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# THE NEW POOR AT OUR GATES: GLOBAL JUSTICE IMPLICATIONS FOR INTERNATIONAL TRADE AND TAX LAW

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# THE NEW POOR AT OUR GATES: GLOBAL JUSTICE IMPLICATIONS FOR INTERNATIONAL TRADE AND TAX LAW

*Ilan Benshalom*\*

**Abstract:** The Article explains why international trade and tax arrangements should advance global wealth redistribution in a world of enhanced economic integration. Despite the indisputable importance of global poverty and inequality, contemporary political philosophy stagnates over the controversy of whether distributive justice obligations should extend beyond the political framework of the nation state. This stagnation results from the difficulty of reconciling liberal impartiality with notions of state sovereignty and accountability. The Article offers an alternative approach that bypasses the controversy of the current debate. It argues that international trade results in relational distributive duties when domestic parties engage in transactions with foreign parties that suffer from an endowed vulnerability—such as extreme poverty prevalent in the developing world. These relational duties differ from “traditional” distributive claims because they rely on actual economic relationships, rather than upon hypothetical social-contract scenarios. The Article establishes that in a competitive market, private parties cannot address these relational distributive duties by themselves, because doing so would put them at a competitive disadvantage, and argues that the only common-action solution to this systemic problem in the current global political setting is wealth transfers among states. The Article proceeds to suggest some policy implication of this normative analysis in the field of international tax law. It points out that the allocation of taxing rights is a form of wealth allocation that divides globalization’s revenue-proceeds among nations. As such, tax allocation arrangements should help “correct” international trade relationships that fail to meet relational distributive standards. This discussion stresses a point frequently neglected by both the tax and political philosophy literatures—that real-world attempts to promote a more just distribution of global wealth could greatly benefit from integrating distributive considerations in tax allocation arrangements.

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“If there will be among you a needy person, from one of your brothers in one of your cities, in your land ... you shall not harden your heart, and you shall not close your hand from your needy brother.” (Deuteronomy 15:7).

“If there will be among you a needy person”: [Meaning that t]he *most needy person has priority*... “in one of your cities:” [Meaning also that t]he *poor of your city have priority* over the poor of another city. (Rashi commentary, emphasis added I.B.)

I. Introduction

Since its nascence, moral philosophy has been haunted by the need to prioritize between aiding those in greatest need and fulfilling the needs of those more closely related to us. This prioritization dilemma is even more important today, as global commercial relationships shrink our world into a global village where the answer to the question “Who is thy neighbor?” is less trivial than ever before. The Article offers a new scholarly approach to how this question of prioritization should be addressed, and discusses the concrete implication of this approach on international trade policy, and, particularly, on international tax policy.

Startlingly, even though global markets operate in a world characterized by tremendous poverty and inequality—a world where 40% of people live on less than two dollars a day, legal literature dealing with international taxation rarely addresses issues of global distributive justice directly. Unlike the domestic frontier, where legal scholars perceive the tax system as the key policy tool to promote redistribution,<sup>1</sup> the legal scholarship is relatively silent on the tax system's role in international redistribution.<sup>2</sup>

This silence reflects upon a broader unresolved conflict in liberal political philosophy over the scope of distributive justice claims. For the last four decades, philosophers have been engaged in a stagnated debate over whether considerations of distributive justice should be limited to the realms of the nation state. Globalization—that is, the growth of economic interconnectedness and interdependence among peoples—has forced this question out of the ivory tower, however.

Real world dilemmas regarding our moral obligations to the distant poor and to questions of global inequality are increasingly becoming part of our everyday experience. We encounter them when we buy cheap consumer goods made abroad, when we invest our pension funds in multinational corporate enterprises (MNEs), and when we watch the news. Global occurrences and trade issues also seem to occupy a growing role in the political agenda. All of these daily experiences call upon moral political philosophy to devise the structure and guidelines for an international global economic regime that will balance our moral obligations to nearby compatriots with our obligations to needy foreigners. Plainly put, globalization has placed the distant poor at our city gates so that turning aside the consequences of global poverty and inequality is no longer possible.<sup>3</sup>

There are two general approaches in contemporary liberal political philosophy to questions of global distributive justice: Liberal-Cosmopolitanism and Liberal-Statism. Liberal-Cosmopolitans such as Charles Beitz and Thomas Pogge argue that the notions that all humans are equal and that national endowment is a matter of pure luck prescribe that considerations of distributive justice should not be limited to the domestic realm.<sup>4</sup> Since every individual is a subject of equal moral concern, it is the liberal duty to establish political institutions that would allow every individual an opportunity to lead a decent autonomous life. In sharp contrast, Liberal-Statists, such as Thomas Nagel, David Miller, and most notably John Rawls, argue that the claim for distributive justice is not based on common humanity but on the special associative relationship among compatriots.<sup>5</sup> Individuals' reciprocal and cooperative long-term political engagement with their compatriots, via the state, makes their national identity coincidental but not morally arbitrary. The intimate and coercive nature of this arrangement justifies the

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<sup>1</sup> Louis Kaplow & Steven Shavell, *Should Legal Rules Favor the Poor? Clarifying the Role of Legal Rules and the Income Tax in Redistributing Income*, 29 J. Legal Stud. 821 6 (2000)

<sup>2</sup> These issues have been somewhat addressed by the political science literature. *See generally* Alexander W. Cappelen, *The Moral Rationale for International Fiscal Law*, 15 Ethics & International Affairs 97 (2001) Thomas Rixen, *Tax Competition and Inequality* (copy with the author)

<sup>3</sup> This is a paraphrase on the following expression “[Y]our transgressions are many and your sins are great, you who...turn aside the poor at the gate” (Amos 5:12).

<sup>4</sup> Charles R. Beitz, *Justice and International Relations*, 4 Philosophy & Public Affairs 360 (1975); Thomas W. Pogge, *Realizing Rawls* (1989).

<sup>5</sup> Thomas Nagel, *The Problem of Global Justice*, 33 Philosophy & Public Affairs 113 (2005); David Miller, *Against Global Egalitarianism*, 9 Journal of Ethics 55 (2005); John Rawls, *A Theory of Justice* (1999); John Rawls, *The Law of Peoples* (1999). *See also* (making a somewhat similar point) Jack Goldsmith, *Liberal Democracy and Cosmopolitan Duty*, 55 Stan. L. Rev. 1667 (2003).

claim for distributive justice on the one hand; common humanity, on the other hand, gives rise only to claims of humanitarian assistance in times of crisis.

The essence of the conflict between the two approaches is the inherent clash in liberalism between the notions of impartiality and (democratic) national sovereignty. Nationality is something most do not choose but rather are born into, and therefore favoring compatriots requires biased rules, which are antithetical to the common liberal intuition that fair moral standards should be general and universal. However, as long as independent sovereign nation states comprise the world political system, global redistribution fundamentally conflicts with the notion of national sovereignty and accountability. It does so because different sovereigns are each accountable only to their own people, they act independently from each other, and they may even act against each other. Accordingly, no global redistribution is possible in the absence of an effective global political institution that governs how different peoples compete with each other. Simply put, in a world where North Korea may spend money without asking Japan for any authorization, and may indeed use it even to prepare for a war against Japan, the Japanese will not be willing to engage in any cross border redistribution of wealth—regardless of North Koreans’ poverty and the reasons for it.

The Liberal-Statist and Liberal-Cosmopolitan positions are distinct and dichotomous; therefore, the conflict over the scope of distributive justice claims is not likely to be resolved in the foreseeable future. More fundamentally, both approaches fail to provide any guidance to policymakers operating in a hybrid global reality. This reality does not align completely with either the Statist approach, because of the global market and its enhanced interconnectedness, or with the Cosmopolitan approach, because there are multiple state political entities operating independently. In the absence of such normative guidance, policymakers have only vague ideas of what political morality requires them to actually do. The absence of a concrete agenda thus makes it difficult to internalize distributive considerations into the operation of international and supra-national political institutions and to balance these considerations against other interests. More fundamentally, this lack of a concrete agenda suggests that there is a gap in the political philosophy discourse, which fails to reconcile individuals’ affinity towards compatriots with the notion that they should not concurrently be indifferent to questions of global poverty and inequality. The current discourse within liberal political philosophy renders it impossible to translate these very real sentiments into a political framework. The Article tries to fill this gap by offering an institutional analysis that evaluates how existing state-based international trade and tax institutions could be made to operate justly in terms of global wealth distribution. But, it does not aim to “solve the world” by inventing alternative political institutions to replace the current international political system.

The first objective of the Article is to advance the normative argument that it is not necessary to resolve the Liberal Statist v. Cosmopolitan debate to start thinking about what a more just allocation of global resources requires. The global distributive justice debate can and should be bypassed by focusing on the way in which cross-border trade relationships affect our moral duties to foreigners. I argue that international trade brings peoples from different countries materially closer and allows them to establish long-term economic relationships that once were limited to the local-domestic setting. Once these relationships are set, they give rise to what I coin as “relational-distributive claims and

duties.” The presence of these claims and duties helps to reconcile our moral distributive dilemma between our obligations to compatriots and to foreigners. Although the moral and redistributive obligations towards compatriots are generally stronger than the relational duties towards foreigners producing the consumer goods one purchases, I suggest that the accelerated integration of global economy makes obligations to foreigners more tangible.

I base my argument on three non-controversial assumptions: that human history is too complicated to allow historic rectification, that states will continue to exist,<sup>6</sup> and that most individuals are concerned about issues of global poverty and inequality. Using these assumptions, I examine the question of which *actual relationships* trigger claims and duties of redistribution. Most relational duties, such as the duties between adult family members, prescribe ethical principles with regard to the morality of human behavior but do not typically require any external intervention of political institutions.

The Article’s main theoretical contribution is the claim that these relational duties cause by globalization trigger distributive obligations towards foreigners and that these duties should affect the structure of international and supra-national institutions governing global trade. I establish this claim by demonstrating that commercial relationships between peoples living in developed and developing countries may fall into an unfair pattern—meaning that individuals living in developed countries tend to benefit from global inequality and poverty in the developing world because of the frequent unfairness in market transactions between them. Rather than developing a full theory of transactional fairness, I explain why these market transactions fall into categories that most people typically regard as immoral. Even though both parties arguably benefit from voluntary transactions, they may be regarded as unfair if the benefits are unevenly skewed to one party because of the low bargaining power of the other party that results from an endowed vulnerability. This concern is exacerbated when the vulnerable party has no real impact on the rules governing commercial interactions and when market returns do not allow that party to meet minimal decent life standards. Unfortunately, this case often arises with international trade. However, we should not conclude that engaging in global trade with developing countries is morally wrong, or that global trade harms individuals in developing countries. The unfair pattern merely points out that long-term commercial relationships give rise to relational duties and that relationships taking place in an international setting are not fundamentally different from those in domestic settings. Critics may argue that relational duties have nothing to do with redistribution but merely with reciprocal good conduct practices (e.g., the duty to enter a contract in good faith). I, however, argue that in a reality in which global inequality and poverty considerably impact international trade’s allocation of benefits, “fair business conduct” compels parties to mitigate the impacts of the allocation in light of the seemingly inherent disadvantages of the vulnerable party.

This unfair pattern is not a sign of moral faultiness but a systemic problem. In a competitive market, individuals from developed countries have no alternative but to reduce their costs as much as they legally can. This is therefore a classic common-action problem,<sup>7</sup> in which market mechanisms prevent us from addressing the negative moral

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<sup>6</sup> Which entails a continuous adherence to favorable treatment of compatriots.

<sup>7</sup> The economic theory of public goods justifies common-action. In its basic form, this theory suggests that the free market cannot efficiently supply these goods—e.g., national security and clean air—because they

externalities of our trade relationships with foreigners. This common action problem justifies a political response, which assures that relational duties are met, or compensated for when breached.

Addressing these relational duties requires restructuring the rules and institutions governing international trade. As such, the second objective of the Article is to advance an institutional framework through which relational distributive duties could be met. Put differently, the first objective is to identify the source of the redistributive duty; the second objective is to suggest some concrete measures that can help policymakers quantify and balance that duty with other considerations. In this context, I suggest that international tax allocation arrangements are one appropriate way to accommodate these global relational redistributive duties.

This proposal captures two important (and realistic) conceptual insights about what would be required from an effective and politically sustainable international distributive scheme: First, it requires transfers among states and cannot rely on the private or NGO sectors; and second, it requires some type of (commercial) relationship to trigger distributive claims and duties among peoples. Because international tax law is an inherent part of every cross border transaction, the allocation of taxing rights could be used as an alternative to direct regulation of business practices thought to be unfair. Instead of decreasing international trade's negative moral externalities by limiting business practice, the international tax regime (ITR)—which is the set of conventions that allocate the “right to levy tax” from commercial activities involving locations and/or residents from more than one jurisdiction—should include allocation conventions that compensate for those externalities by transferring wealth, in the form of taxing rights, to developing countries. Accordingly, in the international context, the ITR should be understood as a macro price-correction mechanism that relies on the volumes of trade between given developed and developing countries as a proxy for the relational duties between their peoples. I contextualize the analysis by briefly discussing how relational-distributive duties impact the allocation of taxes between source and residence jurisdictions—a core issue in international income taxation. I further point out that analyzing relational-distributive duties bears crucial significance on the most important ITR allocation challenge today—allocating income taxes derived from the activities of MNEs.

An examination of both the legal-economic literature dealing with the ITR and the liberal philosophy literature dealing with international distributive justice reform reveals that with very few exceptions,<sup>8</sup> the underlying relationship between ITR arrangements

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are non-rivalrous and non-excludable. Absent government action, these goods would go underprovided because of individuals' rational tendency to free ride. Rational individuals would therefore seek to establish institutions that would assure the provision of these public goods through obligatory common action.

<sup>8</sup> Reuven S. Avi-Yonah, *Globalization, Tax Competition, and the Fiscal Crisis of the Welfare State*, 113 Harv. L. Rev. 1537 (2000); Brian Barry, *Humanity and Justice in Global Perspective*, in Ethics, Economics, and the Law Nomos XXIV, 241-43, (J. Roland Pennock & John W. Chapman eds., XXXX).; Alexander W. Cappelen, *National and International Distributive Justice in Bilateral Tax Treaties*, 56 Finanzarchiv 424 (1999); Alexander W. Cappelen, *The Moral Rationale for International Fiscal Law*, 15 Ethics & International Affairs 97 (2001); Michael J. Graetz, *Taxing International Income: Inadequate Principles, Outdated Concepts, and Unsatisfactory Policies*, 54 Tax L. Rev. 261 (2001); Charles R. Irish, *International Double Taxation Agreements and Income Taxation at Source*, 23 Int'l & Comp. L.Q. 292

and different theories of global distributive justice has been largely neglected. Even though the domestic tax policy literature and the philosophic literature dealing with domestic redistribution identify the tax-and-spending system as the major redistributive policy device, there is hardly any reference to the ITR as an option to promote global wealth distribution. Normative theories' failure to include international fiscal policy in their analysis could be explained by the enormous complexity of tax laws. Understanding ITR rules and conventions involves exceptionally high learning costs, which are far less intuitive than the conventions underlying international trade law. Tax scholars, on the other hand, find it difficult to engage in a normative discussion about the ITR given the multiple standards of welfare and redistribution that could be employed.<sup>9</sup>

The way in which the Article approaches the issue of global wealth distribution deviates significantly from the traditional *Cosmopolitan v. Statist* debate. It provides a normative framework that aligns well with prevalent moral intuitions that global inequality and poverty in the developing world matter but do not prevail over duties to compatriots. More importantly, even though it offers no resolution for the moral dilemmas associated with the global distributive justice debate, it does offer a set of normative and policy conclusions through which realistic solutions could be developed and implemented. It does so within the boundaries of existing global political reality where interaction among sovereign states is the underlying force shaping global order. This allows policymakers to overcome the failure of current political philosophy discourse to provide them with guidance. Moreover, rather than engaging in the *Liberal Cosmopolitan v. Statist* debate, it urges philosophers and policymakers to establish a new discourse to determine which attributes in global trade trigger relational-distributive duties among peoples. Such a discourse is necessary to provide a baseline for any future reform in the political structure governing international trade and the ITR.

