industrial innovations; 3) industrial sector innovations have a larger relative effect on industrial productivity; and 4) innovations and their spillover effect are a function of the scale of the industrial market.

Under these conditions, the free trade equilibrium will involve developing countries specializing in the traditional sector. Because there is no innovation in the traditional sector, developing economies stagnate and fall increasingly behind the developed world in economic growth rates, given the innovation that occurs in the industrial sectors of the developed world. To avoid this undesirable equilibrium, Greenwald and Stiglitz suggest that developing countries can use protectionist measures, such as bans or significant tariffs on industrial inputs. Under such policies, the

---

[70] *See* Dani Rodrik, *Trade and Industrial Policy Reform*, 3 HANDBOOK DEV. ECON., 2925-2982 (Hollis Chenery & T.N. Srinivasan, eds., 1995) [hereinafter *Policy Reform*].

[71] BRUCE GREENWALD & JOSEPH E. STIGLITZ, HELPING INFANT ECONOMIES GROW: FOUNDATIONS OF TRADE POLICIES FOR DEVELOPING COUNTRIES, (Columbia Univ. Working Paper No. d, 2006), *available at* http://www2.gsb.columbia.edu/faculty/jstiglitz/download/Helping_Infant_Economies_Grow.pdf (last accessed on March 7, 2006).

developing countries would no longer specialize in the traditional sector, generating knowledge spillovers that lead to a higher-growth equilibrium in the long run. The authors concede that these policies, however, generate costs in the short-term.

From this model, Greenwald and Stiglitz suggest that developing countries should adopt broad-based industrial tariffs rather than trying to identify the infant industry that will eventually prove to be the “best” sector in which to develop a comparative advantage. They argue that this broad based policy avoids both the uncertainty problems involved with picking the right industry and it does not involve creating narrow special interests. In support of the welfare conclusions and policy prescriptions of the model, Greenwald and Stiglitz point to the success of such broad based industrial tariffs in generating later growth for the European Economic Community, as well as many of the Asian economies. They even argue that this policy of high, uniform industrial import tariffs characterizes the early history of the U.S.

As mentioned before, this model’s implications change quite a bit if the underlying assumptions are changed. At the very least, the tradeoff between current losses due to restricted trade and higher future growth rates becomes increasingly unattractive for infant economy protection as the assumptions are changed. If innovations are not country-specific (that is, if developing countries can learn from innovations in developed countries) and trade facilitates communication between developing and developed countries, then the import tariffs could retard long-run growth. Further, if innovations can occur in the traditional sector, the case for industrial import tariffs is weakened.

Greenwald and Stiglitz argue that their assumptions are reflective of reality because industrial production is more likely to generate innovations given the larger scale and increased stability observed in the industrial sector. Further, they argue that innovations do tend to be area specific, limiting the ability of developing countries to learn from foreign innovations.[72]

However, others challenge the claims made by Greenwald and Stiglitz. Perhaps most important, Coe and Helpman present a model in which a country's productivity is influenced by the knowledge accumulated by its trading partners.[73] That is, in the language of the Greenwald and Stiglitz model, knowledge spillovers are *not* limited geographically. Country A can benefit (learn) from the innovations created in Country B as long as there are trade linkages between A and B. Coe and Helpman present results that indicate a country's productivity is positively associated with foreign research and development and the effect is larger when a country is more open to foreign trade.[74] The Coe and Helpman empirical results have been the subject of some debate,[75] but they at least cast some doubt over the "infant economy" model.

---

[72] *Id.* at 10-11.
[73] David T. Coe & Elhanan Helpman, *International R&D Spillovers*, 39 EUR. ECON. REV. 859 (1995).
[74] *Id*. at 875.
[75] *See, e.g.*, Chihwa Kao, Min-Hsien Chiang, & Bangtian Chen, *International R&D Spillovers: An Application of Estimation and Inference in Panel Cointegration*, 61 OXFORD BULL. ECON. & STAT. 691 (1999) (suggesting that more general models do not support the inference that foreign R&D improves domestic productivity, while these models do support the Greenwald and Stiglitz assumption that domestic R&D does improve domestic productivity generally); Chris Edmond, *Some Panel Cointegration Models of International R&D Spillovers*, 23 J. MACROECON. 241 (2001) (presenting evidence suggesting that the Coe and Helpman results are not robust to different specifications); Wolfgang Keller, *Are International R&D Spillovers Trade-Related? Analyzing Spillovers Among Randomly Matched Trade Partners*, 42 EUR. ECON. REV. 1469 (1998) (presenting Monte Carlo results that suggest that if international R&D improves domestic productivity, trade openness might not be a necessary condition to benefit from international spillovers). However, a number of subsequent studies have also found support for Coe and Helpman's model. *See, e.g.*, Frank Lichtenberg & Bruno van Pottelsberghe de la Potterie, *International R&D Spillovers: A Comment*, 42 EUR. ECON. REV. 1483 (1998) (re-analyzing Coe and Helpman's econometric model correcting for various biases, and finding support for the idea that trade openness determines whether or not a country benefits from international innovations); Tamim Bayoumi, David T. Coe, & Elhanan Helpman, *R&D Spillovers and Global Growth*, 47 J. INT'L ECON. 399 (1999) (providing evidence

Hausman, Hwang, and Rodrik offer a dynamic comparative advantage model in which the spillovers within a country do not have to do with productivity *per se*, but rather have to do with cost discovery.[76] These authors start with the insight that a country's comparative advantage will not be immediately obvious or even necessarily determinate. Given that, there is a cost-discovery process in which domestic entrepreneurs can either ape what other producers are doing in the country or they can attempt to innovate. Each successful attempt at innovation provides more information about what the country's underlying cost structure is to subsequent entrepreneurs. Because this cost discovery is a public good (that is, successes create positive externalities, while the cost of failure is privately borne), Hausman, Hwang, and Rodrik suggest that investment in cost discovery will be sub-optimal from a social viewpoint.[77] Thus, without some policy intervention, countries might have a tendency to lock themselves into a comparative advantage that generates lower long-term growth rates.[78] They present some empirical support for this model.[79]

---

from simulation exercises supporting the Coe and Helpman model); Gwanghoon Lee, *International R&D Spillovers Revisited*, 16 OPEN ECON. REV. 249 (2005) (supporting the Coe and Helpman model using more sophisticated panel data techniques that allow for cointegration).

[76] RICARDO HAUSMAN, ET AL., WHAT YOU EXPORT MATTERS (Nat'l Bureau of Econ. Research, Working Paper No. 11905, 2005).

[77] *Id.* at 2.

[78] *Id.* at 13.

[79] *Id.*at Section 3. Specifically, they develop an index indicating which goods are exported by which countries with goods exported by richer countries achieving a higher index score. They then develop an index for each country based on the basket of goods that country exports valuing each export with the previous index. Next, they show that countries exporting a basket of goods composed mostly of those goods exported by rich countries have relatively higher future growth rates. They argue this supports the idea that policies designed to induce more cost discovery (and thus production of more types of goods) are favorable to long-run economic growth. However, their regressions cannot separate this effect from idiosyncratic country differences (i.e., their specifications do not allow for fixed effects estimation). Further, there is obviously an endogeneity concern given that the first index is determined by looking at the income levels of the countries that export various goods. They do provide some instrumental variables analysis meant to remedy this endogeneity concern, though their instruments (population and land area) would seem to be problematic as they too might directly affect economic growth. Hausman, et al. argue that these variables are not linked to growth rates in existing theory and are rarely included in growth regressions, *id.* at 12; however, if specialization or innovation are linked to the scale of an economy, both

While Hausman et al. do not spell out the policy implications of this model, trade barriers might be a way to induce local entrepreneurs to investigate new areas in which the country might develop a comparative advantage at a later date. Other kinds of internal subsidies might be justified as well. However, given the indeterminacy of comparative advantage within the model, it is not clear that trade restrictions are necessarily implied by the model, and the efficiency of trade barriers depends on the country's predictive accuracy about the "right" comparative advantage in the long run.

As indicated by this limited review of dynamic comparative advantage or increasing returns models of trade, their results are driven by fairly specific assumptions about the ways innovations occur in an economy. Assuming that long-run growth and welfare are desirable, the wisdom of trade restrictions will depend on the relative importance of domestic vis-à-vis international innovations. If countries can learn a substantial amount from outside innovations, trade restrictions will hamper domestic productivity. If however, domestic innovations are significantly more important and those innovations primarily occur in sectors outside of a country's initial comparative advantage, trade will retard long term growth.

However, under almost any plausible set of assumptions, short-term economic performance is harmed by trade restrictions. About this, essentially none of the increasing returns theorists disagrees. The relevant policy decision then involves trading off short-term losses (due to foregone trade) against predicted future improvements (from

---

of these variables would be directly important for growth and thus fail as useful instruments. Further, they provide no diagnostic statistics to indicate whether these instruments perform well. In subsequent specifications, they do control for country-fixed effects and the magnitude of their results drops (though remains statistically significant), but they still do not provide much evidence that their results are not an artifact of endogeneity.

having a “better” comparative advantage due to nurtured innovations) based on assumptions that are severely in dispute.

The upshot of the foregoing analysis is that under some of the trade models, everyone who owns a factor of production (capital, land, or labor) benefits from open trade; and, under the more complex (although not necessarily more accurate) models, such as the Heckscher-Ohlin framework, the owners of the more abundant factor, which for developing countries will be labor (owned primarily by the poor), will benefit from liberalized trade. Even under the models that are less favorable to trade liberalization (that is, the endogenous comparative advantage models), it is generally recognized that trade liberalization will improve current economic conditions, while protectionists policies have the potential to improve conditions at some undetermined point in the future if some fairly restrictive assumptions hold and policymakers make the right decisions about which industries to protect.

Generally speaking, most economists accept that trade is beneficial for development, even if they don’t view it as a panacea for countries with bad institutions. If economists do deviate from support for free trade, their reasons are more complex and narrow in scope than the protectionist arguments given by political actors and scholars who are not economists.

Under the models discussed above, when trade opens between nations, in all practical situations joint gains occur and no country loses. In most situations, the gains of trade are split, so each of them gains. Therefore, not only does trade enhance aggregate wealth (that is, the wealth of both nations added together); but, in virtually every case it also enhances the national wealth of each nation. While unilateral gains from trade are theoretically possible, in virtually every single practical situation the gains of trade are split among trade partners. This improvement occurs because the resources in each country are used more efficiently. Because the cost of producing the good in which a country specializes is lower, that country can produce more and import the good that was harder for it to produce before under conditions of autarky. Long-run effects may be different in the endogenous comparative advantage models, but even in these models restraints on trade generate short-term losses. Moreover, under those models long-term gains from the restraints are highly uncertain and depend on a high degree of foresight and predictive ability on the part of government actors. In particular, those models overlook the potential susceptibility of such actors to rent-seeking activities on the part of those industries seeking protection.[80]

This finding is of great importance, because it contradicts the claim that the country that protects helps itself and hurts only or mainly its trade partner who (perhaps foolishly) liberalizes trade. This claim is commonly advanced by scholars not trained in economics,[81] and it is based on a serious economic mistake: that exports are good and imports are bad. The view is the centerpiece of mercantilism –a theory that was refuted two hundred years ago.[82] Mercantilism views trade as a zero-sum game: one country's gains come at the expense of other countries. It rests on the false assumption that a surplus in international trade must be a deficit for other countries.[83] Mercantilists claim that exports, believed to benefit domestic producers, should be encouraged, while

---

[80] Note that when this point was formalized in Gene Grossman & Elhanan Helpman, *Protection for Sale*, 84 AM. ECON. REV. 833-850 (1994) they characterize their rent-seeking model as a new way to look at trade policy (Id at 848).
[81] See authors cited below.
[82] *See* generally ADAM SMITH, THE WEALTH OF NATIONS (1776) and DAVID RICARDO, *supra* note 33.
[83] *See* THOMAS A. PUGEL & PETER H. LINDERT, INTERNATIONAL ECONOMICS, 33 (11th ed. 2000).

imports, believed to hurt domestic producers, should be discouraged.[84] But national well-being is based on present and future increased consumption. Exports are valuable only indirectly: they provide the income to buy products to consume. As two specialists write, "imports are part of the expanding national consumption that a nation seeks, not an evil to be suppressed."[85] This insight is central to an assessment of the effects of trade on the poor: independent of whether the poor are able to export (that is, independently of whether or not foreign markets are open to the goods they produce), the poor *benefit from having a wider variety of available imported goods to consume*, either because the product was not available domestically or because trade lowers the price of the product, bringing it within a poor person's choice set.