Part II describes the current liberal *Cosmopolitan-Statist* debate on global redistribution. Part III explains the concept of relational duties and Part IV delineates the scope of the inquiry. Part V explains why international trade results in relational duties between peoples living in developed and developing countries. Part VI then discusses why the inability of the parties to address these relational duties invokes redistributive political justice questions. Part VII offers the ITR as a viable mechanism to address these relational duties, by briefly explaining its current operation and structure and by analyzing how the "right to tax" should be allocated between developed (capital-exporting) and developing (capital-importing) countries. Finally, Part VIII offers several brief conclusions.

## II. The (Deadlocked) State of the Liberal Debate

The conflict between liberal cosmopolitanism, which stresses the importance of global redistribution across-borders, and state-centered liberalism, which argues that

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(1974); Nancy H. Kaufman, *Fairness and the Taxation of International Income*, 29 *Law & Pol'y Int'l Bus.* 145 (1998).

<sup>9</sup> Daniel N. Shaviro, *Does More Sophisticated Mean Better? A Critique of Alternative Approaches to Sourcing the Interest Expense of U.S. Multinationals*, 54 *Tax L. Rev.* 353 (2001) (relating to the difficult of making determinations about the appropriate welfare benchmark).



wealth redistribution should be limited to the politically accountable unit of the nation state, is decades old. Rather than exploring each of these positions in great depth, this Article seeks to explain why no convincing theory has yet been able to reconcile these opposing views. Independently, both Liberal-Cosmopolitanism and Liberal-Statism approaches are appealing and intuitive in some respects, but they are also materially deficient in others. The inability to bridge the two sides has incapacitated further evolution of the debate. As a result, liberal political philosophy has not equipped policymakers with the tools necessary to address global redistribution issues, even though there is a general sense that global poverty and inequality are a source of moral concern. Indeed, clarifying the normative debate over global redistribution is the most important challenge faced by contemporary political philosophy today because it would allow distributive justice considerations to influence the development of international and supranational institutions.

#### A. *Two Worlds on One Planet*

Details over third world poverty and world inequality are readily available in the information bombarded developed world. The details themselves, whether conveyed in sensational coverage of dire human tragedies or statistical figures, are shocking—revealing huge human suffering.<sup>10</sup> In 2005, about 40% of the world's population lived on below \$2 per day, child mortality in Sub-Saharan countries was about thirty times higher than in Organization for Economic Co-operation and Development (“OECD”) countries and maternity mortality rate is fifty times higher in the developing world than in the developed world.<sup>11</sup> These statistics as well as many others, can only give us, the privileged residents of the developed world, a vague idea of the pervasiveness of extreme poverty and the imminent hardship associated with it.

That the above figures are (or at least should be) a source of moral discomfort to well-off individuals in developed countries is fairly uncontested. Moreover, it is not relevant to this analysis whether this moral discomfort originates from the fact that much of the human suffering is a direct result of past injustices (e.g., colonization, slavery) or that it could easily be avoided (e.g., infant mortality from preventable diseases), or whether it stems from a “feeling” that all human beings are equal in some important ways and should not be born into a life of misery. What is relevant, however, is that this moral discomfort is widespread and real.

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<sup>10</sup> Shaohua Chen & Martin Ravallion, *Absolute Poverty Measures for the Developing World, 1981-2004* World Bank Policy Research Working Paper 4211 at [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2007/04/16/000016406\\_20070416104010/Rendered/PDF/wps4211.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2007/04/16/000016406_20070416104010/Rendered/PDF/wps4211.pdf).

<sup>11</sup> All the data is collected from the web cite of the World Bank. The data reflects figures for the year 2005. This means that the estimates do not reflect the potentially large impact of rising food and fuel prices in recent year—which have most likely increased poverty measures in the developing world. See Who, et al., *Maternal Mortality in 2005* 16 (2007); World Bank, *Data on Poverty and Inequality--Overview*. at <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/EXTPA/0,,contentMDK:20153855~menuPK:435040~pagePK:148956~piPK:216618~theSitePK:430367,00.html>.; World Bank, *HNPstats*. at <http://ddp-ext.worldbank.org/ext/DDPQQ/member.do?method=getMembers..>

Human poverty is hardly new. In fact, in relative terms, it has declined during the last decade.<sup>12</sup> The focus of this Article's inquiry is the changes that have occurred in the socio-political frameworks in which global poverty or inequality exist, and on the moral impact of these changes.

The post-Cold War establishment of open and liberalized global markets appeared to be the ultimate triumph of western ideology. It also created the impression, however, that nation states may no longer be able to take care of their poor citizens when faced with pressures of a world economy governed by strict neoliberal conventions.

This concern is aggravated by the fact that world markets operate at an accelerated pace, as technological advancements allow people to transfer commodities, capital, and information much more quickly and reliably than ever before. One aspect of this advancement, that typically goes unnoticed, is that technological advancements have also made it possible to effectively distribute commodity surpluses and wealth among nations and peoples, perhaps for the first time in human history. Hence, the unprecedented wealth produced by global markets highlights how little has been done (in comparison to what could be done) to use this wealth to reduce human misery in the developing world.

Nevertheless, the widespread moral discomfort with global poverty and inequality has not resulted in any agreement as to how to mitigate them. The new technological option of materially mitigating global poverty and inequality has, however, intensified debates in contemporary liberal political philosophy about these issues.<sup>13</sup>

Liberalism emerged from Kantian moral philosophy, which considers all individuals as equal moral agents. In the political context, the notion of equal moral worthiness prescribes that individuals should not be treated differently by political institutions because of factors they do not control (e.g., gender, race) or attributes that are part of their personal lives (e.g., religion, sexual orientation). Furthermore, in the second half of the twentieth century, liberal philosophers have extended this idea to argue that the notion of equal moral worthiness prescribes that individuals should not be put at a relative disadvantage because of things beyond their control.<sup>14</sup> There is of course great controversy over what comprises acts of will and what is pure luck,<sup>15</sup> and whether the state should be responsible for offering equal opportunity or just sufficient opportunities to all,<sup>16</sup> but the basic idea is relatively appealing and intuitive. From a liberal perspective, individuals are equal moral agents, and they should be able to have a fair opportunity to lead a meaningful and autonomous life regardless of the race, class and religious groups they were born into.<sup>17</sup>

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<sup>12</sup> World Bank, *Data on Poverty and Inequality--Overview*. at <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/EXTPA/0,,contentMDK:20153855~menuPK:435040~pagePK:148956~piPK:216618~theSitePK:430367,00.html>.

<sup>13</sup> As the references below reveal the vast majority of the literature dealing with this issue has been written in the last ten years.

<sup>14</sup> Anne L. Alstott, *Equal Opportunity and Inheritance Taxation*, 121 Harv. L. Rev. 469 476 (2007) (providing a thoughtful summary of this literature); Ronald Dworkin, *What is Equality Part 2: Equality of Resources*, 10 Philosophy and Public Affairs 283 (1981).

<sup>15</sup> *Id.*

<sup>16</sup> Harry Frankfurt, *Equality as a Moral Idea*, 98 Ethics 21 (1987).

<sup>17</sup> Technically, nationality religion and even sex are mutable categories. However, de facto, for the vast majority of humanity changing these categories is not really a viable option and therefore the Article will treat these categories as immutable.

In the context of this article, the debate over global distributive justice produced two camps within liberal political philosophy: Cosmopolitanism and Statism.

### *B. Cosmopolitanism*

Contemporary Liberal-Cosmopolitan philosophers argue that policymakers should abandon current state-centered redistribution conceptions in favor of a more position that does not distinguish among individuals by their nationality.<sup>18</sup> While these cosmopolitan philosophers may be trailblazing vanguards or prisoners of their ivory-towers, their monist claims—that the only units of moral concern are human beings, and that all human beings are morally equal and should be treated accordingly<sup>19</sup>—are forceful and deserve addressing.

Liberal-Cosmopolitans evaluate political institutions in accordance with how promote those institutions regard all human beings.<sup>20</sup> This moral evaluation encompasses two important stages marking the development of contemporary Liberal-Cosmopolitan philosophy, each of which was triggered by the works of the influential philosopher John Rawls and the feeling among Liberal-Cosmopolitans that his works do not sufficiently take into account issues of global inequality and poverty. In his landmark book, “A Theory of Justice,”<sup>21</sup> Rawls reshaped liberal thought, claiming that the operation of just institutions are those agreed upon by rational individuals positioned behind the “veil of ignorance.” The veil of ignorance is a thought experiment—in which individuals are thought to have no information whatsoever about their actual position, the possible positions, and their probabilities. It is therefore a method designed to avoid any particularity from shaping political institutions, and it relies on the reasoning of hypothetical agents that are forced to be impartial by their ignorance. From this thought experiment, Rawls derived his famous two general principles of justice—the liberty and difference principles—which require the protection of basic liberties and the equitable provision of five primary goods.<sup>22</sup> Although a deep analysis and critique of the Rawlsian theory goes well beyond the scope of this inquiry, it is important to note that in “A Theory of Justice,” Rawls constrains his principles of justice to the political unit of the nation state and remains intentionally brief and vague as to why he does so.<sup>23</sup>

The first stage of Liberal-Cosmopolitanism challenged this confinement of the Rawlsian analysis to the nation state political unit.<sup>24</sup> Philosophers like Charles Beitz and Thomas Pogge have claimed that the Rawlsian assumption that domestic political institutions operate as a closed system that distributes fundamental rights and duties conflicts with reality. In reality, individuals’ access to fundamental rights is also affected

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<sup>18</sup> Among the recent influential works of Liberal Cosmopolitans one can include: Thomas Pogge, *World Poverty and Human Rights*, 19 *Ethics & International Affairs* 1 (2005); Kok-Chor Tan, *Justice Without Borders – Cosmopolitanism, Nationalism and Patriotism* (2004).

<sup>19</sup> Charles Beitz, *Cosmopolitanism and Global Justice*, 9 *Journal of Ethics* 11 (2005); Andrea Sangiovanni, *Global Justice, Reciprocity, and the State*, 35 *Philosophy & Public Affairs* 3 (2007)

<sup>20</sup> They do not (explicitly) tie the cosmopolitan ideal to the existence of a global state, however. See Kok-Chor Tan, *Justice Without Borders – Cosmopolitanism, Nationalism and Patriotism* 5 (2004).

<sup>21</sup> John Rawls, *A Theory of Justice* 40-168 (1999)

<sup>22</sup> Rawls defines the primary goods as goods “every rational person is presumed to want” whatever else he wants, including liberty opportunities, wealth, income and the social bases for self respect. *Id.* at 54

<sup>23</sup> *Id.* at 6-8

<sup>24</sup> The constitutive works of Liberal Cosmopolitans at this stage are: Charles R. Beitz, *Political Theory and International Relations* (1979); Thomas W. Pogge, *Realizing Rawls* (1989).

by the interactions among states, market forces, and international mechanisms over which the state sometimes has little or no influence (e.g., supra-national institutions or foreigners participating in the domestic economy as investors).<sup>25</sup> Accordingly, Liberal-Cosmopolitans argue that, to be faithful to its own principles, Rawls's theory should adhere to its liberal individualistic framework. This framework should disregard national borders as no more than an arbitrary distinction and looks only at individuals.<sup>26</sup> Because individuals are born into their nationality, their "national endowments" are morally arbitrary and the veil of ignorance should extend so that rational agents making decisions behind it would not be aware of them. If this was to happen, the Rawlsian framework itself would prescribe that just political institutions would apply the two principles of justice to all human beings.<sup>27</sup> This extension of Rawlsian distributive theory thus sets a high universal standard and requires mass transfers of resources from developed to developing countries.

The second stage in Liberal-Cosmopolitan thought emerged as a reaction to Rawls's later book—"The Law of Peoples" in which he explicitly addressed, and rejected, an extension of his distributive theory to the international arena. Rawls acknowledged that all individuals are entitled to have their basic humanitarian needs met, especially in times of crises in which states may not be able to supply even minimally acceptable levels of basic provisions.<sup>28</sup> These humanitarian-rescue duties that people have towards other peoples, which he framed as "the duty of assistance," differ from the domestic distributive obligations triggered by inequality. In response, Pogge published a collection of essays in which he re-articulated the notion of global redistribution duties,<sup>29</sup> which had a broader and more tangible appeal than the initial classical Liberal-Cosmopolitan argument. He argued that even from a minimalistic libertarian perspective, peoples of developed nations have a duty not to harm those in developing nations. He then demonstrated how existing international arrangements actually harm peoples of developing countries. This includes anti-dumping arrangements, agricultural subsidies and intellectual property regulatory regimes all which favor the interest of developed countries at the expense of perpetuating the disadvantages and humanitarian deficits of less-developed countries and reducing the welfare of their citizens. From an empirical perspective, many of Pogge's claims are counterfactual and have been persuasively criticized as speculative.<sup>30</sup> Some of his other claims are, nevertheless, well established. For example, the international legal system harms people of developing countries when

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<sup>25</sup> Charles R. Beitz, *Political Theory and International Relations* 144-47, 166 (1979); Thomas W. Pogge, *Realizing Rawls* 219 (1989)

<sup>26</sup> Charles R. Beitz, *Political Theory and International Relations*, 53-54 (1979); Thomas W. Pogge, *Realizing Rawls* 247 (1989).

<sup>27</sup> Charles R. Beitz, *Political Theory and International Relations* 138-140, 151-152, 164 (1979); Thomas W. Pogge, *Realizing Rawls* 240-44 (1989)

<sup>28</sup> John Rawls, *The Law of Peoples* 113-20 (1999). Rawls argues that the underlying motivation behind this Rawls's position is his notion of tolerance and the idea that peoples should not be required to adopt a liberal regime. Once different types of legitimate regimes are present in the international arena, each regime should be allowed to pursue its own objectives, and, should be held accountable to them.

<sup>29</sup> Thomas Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (Polity, 2002). For a summary of the arguments made in the book see Thomas Pogge, *Real World Justice*, 9 *Journal of Ethics* 29 (2005).

<sup>30</sup> Mathias Risse, *How Does the Global Order Harm the Poor?*, 33 *Philosophy and Public Affairs* 349 (2005).

protecting the resource and borrowing privileges of tyrant and corrupt governments and holding the state liable to agreements made by those governments. The willingness of Western governments and business entities to collaborate with these governments constitutes a casual relation to the misery of the people of corrupt governments.

It is, however, difficult to draw a cause-and-effect connection between the privileges of the developed countries and the actual harm they inflicted on developing countries.<sup>31</sup> For example, should the citizens of the United States, Britain, Ireland, Israel, and Finland all be considered as preventing or causing harm when the International Monetary Fund (“IMF”) (along with other financial conglomerates) agreed to bail out South Korea during the 1998 East Asia financial crisis but refused to do the same later with Argentina? Should they be considered as harming peoples of developing countries when western financial institutions lend money to developing countries, or when they refuse to do so? Should they be considered as causing or preventing harm when those banks forgive some, but not all, of the debt owed to them by developing countries (e.g., the case of Argentina)? These questions demonstrate how limited Pogge’s theory is in providing guidelines to construct actual global redistributive policies. In other words, Pogge’s ideas of rectification fail to provide any practical guidance as to how much redistribution should there be, and more importantly, they do not help identify what occurrences trigger a distributive duty.

Pogge made clear that he regarded his later proposal—that there is a minimal duty not to harm—as a second-best alternative for explaining distributive duties. The best alternative, in his opinion, was still the original argument: that the ultimate duty to redistribute wealth from developed to developing nations is anchored in a positive duty to account for the equal moral importance of individuals.<sup>32</sup> This duality in Pogge’s position highlights the main contribution of his normative innovation. In his later work, Pogge shifted the Liberal-Cosmopolitan ambition to avenues more compatible with individuals’ ordinary perceptions. Rather than advocating for an all-or-nothing solution—which stresses complete moral equality between compatriots and foreigners—he emphasized the presence of a preliminary duty not to harm other humans (or to compensate for the harm one has inflicted). Focusing on the alleged harm inflicted by the current system on peoples of developing countries, Pogge reframed the obligations towards them as negative duties (duties not to harm) and, by doing so, appealed to a broader audience. For Pogge, a devoted Liberal-Cosmopolitan, this reframing came at the cost of significantly narrowing peoples’ duties to only include remedying casually linked disadvantages. Therefore, he essentially adopted his second-best reality proposal: peoples living in developed countries would not have to allocate resources to mitigate the disadvantages they did not cause—no matter how devastating their consequences may be (e.g., the AIDS epidemic in Africa). He, therefore, paved the way to a new non-utopian philosophic discourse over global distributive justice issues that promotes arguments other than the merits of complete and unconditional equality between foreigners and

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<sup>31</sup> See generally Alan Patten, *Should We Stop Thinking about Poverty in Terms of Helping the Poor?*, 19 *Ethics & International Affairs* 19 (2005); Mathias Risse, *Do We Owe the Global Poor Assistance or Rectification?*, 19 *Ethics & International Affairs* 9 (2005).

<sup>32</sup> Thomas Pogge, *A Cosmopolitan Perspective on the Global Economic Order*, in *The Political Philosophy of Cosmopolitanism* 93-95, (Gillian Brock & Harry Brighouse eds., 2005).; Debra Satz, *What Do We Owe the Global Poor?*, 19 *Ethics & International Affairs* 47 (2005).

compatriots. Moreover, by trying to win broader appeal, Pogge opened a discourse that takes into account common perceptions as a relevant consideration in the global distributive justice moral debate.

For Liberal-Cosmopolitans, globalization did not change anything. It just made the attempt to assign moral value to states more evidently absurd. Given the strong commitment of liberal scholarship to notions of moral equality, impartiality, and adequate opportunity to all—how can any liberal possibly differentiate between individuals according to their nationality? How can a liberal political arrangement possibly exclude itself from addressing tremendous human suffering and lack of meaningful opportunities simply because it involves the bad fortune of individuals who happened to be born in foreign nations?

The notion that moral equality gives rise to the belief that all humans are entitled to some equal provision of certain basic goods cannot, however, be separated from the question of what global political regime should enforce and supervise this provision. Most Liberal-Cosmopolitans try to avoid linking the Liberal-Cosmopolitan ideal to the global state concept. Even though they do not call to abolish states, they tend to remain intentionally (and suspiciously) vague about the actual mechanism through which global distribution should be enforced. This, undoubtedly, is Liberal-Cosmopolitanism's Achilles heel.

### C. Statism

Liberal-Statists are at an inherent philosophic disadvantage when confronted with Liberal-Cosmopolitans' critique. Given the strong commitment of liberal thought for moral equality, impartiality, and the right of all individuals for an opportunity to conduct a meaningful life, how can one morally justify the political structure of nation states and their bias towards compatriots?

Most Liberal-Statist philosophers would agree that a moral political structure would have for account to foreigners' common humanity.<sup>33</sup> They contend, however, that common humanity can only justify wealth transfers and interventions on a rescue basis—when foreigners suffer from absolute deprivation of human autonomy and dignity. This common humanity is insufficient to trigger robust redistributive obligations aimed at reducing relative deprivation caused by inequality, however. Liberal-Statists argue that the existence of collaborative political institutions, which also have the coercive power to force actions on their members, fundamentally alters the connection among individuals, and that distributive justice claims only arise in the context of this unique association, which is based on mutual commitment.<sup>34</sup> A detailed inquiry into the subtleties of the above position is unnecessary, because all of us experience it on a daily basis; for example, we are aware of famines, but endorse the political reality in which providing costly medication to Medicaid recipients has priority over providing food to distant foreigners.

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<sup>33</sup> Michael Blake, *Distributive Justice, State Coercion, and Autonomy*, 30 *Philosophy & Public Affairs* 257 (2001)

<sup>34</sup>Id. at ; David Miller, *Against Global Egalitarianism*, 9 *Journal of Ethics* 55 (2005); Thomas Nagel, *The Problem of Global Justice*, 33 *Philosophy & Public Affairs* 113 (2005); Andrea Sangiovanni, *Global Justice, Reciprocity, and the State*, 35 *Philosophy & Public Affairs* 3 (2007)

Thinking of nationality in terms of commitment is appealing but problematic. Nationality is formalistic and, in most cases, an involuntary association. Why should an American of Mexican descent living north of the Rio Grande be committed to help finance wealth transfers and government services to American citizens that live on the other side of the Mississippi River or the Atlantic Ocean? Would it not be more plausible to assume a stronger commitment between this particular American citizen and her Mexican neighbors on the south bank of the river?

Liberal-Statists have a multilayer reply to this critique. First, they point out that in many instances national group memberships correlate relatively well with other group memberships based on similar historic, ethnic, cultural and linguistic backgrounds. Second, the notion that all individuals are entitled to certain universal rights does not mean that the burden (of the positive duties) to assure those rights falls equally on all human beings.<sup>35</sup> Any type of reasonable political theory would have to account for the fact that individuals have stronger obligations towards others that have reciprocal obligations towards them. Even though the act of entry into a nation is pure luck, once membership is established, it is accompanied by reciprocal rights and obligations. Most individuals live their lives in ways that suggest they accept that the reciprocal relationship among them and their fellow compatriots carries significant moral weight.<sup>36</sup> Regardless of whether Liberal-Cosmopolitans regard this as right or wrong, this tendency of human nature is something of which (non-utopian) political philosophy should take into account.

More importantly, despite the recent wave of globalization, world markets and the international organizations that help coordinate and regulate their operations have not come close to replacing the role of the state. Although this may change over time, contemporary international markets and political settings do not exercise the same level of control over individuals' lives—they lack coercive power and have no effective mechanism to directly assign personal claims or duties.

Each country has to take into consideration the policies of other governments but is accountable to its own people; thus it *determines by itself* which policies it wants to pursue. In this type of political setting, the attempt to establish a global safety net through cross-national redistribution is bound to be ineffective and, in many cases, will lead to politically absurd and unsustainable results. Two points stand out about cooperative redistributive enterprises that are formulated and driven at the nation-state level. First, to be effective, a redistributive enterprise requires cooperation among participating governments and a minimal level of competence in governments receiving aid.<sup>37</sup> Second, and more importantly, the notion of national self-government and accountability is inconsistent with the ideals of cosmopolitan egalitarianism.<sup>38</sup> This is because governments' policies reflect, to a certain extent, the preferences of their

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<sup>35</sup> Henry Shue, *Mediating Duties*, 98 *Ethics* 687 (1988); David Miller, *Cosmopolitanism: A Critique*, 5 *Critical Review of International Social and Political Philosophy* 80 (2002). See also Andrew Mason, *Special Obligations to Compatriots*, 107 *Ethics* 427 (1997) (providing an interesting account for what the concept of citizenship should mean to justify these obligations).

<sup>36</sup> David Miller, *National Responsibility and International Justice*, in *The Ethics of Assistance* 124, (Deen K. Chatterjee ed., 2004).

<sup>37</sup> Mathias Risse, *What We Owe to the Global Poor*, 9 *Journal of Ethics* 81 (2005)

<sup>38</sup> David Miller, *Against Global Egalitarianism*, 9 *Journal of Ethics* 55 (2005)

peoples—so each people should bear the consequences of its policies.<sup>39</sup> Cosmopolitan egalitarianism thus undermines national accountability because it requires people from one political entity to transfer funds to other peoples, which are subject to political institutions over which they have no influence.

The above concern is not a theoretical deficiency, but a fundamental practical-political obstacle that makes any international redistribution inherently unsustainable. For example, Israel, Saudi Arabia, and Syria are countries in conflict with each other. Assume, solely for the purpose of this example, that all three nations have democratically elected governments that reflect their peoples' will. Any claim for cosmopolitan distributive justice would require disregarding that conflict, and have Israel and Saudi Arabia transfer funds to Syria, which is by far the poorest of the three countries. Even if Syria would have been required to use these funds only to improve its provision of healthcare services, the transfers from Israel and Saudi Arabia would still leave it with more resources to better prepare for a future conflict with them. This is politically unsustainable. No Israeli or Saudi government could agree or persuade their voters to support such a redistributive scheme, and no Syrian government could ever have this claim enforced. Significantly, this problem is inherent in any cosmopolitan redistributive scheme; because *money is fungible*, it could not be corrected by having Israel and Saudi Arabia make transfers to an international organization that would then allocate it to Syria and other less-developed countries. Accordingly, if developed countries were forced to make transfers to such an organization, the United States and the United Kingdom could indirectly help countries such as North Korea, Belarus, and Zimbabwe. By doing so, they would take off some of the economic burden from those governments and, in a sense, indirectly subsidize their policies.

Liberal-Cosmopolitans may argue that (relatively) affluent Israelis have indeed cosmopolitan duties of wealth redistribution to (relatively) poor Syrians. They would probably concede, however, that Israelis are not required to transfer funds to Syrians but would argue this does not mean that the cosmopolitan duties do not exist, but merely that they are trumped by (national and personal) security considerations.<sup>40</sup> While there is no controversy that, by the virtue of their common humanity, Syrians and Israelis owe humanitarian duties to each other,<sup>41</sup> the notion that they have redistributive duties is not only meaningless—because they currently can not be met—but also are counter-intuitive. By the same token, those Liberal-Cosmopolitans would have to endorse that (relatively) affluent American Jews had redistributive duties towards poor Germans in 1943, and that (relatively) rich Tutsis living at Burundi had distributive duties towards poorer Hutus living in the neighboring Rwanda during the 1994 genocide.

The above two, admittedly extreme and provocative, examples illustrate a deeper point, however. Statists' objection to global redistribution is deeply rooted in the well established notion within contemporary liberal political philosophy that questions of justice, and distributive justice, can only be meaningfully addressed in a beyond-crisis

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<sup>39</sup> Seyla Benhabib, *The Rights of Others – Aliens, Residents and Citizens* 103 & 112 (2004); David Miller, *National Responsibility and International Justice, in The Ethics of Assistance* 124, (Deen K. Chatterjee ed., 2004)..

<sup>40</sup> I thank David Pozen for bringing this forceful objection to my attention.

<sup>41</sup> E.g., those duties imposed under the Geneva conventions, which provide citizens and soldiers of enemy countries with some minimal set of rights under the law of war.



social setting. Only a society which assures a certain sustainable level of personal safety and political stability, and where no large-scale conflict or famine exists, can “afford” to develop just political institutions.<sup>42</sup> Accordingly, states’ sovereignty and accountability to their own peoples undermine the notion of long term international stability, and, indeed, the international arena has for many years been considered as a Hobbesian “State of Nature.”<sup>43</sup> Although world history may, hopefully, be progressing to a much more peaceful era, state sovereignty still imposes a challenge to cross border redistribution. For example, Germans living in the West side of the Berlin wall probably felt very close to those living on its east side, but mass redistribution between them became possible only once the conflict between East and West Germany ended.

This example demonstrates why redistribution on the international level is very different from domestic redistribution. Even in the case of countries like the United States—which are comprised of fifty smaller semi-autonomous political units—federal supervision helps to overcome problems of competence, cooperation and conflict. People in Massachusetts may have very different opinions than those living in Texas, and this may indeed lead them to structure their local and political affairs differently. However, despite all their differences, wealthy individuals living in Massachusetts would likely be much more willing to comply with a federal redistributive program benefiting poor Texans than Israelis would be willing to comply with a program benefiting Syrians. It is not only that Texas will not use this money to disadvantage Massachusetts in the same way Syria may use it against Israel, but also that people in Massachusetts know that, at a time of national crisis, Texans would be responsible for cooperating with them to alleviate the source of the crisis. It is therefore apparent that humanity is not enough, and that a long-term reciprocal commitment is required to trigger a *viable* political distributive justice claim in a multi-state political reality.

Given the above, most Liberal-Statists would agree that the Liberal-Cosmopolitan vision is a utopian ideal—desired, yet unachievable. In a world divided into different national apparatuses, no cosmopolitan egalitarian scheme is possible. Many Liberal-Cosmopolitans would be forced to agree to this proposition, but would reply with another quandary: what does it mean to be a liberal and to recognize that all human beings are of equal moral worth if *de facto* significant numbers of human beings do not deserve any material consideration because they are foreigners? If by the virtue of their humanity, those foreigners are entitled to *some rights* that they are not receiving from their own state, who has the duty to assure that these rights are provided? How can foreigners’ rights mean anything if no one has an effective correlative duty to assure it is provided? How can a bias towards compatriots be reconciled with the Kantian position that all humans are of equal moral worth? How can we justify the moral waste that occurs when developed countries invest enormous amounts in their own citizens when it is much cheaper to alleviate foreigners’ right deficiencies?<sup>44</sup>

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<sup>42</sup> John Rawls, *A Theory of Justice* 5-6 (1999)

<sup>43</sup> Thomas Hobbes, *Leviathan* 63 (1651)

<sup>44</sup> These questions demonstrate how the Cosmopolitan Statist debate within liberalism echoes on another fundamental debate within liberalism between equality and autonomy. Sovereignty could be seen as a form of autonomy and therefore there is an inherent conflict between it and arguments for equality. I thank Alon Harel for sharing this insight with me.

#### *D. Identifying the Problem: Global Poverty in the Crossroad of Two Conflicting Liberal Intuitions*

Rather than adding another argument to the Statist-Cosmopolitan debate, this Article tries to identify the source of the controversy. It claims that the controversy originates from the two conflicting intuitions that emerge out of liberal thought: the intuition that rules should be impartial and the intuition that the liberal ideal could only be reasonably achieved within the framework of the nation state, which is based on past historic experience and analytical thinking.<sup>45</sup> As I explain below, these two intuitions are key to understanding how political institutions and moral arguments are framed in liberal democracies.

Modern liberal theory requires political arrangements to be just, so that all rational individuals will agree to them.<sup>46</sup> This requires liberal arguments to be impartial. Impartiality, as a methodological tool, validates the legitimacy of rules because it ensures that their application is general and is not contingent on morally arbitrary factors (e.g., race, gender, religion).<sup>47</sup> For this reason, partiality is often considered as a proxy for injustice, because individuals should be held accountable for their actions and, to a certain degree, their preferences but should not be disadvantaged due to things beyond their control. Thus, there is a strong bias in liberal thought against any distinction based on endowment that is considered partial and unjust.