So far, the theoretical prediction is that freer trade causes global and national growth in *aggregate terms*. Yet nations must be disaggregated to find out who wins and who loses with open trade. As we saw, critics of free trade have long argued that the beneficial aggregate effect of trade is consistent with the bad effect of leaving the poor out, as it is possible that the gains of trade fall on the rich or the middle class of both trading partners.[86] This view may concede that trade causes global growth and even growth in each of the trading partners, so that, if we took *nations* as units, trade would be Pareto efficient. However, the objection may go, when we take *persons or families* as

---

[84] *Ibid.*

[85] *Ibid.* Equally problematic is the claim that imports reduce domestic employment. *See* Laura LaHayes, *Mercantilism*, CONCISE ENCYCLOPEDIA OF ECONOMICS, *available at* http://www.econlib.org (accessed on February 8, 2007).

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

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

units, free trade may well lead to losses for the poor. And this violates our requirement that free trade help the poor regardless of how much it might increase aggregate wealth. This is a version of the familiar view that political arrangements should be evaluated according to their distributional effects and not merely under a utilitarian standard of wealth maximization.[87]

It is true that *if* open trade would hurt the poor and protectionist policies would be necessary to alleviate poverty, then free trade would be objectionable and protectionism would be desirable. However, the factual premise of the argument--that open trade hurts the poor--is supported neither by the theory nor by the evidence. A scientific analysis of the effect of trade on poverty centers on a simple two-step argument: trade enhances growth, and growth reduces poverty.[88] Even if openness to trade *at first blush* does not help the poor, why assume that the poor will end up worse than before? When a country grows, two things happen. First, more industries are created, more jobs are available, and so the opportunities for the poor expand. Second, when a country grows, so do government resources that can be used to alleviate poverty. Indeed, this is the assumption that lawyers make when they condition the obligation of governments to implement social and economic rights to the country's resources.[89] The assumption is that the more resources a country has, the more resources the government will have. And the more

---

John Rawls & Phillipe van Parijs, *Three Letters on The Law of Peoples and the European Union*, 8 REVUE DE PHILOSOPHIE ÉCONOMIQUE [R.P.E.] 7, 9 (2003). Phillipe van Parijs calls this passage Rawls's "most explicitly 'anti-capitalist' text."

[88] The evidence for this proposition is overwhelming. For a non-technical account, see JAGDISH N. BHAGWATI, OF GLOBALIZATION, *SUPRA* NOTE 7, AT 51-67... For a more rigorous analysis, see NEIL MCCULLOCH, ET AL., TRADE LIBERALIZATION AND POVERTY: A HANDBOOK (Centre for Economic Policy Research 2001), and Jagdish Bhagwati and T.N. Srinivasan, *Trade and Poverty in the Poor Countries*, 92 AM. ECON. REV. 180 (2002). As these authors show, the argument that free trade helps the poor are static (freer trade should help in the reduction of poverty in the poor countries which use their comparative advantages to export labor-intensive goods), and dynamic (trade promotes growth; and growth reduces poverty).

[89] *See, e.g.*, INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS, *opened for signature* Dec. 16, 1966, art. 2, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976).

resources the government will have, the more effectively it will address the country's poverty. So whether a country's economic policies are laissez-faire or redistributive, the poor will benefit from access to global markets as a producer and as a consumer.

IV. Trade, Growth, And Poverty: Empirical Findings

If the empirical claim that the poor are hurt, or are not helped, by liberalized trade were justified, given the models described above, the most natural conclusion would be that the problem lies not with trade itself but with some other institutional mechanisms. However, there is no strong evidence that trade in fact does hurt the poor, and there is strong evidence that trade improves growth and it encourages the development of stronger institutions. Both of these effects suggest that liberalized trade generates circumstances in which the condition of the poor could be improved. This empirical evidence is reviewed in the following section.

2(a) TRADE AND GROWTH

Most studies find a moderately positive association between the level of trade and per capita income.[90] However, the confidence engendered by these studies is not great as many suffer from data problems involved in classifying a country as having a liberalized trade regime. More important, perhaps, is the potential for reverse causality (or, more generally, omitted variables bias or endogeneity), since higher-income countries may naturally be inclined to trade more.

---

[90] For reviews of this literature, see Sebastian Edwards, *Openness, Trade Liberalization, and Growth in Developing Countries*, 31 J. ECON. LITERATURE, 1358 (1993), and Rodrik, *Trade and Policy Reform*, *supra* note 59.

The most important and exhaustive contrarian paper in this area is provided by Rodriguez and Rodrik.[91] They demonstrate that the results of the most influential papers on the trade and growth relationship through the 1990s are not robust to different measures of trade openness and that many of the measures employed in the papers finding a positive association suffer important endogeneity problems. That is, many of the openness proxies employed are highly correlated with factors that influence growth directly. Thus, the authors draw the conclusion that "the nature of the relationship between trade policy and economic growth remains very much an open question."[92] However, since the Rodriguez and Rodrik critique, researchers have spent significant effort in trying to tease out the causal effects of trade on growth using more sophisticated econometric techniques.

In an important paper, Frankel and Romer attempt to address the endogeneity concern by exploiting the fact that geographically isolated countries tend to trade less.[93] They use a measure of distance from potential trading partners to model countries' actual shares of GDP constituted by trade. If the distance metric is not related to income in some way other than the trade channel, the causal effect of trade on national income can be isolated.[94] Their results suggest that existing trade studies appear to *underestimate* the effect of trade on growth. They find that the elasticity between trade share and per capita

---

[91] FRANCISCO RODRIGUEZ & DANI RODRIK, TRADE POLICY AND ECONOMIC GROWTH: A SKEPTIC'S GUIDE TO THE CROSS-NATIONAL EVIDENCE (Nat'l Bureau of Econ. Research, Working Paper No. 7081, 1999).

[92] Id at 4.

[93] Jeffrey Frankel & David Romer, *Does Trade Cause Growth?*, 89 AM. ECON. REV. 379, ### (1999).

[94] This is simply an application of the instrumental variables approach to correcting omitted variables bias. On this point, see James H. Stock and Mark W. Watson, INTRODUCTION TO ECONOMETRICS 346 (Adison Wesley, 2003).

income is between 2 and 3, implying that a 1 percent increase in the trade share leads to an improvement in income on the order of 2-3 percent.[95]

While the Frankel and Romer results suggest that the effect of trade on growth is causal, robust, and large, their identification strategy raises some concerns. Specifically, because the distance measure does not change over time, it is not possible to identify income-related idiosyncratic traits of a country that are independent of the trade measure. That is, it could be the case that the distance is really picking up something about the country that is important for growth directly. The model may not be able to control for this potentially confounding factor. If such idiosyncratic effects are important, the identification strategy employed does not rule out the possibility that the association between trade and income may be spurious.[96]

To confront this problem, Lee, Ricci, and Rigobon adopt an identification-through-heteroskedasticity procedure to identify the effect of trade on growth, independent of the effect of growth on trade.[97] They find that once endogeneity is controlled for, there is a robust statistically-significant positive effect of trade on growth using various measures of openness.[98] These effects, however, are smaller than both the Frankel and Romer results and the results from the studies that do not control for reverse causality.[99]

---

[95] *Id*. at Table 3.
[96] Rodriguez and Rodrik make a similar criticism of the Frankel and Romer identification strategy. *See* Rodriguez & Rodrik, *supra* note 80, at 3.
[97] HA LEE, ET AL., ONCE AGAIN, IS OPENNESS GOOD FOR GROWTH? (Nat'l Bureau of Econ. Research, Working Paper No. 10749, 2004). In short, analogous to the instrumental variables method employed by Frankel and Romer, identification through heteroskedasticity exploits shocks to the variance of trade measures to identify the causal effect of trade on growth.
[98] *Id.* at Tables 4b, 4c, 5b and 5c.
[99] *Id.* at 20.

One last set of results we wish to discuss come from Chang, Kaltani, and Loayza[100] which highlight the importance of domestic institutions in mediating the effect of trade on growth. In general, their results suggest that trade openness (as defined by the ratio of trade volume to GDP) enhances the growth rate of real GDP per capita as long as it is combined with other institutional attributes.[101] Of greatest interest is the significantly positive effect on growth of the interaction between trade openness and labor market flexibility. Labor market flexibility is measured by an index indicating how easy it is to hire and fire employees, as well as the level of regulations on employee working conditions.[102]

While Rodriguez and Rodrik are right to indicate that the effect of trade on growth is still an open question because of limitations in the available data (particularly good measures of trade openness) and econometric techniques, the vast majority of studies do find an association between trade and growth. Perhaps more important, as researchers continue to refine techniques and openness proxies to isolate causality more precisely, the weight of the evidence is mounting on the proposition that trade does lead to growth. Trade, however, may not be a sufficient condition for growth; most likely, there seem to be important interactions between trade openness and other institutions and policies that affect the magnitude of trade's effect on growth. We turn now to this issue.

2(b) THE IMPORTANCE OF INSTITUTIONS

There is a growing consensus that domestic institutions themselves have important effects on economic growth. Trade models generally do not consider the

[100] Roberto Chang, et al., *Openness Can be Good for Growth: The Role of Policy Complementarities* (Nat'l Bureau of Econ. Research, Working Paper No. 11787, 2005).
[101] *Id.* at Tables 1 & 2.
[102] For a more detailed description of the labor market flexibility variable, see *id*. at App. 2.

importance of institutions in channeling the gains from trade into actual welfare improvements for a country's residents. If people in a country *do not* own a factor of production (such as slaves who do not own their own labor), they will not benefit from trade. By the same token, if a country's fiscal or regulatory policies (such as confiscatory taxes or rigid labor laws) prevent the owners of factors of production from selling it in the global market, then those affected by these policies will not benefit from trade. This shows how crucial it is to control for *government failure* and institutional quality when evaluating the welfare effects of trade.[103]

Modern scholarship on the importance of economic institutions for long-run economic performance is largely associated with Douglass North, although the importance of institutions has been recognized least since Adam Smith. Although North's early work stressed that institutions would evolve efficiently, leading to economic growth,[104] his later work moves away from this efficiency explanation for institutional change and instead argues that institutions are adopted by self-interested rulers and that there is no reason to believe that such institutions would be efficient or lead to maximum economic growth.[105] Building on this theory, North argues that inefficient institutions that are adopted in the interest of the ruler or ruling elite may result

[103] For example, recent work suggests that when institutions are appropriately controlled for, trade openness is not directly important for economic development, however, trade openness does increase the likelihood that development-friendly institutions will be adopted. *See* Dani Rodrik, et al., *Institutions Rule: The Primacy of Institutions Over Geography and Integration in Economic Development*, 9 J. ECON. GROWTH 131 (2004). Thus, trade might have an important "externality" not accounted for in the trade models, namely increasing demand for "good" institutions. *See id.* In a different paper, the relative effects of trade and institutions are reversed with both mattering quite a bit for long term growth, but trade mattering more in the short run. *See* David Dollar & Aart Kraay, *Institutions, Trade, and Growth*, 50 J. MONETARY ECON. 133 (2003). Both sets of results suggest that the short and long term effects of trade on development are affected by, and likely affect, institutions.

[104] *See, e.g.*, DOUGLASS C. NORTH & ROBERT THOMAS, THE RISE OF THE WESTERN WORLD: A NEW ECONOMIC HISTORY (Cambridge 1973).

[105] *See, e.g.*, DOUGLASS C. NORTH, STRUCTURE AND CHANGE IN ECONOMIC HISTORY (Norton 1981).

in path dependence in economic and institutional development generating effects that outlive the ruler's tenure.[106]

Later research complements North's emphasis on the importance of studying institutions. De Soto argues that economic development in poor countries is hindered by excessive regulation and bureaucracy that raises transactions costs so high that it prevents entrepreneurial activities, leading to stagnation.[107] He also argues that poor countries lack the foundations of market economies, including a clear system of property rights, such as the systems that rich countries developed in the nineteenth century. The absence of such clear institutional underpinnings prevents individuals in poor countries from exploiting their informal, or extra-legal, property holdings, limiting economic growth in general and the condition of the poor in particular.[108]

More recently economists have begun efforts to examine the effects of institutions on growth empirically. Acemoglu, Johnson, and Robinson investigate how pre-existing conditions impact the establishment of institutions in European colonies and how institutions impact long-run growth in those former colonies.[109] Their work takes exception with the argument of Jeffrey Sachs and others who claim that immutable factors like disease environment and climate directly consign some areas to poor

---

[106] DOUGLASS C. NORTH, INSTITUTIONS, INSTITUTIONAL CHANGE AND ECONOMIC PERFORMANCE (Cambridge University Press 1990).

[107] HERNANDO DE SOTO, THE OTHER PATH: THE INVISIBLE REVOLUTION IN THE THIRD WORLD (HarperCollins 1989).

[108] HERNANDO DE SOTO, THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE (Basic Books 2000).

[109] Daron Acemoglu, Simon Johnson, & James A. Robinson, *The Colonial Origins of Comparative Development: An Empirical Investigation*, 91(5) AM. ECON. REV. 1369-1401 (2001) and Daron Acemoglu, Simon Johnson, & James A. Robinson, *Reversal of Fortune: Geography and Institutions in the Making of the Modern World Income Distribution*, 17(4) Q. J. ECON. 1231-1294 (2002).

economic performance today.[110] Instead Acemoglu et al. argue that economic institutions, such as property rights, which may have originally been influenced by natural conditions, are in fact the primary determinants of economic performance today.

Studies of the effect of institutions on growth, however, have the potential to suffer from reverse causality problems. While many papers[111] show a strong correlation between economic freedom and growth, it is difficult to determine causality. Acemoglu et al. address this in their papers by developing new instruments for economic institutions—variables that are associated with institutions, but cannot themselves be thought to directly impact growth, thus avoiding the problems of reverse causality.

For example, Acemolgu et al. use the mortality of colonial settlers as an instrument for economic institutions. They hypothesize that colonial powers were more likely to set up "extractive institutions" in colonies where it was difficult to survive, thus allowing them to extract as much wealth as possible from the colony, ignoring long-run performance. In colonies viewed as going concerns, "productive institutions," institutions that respected property rights and rule of law and encouraged long-run growth, were developed.[112],[113] In other work, they use population density as an instrument for institutions, hypothesizing that colonies with dense existing populations were more likely

---

[110] *See, e.g.*, Jeffrey D. Sachs, *Institutions Don't Rule: Direct Effects of Geography on Per Capital Income* (NBER Working Paper 9490 2003.)

[111] For a literature review, see Niclas Berggren, *The Benefits of Economic Freedom*, 8(2) INDEPENDENT REV. 193-211 (2003).

[112] *See* Acemoglu et. al., *supra* note 98.

[113] Though not noted by the authors, the intuition for these instruments is consistent with Mancur Olson's stationary bandit model in which a utility-maximizing autocrat will be willing to extract less in any given period and may even be willing to provide public goods, if he views his tenure as secure. *See* Mancur Olson, *Dictatorship, Democracy, and Development*, 87 AM. POL. SCI. REV. 567-576 (1993), Martin McGuire & Mancur Olson, *The Economics of Autocracy and Majority Rule: The Invisible Hand and the Use of Force*, 34 J. ECON. LITERATURE 72-96 (1996), and MANCUR OLSON, POWER AND PROSPERITY: OUTGROWING COMMUNIST AND CAPITALIST DICTATORSHIPS (Basic Books 2000). While the tenure security point is implicit in the Olson model, it is made explicit in Jonathan Klick, *Limited Autocracy*, 1 REV. LAW & ECON. Article 5 (2005).

to have extractive institutions, while colonies with sparse population densities were more likely to receive productive institutions.[114]

With both of these approaches, the authors find that these instruments, mortality and population density, are strong predictors of current day institutions and, using these instruments to control for reverse causality, they show that there is a strong *causal* relationship between the strength of property rights and current economic performance.

Others use various instruments to get around the causality problem finding that institutions are a primary determinant of economic growth. Easterly and Levine find evidence suggesting that institutions are the fundamental cause of long-run economic performance.[115] Even Rodrik concludes "the quality of institutions trumps everything else" when it comes to growth.[116]

But while institutions may be of primary importance for economic growth, exactly which institutions are important and why is still open to debate. Acemoglu and Johnson identify two types of institutions that reasonably could be thought to be important for economic growth: property rights institutions and contracting institutions.[117] They identify property rights institutions as those that determine how secure property is from expropriation by the state or governmental entities. Contracting institutions are identified as those that govern the security of contracts signed by individual economic agents and how well those contracts are enforced. To address problems with endogeneity they use colonial mortality as the instrument for property

[114] Daron Acemoglu, Simon Johnson, & James A. Robinson, *Reversal of Fortune: Geography and Institutions in the Making of the Modern World Income Distribution*, 17(4) Q. J. ECON. 1231-1294 (2002).
[115] William Easterly & Ross Levine, *Tropics, germs, and crops: how endowments influence economic development*, 50 J. MONETARY ECON. 3-39 (2003).
[116] Dani Rodrik, Arvind Subramanian, & Francesco Trebbi, *Institutions Rule: The Primacy of Institutions Over Geography and Integration in Economic Development*, 9 J. ECON. GROWTH 131-165 at 135 (2004).
[117] Daron Acemoglu & Simon Johnson., *Unbundling Institutions*, 113(5) J. POL. ECON. 949-995 (2005).

rights and indicators for the origins of the country's legal system to instrument for contracting regime.[118]

This analysis reveals a strong relationship between property rights institutions and economic performance. However, once these are controlled for, contracting institutions have no statistically significant impact on growth. The authors hypothesize that in an environment of secure property rights economic agents will be able to develop sufficient mechanisms, such as reputation monitoring, to overcome shortcomings from a country's contracting rules.

These results suggest that in addition to free trade, other political and social institutions will also be important determinants of overall growth in general. These institutions also are likely to have important implications for the plight of the poor specifically, as suggested by DeSoto.

IV (1) *Trade And The Welfare Of The Poor*

In some ways, the foregoing empirical and theoretical reviews are not dispositive on the issue presented in this article. Most of the theoretical models, and all of the empirical analyses on growth, do not speak directly to the effect of trade on the poor specifically. At a high level of abstraction, this may not matter, as the models and results imply that trade leads to aggregate gains. Assuming that countries have a well-functioning institutional structure in place, aggregate gains can be redistributed to make

[118] The intuition and data for these instruments come from Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer, & Robert W. Vishny, *Legal Determinants of External Finance*, 52(July) J. FIN. 1131-1150 (1997), Rafael LaPorta, Florencio Lopez-de-Silanes, Andrei Shleifer, & Robert W. Vishny, *Law and Finance*, 106(4) J. POL. ECON. 1113-1155 (1998), and Simeon Djankov, Rafael LaPorta, Florencio Lopez-de-Silanes, & Andre Shleifer, *The Regulation of Entry*, 117(Feb.) Q. J. ECON. 1-37 (2002).

everyone, including the poor, better off. Further, the Heckscher-Ohlin model of trade suggests that the owners of the abundant resource will find that their income grows when trade is liberalized. Thus, in the developing world, where unskilled labor is the abundant resource, the poor will be made better off through trade as long as they own their own labor. Given that, if we find that the poor do not gain from trade, one could argue, the problem lies not with trade but with failures in other political institutions. Once we account for the quality of institutions, it is hard to resist the conclusion that trade liberalization is generally a strongly positive contributor to poverty alleviation –it allows people to exploit their productive potential, assists economic growth, curtails arbitrary policy interventions, and helps to insulate against shocks.[119]

However, institutions tend to change slowly and individuals benefiting from current institutions will have an incentive to protect them.[120] As a practical matter, changing domestic institutions may not be an available policy choice or it may only be viable in the long run. Yet changes in trade policies, such as the reduction of tariffs and quotas, may be more feasible, because governments may insulate themselves from political backlash by claiming that international institutions or other external actors are forcing them to reduce trade barriers. Therefore, it is important to examine what the observed effect of trade liberalization on the poor is. Unfortunately, there are relatively few empirical studies on the effect of trade on the poor. There are more studies of the effect of trade on inequality within a country.[121] However, as we saw, relative welfare is

---

[119] L. Alan Winters, *Trade and Poverty: Is There a Connection?* (2000), *available at http://*www.wto.org/English/news_e/pres00_e/pov3_e.pdf (last accessed on ??/??/????)

[120] *See* MANCUR OLSON, THE RISE AND DECLINE OF NATIONS: ECONOMIC GROWTH, STAGFLATION, AND SOCIAL RIGIDITIES (1984).

[121] For a summary of some of this work, see PINELOPI K. GOLDBERG & NINA PAVCNIK, TRADE, INEQUALITY, AND POVERTY: WHAT DO WE KNOW? EVIDENCE FROM RECENT TRADE LIBERALIZATION

not our concern in this article. Instead, we are interested in how trade affects the absolute welfare of the poor in the developing world.[122]

Winters, McCulloch, and McKay provide a survey article of the empirical literature on the effect of trade liberalization on poverty.[123] As they point out, there is little direct empirical evidence on the relationship between trade openness and the welfare of the poor.[124] However, they conclude that, in the long run, due to the results discussed in the growth studies mentioned above, free trade is likely to alleviate poverty.[125] They argue that even if the results of the growth studies do not hold up, there is little evidence that liberalized trade will hurt the poor or expand their ranks in the long run.[126] However, they do note that the poor may be generally less well situated to benefit from trade in developing countries than their wealthier counterparts.[127]

This last point seems to be supported by some more recent work. Topalova's work examining the effects of a positive shock to Indian trade in 1991, suggests that while the liberalization coincided with economic gains in India, the effects were not homogenous throughout the country.[128] Specifically, Topalova finds that rural districts where trading industries were concentrated saw slower growth than other districts that

---

EPISODES IN DEVELOPING COUNTRIES (Nat'l Bureau of Econ. Research, Working Paper No. 10593, YEAR?). (FIND PG NUMBERS FOR SEC. 3 AND CONCLUSION).

[122] We do not necessarily reject the notion that individuals include relative measures in their utility functions such that income inequality can lead to direct reductions in individual welfare. However, under some threshold level of resources (i.e., sustenance), we believe inequality is only a second order concern.

[123] L. Alan Winters, et al., *Trade Liberalization and Poverty: The Evidence So Far*, 42 J. ECON. LITERATURE 72 (2004).

[124] *Id.* at 73.