Even though liberalism is committed to impartiality, it also inherently relates to the notion of democratic sovereignty. In liberalism, the premise that all humans carry equal moral weight suggests that democracy, in which every person has an equal opportunity to vote and influence public policy, is the practical political structure according to which individuals' claims from society and responsibilities to it should be determined. There is also a historic connection between liberalism and democracy; liberalism developed in Western Europe during roughly the same period that national ideologies and nation-states developed there.<sup>48</sup> Thus, to date, democratic sovereignty has only been effectively exercised within the nation-state's political framework—that is, only democratic nation-states have been able to execute policies that endorse liberal values, e.g., legal regimes that protect human rights and tax-spending policies that sponsor welfare state provisions.<sup>49</sup> In contrast, very few Liberal-Cosmopolitans argue

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<sup>45</sup> This claim that the international arena cannot provide a stable political framework could be traced to Hobbes. See Thomas Hobbes, *Leviathan* 63 (1651) (stating “yet in all time kings, and persons of sovereign authority, because of their independency, are in continual jealousies and in the state and posture of gladiators”).

<sup>46</sup> John Rawls, *A Theory of Justice* 3-6, 10-15, 47-52 (1999)

<sup>47</sup> Robert Goodin, *Protecting the Vulnerable* 1 (1985)

<sup>48</sup> See generally Yael Tamir, *Liberal Nationalism* 140-50 (Princeton University Press, 1993).

<sup>49</sup> Mark Beeson, *Globalisation, the State and Economic Justice: Paper for Ethics and Australian Foreign Policy, Symposium at the University of Queensland*, 9 (2003); Wilfred L. David, *The Humanitarian Development Paradigm Search for Global Justice* 241 (2004); David Miller, *The Ethical Significance of Nationality*, 98 *Ethics* 647 (1988) (claiming that “[t]he universalist case for nationality, therefore, is that it creates communities with the widest feasible membership, and therefore with the greatest scope for redistribution in favor of the needy. Smaller units would be hampered by their limited resource base; wider units, although advantageous for the reverse reason, would be unable to generate a distributive consensus”). See also Robert E. Goodin, *What is So Special about Our Fellow Countrymen?*, 98 *Ethics* 663 (1988) (arguing that “Territorial boundaries are

that a world democracy would be an optimal arrangement—precisely because they fear that these characteristics can only be achieved within nation-state frameworks.<sup>50</sup>

The cleft between these intuitions is straightforward and inevitable because nationality, like race, is in many ways an arbitrary category. When liberals restrict the obligation for justice on the basis of nationality, they undertake a partial position based on national endowment.<sup>51</sup> This partiality would have been morally insignificant in a world in which every national entity was able to supply its members with an adequate set of minimal resources to lead a meaningful autonomous life.<sup>52</sup> It has enormous consequences, however, in our world, in which sovereigns vary considerably in their capacity and willingness to provide for all of their citizens. In this world, partiality towards compatriots means that developed countries primarily devote their resources to promoting the welfare of poor living in them. This leaves the poor living in developing countries—which is roughly half of the human race—in a heavily constrained position.<sup>53</sup>

### *E. Why Deadlock?*

Recognizing the sources of the conflict between liberal intuitions of impartiality and national democratic sovereignty is more important than determining the persuasiveness of the Liberal-Statist or Liberal-Cosmopolitan positions. The difficulty in reconciling these two notions is crucial because it leads to a policy deadlock. This conclusion may surprise some readers, given the unprecedented recent flourish of the philosophic literature dealing with issues of global distributive justice and given that political philosophy is not a field in which one would expect to find unanimous concurrence.

The argument of a deadlock in the current political debate relates to the inability of both the Liberal-Cosmopolitan and Liberal-Statist approaches to inform actual policies related to current practices of international relations and commerce. Both sides offer dichotomous arguments that are not only parallel to one another, but also to policymakers who need to form these political institutions in a multi-state economically integrated global arena.

For example, Statists like Nagel, may feel that the way current World Trade Organization (“WTO”) trade liberalization initiatives exclude agriculture unfairly disadvantages developing countries. However, given their State-centric position, they would be unable to ground their criticism to any obligation which requires developed countries to “give up” their superior bargaining positions to better promote the interests of developing countries. Cosmopolitans would not be able to provide policymakers with any guidance on how to design those political institutions as well. Obviously, from a

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merely useful devices for “matching” one person to one protector. Citizenship is merely a device for fixing special responsibility in some agent for discharging our general duties vis-a-vis each particular person”).

<sup>50</sup> There is a general fear that a global world regime would not be able to produce efficient decision making mechanisms and would oppress minority groups. *See also* Jack Goldsmith, *Liberal Democracy and Cosmopolitan Duty*, 55 *Stan. L. Rev.* 1667 (2003) (making this point brilliantly).

<sup>51</sup> Alasdair Macintyre, *Is Patriotism a Virtue?* 5 (1984)

<sup>52</sup> Goodin (arguing that restricting the right for justice to the national sphere is justified when it could be perceived as a geographic division of labor in which, instead of having one world government that assumes responsibility for all humanity, comprehensive coverage is achieved when every sovereign assumes responsibility for its members).

<sup>53</sup> *See supra* note 11.

cosmopolitan perspective, more distribution is better than no distribution, but international institutions play only an instrumental role. There is nothing inherent in trade or tax relationships requiring that cosmopolitan redistribution be promoted through them. Cosmopolitans would thus agree on any type of redistributive scheme that would be politically feasible and have the most redistributive outcome—whether it is lump-sum payments between sovereigns, trade agreements or tying \$100 bills to migrating birds.

The impact of the mismatch between the discourse of political philosophy and what is actually at stake cannot be underestimated. Both approaches engage in speculative normative theory—while remaining relatively mute about the evolving institutional framework of international and supranational institutions. That both approaches have so little to say about current policy issues suggests an ambition to provide the perfect solution. In this type of discourse it is no wonder that many actual issues associated with the construction of current arrangements fly under the radar of moral-political scrutiny. Without undermining the role of ideal theory, the inability of political philosophy to seize this window of opportunity to impact the actual construction of global arrangements suggests a troubling deadlock.

This Article follows this conclusion of deadlock. Rather than embracing or rejecting either the Liberal-Cosmopolitan or Liberal-Statist approach, it considers whether there are other ways to approach global distributive issues and to tackle the conflicting moral intuitions of impartiality and the necessity of the nation state.

### III. Changing the Framework: From Impartial Justice to Relational Duties

This Article suggests a different approach through which the commitment of peoples living in developed countries to those living in developing countries should be examined. In presenting this approach, two additional concepts should first be carefully explained and distinguished: impartial justice and relational duties. Impartial justice is the set of claims and duties among certain group members, which are independent from individuals' actual relationships. Relational duties are partial and based on particular obligations agents owe to those with whom they *choose* to associate. The framework of this Article relies on a novel concept of relational distributive duties. To best understand this concept, one has to carefully examine how it stands apart from the global distributive justice debate reviewed in Part II.

#### A. *Impartial Distributive Justice*

I argue that the controversy between Liberal-Cosmopolitans and Liberal-Statists should best be understood as a controversy about the scope of impartial distributive justice. Standards of distributive justice are typically impartial in the sense that they apply to all members of a designated group and do not depend upon the existence of actual relationships among group members. These standards may require individuals to transfer resources even to complete strangers. In the context of impartial distributive justice, actual relationships do *not* weaken or strengthen the distributive duty or claim.<sup>54</sup>

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<sup>54</sup> These impartial distributive justice claims are manifested in the domestic tax-spending systems of liberal democracies. In those systems high income taxpayers are required to pay taxes that indirectly finance transfers to low income taxpayers—regardless of whether they are the poor family relatives or the worst high school enemies of the high income taxpayers.

Hence, the Liberal-Cosmopolitan-Statist controversy is about impartial distributive justice because it centers on the question of which group justice considerations should be imposed. Liberal-Statists consider the group of citizens or residents to comprise the relevant group, while Liberal-Cosmopolitans argue that the relevant group for redistributive concerns is the human race in its entirety. Put differently, Liberal-Statist and Liberal-Cosmopolitans agree that distributive justice claims and duties should equally be imposed on all group members; they just cannot agree what the relevant group is.

The stagnated liberal debate over global distributive justice is by and large a result of the implicit assumption that the proper standard is an impartial justice standard that would be applied to an agreed upon group. The inadequacy of the current global distributive justice debate suggests that a partial standard may offer some useful insights as discussed below.

### *B. Relational (Partial) Distributive Duties*

In contrast to an impartial framework for evaluating distributive justice, this Article offers a new relational framework. While impartial-justice claims try to determine what intrinsic attributes trigger distributive obligations among individuals, this new framework tries both to determine what relational attributes trigger them and to correlate the levels of distributive obligations with the nature and intensity of these relationships. It also tries to elucidate whether (and which) voluntary relationships carry with them any redistributive claims.

Unlike endowed relationships—e.g., relationships between compatriots—real world relationships require actual connections among specific individuals and groups.<sup>55</sup> The rights and obligations emerging from these relationships are always agent-dependent, and therefore partial,<sup>56</sup> because they require agents to prefer allocating their scarce resources to those whom they chose to engage with. The relational framework thus seeks to correlate levels of obligations among people with the nature of their relationships with one another.

This notion of relational duties is intuitive and straightforward.<sup>57</sup> Individuals associate different levels of obligations they owe other people according to the nature of their relationships. The level of obligation may vary, but most people will probably agree that I should have some special obligation towards my cousin, another soldier in my (reserve) platoon unit, and a fellow member of my faculty—even if I am not especially friendly with any of them. The questions of whether one possesses a right, and whether that right is of the (stronger) negative nature of not to be harmed, or of (weaker) positive nature to receive assistance, seem arbitrary and futile. For example, consider the question of whether my brother and I have an “obligation” to treat each other respectfully. I claim that most people would find the question irrelevant, given our binding long-term relationship which requires us to act decently to each other. Additionally, if I talk to a close friend with vicious sarcasm, how important is the question of whether I am violating one of his negative rights (not to be harmed) or a positive right (to be treated

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<sup>55</sup> Thus a relationship between parents to their non-adult children may not fit well into this framework because it is not entirely voluntary. Relationships between adult family members may be more appropriate.

<sup>56</sup> See generally Tomas Nagel, *The View from Nowhere*, 164-66 (Oxford 1986)

<sup>57</sup> Robert Goodin, *Protecting the Vulnerable*, 24 (1985)

with respect)? Consider also the situation of a small lifeboat filled with twenty strangers, one of whom possesses all the food.<sup>58</sup> If that passenger decides to deny it from the others, do the nineteen other passengers have any claim against the food-endowed-passenger who they have just met for the first time on the lifeboat? If they do, is the food-endowed-passenger denying their negative or positive rights by denying them food?

The answer is that most people regard common philosophical classifications of rights as futile—because the distinction among those amorphous categories tends to blur in ongoing relationships. Moreover, these classifications have little to do with human experience—especially in close settings. Human moral reaction tends to respond to the fact that there are many potential agents that have duties to satisfy the rights of a specific individual and that those obligations correlate with the intensity of the relationship and the capacity of the duty holder.

A number of factors shape our moral intuitions about whether a certain relationship raises relational duties. Relationships based on reciprocity and cooperation trigger some sense of duty, even if entered into voluntarily. This is especially true when these are long-term relationships with costly exit options. The special vulnerability of one party may also establish a sense of moral duty in the other party. For example, a professor may feel a different moral duty when interacting with another professor than with an eighteen year old freshmen college student, even though legally they are both adults. Sometimes, just the capacity to help, which may be determined by arbitrary geographic proximity, is enough to trigger or to materially intensify a sense of duty towards another party. Additionally, although arbitrary from an impartial-justice philosophical perspective, people tend to form small interdependent relationships with individuals with whom they share something in common.<sup>59</sup>

It is important to point out that, so far, my argument has been modest in scope. While I demonstrated that most people seem to recognize through their deeds the existence of moral relational duties, I have not yet claimed that these relational duties require any institutional response of the state or explain how they should relate to (non-relational) impartial-justice duties in a world of scarce resources.

Relational duties are in fact typically recognized as an issue of ethics—the moral values that should govern human behavior, which is different from the question of what principles should govern the structure and operation of political institutions. The philosophical inquiry of whether one can distinguish ethics from justice goes (well) beyond the scope of this paper.<sup>60</sup> From a practical legal-perspective, it is important to note that liberal legal regimes have a default presumption that favors freedom of contracts, which essentially means that individuals are not subject to any exogenous relational duties when voluntarily structuring their relationships.<sup>61</sup> This “voluntarist” default is subject to many exceptions, however. Many branches of law in liberal states—e.g., family law, labor law, consumer protection law and utility regulation—tend to

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<sup>58</sup> Onora O’neill, *Lifeboat Earth*, in *International Ethics* 267-68, (Charles R. Beitz, et al. eds., 1985).

<sup>59</sup> The factors which trigger this sense of duty can range from biological endowment, historic and religious background, hobbies and economic activities. See Soran Reader, *Distance, Relationship and Moral Obligation*, 86 *The Monist* 367 (2003)

<sup>60</sup> See generally Liam B. Murphy, *Institutions and the Demands of Justice*, 27 *Philosophy & Public Affairs* 251 (1998).

<sup>61</sup> Samuel Scheffler, *Relationships and Responsibilities*, 26 *Philosophy & Public Affairs* 189 (1997)

intervene in long-term relationships with inherent high exit costs or when consistent vulnerability of a certain party is observed.

Political philosophers tend to avoid the discourse of relational duties when examining issues of justice. Relational duties require a bottom-up reconstructionist approach, which tries to elicit conclusions about moral behavior from observing and comparing actual human practices. This differs from the impartial-justice top-down analytical approach, which questions the morality of political institutions by making assumptions and logically questioning their validity and implications. In the context of relational duties, this reconstruction cannot yield any clear results about what duties are owed through which relationships and, more importantly, how to divide the responsibility to fulfill duties owed to a specific individual among a group of different agents with whom he or she shares relationships.

The inherent ambiguity about the proper standards of relational duties could be understood as the primary reason for why liberal political philosophy adheres to impartial argumentation. As mentioned, impartial arguments establish general rules, which are applicable to all. Because of that, even though it is unreasonable to reject the existence and moral validity of relational duties, political philosophers tend to assert that general normative duties of justice should be given priority over relational ones. Hence, relational duties are integrated with universal duties, but they are considered secondary and supplemental in nature.

This conception is well embedded in the practice of the liberal state. Even though the state intervenes via regulation in many types of relations, the main re-allocation of wealth is done through the state's tax-spending mechanism. Therefore, even though I am morally required to support my poor relatives, I am only allowed to do so while using my after-tax money—meaning, after I have fulfilled the impartial distributive justice duties to my compatriots.

#### IV. Limitations and Assumptions of the New Framework

Up to this point, this Article has primarily discussed the Liberal-Statist Liberal-Cosmopolitan debate and commented on the little progress that has been made to make this debate relevant to actual decision-making about the design of international political institutions. It has further explained the difference between impartial-justice claims, which philosophers use to analyze the way political institutions should function, and relational duties, which govern personal relationships. It now turns to combine two distinct fields of thought: distributive political philosophy and international trade and tax policymaking. Integrating the disciplines—so as to make normative theory more applicable, and international trade and tax policy more just—is a challenge that requires a new framework.

This framework requires separating the questions of what should be the proper role of impartial justice and the question I address—whether in a multi-state reality relational duties impact what people owe to one another, globally, and whether this impact requires any institutional arrangement. This requires accepting the existence of the multistate political structure, and that the current political structure of international institutions is not able to support the Liberal-Cosmopolitan ideal. However, the approach I propose does not directly draw on either the Liberal-Statist or Liberal-Cosmopolitan

approaches. This allows both Liberal-Statist and Liberal-Cosmopolitan to consider the Article's approach without disposing of their respective positions.