[125] *Id.* at 108. *See also* T.N. Srinivasan & Jessica S. Wallack, *Globalization, Growth, and the Poor*, 152 DE ECON. 251 (2004); DAVID DOLLAR & AART KRAAY, GROWTH IS GOOD FOR THE POOR (*World Bank Pol'y Research, Working Paper* No 2587, 2001) (arguing that as economies grow, the income going to the bottom quintile of the population rises proportionately). Since one source of growth is expanded trade, trade is likely to lead to income growth among the poor.

[126] *Id.* at 106.

[127] *Id.* at 107.

[128] PETIA TOPALOVA, TRADE LIBERALIZATION, POVERTY, AND INEQUALITY: EVIDENCE FROM INDIAN DISTRICTS (Nat'l Bureau of Econ. Research, Working Paper No. 11614, 2005).

presumably were not as affected by trade.[129] Interestingly, Topalova posits that this differential effect was generated by limitations in labor mobility in India, so again non-trade institutions are shown to be important in mediating the effects of trade.[130] Consistent with the work of Chang, et al.,[131] discussed earlier regarding policy complementarities, inflexible labor policies appear to retard trade-induced growth.[132]

Porto has suggested that the 1996 liberalization of trade in Argentina (when it joined MERCOSUR) as well as contemporaneous liberalizations among Argentina's trading partners led to a decrease in poverty (as defined by the fraction of individuals living below the poverty line) by between 1.7 and 4.6 percentage points.[133] However, it should be noted that the results were not estimated directly but were the product of a simulation based on empirical estimates of consumption patterns of the poor in Argentina as well as labor market dynamics. Further, it is interesting that the indirect effect of liberalizations by trading partners leads to larger gains than Argentina's own liberalization; however, those gains are positive too.[134]

Studying liberalizations in Colombia, Goldberg and Pavcnik found no evidence that trade openness improved the income of the rural poor in Colombia.[135] However, they cannot rule out the possibility that the poor did benefit from lower prices for the goods they consume. As indicated, there are few empirical studies on the effect of trade

---

[129] *Id.* at 20.
[130] *Id.* at 24.
[131] *See* Chang, et al.,*supra* note 89.
[132] *See* TOPALOVA, *supra* note 117, at 24.
[133] GUIDO G. PORTO, TRADE REFORMS, MARKET ACCESS, AND POVERTY IN ARGENTINA ### (*World Bank Pol'y Research, Working Paper* No. 3135, 2003), *available at* http://wdsbeta.worldbank.org/external/default/WDSContentServer/IW3P/IB/2003/10/25/000094946_03101104021143/Rendered/PDF/multi0page.pdf (last accessed on March 13, 2006).
[134] *Id*. at 2.
[135] PINELOPI K. GOLDBERG AND NINA PAVCNIK, THE EFFECTS OF THE COLOMBIAN TRADE LIBERALIZATION ON URBAN POVERTY (Nat'l Bureau of Econ. Research, Working Paper No. 11081, 2005). *available at* ??

on the absolute level of welfare of the poor in developing countries. However, the existing research suggests that trade may be a powerful mechanism for alleviating poverty, particularly if it is combined with other institutional reforms such as policies that facilitate the movement of labor within a country.

In particular, recent evidence from India and China is compelling.[136] In general, empirical studies "have found that, in most cases, trade reform increases the income of the poor as a group and that the transition costs are generally relatively small relative to the overall benefits."[137] Most specialists point to ways in which governments may facilitate this effect.[138] However, as we saw, a country may liberalize trade, yet simultaneously pursue policies that are counterproductive for either growth or wealth distribution. This conflict of forces occurred in Argentina, where the liberalizing measures of the 1990s were accompanied by massive unproductive public spending and political corruption.[139] Under those circumstances, it is of course fallacious to attribute the cause of the country's collapse (and the corresponding increase in poverty) to trade liberalization. It is therefore crucial to control for non-trade variables when assessing the effects of trade on the poor. Specialists recommend that governments accompany the country's adaptation to the law of comparative advantages, for example, by easing

---

[136] *See* BHAGWATI, IN DEFENSE OF GLOBALIZATION, *supra* note 7 at 64-67.

[137] Bannister & Thugge, *supra* note ##, at 50.

[138] *See* IAN M.D. LITTLE, TIBOR SCITOVSKY, & M.F.G SCOTT, INDUSTRY AND TRADE IN SOME DEVELOPING COUNTRIES (1970); Jeffrey D. Sachs & Andrew M. Warner, *Economic Reform and the Process of Global Integration*, 1 BROOKINGS PAPERS ON ECON. ACTIVITY, 1, ## (1995). Bhagwati and Srinivasan have replied to the few dissenting voices. *See* T.N. Srinivasan & Jagdish N. Bhagwati, *Outward Orientation and Development: Are Revisionists Right?*, in TRADE, DEVELOPMENT, AND POLITICAL ECONOMY: ESSAYS IN HONOR OF ANNE KRUEGER ##, ## (Deepak Lal & Richard Shape eds., 2001).

[139] *See* Jean-Cartier Bresson, *Economics of Corruption*, OECD OBSERVER (May 2000), *available at* http://www.oecdobserver.org/news/fullstory.php/aid/239 (last accessed Jan. 12, 2007) and Joseph Contreras, *Argentina's Fiasco*, NEWSWEEK, December 21, 2001, at ##.

industrial adjustment or helping the country diversify its exports, always in the light of its comparative advantages.[140]

Trade liberalization will produce winners and losers, and many of those losers will be poor. But, as we saw, our claim here is not that *each* poor person will improve as a result of trade liberalization; in fact, no policy can do that. The claim is that, in virtually every instance, the poor *as a class* will improve. More specifically, trade liberalization can affect the welfare of the poor by changing prices of tradable goods and improving access to new products; changing the relative wages of skilled and unskilled labor and the cost of capital; affecting government revenue; changing incentives for investment and innovation; and affecting the vulnerability of an economy to negative external shocks.[141] On the issue of cost of goods, trade liberalization will help the poor in the same way it helps all consumers: by lowering prices of imports and keeping the prices of substitutes for imported goods low, thus increasing people's real incomes. On the question of wages, the evidence seems to show a number of things. Labor markets need flexibility in order to adjust to comparative advantages. If firms are too constrained by labor laws from reducing their work forces, then the poor may suffer as a result. This is ironic, given that supporters of strict labor regulations claim to act *on behalf* of the poor.[142] Also, the gap between the wages of skilled and unskilled workers may increase,[143] but this is hardly an objection to the claim that the poor as a class benefit from trade liberalization. The objection that liberalizing trade will reduce government revenues, and thus its ability to

[140] *See, e.g.*, BHAGWATI, IN DEFENSE OF GLOBALIZATION, *supra* note 7, at 55.
[141] *See* Bannister & Thugge, *supra* note ##, at 48.
[142] Thus, for example, critics of "sweatshops" claim that, due in part to lax work conditions, "clothing companies benefit from free trade through BIG profits, and garment workers lose out." *See* http://www.sweatshopwatch.org/index.php?s=36 (last accessed February 2, 2007)
[143] *See* Elias Dinopoulos & Paul Segerstrom, *A Schumpeterian Model of Protection and Relative Wages*, 89 AM. ECON. REV. 450-472 (1999).

fight poverty, is also misplaced because it ignores the dynamic effects of trade liberalization. If trade liberalization produces growth, taxable incomes will grow as well, and government revenues will grow with them.[144]

In sum, trade liberalization (1) increases *aggregate* wealth, that is, wealth measured aggregatively in both trade partners; (2) increases wealth in *each* of the trade partners, and (3) *at the very least*, within each trade partner, such growth is most often shared by the poor in various ways. On the other hand, the claim is *not* that trade liberalization reduces inequality among trade partners or among different groups or individuals within the trade partners.

VI. The Philosophers

An important part of the international ethics literature is concerned with global justice.[145] A central issue is this: what moral duties do wealthy nations and their citizens owe to poor nations and their citizens? And what global economic arrangements are required by justice, especially in the light of the pressing problem of world poverty? Many (but by no means all) who currently write on cosmopolitan justice have argued that current restrictions of nations and borders are arbitrary, at least from the perspective of

---

[144] *See* Bannister & Thugge, *supra* note ##, at 49. There are a number of combinations to maintain government revenues at an acceptable level, for example, replacing nontariff barriers with tariffs. *Id.*

[145] Book-length treatments include: DARREL MOELLENDORF, COSMOPOLITAN JUSTICE, *supra* note 19; KOR-CHOR TAN, JUSTICE BEYOND BORDERS (2004), KOR-CHOR TAN, TOLERATION, DIVERSITY, AND GLOBAL JUSTICE (2000); CHARLES K. JONES, GLOBAL JUSTICE (1999); THOMAS POGGE, WORLD POVERTY AND HUMAN RIGHTS (2002), SIMON CANEY, JUSTICE BEYOND BORDERS ch. 4 (2005); PABLO DE GRIEFF & CIARAN CRONIN EDS., GLOBAL JUSTICE AND TRANSNATIONAL POLITICS (2001); and ALLEN BUCHANAN, JUSTICE, LEGITIMACY, AND SELF-DETERMINATION: MORAL FOUNDATIONS OF INTERNATIONAL LAW ch. 4 (2004).

helping the world's poor.[146] For some, preference for compatriots is objectionable; for others, such preference is appropriate but it does not rule out duties to foreigners, and in particular help to the world's poor. That help may assume various forms: private charity, including aid through NGOs, or, more often, governmental aid. Most writers favor governmental aid with the familiar argument that governmental measures solve a collective action problem. A few influential philosophers reject cosmopolitanism and argue that justice makes sense only within the state, but even they agree that there is a duty to do something about world poverty based on elementary notions of humanity.[147] Most global justice philosophers, however, recommend either extensive foreign aid or massive redistribution by a global welfare agency financed through a universal tax. Thomas Pogge's proposal for a "Global Resources Dividend" is typical:

> [S]tates and governments shall not have full libertarian property rights with respect to the natural resources in their territory, but can be required to share a small part of the value of any resources they decide to use or sell. Proceeds from the GRD are to be used toward ensuring that all human beings can meet their own basic needs with dignity.[148]

In this article we do not take sides on whether a defensible system of international ethics countenances a *thick* notion of distributive justice, or if, on the contrary, we only have *thin* obligations of aid toward foreigners. We do not decide, that is, whether the duty to address world poverty stems from basic notions of *humanity* (as Thomas Nagel claims), or whether that duty is required instead by *justice* (as Nagel's

---

[146] *See, e.g.*, POGGE, *supra note* 134. at 118-145; and MOELLENDORF, *supra* note 19, at 36-44.

[147] In this sense, see Thomas Nagel, *The Problems of Global Justice*, 33 PHIL. & PUB. AFF. 113, 119-120 (2005). This article elicited various replies. *See* Joshua Cohen & Charles Stable, *Extra Republicam Nulla Iustitia?*, 34 PHIL. & PUB. AFF. 147 (2006); and A. J. Julius, *Nagel's Atlas*, *Id.*, at 176.

[148] POGGE, *supra* note 134, at 196-97. *See also* TAN, *supra* note 134, at 158-9.

critics claim[149]). We only assume that under any appropriate system of international ethics alleviating poverty should be a major goal of international economic institutions. This approach is consistent with either of the views just described.

With that goal in mind, in the light of our discussion so far it seems reasonably clear that anyone concerned with global poverty must address the issue of free trade. Philosophers, however, either overlook trade almost entirely, or reject free trade, or recommend "equitable" trade. None of the major works on global justice draws on the relevant economic literature, the general consensus of which recommends free trade as a way to enhance global and national wealth and thus benefit the poor. The omission is truly perplexing,[150] especially because the question of whether justice requires free markets or government regulation is (at least sometimes) part of the debate on *domestic* issues. Yet despite the strong consensus of economists on this point, philosophers and politicians continue to claim or imply that attempts to liberalize trade are objectionable because they often result in "inequitable" terms of trade. A review of the philosophical literature will help us see the pervasiveness of this problem.

Thomas Pogge, one of the leading philosophers of global justice, addresses the question of world poverty. He mounts a scathing criticism of the policies of developed nations as well as of current economic institutions such as the WTO. His main argument is that, given the gravity and urgency of world poverty, rich nations are guilty of criminal

---

[149] *See* Cohen & Stabel, *supra* note 136. *See also* Julius, *supra* note 136, at 176.

[150] As an example, in a book entirely devoted to international distributive justice, Charles Jones, *Global Justice* (Oxford University Press, 1999), one searches in vain for any discussion of international trade as a possible way to help the world's poor. The closest reference that we found was hostile to trade: an indictment (justified, for all we know) of transnational corporations who sell baby-milk powder. *See Id.*, at 71-72. In his book on international ethics, THE LAW OF PEOPLES, *supra* note 20 John Rawls does not discuss trade. There is evidence, however, that his views were quite hostile to free trade and globalization. *See,* van Parijs & Rawls, *Three Letters on The Law of Peoples and the European Union*, *supra* note 76.

neglect by not doing the things they could do to alleviate it.[151] Pogge scores some important points in his multi-faceted attack against current global institutions, as in his criticism of the international borrowing privilege (i.e., the prerogative of governments, especially in developing countries, to access large sums of money), which fosters corruption and other evils that end up aggravating poverty.[152]

Yet given Pogge's concern for the plight of the world's poor, one would have expected a thorough treatment of the question of trade, including a state-of-the-art discussion of the relevant economic research. Not so. To be sure, Pogge says he would favor free trade under different conditions. His opposition to the present state of affairs is "no reason to oppose any and all possible designs of an integrated global market economy under unified rules of universal scope."[153] However, on the same page he describes the relative trade liberalization that has occurred in the last couple of decades as the "brutal path of economic globalization which our governments have chosen to impose," After indicting globalization in this way (thus implying that it, and not the bad policies of the often inefficient, dictatorial, and corrupt régimes in developing countries, are to blame for poverty), he nowhere mentions the law of comparative advantage.

Further, he does not mention the harm that protectionist measures in developing nations inflict on the poor. His only concession to mainstream economics is his condemnation of the protectionist policies of rich countries. In fact, his references to trade are scarce and, for the most part, erroneous. He writes, for example, that the WTO system is unjust because "it opens *our* markets *too little* and thereby gains for us the

---

[151] *See* POGGE, *supra* note 134 , at 1-26.
[152] Id., at 113-115.
[153] Id., at 19-20.

benefits of trade while withholding them from the global poor."[154] Pogge does not expressly say that protectionist barriers are good for the country that erects them. But this silence is precisely the problem we identify in this article. The same theory (standard economic trade theory) that condemns protectionist barriers erected by rich countries condemns protectionist barriers erected by developing countries, and any responsible study of trade and poverty should mention this fact. This general position is reminiscent of the discredited theories behind mercantilism, the view that the country that erects protectionist barriers gains and that the country that liberalizes loses (unless the trading partner also liberalizes.)[155] Trade protection by rich countries is wrong, not only because it hurts producers in poor countries (as Pogge correctly observes) but also because it hurts *its own* people. When the United States enacts the Farm Bill it does not "gain" for the United States the "benefits of trade," as Pogge says. It hurts American consumers, perhaps especially the poor, by (among other things) raising the prices of agricultural products.

Some authors suggest that, directly, or indirectly, rich nations bear the main responsibility for world poverty and thus for alleviating it.[156] We do not address here the plausibility of this claim in its general form. However, such emphasis on the responsibility of rich nations obscures the crucial fact that bad governments and bad institutions are a major cause of poverty in developing nations. One manifestation (albeit

[154] Id. (emphasis in the original.)

[155] In written communication distributed at the University of Virginia Conference on Global Justice (November 2006) (on file with the author), Thomas Pogge says that he didn't suggest "that protectionist barriers are good for the country erecting them," and added that "there is no general answer to this question." Our main disagreement, then, is on this last point: we believe there *is* a general answer to that question.

[156] *See, e.g.*, TAN, *supra* note 134, at 29-32 (arguing that the current economic order, sustained by rich nations, perpetuates world poverty); *See also* POGGE, *supra* note 134, esp. ch. 4 (arguing that ignoring world poverty amounts to criminal neglect)

not the most evident or egregious) of bad government is protectionism. Protectionism *by poor countries* is self-destructive. One can ask why, then, governments erect trade barriers. We speculate that this is not a cognitive mistake --an ignorance of standard economics. Rulers know well that the trade-restrictive measures they enact hurt their people, but they persist because those measures *benefit them, the agents of the governments.* Trade barriers are generally responses to lobbying by powerful local monopolies that, in turn, help those governments remain in power. The irony here is that because protectionist measures are justified by nationalist rhetoric, and because the law of comparative advantage is opaque and counter-intuitive, the poor cannot *see* that its own predicament is caused to some extent by those measures. Politicians trade on the public's rational ignorance.[157] What these laws do is to consolidate local monopolies at the expense of *local consumers*, that is, at the expense of everyone else in the country (since everyone is, of course, a consumer.)[158] In addition, protectionist laws create incentives for misdirecting economic resources toward inefficient activities, thus causing a reduction in aggregate welfare and loss of jobs in the (now discouraged) efficient industries --those where the country enjoys a comparative advantage. Protectionist policies are worse than simple transfers of resources from consumers, foreign producers, and unprotected industries, to producers and workers in the protected industries. Those policies, in addition, produce deadweight losses, economic losses that no one else

[157] The public's ignorance is rational because the informational costs are high. For a full treatment of this phenomenon and how it distorts democratic deliberation, see GUIDO PINCIONE AND FERNANDO TESÓN, RATIONAL CHOICE AND DEMOCRATIC DELIBERATION: A THEORY OPF DISCOURSE FAILURE (2006). *See also infra*, section #

[158] *See* Robert Cooter, *2005 Madd Lecture: Law, Innovation, and the Poverty of Nations*, 33 FLA. ST. U. L. REV. 373, 392-93 (2005).

recoups. They are games where some gain, but where losers lose more than the winners gain.

Protectionist policies are often the result of political rent-seeking and other forms of predatory behavior.[159] Well-organized protected industries hire powerful lobbyists who essentially "buy" the protectionist legislation from politicians interested in incumbency. Given this, and contrary to Pogge's claims, world poverty is not caused only (and often, not mainly) by globalization or by the protectionist policies of rich nations.[160] Instead, poverty is largely the result of bad policies and practices pursued by the governments of developing nations who allow or practice predatory behavior. More generally, bad policies include: protectionist measures, which, as we saw, hurt all consumers in that society; political corruption and other forms of unproductive public spending; lack of respect for civil and political rights; lack of appropriate transfer policies; failure of the rule of law; lack of protection of private property and freedom of contract; inept and predatory fiscal policies; and a deficient educational system. While Pogge acknowledges some of these forms of government failure, by failing to reject mercantilism he implicitly endorses some of the policies that aggravate poverty.[161]

Allen Buchanan adopts a similar but more moderate stance in his otherwise good work on the moral foundations of international law. In one chapter, Buchanan addresses the role of distributive justice. Against Rawls and others, he argues that distributive

---

[159] The political dynamics of protectionism is well summarized in McGinnis & Movsesian, supra n. at 521-31. *See* also Gene Grossman & Elhanan Helpman, *Protection for Sale*, 84 AM. ECON. REV. (1994), and THOMAS A. PUGEL & PETER H. LINDERT INTERNATIONAL ECONOMICS (11TH ed. 2000) 61-78.

[160] Whether protectionist measures hurt foreign producers depends on the size of the market. If producers in developing countries can sell their goods elsewhere, then protectionism barriers in Europe and the United States are less certain to be harmful. But we happily agree that protectionist barriers in developed nations are wholly objectionable.

[161] Pogge's criticism of the WTO régime (pp. 15-19) amounts to the simple point that unilateral protectionism of agriculture by rich nations (allowed by the WTO) has caused more poverty than the alternative regime of free trade for all, a point which is undoubtedly correct.

justice should apply to the international "basic structure," and consequently, that rich nations have a duty to help poor nations. While he concedes that at present the international system is relatively incapable of enforcing these principles of distributive justice, he believes international law could further distributive justice. These measures include "promoting more equitable trade relations, labor standards, environmental regulation, aid for development, and endeavors to preserve global commons." [162] A call for equitable trade means presumably a call to reduce protectionist measures by rich countries so that poor countries can compete in those markets. But supporting "equitable" trade is not the same as supporting free trade. As we saw, if rich country A and poor country B are both *equally and strongly protectionist*, that would be "equitable" but it would be catastrophic for B (and, as we saw, bad for A too.) Buchanan, too, never mentions or implies the well-tested truth that *the government that protects hurts its own people*.[163] That omission leads him to propose specific measures *restrictive* of trade: global wage standards, environmental regulations, and obligation of aid. We are not suggesting here that these measures are always, or often, misguided.[164] What we observe, however, is that economic development depends on governments securing things that Buchanan does *not* mention: reducing barriers to trade and protecting private property rights and freedom of contract so as to attract investment –in short, economic liberties. Alleviation of poverty will not be achieved primarily by aid. Rather, poverty will be considerably alleviated by allowing poor people to exchange in the global market the things they produce for the things they need.

---

[162] BUCHANAN, supra note 134, at 193.
[163] *See* Jagdish Bhagwati, *Protectionism*, in THE CONCISE ENCYCLOPEDIA OF ECONOMICS (1988), available at http://www.economlib.org (last accessed on February 14, 2007).
[164] See supra, section

Buchanan's failure to support free trade may stem from his rejection of classic liberal or libertarian views about distributive justice (which he calls "anti-distributive.")[165] Because defense of free trade is associated with classic liberalism or libertarianism, those who reject libertarianism may be hostile to free trade due to this association. Yet opposing free trade on these grounds is a *non sequitur*. Buchanan could safely reject libertarianism as a theory of *domestic* justice and support free trade as a justified *international* arrangement calculated to help the world's poor. As we saw, while in our defense of free *international* trade we insist that nations should have healthy domestic institutions that sufficiently protect property and contract, we remain agnostic about which *other* domestic redistributive policies governments should enact to combat poverty. We simply claim that, whatever those measures may be, they *do not include protectionist measures*. So a state may implement worker training programs, generous welfare programs, or universal health care as ways to help the poor, while allowing free trade of goods and services with the rest of the world. This article does not take a position on that, except by observing that *government failure* aggravates the plight of the poor.[166] Government failure includes not only things that Buchanan recognizes, such as the failure to respect civil and political rights. It comprises, in addition, excessive tax levels, lack of the rule of law, lack of independence of the judiciary, and the failure to protect private property, contract, and investment.

[165] Id. At 222-223. The use of the term "anti-distributive" is already biased and thus symptomatic of discourse failure (see infra, section) For free markets also distribute resources and, moreover, they do so based on the choices of the agents, not of the government. The outcome may not please philosophers, but that does not mean that under free trade there is no redistribution of resources.

[166] Buchanan not only fails to recognize government failure as a cause for poverty: following Christiano, he *praises* the state as an agent of justice.