#### A. *A Realistically-Utopian Agenda*

This Article asks how we should promote considerations of global distributive justice within the existing multi-state political framework. Such a process requires a normative *institutional* analysis, which reconsiders the operation of existing political institutions.

This differs from other inquiries (e.g., Rawls's "Theory of Justice"), which commence by examining moral principles and then trying to conclude what a just society should look like if it were designed from scratch. The main difference is that an institutional analysis begins with reality and then acknowledges which parts of it to embrace and which to challenge. This process requires deciding what the acceptable limits of practical political considerations are, and to designate them as the boundaries of the analysis. Because these boundaries depend on dynamic human practices, they are inherently contestable. Thus, a normative theory that wishes to deal with and re-shape reality must also explicitly address these boundaries.<sup>62</sup> This Article's "realistic utopia" adopts three assumptions, each of which I consider as straightforward and conservative—though not beyond challenge.<sup>63</sup> The ambition of this Part is therefore not to engage in a normative discussion about the desirability of the below assumptions, but to use these quasi-descriptive assumptions as an Archimedean point to develop the realistically utopian normative analysis.

The first assumption is that *wide-scale global redistribution cannot be based on principles of rectification*. Correcting past harms is an appealing notion and is indeed possible in a few clear-cut cases.<sup>64</sup> However, the complexity of human history<sup>65</sup> and the difficulty of determining causality<sup>66</sup> make rectification an arduous and potentially impossible task. As such, the attempt to integrate large-scale distributive considerations into international institutions should not be based upon corrective justice.

This assumption, that real world justice entails synchronic rather than diachronic justice, is crucial to the analysis. Developing countries such as Sierra-Leone, Rwanda and Pakistan have no special claims against their former European colonialists—France, Belgium, and the United Kingdom—asking them to correct the wrongs done to them. Colonialism was anything but benevolent, but it is hard to determine whether it positioned countries in a worse position than what they would have been absent it.

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<sup>62</sup> Sanjay Reddy, *The Role of Apparent Constraints in Normative Reasoning: a Methodological Statement and Application to Global Justice*, 9 *Journal of Ethics* 119 (2005) (stating that distinguishing constraints from what is changeable is a difficult part of every attempt to deal with issue of distributive justice in the global context).

<sup>63</sup> John Rawls, *The Law of Peoples* 11 (1999)

<sup>64</sup> E.g., the past harms of slavery and the genocide of indigenous people by colonial powers. However, even in these cases, it is difficult to say who should compensate – is the Chilean Indian entitled to compensation from Spain or from a fellow Chilean of Spanish origin.

<sup>65</sup> Trying to determine the duty of rectification between countries such as Poland, Russia and Germany would be very difficult if one takes a broad historic perspective.

<sup>66</sup> As mentioned, even in the case of clear exploitive relationships e.g., colonization – it is difficult to determine whether some of the problems we see in developing countries today are a result of colonization. For example, would it be right to assume that high rates of children's mortality from preventable diseases in these countries is a result of colonization or would the rates be even higher in absent of colonization.



Would peoples in the above countries have better or worst political institutions absent colonialism? Would children mortality rates in those developing countries be higher or lower?

Few people in the developed world realize that it cuts both ways, however. Developed countries may not categorically reject distributive claims by arguing that they directly result from developing countries' inability to establish adequate political and legal institutions. To be sure, questions of developing countries' institutional competence will bear significance on *how* to satisfy any distributive claims. However, to determine whether these claims exist and their nature, the assumption that international distributive justice does not involve corrective justice requires us to focus upon actual relationships among peoples and look at actual measurements of poverty and inequality.

Second, *this Article assumes that global institutions will not replace states in the near future*. Therefore, any suggestion for an institutional redistributive scheme should take into account the existence of the multi-state multi-sovereign international arena. Even though states would be increasingly influenced by other states, state-based political institutions would retain the ability to determine most aspects of their tax-spending and foreign relations policies. The implication of this assumption is that any Liberal-Cosmopolitan distributive scheme would not be able to overcome problems of accountability and explicit conflicts between various sovereigns. This assumption also presupposes that any stable global order will continue to depend on each nation-state's ability to provide legal, financial, and administrative infrastructures to support it. Hence, in the absence of dominant supra-national or international players, cooperative efforts of nation-states have the best chance of successfully establishing a sustainable scheme of large scale cross-border redistribution.

This assumption is a factual one, and not a normative claim about the morality (or immorality) of nation-states.<sup>67</sup> In other words, I do not assume that states “*are just*” but merely that they “*are*.” I ask the reader to accept that states *are currently* the only dominant players in global political arena, and that they *are currently* the only framework in which schemes promoting notions of impartial distributive justice exist. The analysis hereafter draws only on the existence of this state of affairs—and remains mute on the question of whether it is morally just.

With the minor exception of the European Union,<sup>68</sup> recent history informs us that peoples are reluctant to concede nation-state powers to global or international institutions—possibly because they have bias preferences towards their compatriots, and want political institutions that reflect them.<sup>69</sup> For example, Medicaid is a relatively expensive domestic redistributive program that provides low-income compatriots with costly health insurance. The argument that it is immoral to spend money on Medicaid until all humanity has been guaranteed a certain minimum baseline of health coverage would strike almost all residents of developed countries as wrong. Whether correct or

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<sup>67</sup> This differs significantly from any claim that States themselves are moral units and that the international system should be treated as an “international community” or a “society of nations” in which each nation has certain rights and obligations. On this issue see Ethan B. Kapstein, *Models of International Economic Justice*, 18 *Ethics & International Affairs* 79 (2004) (describing what such an internationalist position would entail).

<sup>68</sup> The recent rejection of the EU constitution is a reminder how unordinary, and fragile, this exception is.

<sup>69</sup> Diane M. Ring, *What's at Stake in the Sovereignty Debate? International Tax and the Nation-State*, 49 *Va. J. of Int'l L.* (forthcoming 2008).

not, these intuitions are strong and bound to shape political arrangements in the foreseeable future.

The third assumption is that *individuals care about foreigners' human suffering and violations of their rights*. Even though individuals feel stronger sentiments towards their compatriots, they do not categorically reject foreigners' situations from their moral concern.<sup>70</sup> This assumption suggests that even though institutional considerations of democratic accountability may prevent liberal democracies from engaging in cosmopolitan-egalitarian actions,<sup>71</sup> foreign policy of liberal democracies is not limited, categorically, from addressing normative claims associated with foreigners' needs and suffering. Recent phenomena, such as the growing popularity of the fair trade movement and of NGOs dealing with international development,<sup>72</sup> indicate the validity of this assumption. These phenomena reflect that our contemporary social welfare function should be modified to include the condition of foreigners in some way.

### *B. Integrating Relational Duties into International Political Arrangements*

This Article argues that global trade may result in relational-distributive duties between peoples. Unlike relational duties between individuals, these relational duties require an institutional response, and international taxation may offer a plausible avenue to facilitate such a response. A careful analysis is needed to clarify the scope of this Article because questions of wealth redistribution are always complicated and multilayered—especially when dealing with global redistribution. Hence, the Article limits its analysis to address the following three types of questions:

1) What, if any, is the source of global distributive duty? Which considerations give certain individuals the right to claim that other individuals living in a different country should be morally obliged to transfer resources to them without any tangible return?

2) Once the right of certain individuals has been identified, how should the relative distributive burden be shared among those that are required to transfer some of these resources?

3) What institutional scheme should govern those redistributive transfers?

In more concrete terms, the following Parts proceed by answering the following three questions: Why (voluntary) international trade results in relational-distributive duties between peoples; why these duties require a political response; and why the ITR may be an appropriate institutional arrangement to accommodate these distributional concerns.

Noteworthy, this Article does not discuss in depth the following questions concerning global distributive justice:

1) What should be the “currency” of justice? There is strong disagreement among scholars about what should be a proper benchmark to measure and remedy disadvantages

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<sup>70</sup> For interesting discussions of this issue see Richard Arneson, *Do Patriotic Ties Limit Global Justice Duties?*, 9 *Journal of Ethics* 127 (2005); Allen Buchanan, *In the National Interest, in The Political Philosophy of Cosmopolitanism* 111, (Gillian Brock & Harry Brighouse eds., 2005)..

<sup>71</sup> Jack Goldsmith, *Liberal Democracy and Cosmopolitan Duty*, 55 *Stan. L. Rev.* 1667 (2003)

<sup>72</sup> See generally Laura T. Reynolds, et al., *Fair Trade: The Challenges of Transforming Globalization* (Routledge, 2007) (Parts II and IV describing the growth and development of the fair trade movements in Europe and North America).

that require distributive justice considerations. Scholars have suggested a number of such “currencies”—including opportunities,<sup>73</sup> primary goods,<sup>74</sup> and capabilities.<sup>75</sup>

2) How much should be contributed in order to satisfy the distributive claim? Does the answer to this question depend on the situation of the potential receiver of the transfer, or on the capacity of the transferors to sacrifice? This question may have an additional aspect to it, which is how is the distributive duty of an agent affected by the non-compliance of another agent?<sup>76</sup>

These latter two questions are typically related to the (first) question of the source of the redistributive duty but are not inherently part of this Article’s core inquiry, which is concerned with the source of the global distributive duty and the institutional framework through which it could be realized.<sup>77</sup> However, the Article contends that the answer to these questions of currency and depth of global redistribution should be made with reference to the capabilities literature—as advanced by Martha Nussbaum and Amartya Sen.<sup>78</sup>

The integration of relational duties into global political institutions offers a promising avenue for achieving real-world progress on issues of global wealth redistribution. The introduction of this new framework requires briefly elaborating upon the relationships between relational-duties and impartial justice claims. The framework I propose neither nullifies nor affirms the *moral* desirability of the Liberal-Statists or Liberal-Cosmopolitan justice ideals. I do not discuss the role of relational duties in the intra-state context at all. In the international context, I argue that relational duties exist *in*

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<sup>73</sup> Ronald Dworkin, *What is Equality Part 2: Equality of Resources*, 10 *Philosophy and Public Affairs* 283 (1981).

<sup>74</sup> John Rawls, *A Theory of Justice* 54 (1999).

<sup>75</sup> Martha C. Nussbaum, *Frontiers of Justice* (2006); Amartya K. Sen, *Development as Freedom* (Oxford University Press. 2001).

<sup>76</sup> Suppose, for example, that both Singapore and Australia are competing against each other and need to invest in their infrastructure to do so successfully. Both have a distributive duty to transfer funds to Indonesia but Singapore refrains from meeting its obligation. As a result the situation in Indonesia is aggravated. The question therefore is whether Australia (which has the capacity to donate more) is affected by Singapore’s refusal to comply. On the one hand the situation in Indonesia is worsened – so that more money is required to allow the basic provisions which justice entails. On the other hand, Singapore’s refusal places Australia in a competitive disadvantage – because it is unable to match Singapore’s infrastructure investments. One would expect this question to be most relevant in the international arena due to the lack of a central authoritative enforcement mechanism. *See generally* Liam B. Murphy, *Moral Demands in Nonideal Theory* (Oxford University Press. 2000).

<sup>77</sup> I feel comfortable with addressing “just” the first three questions given that the debate of global distributive justice is still in its preliminary stages, and that no theory has yet articulated how real-world policies should address questions over the depth of international redistribution.

<sup>78</sup> This theory was developed primarily by Sen and Nussbaum, and it stresses the key capabilities that human beings need to have an opportunity for a meaningful life. The capabilities discourse they establish reject wealth (and economic growth) as the sole measurement of moral impermissible disadvantages but also limit it to material universal categories common across the globe (capability to transport, to read, etc). The terminology of basic capabilities allows Sen and Nussbaum to advocate for a core human minimum that should be available to all human beings and to avoid issues of relativism and cultural imperialism. *See* George F. Demartino, *Global Economy, Global Justice – Theoretical Objections and Policy Alternatives to Neoliberalism* (Routledge 2000); Martha Nussbaum, *Capabilities and Human Rights, in* *Global Justice and Transnational Politics*, (Pablo De Greiff & Ciaran Cronin (Eds.) eds., 2002).; Amartya K. Sen, *Development as Freedom* (Oxford University Press. 2001); Leif Wenar, *The Legitimacy of Peoples, in* *Global Justice and Transnational Politics* 67 & 70-73, (Pablo De Greiff & Ciaran Cronin (Eds.) eds., 2002).

*parallel* to questions of whether impartial-justice claims should be validated. Simply put, even though this Article focuses upon relational duties, it acknowledges that other (cosmopolitan or humanitarian) duties may arise in the international context.

It is clear that relational-distributive duties among peoples matter more when institutions promoting impartial-justice do not exist. However, even if those institutions did exist, relational duties would still be important because there is a potential political tradeoff between how broad the group of right holders is and the amount of rights allocated. If impartial-justice concerns are going to be implemented on a broad global basis, the political reality dictates that there would be pressures to provide only the very minimum to every person. Education and health are essential services, but “good” education and healthcare require funding that goes well beyond “the minimum” provided by the impartial global justice guarantee. It is therefore easy to see how relational duties may still be of potential significance even if there is a political structure that guarantees a certain minimum to all human beings.

For example, let us assume that I have a relational duty to help my brother when he is sick. I argue that this duty is independent from whether we live in a country that provides universal health insurance to all its citizens. Obviously, my relational duty would be affected by the health benefits provided by the state as part of its impartial justice commitment to its citizens. If my brother and I live in a state with no universal health insurance, my duty to him may be substantial. However, if my brother needs more assistance than provided by the state, I would have a relational duty towards him even if we lived in Sweden, which has a generous and universal state-funded health system.

In the same way that my brother’s entitlement for state health benefits impacts but does not categorically eliminate my relational duties to him, a cosmopolitan regime would not eliminate relational duties among peoples. Relational duties are, therefore, an *independent source of moral duty* and not a second-best instrumentalist way of promoting an, otherwise utopian, cosmopolitan ideal.

## V. Distributive Relational Duties and International Trade

Although the process of globalization may not have brought peoples to a state of interdependence that justifies Liberal-Cosmopolitan impartial-justice claims, international trade is a type of relationship that in certain cases gives rise to distributive moral duties. Even though participation in this enterprise is mostly voluntary—and therefore assumingly beneficial to all parties—the allocation of benefits arising from the interaction between the advantaged and the disadvantaged is morally contestable. Peoples living in developed countries benefit from the disadvantages and low bargaining powers of peoples from developing countries.<sup>79</sup> While the former enjoy unprecedented high standards of living, the majority of the latter suffers from inhuman labor conditions and can barely attain basic health care, education, and decent living standards.

People have *some* obligations, such as fair business conduct, towards others to which they are connected through trade relationships. In the context of a world characterized by extreme inequality, affluence, and poverty, these fairness duties have a broader scope that includes redistributive considerations. These redistributive considerations are less stringent than domestic redistributive duties. I argue, therefore, that even though United-States citizens have distributive duties towards fellow

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<sup>79</sup> Part V.B advances a comprehensive discussion of this controversial claim.

disadvantaged compatriots, they also have some (less stringent) distributive duties to foreigners. Simply put, I owe more to the people serving in my army and washing the dishes at my nearby restaurant than I owe to persons in China manufacturing my shoes and to farmers in Brazil raising my coffee. However, I also have some distributive duties towards the foreigners I am indirectly engaged with through trade. These redistributive duties are triggered by our continuously growing interaction with each other as repeated players in the joint economic enterprise of international trade.

To establish the above claim, I first discuss how the phenomenon of “globalization” has placed peoples in a joint economic system. I then show that even though international trade is voluntary, it may give rise to relational duties when market transactions are not fair transactions, and when the parties benefiting from this unfairness have the capacity to remedy it.

#### A. *Globalization as Proximity*

The growing intensity of global trade and the growing penetration of global markets have essentially connected people through economic relationships, which once were limited to the domestic state. Fifty years ago, most individuals’ economic relations were within the boundaries of their locality or domestic state. In today’s world, individuals are still likely to have a dominant set of domestic affiliations, but also equally likely to have multiple other affiliations. International trade essentially brings people “closer” together by connecting them in ways that once were limited to close geographic settings.

Proximity has been widely recognized as a source of special duty.<sup>80</sup> From a relational duties perspective, proximity is a proxy for the existence of meaningful relationships. Individuals are more likely to share an interdependent long-term relationship with their neighbors and colleagues than with distant strangers.

Globalization thus challenges the value of geographic proximity in a world with developed global financial and commodity markets. Distance-wise, peoples are not anymore closer today than what they were in the Middle Ages; however, global economic liberalization positions them now as parties to long-term trade relationships. Through

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<sup>80</sup> With respect to relational duties it is widely recognized that proximity has an intrinsic value. Few will disagree that I have a duty to aid a drowning person in Michigan lake, even though it is nothing more than a coincidence that he is drowning next to me. *See generally* Liam B. Murphy, *Moral Demands in Nonideal Theory*, 127-32 (Oxford University Press, 2000) (making the special case for rescue). However, even scholars that deal with impartial rather than relational justice have recognized it is a relevant instrumental factor because of division of labor considerations. Rather than assigning all individuals with equal responsibilities towards everything, some type of allocation is desirable. In this context, proximity is a proxy for a reasonable allocation because it reduces the transaction costs associated with resource-transfers. This proxy is valid though not exclusively due to the increasing capacity to efficiently transfer resources to distant locations. Recent improvements in transportation and information technologies significantly reduce the costs associated with information finding and transfer of resources to many places that were considered beyond reach less than half a century ago. *See* Charles R. Beitz, *Cosmopolitan Ideals and National Sentiment*, 80 *J. of Philosophy* 591 (1983) (recognizing that the proximity can be a source for special duties, which is astonishing given the author’s well known cosmopolitan position); Charles R. Beitz, *Cosmopolitan Ideals and National Sentiment*, 80 *J. of Philosophy* 591 (1983); Robert E. Goodin, *What is So Special about Our Fellow Countrymen?*, 98 *Ethics* 663 (1988); Karen Green, *Distance, Divided Responsibility and Universalizability. (Moral Distance)*, 86 *The Monist* 501(17) (2003).

this relationship, formerly discrete economies have now been drawn “materially closer” to each other.<sup>81</sup>

In essence, globalization is the accelerated mobility of assets and ideas within new integrated and interconnected market settings that transcend the nation-state. Although commerce among nations is not a new phenomenon, globalization has created an unprecedented level of economic interconnectedness among peoples. Massive flows of direct and portfolio cross-border investments, which once were fairly rare, are now made on a daily basis,<sup>82</sup> and many businesses depend on foreign suppliers, customers and service providers.

Nation-states’ regulatory gap exemplifies the extent to which market integration has changed our economic relationships. Democratic sovereignty entails that people should be able to determine certain aspects of their lives through an egalitarian process of political participation. However, global markets have created certain regulatory problems, making it difficult to effectively regulate some major issues on the state level, because both the markets affecting those issues and the agents participating in those markets have become global. These issues include vital economic issues such as environmental concerns over global warming and the stability of financial markets.<sup>83</sup> Globalization’s pervasiveness may be best reflected in the recent food and financial crises. For example, the growing demand for oil and food products by the growing economies of China and India, and the decision of the United States government to reduce its dependency on oil by encouraging the use of corn for ethanol, have resulted in severe food insecurity and social turmoil in parts of the developing world.<sup>84</sup> This example does not suggest that the current food crisis is “the fault” of the United-States or any other country. It does suggest that given the interconnectedness of global markets, the attempt to relegate the meaningful economic relationships that give rise to relational duties only to the domestic or local spheres is somewhat artificial and obsolete.<sup>85</sup>

Like domestic market settings, global market settings are not neutral but political and require intensive cooperation. Countries typically seek this cooperation through legal and political devices—mainly treaties and international institutions—that enforce contractual and property rights. Accordingly, international markets do not operate in a

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<sup>81</sup> Mark Beeson, *Globalisation, the State and Economic Justice: Paper for Ethics and Australian Foreign Policy, Symposium at the University of Queensland*, 6 (2003)

<sup>82</sup> Ilan Benshalom, *The Quest to Tax Interest Income: Stages in the Development of International Taxation*, 27 Va. Tax Rev. 631 (2008).

<sup>83</sup> Simon Caney, *Cosmopolitanism and the Law of Peoples*, 10 Journal of Political Philosophy 95 (2002) (arguing that environmental issues can no longer be regulated effectively on the national level and that this fact challenges Rawls’s assumption that the international structure of the international differs fundamentally from the nation state structure).

<sup>84</sup> For a somewhat similar analogy see Henry Shue, *Mediating Duties*, 98 Ethics 687 (1988).

<sup>85</sup> Much of the criticism of Liberal-Cosmopolitans against the Liberal-Statist theory of Rawls, is that it does not account to this change in global economy. His attempt to draw a moral line around state boundaries suggests that he sees the nation state as independent and somewhat self sufficient. The critics of Rawls pointed out that this vision was in fact very different from reality and that very few nation states can be seen as isolated, autarkic or independent. Charles R. Beitz, *Justice and International Relations*, in *International Ethics* 295, (Charles R. Beitz, et al. eds., 1985).; Simon Caney, *Cosmopolitanism and the Law of Peoples*, 10 Journal of Political Philosophy 95 (2002).

vacuum but within a well developed set of legal and coordination norms.<sup>86</sup> Moreover, the ideology driving the recent flourish of global trade is also anything but neutral. It stresses that the key to increasing human welfare is economic growth achieved through stable adherence to free trade and liberalized economic structure.<sup>87</sup>

The most visible aspect of the novel interconnectedness between peoples is the emergence of international institutions and agents. Whether an MNE, a multi-national or international governance institution, an advocacy group, or an NGO—these cross-border agents organize to meet their goals in ways that challenge our nation-centric conceptions. Here, I focus on two key international agents: international institutions that coordinate rules related to economic activities and MNEs.

The norms, rules and principles governing the operations of international institutions like the IMF, the World Bank and the WTO are the common carrier of global trade. These Western-dominated institutions coordinate international trade through a bundle of norms and proceedings, which serves two important functions. First, it standardizes many aspects of international trade by providing a set of coordination norms that reduce the transaction and uncertainty costs of cross-border investments. These criteria allow international trade to operate as a global public good through a grid that allows interaction and efficient allocation of resources, thus yielding non-exclusive and non-rival benefits that increase as more parties interact through it. International organizations determine the criteria and supervise their enforcement—mainly through reporting but also through arbitration procedures.

These functions highlight the second role of international institutions: being the gatekeepers of access to the public good of international trade. Although each sovereign nation's compliance with the criteria set by these institutions is voluntary, countries wishing to benefit from international trade must de facto accept all of the conditions set by international institutions. Hence, when the IMF and the WTO delineate their rules, they are actually delineating the costs of access to international trade and investment markets. In a global economy, in which peoples' welfare has become so dependent on international trade, non-compliance with those rules becomes merely a remote and formal possibility for many sovereigns, no matter how controversial these rules may be.<sup>88</sup> For example, in response to the third world debt crisis during the 1980s, the U.S. Treasury, the IMF and the World Bank devised a set of conditions to developing countries seeking aid known as the Washington consensus.<sup>89</sup> Some of these conditions reflected sound policy, which was of direct interest to the IMF and other international lenders (e.g., fiscal discipline). Other conditions, however, reflected a strong neo-liberal bias, and could therefore be seen as an ideologically skewed interference in the internal policies of developing countries (e.g., an emphasis on requirements for trade liberalization,

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<sup>86</sup> To an extent, the division of labor in world economy demonstrates the high level of cooperation between the different economies (and also indicates how well entrenched the neo-classical economic ideology is entrenched in the process of globalization). See also Charles R. Beitz, *International Liberalism and Distributive Justice: A Survey of Recent Thought* 51 *World Politics* 269 (1999).

<sup>87</sup> Omar Dahbour, *Three Models of Global Community*, 9 *Journal of Ethics* 201 (2005) (describing this model as a community of trade).

<sup>88</sup> Philippe Van Parijs, *Global Distributive Justice* (XXX?) (providing the example of the Washington consensus as a type of ideologically skewed arrangement coercively promoted by the IMF and the World Bank on developing countries).

<sup>89</sup> Walter Goode, *Dictionary of Trade Policy Terms* 476 (Cambridge University Press 5th ed. 2007)

privatization, and deregulation). Viewed wholly, the process of rulemaking and norm-setting has far reached beyond the original purpose of coordination. It has become a process that allows international institutions to reformulate the economic design of sovereigns.<sup>90</sup>

MNEs offer a different challenge to nation-centric conceptions. In the past half century, the number and reach of MNEs expanded dramatically and now control enormous economic and investment powers. By employing economies of scope and scale, which allow them to reduce collective costs and utilize intangible-assets efficiently, MNEs are the crown jewel of modern economic integration. They command the lion's share of Foreign Direct Investments ("FDIs") and conduct much of the high profile R&D and manufacturing activities considered essential to technological advancement and economic growth. Operating in multiple jurisdictions, MNEs are huge generators of economic activity and, in a sense, have become de facto setters of standard business behavior. At the same time in which MNEs affirmed their strong position in global economy, their affiliation to specific national jurisdictions gradually weakens. For example, MNEs' nationally diversified shareholders, operations, employees and consumers have made it difficult to analytically identify any specific MNE with a specific nation.<sup>91</sup> MNEs therefore demonstrate that the regulatory gap, in which standard-setting economic powers lie, are beyond sovereigns' control.<sup>92\*</sup>

The above observations avoid either criticizing or embracing the current global order and the way it facilitates international trade and investment. They do suggest, however, that looking at international trade as either a "natural" development or as a set of sporadic and unrelated transactions is wrong and misleading. International trade performs in a market that, like any other domestic market, is a product of a political construct that governs the rules through which agents interact. Even the decision not to try to subordinate different aspects of global markets to any single sovereign is a political decision from which some benefit while others lose.<sup>93</sup>

As a result of this political decision-making, global markets have become structured networks of long-term interdependent relationships that require political cooperation. The cooperation we see today amounts to an economic association. A

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<sup>90</sup> Pablo De Greiff & Ciaran Cronin, *Introduction: Normative Responses to Current Challenges of Governance*, in *Global Justice and Transnational Politics* 3, (Pablo De Greiff & Ciaran Cronin (Eds.) eds., 2002); Richard W. Miller, *Cosmopolitan Respect and Patriotic Concern*, in *The Political Philosophy of Cosmopolitanism* 155, (Gillian Brock & Harry Brighouse eds., 2005).

<sup>91</sup> Reuven S. Avi-Yonah, *Globalization, Tax Competition, and the Fiscal Crisis of the Welfare State*, 113 *Harv. L. Rev.* 1537 (2000).

<sup>92</sup> In many cases, this regulatory gap is not necessarily a negative development—governments are not ideal regulators, and in many cases MNEs operating in places with weak or corrupt governments introduce higher standards.

\* **[think how much I want to go on with this- after all this is the topic of the next paper- I can go to the who are we article type of argumentation; go into the tax competition argument—I think at least at the footnotes should give Hines and dehsi- maybe put in the footnote again]**

<sup>93</sup> For example, the decision not to have a single tax authority, which coordinates tax enforcement and rates, allows affluent individuals with liquid assets to pay fewer taxes by shifting their profits to low tax jurisdictions. It also triggers a dynamic of tax competition between different sovereigns. Affluent investors, typically from developed countries, are better off and their low-income compatriots are worst. Low tax countries may be better off because of the surplus of investments but also may be worse off because of the lower tax yields and their ability to provide less services to their citizens. See Ilan Benshalom, *Taxing the Financial Income of Multinational Enterprises*, *Va. Tax Rev.* (forthcoming 2009).



country's membership in this association has significant implications on its economic structure and on its citizens' lives. These implications, to be sure, are still far less invasive in comparison to the power states exercise over their citizens. However, given the high exit (or non-entrance) costs of this association, it is reasonable to expect that some moral relational duties should exist between its participants. When a coal mine collapses in China because of inadequate safety measures, is it only the responsibility of the Chinese government that set lax regulatory requirements or is it also the moral responsibility of the high-ranking employees and investors of the MNE that owns it, or of the MNEs that purchase its cheap product? If a shoe company employs children in sweatshop conditions in Indonesia, is it only the Indonesian government's moral responsibility to alleviate these conditions or is it also the responsibility of the company's shareholders, top-management employees and consumers?

International trade connects peoples together in ways that once were confined to domestic settings. These types of relationships in the domestic setting are often a source of special relational duties and responsibilities. It is widely recognized that optimal business strategies, growth, and innovation require abandoning obsolete nation-centric conceptions. By the same token, the global economy's interconnectedness requires us to examine our relational duties through a global-cross-border perspective and not to limit them to the domestic sphere.

*B. Which Type of Economic Relationships Give Rise to Relational Duties*

That international trade allows people in different countries to connect despite the geographic distance does not explain why international trade connections result in relational-distributive duties. My answer is that current international trade exhibits a disturbing pattern, which gives rise to relational duties. This conclusion means that the voluntary nature of trade transactions is not enough to vindicate them as fair. This requires close scrutiny, after all, parties are assumingly rational; therefore, they engage in global trade only if they benefit from it. While this may be true, peoples living in developed countries benefit from it unevenly. This skewed allocation of benefits is not a coincidence but a direct result of the vulnerability of peoples living in developing countries. In addition, there are two other factors that—even though they are not necessarily unfair themselves—exacerbate the immorality of this pattern: the inability of developing countries to exercise effective control over the rules governing global trade and developed countries' (unfulfilled) capacity to better assist developing countries. Coupled together, this gives residents of the developed countries an unfair advantage—and results in a situation where the market equilibrium is arguably not always a fair one.

Before proceeding, it is important to stress two points. First, my argument is distinguished from the Liberal-Cosmopolitan position, which argues that international settings are sufficiently like domestic ones. Instead, I focus on the actual attributes of international trade relationships and claim that many of them are unfair and give rise to distributive duties. To be precise, I do not yet argue that these relational duties should trigger an institutional response (a task that Part VI focuses on), but only that they exist in certain international trade relationships.

Second, as Part III.B. establishes, the claim that individuals may have certain obligations to those they interact with draws upon a rich philosophic literature of ethics. Not everyone agrees that ongoing interaction among individuals can result in relational

duties, but this is a fairly well established field of thought in moral philosophy and a one which most (non-economists) seem to intuitively accept and act upon. The previous Subpart established why in an integrated global market consideration about relational duties should not *categorically be limited* to operate solely within the framework of the state. This Subpart, takes the argument a step further and asserts that the current practice of international trade between developed and developing countries exhibits an unfair pattern that triggers relational duties.