One way to encapsulate the mistake that Buchanan, Pogge, and many others (including the general public) make about trade is this. They see protectionism as an *unsuccessful coordination game*, implicitly saying, "Our country must protect because we know *they* will protect. If only they made a credible commitment to repeal their protectionist laws, we would do the same." However, protectionism might be more accurately seen as a *successful rent-seeking game*: industries affected by foreign competition seek and obtain protection from their governments in exchange for political support and other benefits. Two further facts explain the political success of protection notwithstanding the well-known fact that open trade is beneficial to the great majority of the population. First, the groups that benefit from free trade, such as consumers, are *diffuse* and have high organizational costs.[167] Second, while trade theory predicts that in the long run many of the workers and firms now hurt by foreign competition will be better off because free trade creates higher-paying jobs and higher returns to capital, workers and owners often cannot easily see these prospects.[168]

Given comparative advantage, if a country's trade partner protects, then that country is better off *not* protecting. Therefore, protectionist laws cannot be the result of a failed coordination game. The government erects trade barriers, *not* because it believes that the trade partner will do the same, but, more likely, because local inefficient producers got the government to secure a domestic monopoly in their favor.[169] The government is not "protecting" its citizens: it is "protecting" itself and its friends.

[167] See Mancur Olson, The Logic of Collective Action.
[168] See McGinnis & Movsesian, *The World trade Constitution*, supra n. at 525.
[169]as Adam smith put it more than 200 years ago: "By restraining, either by high duties or by absolute prohibitions, the importation of such goods from foreign countries as can be produced at home, the monopoly of the home market is more or less secured to the domestic industry employed in producing them." . ADAM SMITH, supra note 35, at Book IV, Ch.2,.

Mercantilists not only misunderstand economics; they overlook the *problem of agency costs* inherent in modern government. If we assume that part of the government's job is to benefit the people (improve the welfare of its citizens in an appropriately distributive way), then, in the light of the foregoing discussion, government should reduce trade barriers, even unilaterally.[170] But this is not what happens. Instead, a minority of citizens who want to be sheltered from competition succeed, though lobbying, bribes, and similar modes of influence, in securing protectionist laws in their favor. The government caves because doing so is in *its* interest. The principal (the people) pays for the self-interested behavior of the agent (the government).

In a lengthy discussion of distributive justice, the philosopher Simon Caney unfortunately neglects relevant economic analysis. After surveying the philosophical literature, he proposes the principle that "everyone, without any discrimination, has the right to equal pay for equal work."[171] He then adds that this principle "no doubt condemns much of international trade," because under conditions of trade, wages are determined, he thinks, by the morally irrelevant fact of nationality. Yet lower pay is not determined by nationality; it is determined by supply and demand for labor. Caney's principle relies on obsolete theories of just prices, wrongly assuming that the price of labor is not the result of the intersection between the labor supply and demand curves, but that each kind of work should receive an ideally just remuneration. More importantly, if Caney's principle were adopted many developing nations would collapse, because much of their comparative advantage depends on offering competitive labor in the global

[170] *See* generally JAGDISH BHAGWATI (ed.), GOING ALONE: THE CASE FOR RELAXED RECIRPOCITY IN TRADE LIBERALIZATION (2002)

[171] Simon Caney, 123 (2005). He adopts the language from Article 23 (2) of the Universal Declaration of Human Rights.

market. Because of his neglect of standard economics, Caney, like Buchanan and Pogge, ends up endorsing universal aid and not trade liberalization.[172]

Other philosophers are openly hostile to free trade. In a book almost entirely devoted to international economic justice, Kok-Chor Tan declares that one main reason why globalization has failed the poor is "neoliberal ideology"[173] Tan endorses the main tenets of mercantilism: free trade is bad because the playing field is "uneven" and thus "competition is never truly free, nor, importantly, fair."[174] Reducing tariffs and quotas have failed to help the worst-off, Tan thinks, and this is evidence that capitalism is the wrong way to go.[175] For this proposition he cites not a single mainstream international economist. (He does cite Amartya Sen for a variety of views about the relationship between poverty and inequality, but omits saying that Sen *supports* free trade.[176]). Like others, Tan commits the *ad hoc propter hoc* fallacy: trade has been liberalized in recent decades, yet poverty persists.[177] Therefore, free trade must be responsible for poverty. Tan's position not only disregards mainstream economics. It also fails to control for important variables such as bad institutions and other forms of government failure, including protectionism in rich and poor countries alike.

Implicitly, many philosophers are not so much concerned with alleviating poverty as with reducing inequalities between rich and poor nations.[178] Yet, if our moral duty is to alleviate poverty, why would inequality be our primary concern? And inequality of

---

[172] Id. at 139.
[173] *See* TAN, JUSTICE WITHOUT BORDERS, *supra* note 134, at 32-33.
[174] Id. at 31.
[175] *See*, *e.g.*, p. 31 ('neoliberal economic principles cannot meet the basic human and developmental needs of the word's poorest sector.") In passing, we object to the use of the term "neoliberalism," a loaded word used by demagogues and others to deride capitalism and free markets and devoid of any serious scientific meaning.
[176] *See* Amartya Sen, *How to Judge Globalism*, *supra* note 25.
[177] Cite others.
[178] Cite philosophers concerned w/equality

nations at that? Suppose we could design the international system in a way that would eradicate poverty from the face of the earth, but would leave some rich people or nations much richer than other people and other nations. It is unclear why this would be a major worry. It certainly should not be a concern under Rawls's quite demanding difference principle.[179] The focus on inequality between rich and poor nations unduly obscures the fact that the proper object of moral concern should be the world's poor, their basic needs, and their ability to escape poverty and lead meaningful lives.

Could philosophers concede that free trade may improve aggregate wealth, yet insist that protectionism is somehow required for *moral* reasons? This is highly unlikely. Protectionism is unlikely to serve the public good or any other plausible moral goal. Because an individual cannot make all the things he uses, his standard of living will depend on his chances of exchanging the product of his labor with others, especially if he is poor.[180] Trade barriers are attempts by politicians to undercut this freedom of the poor, the freedom to exchange the goods he produces for cheaper and better imported goods. He needs this freedom to escape poverty. Such coercion can hardly be justified by anything even remotely approaching fairness or justice.

What other moral argument can possibly justify protectionism? Philosophers do not explain just what value, or what right, a protectionist measure in a developing country is supposed to realize. One reason frequently heard in public debate is that trade barriers can be justified as attempts to protect workers in developing nations from layoffs caused

[179] When confronted with the evidence that free trade causes growth, critics typically reply that they care about *equality*, not basic needs. *See, e.g.*, GEORGE F. DEMARTINO, *SUPRA* NOTE 12 , AT,10-11 (2000); TAN, *supra* note 134 , at 116-123 (arguing that how nations fare is dependent in part on how much other nations have)
[180] *See* James Bovard, *The Morality of Protectionism*, 25 N.Y.U. J. INT'L L. & POL. 236 (1992-1993).

by foreign competition.[181] Indeed, the vivid harm suffered by these workers is a crucial factor in the public defense of protectionism.[182] But such argument lacks philosophical and economic sophistication. To begin with, one should ask whether one has a moral right to keep a job that one currently holds. Having a job is not like having a piece of property. My employment stems from a contractual relation. My employer, say, produces things that consumers demand, and hires me to help me produce those things. If consumers no longer demand the product (because they prefer the cheaper foreign product), then, under the principle of contractual freedom, at first my employer does not have a right to force-feed his products to consumers with the aid of the government. Nor do I retain a right to my job, given that my employer does not need me anymore. In other words, it is hard to see what moral principle can justify the state using coercion to help people produce things that consumers no longer want.

The protectionist could reply that workers have acquired certain expectations that the government must try to preserve. It is not the worker's fault, he may argue, that his industry is now inefficient. He got this job, started a family, bought a home, in short, made life plans that are now frustrated by events he cannot control. He is a proper beneficiary of societal help. On this view, trade barriers are justified, not so much to

---

[181] *See, e.g.*, MOELLENDORF, supra note 19, at 61. He does suggest, however, that global mobility is a better remedy than tariffs. Ibi*d.* Other philosophers do not address this point. That silence, we suggest, is precisely the problem: the consensus is that trade *increases* the employment rate in the long run. *See* Steven Matusz, *International Trade, the Division of Labor, and Unemplyment*, 37 INT. ECON. REV. 71 (1996). On the other hand, the argument from job protection is popular in the political arena. A campaign advertisement for Senator Sherrod Brown (D-Oh) read:

> They said that NAFTA would be good for America, but nearly 50,000 Ohio jobs have gone to Mexico. CAFTA, the trade agreement with Central America, will cost us even more. Our trade policy with China has cost our country over a million jobs, huge trade deficits, and it's risking the transfer of sensitive military technology. I voted against all of these deals; my opponent voted for them. I'm Sherrod Brown; I approve this message; it's time to put Americans first.

Available at http://www.citizen.org/trade/articles.cfm?ID=15892 (accessed February 19, 2007)

[182] For an account of vividness, see the classic treatment in RICHARD NISBETT & LEE ROSS: HUMAN INFERENCES AND SHORTCOMINGS OF SOCIAL JUDGMENTS 45 (1980).

enrich the local employer (although it does that), but to preserve jobs. And it is appropriate for consumers to pay for this: society (the consuming public) subsidizes fellow citizens (the workers of the affected industries) who are suffering hardship. It is no different from other forms of wealth redistribution.

There are many replies to this argument, but we'll mention three. First, this argument can only get off the ground if it is part of a non-cosmopolitan theory of justice. For, if these trade barriers protect the local workers at the expense of the world's poor they are unjustified under any cosmopolitan view, unless the protected workers happen to be part of the world's poor. Second, and more important, when a government protects an industry, it *hampers the creation of jobs in other industries.* This occurs because the economy is not able to adjust to the efficiencies of production. Resources are artificially directed to the less efficient endeavors. If this is so, what should we say about the person who is now unemployed *because those new industries* have not been created due to strangling effect of protectionist laws? Seen in this light, beneficiaries of protection in developing countries are not particularly deserving, because protection is harming *other* persons in that society. Since those persons are the unemployed, they are worse-off than the protected workers. Just as the firms obtaining protection get rich as the expense of foreign firms, so the workers in protected industries keep their jobs at the expense of the poor *in their own developing countries* –that is, the poorest persons in the world. Protectionist laws not only harm the poor directly by reducing their choice set as consumers. In addition, they harm the poor *indirectly* because they abort the creation of new industries and jobs. This harm is opaque, hard to see, a circumstance that facilitates the popularity of protectionist views among the general public. And finally, even if this argument is plausible and the state can legitimately aid workers hurt by trade, erecting trade barriers is a bad remedy. Domestic transfer policies such as industrial retraining are more efficient and fair ways to help those workers. [183]

Someone may object to our approach in the following way. Many rich people, especially in developed nations, presently hold resources that they or others in the past obtained from the poor through theft, deception, and exploitation. But trade presupposes legitimate ownership over the traded thing. Trading with the poor the very resources that the owner stole from him is deeply wrong. It follows (so the objection concludes) that before instituting free trade we must implement corrective measures: we must return the stolen goods to their rightful owners. Only then we could start talking about free trade.[184]

To answer this objection we distinguish between two vantage points from which to address the problem of world poverty: ideal theory and nonideal theory.[185] Ideally, the best international system would be one where two things would occur. First, individuals would be able to trade freely goods and services, and to move (relatively) freely across borders. Second, as the objection contends, an ideal system would require restoring ill-gotten resources to their rightful owners. To be sure, determining what part of the current wealth held by individuals should be returned to their rightful owners is a daunting task, because surely not all wealth, not even its greatest part, is stolen.[186] As we indicated, there is solid evidence that much poverty is caused, not by rich countries, but by bad governments and weak institutions in developing countries. Still, if we could determine

[183] See discussion supra, sections , and literature cited infra note cited

[184] We thank Roberto Gargarella of the Universidad Torcuato Di Tella for drawing our attention to this problem.