Trying to precisely define an “unfair pattern” is as futile as the attempts to define tax avoidance or pornography. Nevertheless, like tax avoidance and pornography, we cannot offer a comprehensive definition of it but we “know it when we see it.”<sup>94</sup> This article tries to go beyond the “know it when we see it” test and single out a number of factors that characterize the mainstream cases of unfair patterns. Accordingly the analysis below highlights the main attributes of transactional unfairness and addresses only those relatively stronger cases of unfairness in which *all the attributes apply*. Nevertheless, this approach implicitly assumes some overlapping consensus for what unfairness is, and therefore is suitable to address only clear cut cases rather than those at the margins.<sup>95</sup>

Generally, we may define transactional unfairness as a situation in which a party utilizes a disadvantage of a counterparty to seek self-serving benefits at the expense of another party in a way that is legal but immoral.<sup>96</sup> The immorality of the behavior raises a relational duty to amend it (so that it is no longer unfair) or to compensate the exploited party in other ways.<sup>97</sup> The problem with this type of inquiry is that any voluntary market transaction is generally assumed to be profitable to all parties. The claim that one party generated excessive or unfair returns must rely on a hypothetical benchmark of an alternative transaction with different allocative outcomes—a benchmark that in most cases simply does not exist.<sup>98</sup> Accordingly, rather than providing a full theory of transactional fairness, this inquiry can only enumerate a number of factors that seem to indicate the existence of unfair advantage in the context of international trade. To distinguish between fair and unfair voluntary trade transactions, this Article focuses on objective indicators.

The first factor needed to demonstrate an unfair advantage is that individuals in developed countries benefit from global inequality and poverty in developing countries. Benefiting from a comparative advantage is the essence of trade, however, so this factor is usually satisfied. Hence, to prove the existence of a relational duty, it is necessary to first explain why trading with Indonesia, which has comparative advantages in low wages and low safety regulations, is different from trading with Finland, which offers a comparative advantage in high human capital (particularly electric engineering expertise).

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<sup>94</sup> Jeffery L. Yablon, *As Certain as Death--Quotations About Taxes*, 102 Tax Notes 99 (2004) (citing Fred T. Goldberg Jr. as making this statement with reference to the famous observation of Justice Stewart about pornography in *Jacobellis v. Ohio* 378 U.S. 184 (1964)).

<sup>95</sup> I do not regard this non-definition to be a problem given that most existing approaches in political philosophy inadequately address even those clear cut cases. *See text following infra* notes 98-119.

<sup>96</sup> *See generally* Joel Feinberg, *Noncoercive Exploitation*, in *Paternalism* 203, (Rolf Sartorius ed., 1983).; Alan Wertheimer, *Exploitation* xx (1996).

<sup>97</sup> *See text following infra* notes 98-119.

<sup>98</sup> David Miller, *Exploitation in the Market*, in *Modern Theories of Exploitation* 149, (Andrew Reeve ed., 1987).; David Miller, *Justice and Global Inequality*, in *Inequality, Globalization, and World Politics* 204, (Andrew Hurrell & Ngaire Woods eds., 1999)..

Obviously, the existence of the benefit factor alone is not enough to prove unfairness. The second factor, therefore, is that trade results in relational duties when the allocation of benefits is skewed. Hence, even though both parties fare better than if they had not entered the transaction, one party yields the lion share of those benefits.<sup>99</sup>

The outcome that may suggest an unfair pattern is when one party, typically the party supplying cheap labor or scarce natural resources, trades a lot of its resources in exchange for a level of compensation that does not allow it much more than survival. Granted, like any other political theory that tries to determine sufficiency standards in our dynamic world,<sup>100</sup> it is difficult to draw the line between what is mere survival and what is an option for a decent life.<sup>101</sup> Nevertheless, it seems relatively straightforward to argue that if a party at full employment cannot afford food, shelter, and security, as well as, minimal health care and primary education services necessary to support a family, they have not reached a decent standard of living.<sup>102</sup> This is a somewhat minimalist and simplistic definition of decency, but I adopt it here to minimize controversy on this point because it is a relatively conservative definition.

To make my definition even more conservative, I further assume that to indicate an unfair allocation of benefits, the party-alleged-as-exploiter should be able to attain a decent living standard, even without the transaction. This is somewhat of a simplification, since one can imagine a more nuanced situation in which the unfair allocation exists between two parties that do not attain a decent standard of living or between two parties that both achieve such a decent standard. However, this assumption suffices for the purpose of this analysis, which is concerned with examining clear-cut cases of relational duties that arise from international trade relationships, and not with providing a comprehensive theory of transactional fairness.

Demonstrating the outcome factor of unequal benefits of a trading relationship is a necessary but not sufficient indicator for an unfair trade pattern. The core of the distinction between “fair” and “unfair” lies in the unequal bargaining position and one party’s capability to transform the other party’s vulnerability to a business advantage.<sup>103</sup> This is the exact opposite of neo-classical economics. Rather than looking at the United States-Indonesia relationship only as a manifestation of the comparative advantage principle, it argues that the American investors and consumers are exploiting a comparative weakness of individuals living in Indonesia. Hence, to avoid overriding the moral validity of all commercial relationships, we must have a clear idea of what counts as vulnerability. Put differently, I am not denying that U.S. trade with Indonesia meets the Pareto efficiency principle but argue that Pareto improvement is not always enough to validate the fairness of a transaction.

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<sup>99</sup> Joel Feinberg, *Noncoercive Exploitation*, in *Paternalism* (Rolf Sartorius ed., 1983).

<sup>100</sup> The challenge of defining the core minimum is the essence of the capabilities approach mentioned earlier. *See supra* note 78.

<sup>101</sup> George F. Demartino, *Global Economy, Global Justice – Theoretical Objections and Policy Alternatives to Neoliberalism* 104 (Routledge 2000) (drawing a connection between this type of argument and Marxian exploitation theory). *See also* Hillel Steiner, *Exploitation: a Liberal Theory Amended, Defended and Extended*, in *Modern Theories of Exploitation*, (Andrew Reeve ed., 1987). (connecting the process indicators for exploitation with an outcome of material insufficiency for one party).

<sup>102</sup> United Nations, *Universal Declaration of Human Rights* (1948)

<sup>103</sup> Robert Goodin, *Protecting the Vulnerable* 36 (1985).

To substantiate the above claim, it is necessary to distinguish incidents where benefiting from a comparative disadvantage of the counterparty amounts to an unfair advantage. Observing mainstream human conduct suggests that vulnerability has an important role in determining relational obligations.<sup>104</sup> Voluntary market transactions are not always perceived as fair when one party suffers from an *endowed* disadvantage (in relative and absolute terms), which significantly reduces its bargaining power when entering potential market transactions.<sup>105</sup> Disadvantaged parties are de facto forced to entering long-term economic relationships even though their market returns do not provide for decent lives because they simply do not have any acceptable alternatives.<sup>106</sup> This type of disadvantage is of particular concern when it is not something the disadvantaged can directly control and when it perpetually reduces or slows down their ability to attain a decent life through market participation.

When a party's profit comes primarily from the other party's ongoing misfortune, this behavior tends to be seen as unfair. Unfortunately, human history is full of examples of these types of behaviors. These can range from extreme scenarios—e.g., some Polish and Lithuanian individuals that extracted huge amount of resources from ghetto-imprisoned starving Jews in return for basic food products during WWII<sup>107</sup>—to contemporary “everyday” occurrences where American employers take advantage of their employees' illegal immigration status to deny them basic labor rights and employment conditions.<sup>108</sup> The Lithuanian and, even more so, the Polish people, did not imprison the Jews in the ghetto, since they were also subject to an involuntary occupation by Nazi-Germany.<sup>109</sup> In the same way American employers could not be held directly responsible to the poverty that led illegal immigrants to come to the United States. Nevertheless, even though the non-vulnerable parties described did not directly contribute to the vulnerability of the other parties, the transactions were “voluntary” and the disadvantaged parties would be worse off if the transaction had not occurred, we regard their behaviors of as exploitive and morally faulty. We resent non-disadvantaged parties from selfishly utilizing their comparative advantage in these scenarios because it is based on their counterparties' misfortune and suffering.

This point merits more attention. While it is clear that human beings resent those who take advantage of the vulnerable, this resentment may not be justified normatively. There seems to be a sound case that if redistribution towards the vulnerable is deemed desirable by society, then society as a whole should bear the cost and responsibilities of

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<sup>104</sup> Id. at 28-41 .

<sup>105</sup> George F. Demartino, *Global Economy, Global Justice – Theoretical Objections and Policy Alternatives to Neoliberalism* 77-88 (Routledge 2000) (arguing against the market mechanism of aggregating preferences and explaining, among other issues, that neo-classical economic analysis does account for the way inequality in initial resources impacts preferences and the ability to exercise free choice).

<sup>106</sup> Joel Feinberg, *Noncoercive Exploitation*, in *Paternalism* 208, (Rolf Sartorius ed., 1983).

<sup>107</sup> Yitzhak Arad, *Getto in Flames*, 308 (1982).

<sup>108</sup> This problem may be more serious than what many Americans perceive. While many American businesses will not directly hire illegal immigrants as employees a lot of them will outsource jobs to service firms that do so. The competitive nature of subcontracting low skilled service position requires many of these subcontractors to reduce their labor costs—partly by taking into account the low bargaining positions of these foreign employees. Catherine L. Fisk & Michael J. Wishnie, *Hoffman Plastic Compounds, Inc. v. NLRB: The Rules of the Workplace for Undocumented Immigrants*, in *Immigration Stories*, (Peter Schuck & David Martin eds., 2005).

<sup>109</sup> Tadeusz Piotrowski, *Poland's Holocaust* (McFarland. 1998)

this redistribution.<sup>110</sup> Such arrangement would arguably be more efficient than the distortion of market transactions.<sup>111</sup> To argue that there is a normative need for relational duties, one has to provide more than a knee jerk reaction to explain *why* voluntary transactions in which parties take full advantage of their counterparties' vulnerability are unfair and normatively undesirable.

There are a number of possible responses to this challenge. First, if there is a strong and consistent observation that the vast majority of people perceive a certain transaction as morally faulty, the discussion of why relational duties should protect vulnerable parties may not be necessary. Since we are dealing with an actual human society, the fact that something may overwhelmingly seem wrong may suffice to raise relational duties. For example, let us assume a society where a large portion of the population considers it wrong for people to work at bakeries for more than ten hours per day or sixty hours per week because of the hard labor it involves. In such a society, bakery owners may have a relational duty not to take advantage of the low bargaining powers of their vulnerable employees to "overwork" them. Even though vulnerable employees' low alternative employment possibilities would compel them to work more than what is considered reasonable in that society, employers may have a relational duty not to take advantage of this vulnerability. This argument is a positive reflection about the state of affairs in a given society, and not so much a normative argument. Nevertheless, it makes sense that in a society which has cohesive norms, relational-duties that follow those norms would be an integral part of how this society operates.

The second response relies on the positive assumption that vulnerabilities cannot be sufficiently reduced by market mechanisms, by actions of social agents (such as state sponsored welfare institutions), or by voluntary actions of private parties.<sup>112</sup> This, in fact, assumes that a certain degree of uncompensated vulnerability is an inherent part of human society. In this state of affairs, it would be counterproductive to strip private parties from any duty to protect the vulnerable, because such a stripping would give those parties socially undesirable incentives to exploit these vulnerabilities. Without relational duties all duties to protect the vulnerable would be relegated to social agents such as the state. Without relational duties, private parties and communities would have the incentive (and social legitimacy) to maximize their wealth by exploiting the comparative disadvantage of the vulnerable even though they know that there is no real other protection available to them. Thus, in the absence of relational duties, the ultimate goal of providing more protection to the vulnerable may be severely undermined. For example, let us assume a society that seeks to protect individuals that because of social

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<sup>110</sup> This debate echoes in every decision of the state to protect the vulnerable via regulation of non-monopolistic market transactions—e.g., by imposing a minimum wage, by requiring employers to provide medical leave and benefits, and by enforcing anti-discrimination and consumer protection legislation. Such legislation would include the Fair Labor Standards Act of 1938 (which established a minimum wage) and the Family Medical Leave Act 1993. For critiques of this initiative see Daniel Shavero, *The Minimum Wage, the Earned Income Tax Credit, and Optimal Subsidy Policy*, 64 U. Chi. L. Rev. 405 (1997) (critiquing this approach as an inefficient tax subsidy).

<sup>111</sup> Louis Kaplow & Steven Shavell, *Should Legal Rules Favor the Poor? Clarifying the Role of Legal Rules and the Income Tax in Redistributing Income*, 29 J. Legal Stud. 821 (2000).

<sup>112</sup> This assumption seems to be in place, given what we know of human history. It also seems to be plausible, given that at least some measurements of vulnerability are determined in relative terms rather than absolute terms.

and genetic endowment were not able to obtain a good education. Among other things, this protection would allow these vulnerable individuals to make well informed decisions about sophisticated mortgage products. In this society, mortgage sellers should have relational duties to adequately explain the different contracts they are selling to potential “unsophisticated” consumers. Otherwise, the social goal of protecting this vulnerable group would not be adequately met.

The third response is, in a sense, a combination of the two former ones. This argument states that the absence of relational duties to protect the vulnerable would result in negative expressive value externalities. In a given society, where as a positive matter there is a goal of protecting the vulnerable, it is inconceivable to have private parties and communities engage in exploiting their vulnerability. Such exploitation would project a vision of society that does not care of the vulnerable and would thus have negative externalities upon intangible social fabrics—e.g., trust, solidarity and human compassion—which are necessary for a well-ordered functioning society. This is a very strong argument because it explains not only why private parties may have relational duties but also why they should not be compensated by social agents when they incur costs to meet those duties. For example, let us assume a society which values racial equality. In this society, employers may have a relational duty not to discriminate against minority group members. Given the strong social stand against discrimination, it would also be unreasonable to compensate employers that hire employees that come from minority groups. Even if such a reimbursement was administratively possible, it would project a vision that minority group members are indeed different and inferior.

The above three justifications for relational duties stress what all of us know from our daily lives’ experiences—that as a matter of ethics, and not necessarily as a matter of law, we are all required not to take full advantage of others’ vulnerability. We therefore should be able to characterize a Pareto-efficient transaction as unfair if it involves a vulnerable party who is not able to attend a basic minimum decent living standard, *and* when the benefits are unevenly skewed towards a party that is able to live above that standard (even without the benefits that the transaction with the vulnerable party confers it with).

Providing a full list of potential vulnerabilities is beyond the scope of this Article. However, in the context of international trade, a few important ones should be mentioned, including: food insecurity, acute financial insecurity, lack of relevant expertise or information, and the inability to cope with an effective cartel or monopoly arrangement. Even though not all people living in developing countries suffer from these types of endowed disadvantages and not all people living in developed countries are immune from them, people living in developing countries are much more likely to suffer from these disadvantages.

The conclusions of the above analysis may seem counterintuitive to many living in developed countries. After all, the prevalent perceptions are that people living in developing countries that are “taking our jobs,” are getting “higher relative returns” and using “our money.” All these statements are true to some extent, but they do not change the fundamental point that I have stressed—that upon interacting with peoples that are materially disadvantaged (in both absolute and relative senses), we need to put some moral constraints on our ability to seek self serving profits. The voluntary nature of the transaction and the fact that those people would fare worse in its absence are not,

therefore, materially important. To produce cheaply, many individuals working in developing countries work in harsh and unsafe labor environments. Given a viable ability to earn their living in a different way, most individuals would choose not to work in these places, but they are pushed to do so by their poverty. We take advantage of their poverty in ways that we would regard as immoral if they were to happen in the closer domestic setting. For example, very few will contend that the following Pareto-efficient transactions are moral: buying a kidney from a compulsive gambler who will lose all of the money, or denying basic work safety conditions from employees that enter the country illegally. In short, human beings tend to regard a transaction as immoral when a party with desperate need receives very low returns when performing an unsafe or degrading task. We do not need a comprehensive definition of transactional fairness to know the above transactions are not fair, and, by the same token, we do not need such a definition of fairness to see that our trade relationship with peoples in developing countries may not be fair.