[185] The distinction between ideal and nonideal theory was introduced in JOHN RAWLS, A THEORY OF JUSTICE, *supra* note 11, at 7-8, and applied to international relations in JOHN RAWLS, THE LAW OF PEOPLES, *SUPRA* NOTE 20, AT.; and ALLEN BUCHANAN, *supra* note. 134, at 54-5.

[186] For a useful discussion, see MOELLENDORF, *supra* note 134, at 87-92.

who rightfully owns what, corrective transfers would be justified.[187] Freedom to trade would be accompanied by corrective justice.

From the standpoint of nonideal theory, however, the goal is to *reduce poverty, here and now.* That is, justice requires that international institutions and governments give priority to reducing poverty, and implement feasible policies to do this. If corrective measures are unfeasible, either because the theft took place too far back in time, or because we cannot possibly know the percentage of wealth that was stolen, or because the amount of coercion needed is morally prohibitive, or simply because current international politics pose insurmountable practical obstacles, or for some other reason, then that should not be a reason to refuse to liberalize trade, here and now, as an effective way to help the world's poor. From the standpoint of nonideal theory we should not reject free trade on the grounds that many people, unfairly, would be trading in stolen goods. The argument we make in this article, then, rests on nonideal theory. It proposes a feasible institutional framework, free trade, calculated to help the world's poor, and it criticizes the failure of the philosophical and legal scholarship properly to acknowledge the role of trade in achieving that aim.

We can put our moral critique of protectionism into the form of a dilemma. Either a government enacts trade barriers as a response to lobbying and other forms of rent-seeking, or it enacts them, as it should, out of a sincere desire to promote the public interest. In the first case, protection is morally objectionable for obvious reasons: having more lobbying or bribing power is hardly a characteristic that makes people deserving of a transfer of resources in their favor. If, on the other hand, the government protects for

[187] *See, e.g.,* ROBERT NOZICK, ANARCHY, STATE, AND UTOPIA 150-3 (1974) (justice in acquisition and holdings must be accompanied by corrective measures).

public reasons (and not as a response to lobbying), it is hard to see what public reason can identify producers and workers of inefficient industries as deserving of a transfer of resources from (1) consumers and (2) those persons who remain unemployed because of the reduction in general welfare caused by protection (we are not considering here the harm done to foreign producers.) In other words, any theory of justice concerned with the poor should have the poor as the rightful beneficiary of transfer of resources. However, the group "owners and workers of inefficient industries" is not coextensive with "the poor," and is therefore an inappropriate beneficiary of redistribution –an inappropriate object of moral concern.

Liberal cosmopolitans tend to ground their views on human rights.[188] Standard lists of those rights include, on the one hand, civil and political rights, and on the other, socio-economic rights. [189]In view of the findings of the economic literature on the relationship between market institutions, growth and the alleviation of poverty, we propose to reinterpret the principle that states must respect socio-economic rights. We suggest that governments have a *prima facie* duty to alleviate poverty (understood in an aggregative measurable sense) in their territories. This is the domestic version of the international duty we mentioned at the outset of this article. The international community has a moral obligation to design international economic institutions and policies with an aim to alleviate world poverty in general. Our proposal, then, excludes the view that *each* individual has a right to a certain amount of food, or to a house, or to health care.

[188] For an argument grounding international law on human rights, see Fernando R. Tesón, *The Kantian Theory of International Law*, 92 Colum. L. Rev. 53 (1992). See also ALLEN BUCHANAN, *supra note* , at 118-90.

[189] The list sometimes includes group rights and "third generation rights". It is debatable whether these rights are (1) morally defensible; or (2) if they are defensible, they should be reduced to the two main categories. For a discussion, see FERNANDO R. TESÓN, A PHILOSOPHY OF INTERNATIONAL LAW, *supra n.* , at 132-7. See also ALLEN BUCHANAN, *supra n. , at 408-15.*

But our view reaffirms the main thrust of socioeconomic rights. Nations must try to alleviate poverty.

In addition, we suggest rethinking the law and philosophy of human rights. An improved, economically-literate version of human rights law should move away from the dichotomy civil-political/socioeconomic rights and comprise instead a *trilogy* of recommendations. First, states should respect civil and political rights. The reasons for this are many and obvious, and include the fact that enjoyment of civil and political rights facilitates development.[190] Second, states have a *prima facie* obligation to alleviate poverty. Discharging this obligation requires making trade-offs and establishing priorities among various development needs. Whether the fight against poverty requires laissez-faire politics or, on the contrary, government intervention in the economy (provided it respects property and contract), is an issue of institutional design that depends on context and cannot be decided in advance. And third, states should secure economic *liberties*,[191] that is, they should not interfere with rights to private property and freedom of contract to such a degree that would create significant disincentives to productive activities and economic growth.

In sum, while rightly decrying the protectionist practices in wealthy nations, philosophers, sadly, encourage the use of bad economics and demagoguery by politicians in developing nations. In doing so, they provide justification for policies that hurt the poor everywhere.

[190] AMARTYA SEN, *supra* note 29, at #.

[191] See generally James W. Nickel, *Economic Liberties*, *in* THE IDEA OF POLITICAL LIBERALISM 155-75 (Victoria Davion & Clark Wolf, eds., 2000); and Loren Lomasky, *Liberalism without Borders*, 24 SOC. PHIL. & POL'Y 206, 213-217 (2007) (main cause of poverty is bad institutions, including lack of economic liberties).

IX. Aid or Trade?

Philosophers could agree with all this, yet still insist that foreign aid and other forms of global redistribution are needed to correct the unjust outcomes of a global free market. They can concede, that is, that free markets will increase wealth and reduce poverty overall, yet still countenance unjust distributions. We have two responses in addition to the counter-arguments already rehearsed.

First, open markets are predicated on everyone pursuing their self-interest and thus improving their positions through voluntary exchanges. If two persons *freely* exchange goods, by definition, they both improve. In an important sense, then, trade partners improve without relying on anyone's *altruistic* impulses.

Free trade is much less demanding on human nature than redistribution schemes because under redistribution schemes governments coercively choose winners and losers and, in discharging their task, governments are vulnerable to the pathologies of rent-seeking, corruption, self-aggrandizing bureaucracy, and information failures. Governments may achieve the goal of reducing poverty, but at great cost. Most people are not saints: they will have to be forced to contribute to the global redistributive agency, which could lead to resentment and political backlash, stemming in part from the feeling of those who produce that they are forced to subsidize those who do not. Thus, the proposal runs the risk of being institutionally unfeasible and utopian. Suppose we have two choices to address world poverty: establishing massive foreign aid administered by a global agency, or liberating international trade. The latter, but not the former, will allow us to *economize on virtue*.[192] Surely a system that requires less of people will have greater chances of success.

Second, as we pointed out, if the outcomes of free trade are deemed unjust, then the remedies lie in *better transfer policies*, not in protectionism. If the problem with trade is that it harms the workers of the formerly protected industries, then perhaps industrial reconversion and training is the answer. Every responsible economist who has leveled criticisms to the outcomes of free trade has insisted that, whatever national and international policies are apt to redress those undesirable outcomes, protectionism is not one of them.[193]

The hostility that many people have to free markets blinds them in inexplicable ways. For example, objectors rarely notice that some of the bad effects of free markets are the result of *government* failure, not of the workings of markets. For example, those who criticize free trade by citing the predatory behavior of transnational firms in developing countries overlook the fact that, in those cases, transnational firms *bribed* corrupt governments, often to secure cheap labor.[194] This appalling behavior would be banned in a global *free* market system. The system we propose would use coercion (supervised, perhaps, by appropriate international institutions) only to make sure that

---

[192] The idea of economizing on virtue goes back, of course, to Adam Smith. *See* SMITH, *supra* note 135. It is treated modernly by Geoffrey Brennan & Alan Hamlin, *Economizing on Virtue*, 6 CONST. POL. ECON. 35 (1995).

[193] *See, e.g.*, Jeffrey Sachs & Howard J. Shatz, *U.S. Trade with Developing Countries and Trade Inequality*, 86 AM. ECON. REV. 239 (1996) (showing that, while trade liberalization may hurt low-skilled workers in the U.S., protectionism is the wrong remedy.)

[194] *See, e.g.*, Doe v. Unocal Corp., 963 F. Supp. 880, 883-85 (D.C. Cal. 1997) (recounting the factual setting where the transnational firm allegedly obtained slave labor from the Government of Burma); Doe v. Unocal Corp., 27 F. Supp. 2d 1174, 1178-79 (D.C. Cal. 1998) (same); Doe v. Unocal Corp., 395 F.3d 932, 936-43 (9th Cir. 2002) (same).

exchanges are *voluntary*. Free trade is based on free exchanges, and there is nothing free about a firm bribing a government to secure slave labor.

Critics of free trade commit yet another fallacy. Let us say, for the sake of argument, that markets fail and that we need to create a global redistributive scheme to correct the resulting injustices. In order to do that, you first have to have global free markets. We cannot know if free markets will fail if we don't have free markets to begin with. One cannot transpose the arguments in favor of redistribution *within* society to argue in favor of global redistribution, simply because a central assumption of the arguments for domestic welfare is that *there are no internal barriers to trade.*[195] Assume that government redistribution is needed to correct *domestic* injustices yielded by markets. Let us assume, that is, that there is an optimal point in the combination of free markets and coercive redistribution of wealth, so that individual autonomy, or some such value, is reduced either with more or with less government intervention. This arrangement cannot, without more, be transposed to the international society, simply because, while in the domestic society there are no geographic barriers to trade, such as internal tariffs or quotas, in the international market those barriers are real and formidable. Only where there are no barriers to international trade can we say that international free markets countenance injustice. Thus, in order to even start considering whether we should coercively redistribute wealth from the world's rich to the world's poor, we should first have free trade, including free immigration, as we propose here. Only then could we say that free trade has not done enough to eradicate poverty, (if that is indeed the case), so that intervention in the market, including redistribution of wealth, may be called for. No matter how you put it, if we are concerned with world poverty,

[195] *See, e.g.*, U.S. CONST. art. 1, § 8.

abolishing barriers to global voluntary exchanges should be our first priority. It may be that some global redistribution will still be desirable under conditions of free trade, but until and unless defenders of global redistribution address the question of trade and pay proper attention to the specialized economic literature, it will be hard to take them seriously.

X. A Case of Discourse Failure

The scholarly silence about the beneficial effects of trade on poverty is disconcerting. We can only speculate about its causes. First, most philosophers in this area are left-of-center and thus *pro tanto* sympathetic to government redistributive policies and regulation of markets. It seems natural to transpose this model to the global arena. On this view, the essence of justice is taking from the rich and giving to the poor, come what may. Egalitarian liberals may fear inconsistency should they simultaneously support unfettered *international* markets and regulated *domestic* markets. They might not want to concede too much to laissez-faire economics after having argued for the redistributive state. But, as we saw, such inconsistency is only apparent. One corollary of this paper is that egalitarian liberals should support free trade because it helps the poor and because it is consistent with the domestic redistributive policies they favor. Free trade is required by virtually *any* system of international ethics.[196]

Second, academics (like everyone else) send package *signals*. It may be important to them to express their commitment to egalitarianism, which (they might think) entails

[196] The exception could be, perhaps, a system of ethics that advocates complete abolition of private property.

showing support for coercive redistribution of wealth. Because supporting free trade means, in some sense, rejecting government interference with voluntary exchanges, left-egalitarians might fear that their commitment to egalitarianism will be compromised in the eyes of the relevant audiences. [197] This is troublesome, especially because a commitment to egalitarianism or a commitment to the poor, need not entail rejecting free markets, *if* free markets help the poor.

Third, philosophers not trained in social science tend to believe that most answers to social problems are conceptual or normative, not empirical. The world they prefer is one where the solutions to social problems depend on two things: taking the right normative stances and making the appropriate conceptual distinctions. Implicitly, many in these camps seem to believe that if we could just figure out what equality means, or what respect for autonomy requires, or what the International Covenant on Social Economic and Cultural Rights really means, we could properly address global justice. We reject this approach.[198]

Many answers to social problems depend on the findings within the empirical social sciences like economics, sociology, political science, and the natural sciences. The question of how to reduce world poverty is one of such problems. In particular, the defense of free markets relies heavily (though not entirely) on empirical economic arguments.[199] When philosophers face complex empirical arguments grounded in fields of study they do not understand or care for, they tend to lose interest quickly. It is easy to

---

[198] The remarks in this section are adapted from PINCIONE & TESÓN, *supra* note 204.

[199] Thus, the Friedmans' popular defense of free markets rests on its beneficial consequences. *See* MILTON FRIEDMAN & ROSE FRIEDMAN, FREE TO CHOOSE (Harvest ed. 1990). A deontological defense of free markets can be found in NOZICK, *supra* note 181, and LOREN LOMASKY, RIGHTS, PERSONS, AND THE MORAL COMMUNITY (1987). Despite their differences, most contemporary liberal political philosophers concede that markets play an important role in any institutional proposal.

overlook how markets work, especially when you do not have much sympathy for markets anyway. As we saw, the hostility that philosophers often have to using efficiency as a normative criterion blinds them to the benefits of free trade for the poor. The free trader thinks that increasing global and national wealth will benefit the poor as a class in the ways we discussed, and this cannot be dismissed out of hand as a misplaced emphasis on efficiency.[200]

Fourth, as a proposal to address world poverty, the recommendation to liberalize trade suffers from a *rhetorical disadvantage* against its two rivals: protectionism and global redistribution. This occurs in two ways. On one hand, the merits of free trade rely on *opaque*, impersonal workings of the market. For free-traders, the poor will improve, not as a result of individuals and governments engaging in altruistic acts of charity, but by allowing them to advance their self-interest through voluntary exchanges. Proposals for international aid are even more *vivid*. By implementing aid, for example by establishing a global agency to redistribute resources, we are *giving* things to people who need them. It looks as if we are discharging our justice-based duty. Of course, this does not mean that politicians who support international aid are necessarily acting *out* of duty. There are good reasons to believe politicians react to electoral incentives, which may favor aid, at least relative to trade. If the politician supports trade, he will be at a rhetorical disadvantage because he is advocating transactions from which the rich will

[200] . Sometimes philosophers go as far as expressly dismissing the contribution of economists to the study of poverty. For example, Thomas Pogge writes that we should take the economists' findings with a great deal of caution, because "while economists like to present themselves as disinterested scientists, they function today more typically as ideologists for our political and economic 'elites' – much like most theologians did in an earlier age." Thomas Pogge, *Real World Justice*, 9 Journal of Ethics 29, 29-30 (2005). Such ad-hominem, obscurantist approach is a typical exemplar of discourse failure.

also benefit. Given the vivid views that the public has, voters might not see moral worth in trading with the poor, even if the poor are thereby made much better off, because the trader is simply acting out of self-interest.

Philosophers think that global justice is about recommending to people in power (governments, international institutions) that they do things, here and now, that *discharge* the justice-based duty toward the poor in a vivid way. That may be why foreign aid, and not trade, is important to them. Aiding a poor person looks like a lofty way of implementing our justice-based duty to her. Trading with her does not, *even if the poor as a class are better off with widespread trade than with widespread aid.* Free trade rests on self-interest, and this, we believe, is one of the reasons why philosophers overlook free trade institutions as a way to help the poor. Promoting trade, for them, is not a sufficiently *lofty* way to discharge our duties based on justice.

This approach is deeply mistaken, an instance of Kantianism gone awry. If we care about helping the poor, we should care about designing institutions that do just that -- help the poor. We should not obsess over institutions that help the poor inefficiently, simply because the intent of the actors is, arguably, more pure.[201] The justice-based duty to help the poor has a *consequentialist* structure. It enjoins us to do those things that alleviate poverty, not those things that are subjectively pure yet counterproductive or insufficient. If trading with the poor helps them more that giving them things for nothing, then trading is *morally* preferable to aiding. [202]

[201] For a skeptical view on the possibility that those political proposals may be defended on account of their *symbolic* value, see Guido Pincione & Fernando R. Tesón, *Self-Defeating Symbolism in Politics,* 98 J. PHIL. 636 (2001).
[202] Fernando Tesón and Guido Pincione call the rhetoric we criticize in the text *the moral turn*. This is defending a public policy on non-consequentialist grounds and thus ignoring the policy's unpalatable consequences, when it is unreasonable to do so (that is, when unpalatable consequences *should* reasonably be taken into account.) See PINCIONE & TESÓN, *supra* note 204, ch. 6.

There is another reason why supporters of free trade tend to lose in the political arena. It stems from the rhetoric of protectionism. Protectionists rely on the imagery of nationalism. We need to protect "us" against "them"; our local industries against the invading products; our culture against immigrant invasion.[203] This is an instance of the use of vivid imagery for political purposes. To see the advantages of trade, people need to see that the country that protects *hurts its own people* because protection hurts consumers. This is concealed by the very notion of "protection" *of something that is ours*, in our country, against *something that comes from the outside*. Because that "something" is alien, external, politicians, and rent-seekers can easily portray it as a threat. All one can say is a trivial truth: that the government can protect *specific* workers by protecting the industry from foreign competition. But trade barriers do not "protect" the employment rate in one's country because of their high opportunity costs (that is, they prevent the creation of new industries by artificially divesting resources toward the protected sector). Trade barriers do not "protect" the real value of wages; and they positively harm consumers, reducing general welfare particularly among the poor. When the rhetorical smoke clears, trade barriers "protect" weak producers by giving them the chance to prey on even weaker consumers.[204] Particularly hidden are the opportunity costs of protectionism, that is, the harmful effects of protection in other sectors of the economy, including reduced job creation in those other sectors. Workers in industries yet to be created do not have lobbyists (nor philosophers, it seems) to champion their cause.

---

[203] This rhetorical argument was criticized more than a hundred years ago by HENRY GEORGE, PROTECTION OR FREE TRADE: AN EXAMINATION OF THE TARIFF QUESTION, WITH SPECIAL REGARD TO THE INTERESTS OF LABOR ch. 6 (1886), *available at* the Library of Economics and Liberty, http://www.econlib.org/library/YPDBooks/George/grgPFT6.html (last accessed February 19, 2007).
[204] Bovard, *supra* note 170, at 238.

These discursive pathologies (false Kantianism, the desire to send political package signals, treating empirical issues as if they were normative issues, the use of vivid imagery for political purposes, and the neglect of reliable but opaque social science in favor of simpler, vivid explanations) are part of a phenomenon referred to as *discourse failure* by Pincione and Tesón.[205] Discourse failure is the public display of political positions that are traceable to truth-insensitive processes. A truth-insensitive process is one that disregards the best available reasons, understood as those that define the *status quaestionis* in the relevant reliable scholarly discipline –in our case, international economics. In general, discourse failure occurs as the result of the mutually reinforcing interaction between the public's rational ignorance (their incentives *not* to be politically well informed), and the politicians' posturing for political gain. Sometimes, as in this case, the dynamics of discourse failure afflicts academic scholarship as well.

The discourse failure hypothesis is a potential explanation of the disconnect between the economics literature and the claims (or silence on these issues) made by philosophers in this area. The most plausible alternative hypotheses, that prestigious scholars would be unaware of the economics literature or find it so unpersuasive that they feel they can ignore it without explanation, defies belief. A full demonstration of this thesis exceeds the scope of this article[206] but, at any rate, our substantive argument (that any theory of global justice as well as any defense of socio-economic rights requires supporting free trade) stands on its own, independent of the discourse failure hypothesis.

XI. Final Remarks

[205] *See* PINCIONE & TESÓN, *supra* note 204.
[206] We remit to PINCIONE & TESÓN, *supra* note 204, at #

In this article, we address the surprising lack of attention philosophers and human rights scholars pay to liberalized trade as a mechanism for improving the condition of the poor. Our discussion can be summarize as follows:

1) Persons and governments have a *prima facie* duty to try to alleviate poverty. We remain agnostic as to whether this duty stems from principles of justice or from elementary considerations of humanity;

2) Those duties are owed to the world's poor as a class, not to individuals or states;

3) For empirical reasons, liberalizing trade and immigration are likely to go a long way toward implementing those duties;

4) In order for trade to benefit the poor, nations need to have good institutions, in particular, they must respect civil and political rights, property, and contract;

5) What other policies governments may pursue to reduce poverty is left as an open question (thus we are not committed to the view that whatever distribution results from the market is ideally just);

6) International institutions should focus less on aid and more on addressing government failure;

7) Our proposal is more realistic and holds out more hope to reduce poverty than global redistributive proposals;

8) More generally, scholars writing on distributive justice may not disregard the findings of economists. This is an application of the simple principle that in order to do law or political philosophy, we need to get social theories and facts right;

9) We conjecture that the failure to recognize the beneficial effects of trade on the poor is a case of discourse failure (that is, propositions that are traceable to truth-insensitive cognitive processes).

This article identifies an omission in the philosophical literature, and we believe it is a serious one. Scholars in this area ignore the theoretical claims and empirical evidence of economists suggesting that liberalized trade is likely to improve the condition of the poor. We speculate about some possible reasons why scholars of such keen intellect, prestige, and power would commit a cognitive mistake of this magnitude.

The benefits from trade to the poor are denied both by protectionist measures in developed countries and by local monopolies and foreign interests allied with those in power in developing nations. Few things have done as much to cause the economic stagnation in the developing world as the policies of import substitution and similar protectionist devices (perhaps only *political* failure ranks higher in the list of such causes.)[207]

Developed countries deserve scorn for not opening their markets to products made by the world's poor by protecting their inefficient industries, while ruling elites in developing nations deserve scorn for allowing bad institutions, including misguided protectionism. Realizing these facts, rather than engaging in cheap talk about socioeconomic rights, global taxes, and ineffectual treaties, will help the poor. International reform, then, should try to *create those effectively functioning institutions* that best help the poor. Because trade relies on mutual advantage and not on altruism,

---

[207]For the effect of import substitution policies in Latin America, see Joseph L. Love, *The Rise and Decline of Economic Structuralism in Latin America: New Dimensions*, 40 LATIN AM. RES. REV. 105 (2005) ("it is universally agreed that ISI has not been a viable policy for some time.") For a useful account of the debate, see generally Henry J. Burton, *A Reconsideration of Import Substitution*, 36 J. ECON. LITERATURE 903 (1998) (acknowledging that the pro-trade view has carried the day but suggesting a more nuanced view)

there is little doubt in our mind that liberalizing global voluntary exchanges, trade and immigration, will go a long way toward that goal. Critics of free trade simply do not believe that the poor can compete in world markets. They conjure up the image of a poor and uneducated peasant immersed into a whirlwind of overwhelming economic forces which he cannot possibly shape or control.

When we advocate that this poor peasant be allowed to participate freely in a global free market, we propose to endow him with freedoms he *does not* currently have: the freedoms to produce, work, trade, and emigrate at will. We find it curious that some critics of free trade blame world poverty on free world markets, given that we currently do not have free world markets. The poor peasant is the victim, not of free trade, but of one or more of the following: oppressive political conditions, in particular denial of human rights; collusion of the government with local monopolies or foreign producers; lack of protection of property and contract; lack of labor mobility; and stifling cultural structures. These failures cause poverty, not the other way around. Poor persons in developing countries could participate in the world economy, if only they would be given the chance to do so by those who hold an extraordinary amount of power over them.