It is worth examining how this analysis applies to international trade in concrete terms. It is, I believe, not controversial to see how global inequality translates to developed countries' privilege.<sup>113</sup> Poverty's low standards of living and low levels of human capital formation in developing countries result in low wages, lax regulatory enforcement, and under-priced natural resources—all designed to attract foreign investments. These factors result in higher purchasing power in developed countries and in higher yields to investments made (primarily) by their residents.<sup>114</sup>

Developing countries and people living in them strive for foreign investment and cannot afford to reject certain investments and certain jobs. The vulnerability and low bargaining powers of developing countries dictate that certain types of economic activities with high long-term negative externalities are shifted to them. Businesses associated with these externalities include pollution-intensive industries and businesses that benefit from low labor standards—e.g., gender based exploitation of young women, and lax safety regulation in dangerous workplaces.

Strong economic growth, however, is rapidly mitigating some of these disadvantages in certain countries—but not in all of them. Even in countries with robust growth figures (e.g., China and India) where market forces increasingly provide this change, a majority of people are still unable to attain basic health care services, adequate primary education, and basic services (e.g., running water). Many developing countries in Asia, Sub-Saharan Africa and South America are far from reaching a state where the majority of the population attains a decent life style and many of them (including the majority in China and India) will not reach it in the next decade or so. This means that even though economic growth allows for tremendous progress, child mortality from preventable diseases would probably continue to be very high in all these countries, at least in the next ten years. Furthermore, given the low educational infrastructures in many of these emerging economies, new generations of young adults are entering the

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<sup>113</sup> Jan Nederveen Pieterse, *Global Inequality: Bringing Politics Back In*, 23 *Third World Quarterly* 1023 (2002)

<sup>114</sup> Charles R. Beitz, *Justice and International Relations*, 4 *Philosophy & Public Affairs* 360 (1975); Thomas Pogge, *Severe Poverty as a Violation of Negative Duties*, 19 *Ethics & International Affairs* 55 (2005). For a contrasting view see Mathias Risse, *How Does the Global Order Harm the Poor?*, 33 *Philosophy and Public Affairs* 349 (2005).

global labor market with little prospects of attaining anything more than low-skilled low-wage jobs. Although market forces are pushing towards a convergence in living standards across the globe, this process of convergence is simply too slow given the dire need. The “radical inequality” between developed and developing countries therefore helps to maintain somewhat of a vicious cycle.<sup>115</sup> Regardless of whether one thinks that this is the responsibility of developing countries, it is important to recognize that in this cycle are individuals from the developing world that participate in global trade with few chances to realize a genuine opportunity for a decent life.

Three elements intensify the immoral nature of this pattern. First, the dominance of developed countries in the institutions governing global trade has resulted in many examples in which trade arrangements favor developed countries.<sup>116</sup> The most well-known incident of this is the agricultural exception in trade agreements.<sup>117</sup> The international trade regime encourages the liberalization of services and commodity markets pushing countries to reduce their trade barriers and liberalize their import and export markets. However, this same regime that promotes liberalization also specifically allows countries to protect (through tariffs and subsidies) their domestic agricultural producers. This exception is primarily made to shelter the agricultural sector in developed countries from competing with foreign imports from developing countries.<sup>118</sup>

Conspiracy arguments that the IMF, WTO, and OECD operate as a cartel to advance the interests of developed countries and theories of capture are exaggerated.<sup>119</sup> However, the fact that many developing countries have little influence on these institutions and are primarily rule-takers is undisputed. Certain international institutions dominated by developed countries can therefore materially and non-reciprocally influence the economic structure of developing countries. Given the public good characteristics of the global trade and the difficulty of exiting its “voluntary” arrangements, this regulation without representation is morally disturbing. Global trade rules entangle peoples in developing countries in path-dependent arrangements without ever giving them any substantive voice to influence those rules.<sup>120</sup>

Second, the growing capacity of developed countries to reduce global inequality and poverty’s most devastating effects contributes to the moral discomfort created by international trade.<sup>121</sup> As mentioned, the relatively modern phenomenon of enhanced

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<sup>115</sup> Thomas Pogge, *Real World Justice*, 9 *Journal of Ethics* 29 (2005) (coining the term “radical inequality” as pervasive inequality that keeps the worst off in a bad position in both relative and absolute terms).

<sup>116</sup> Thomas Pogge, *Priorities of Global Justice*, 32 *Metaphilosophy* 6 (2001) (mentioning that the economic infrastructure of trade has been structured to favor the interests of developed countries, including intellectual property protections, environmental standards, and taxation conventions). See generally Ethan B. Kapstein, *Distributive Justice and International Trade*, 13 *Ethics & International Affairs* 175 (1999)

<sup>117</sup> On this issue see Dani Rodrik, *One Economics, Many Recipes: Globalization, Institutions, and Economic Growth* 222-23 (Princeton University Press, 2007)

<sup>118</sup> Agriculture is still a relatively labor-intensive industry, in which developing countries have the “comparative advantage” of low wage.

<sup>119</sup> Helen V. Milner, *Globalization, Development and International Institutions: Normative and Positive Perspectives* 3 *Perspectives on Politics* 833 (2005); Michael Pendlebury, *Global Justice and the Specter of Leviathan*, 38 *The Philosophical Forum* 43 (2007).

<sup>120</sup> Kok-Chor Tan, *Critical Notice of John Rawls's The Law of Peoples: With the 'Idea of Public Reason Revisited'*, 31 *Canadian Journal of Philosophy* (2001)

<sup>121</sup> F.M. Kamm, *The New Problem of Distance in Morality*, in *The Ethics of Assistance* 60, (Deen K. Chatterjee ed., 2004).



economic growth has only recently enabled the majority of individuals in developed countries to attain enough surpluses over what is required for them to pursue decent lives. Hence, even though a more egalitarian distribution of resources was always a theoretical option, for the first time in human history, the majority in developed countries can retain a decent standard of living even if they “give up” some of their comparative advantages.

Third, the awareness in developed countries of issues of global poverty and inequality does not allow us to ignore these issues anymore. Global trade is ancient, but electronic media and international NGOs have only recently made the information about the consequences of global poverty and inequality so readily available to the general public.

The analysis of this Section should not be interpreted to suggest that specific parties should not engage in cross-border trade transactions because they are unfair. In fact, in a competitive market, parties do not have the privilege to engage only in fair transactions. Neither the potentially exploited party nor the potential exploiter has any ability to influence the economic equilibrium, even if they regard it to be an unfair one. In the context of international trade and investments, firms increasing their costs in order to provide higher-than-market returns to parties in developing countries would be driven out of business given their lower competitive yields.

### *C. Relational-Distributive-Justice and the Coffee We Drink*

The above argument suggests that international trade entails some unfair patterns, which may therefore result in relational obligations. It further implies that in a competitive market, correcting unfair patterns cannot be assigned to private agents.

An example may help to illustrate this point. Coffee is an agricultural product raised in many developing countries. For simplicity, let us assume that coffee is a standard commodity with no significant quality variations. Let us further assume a scenario in which the average price of coffee to end consumers in the developed world is \$5 per pound, while the coffee farmers sell it in an average price of 5¢ per pound. The return that the farmers receive for their crops allows them to attain only subsistence level.

The price variation reflects, of course, no malice. Coffee could be grown in almost every developing country with a tropical climate; therefore, there is a high potential supply of it. In many of these countries, agriculture is the only/main possible source of employment because of the low human capital resources and the lack of industrial infrastructure. Hence, a competitive market is bound to reduce the returns of coffee farmers to subsistence levels. Under the assumption that the retail coffee markets in developed countries are competitive, the difference of \$4.95 per pound between the price paid by the coffee distributors to the farmers and the price paid by the end consumers reflects the real costs born by the coffee industry (e.g., transportation, advertisement, etc.).

Let us further assume that the vast majority of the individuals from developed countries operating in this industry (as investors, consumers and/or employees of firms in the coffee trade business) enjoy an above-decent lifestyle. Many would think that the price paid to the coffee farmers is “unfair” because if they were paid 20¢ per pound instead of 5¢ (4% rather than 1% of the retail price), the farmers’ living standards would rise dramatically—enabling them to attain basic goods such as good education for their children and better health care services (that would further allow them to reduce the

number of mortalities caused by preventable diseases). If such a uniform price increase would occur, the price to the end coffee consumer would increase by no more than 3%. If the demand for coffee is not completely elastic, and coffee is not completely interchangeable with other products such as tea, this change should not significantly affect coffee sales. Additionally, most individuals from developed countries operating in the coffee industry will retain their high living standards.

True as the above may be, an individual coffee importer cannot buy the coffee from its producers in any more than 5¢ per pound. Given coffee's homogeneity, and the market returns requested by everyone working in the coffee processing and distributing industry, such an importer would be out of business because of its higher costs. In reality as in theory, the global competitive market benefits the end consumer. Indeed, in the last decades we have witnessed how international trade contributed to an excessive and unprecedented increase in the consumption power and living standards of residents in the developed world. These excessive (and one can even say infra-marginal) gains to end consumers in the developed world align with the intuition that the benefits of international trade are in many cases unfairly skewed.

Liberal-Cosmopolitans will find this example troubling. Why do people in the coffee industry owe anything to the coffee farmers and not to the farmers' neighbor—a barber—who just by coincidence does not take part in the coffee trade? This objection overlooks a point made earlier that relational duties exist in *parallel* to whether one agrees that there is any Liberal-Cosmopolitan duty.<sup>122</sup> People in the coffee industry may have special relational duties towards coffee farmers even if all humans (barbers and farmers alike) would have been granted a certain minimum by a Liberal-Cosmopolitan political arrangement.

A somewhat different response is that Liberal-Cosmopolitans' farmers v. barbers challenge misses the essence of the relational duties' argument. Barbers, as well as other service providers, could be seen as part of the coffee-farming community. Members in this community are working hard to supply consumers in developed countries with the products they desire. While the coffee-farming community fares better with foreign trade than without it, its members are still far from having a "decent" living standard, which they could attain if their developed-world counterparts were willing to sacrifice a very small component of their profits. The relevant question therefore is not what is the difference between the farmer and the barber, but whether our benefit from the extreme poverty of the coffee-farming community, and this community's dependency on us, increase our moral obligations towards its members.

This example serves two purposes: First, it demonstrates that there could be a relatively broad agreement that certain "ordinary" international market settings are "unfair" even if it is difficult to perfectly define transactional fairness. This perceived unfairness demonstrates that relational distributive concerns may play an important corrective role in voluntary international market settings. Second, it suggests that in a competitive market, distributive relational obligations entail a collective-action problem. This is a structural problem, and addressing it requires the formation of a mandatory mechanism to overcome it because competitive pressures disable private agents from remedying it themselves.

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<sup>122</sup> See Part IV.C.

## VI. Institutionalizing Relational Duties

Up to this point, this Article established that relational duties exist and that some features of international trade exhibit unfair patterns breach those relational duties. It also demonstrated that it is impossible to address these types of problems on an individual level. Here, I will explain why, in the context of international trade, relational duties should give rise to redistributive justice claims. Rather than affecting our individual behaviors, relational duties arising from international trade should affect the structure of the international or supra-national political institutions governing trade. Accordingly, even though the relational duties are duties individuals owe to one another, the settlement of these claims and duties, on the international level, should be made among countries.

### A. *Close Relationships Over Long Distances and the Common Action Problem*

Increasing competitiveness in global markets makes it impossible for individuals to meet their relational duties. In particular, the physical distance and the overwhelming number of relationships we are indirectly exposed to make it impossible for us to prioritize our duties towards those we do not personally know. Therefore, even if we recognize that the global economy occasionally facilitates unfair trade relationships among individuals from developed and developing countries, we cannot satisfy our duties merely by changing our personal conduct. This is a classic common-action problem, which should be settled by enforcing a comprehensive, involuntary standard of institutional intervention to help parties meet their duties without being placed at a competitive disadvantage.

As mentioned, the notion of relational obligations that correlate with actual, (at least partly), voluntary relationships is evident in the context of our familial, social, work, and community-based relationships. For example, interpersonal intimate relationships between adults may be subject to moral criticism, but only in extreme cases—e.g., polygamy, doctor-patient and teacher-student relationships—they require, involuntary state regulation. Our challenge is to explain why essentially the same relational duties have radically different implications in the interpersonal and international trade settings.

The key answer to this challenge is that distance and scale change our ability to respond to relational duties.<sup>123</sup> International trade exposes us to a wide network of relationships with a lot of individuals—some of whom suffer from acute disadvantages. Even though trade draws people closer, geographic distance and division of labor in modern economic markets make it impossible to trace those disadvantages. Individuals cannot be expected to undertake costly information-finding and analyzing of expenses to determine their actual relationships and the best way of fulfilling their relational obligations toward distant individuals. This difficulty makes it implausible for a single party to undertake the task of determining and prioritizing among different relational obligations, and thus prevents them from taking actions to meet those obligations.

Just as in the case of individuals, peoples will compete for resources. In an insufficiently regulated social structure, this competition may lead to immoral actions.<sup>124</sup> Current international trade relies primarily on parties' ability to advance their position

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<sup>123</sup> Andrew Kuper, *More Than Charity: Cosmopolitan Alternatives to the "Singer Solution"*, 16 *Ethics & International Affairs* 107 (2002)

<sup>124</sup> Jeremy Waldron, *Who is my Neighbor?: Humanity and Proximity*, 86 *Monist* 333 (2003)

through free contractual bargaining,<sup>125</sup> and is therefore inappropriate to address the problem of unfair relationships between developed and developing countries.<sup>126</sup> Given this inability, international institutions need to internalize these negative moral externalities of global trade. Since this is a systemic problem, and not a problem that can be corrected effectively through reasonable changes in the conduct of individual parties, it becomes an issue of justice. Global regulation of relational duties is therefore required not only to improve the standard of living in developing countries, but also, and perhaps primarily, *to help peoples of the developed world remedy the immoral consequences of their occasionally unfair competitive engagement in global trade arrangements.*<sup>127</sup>

It should not surprise us that socio-political institutions are needed to set a standard that helps individuals in the developed world satisfy their relational duties. Part V.A established that trade relationships among peoples have created a complex social construct based on economic associations. The operational goals and structure of this enterprise may differ substantially from those of the domestic state, but both are socio-political constructs. Our domestic experience indicates that coordinating behaviors in such complex social settings requires establishing political institutions that use formal legal devices.<sup>128</sup> Obviously, these legal devices are crude mechanisms that help us satisfy relational obligations only through proxies. However, there are likely no other viable alternatives.

In Part IV.A, I assumed that states will remain the major tax and spending entities in the foreseeable future. From this, I concluded that any major future global redistribution would have to be executed by states. This of course is a refutable assumption, and we may eventually witness other actors—perhaps multinational NGOs such as OXFAM which rely on voluntary giving or regional associations such as the European and African Unions—evolve to better take such a role. However, no paradigm has yet offered a viable alternative for an effective international regime that does not rely on state action. Accordingly, in the context of relational duties resulting from cross-border trade, it is useful to think of a state as an aggregate of its citizens' relational duties.<sup>129</sup>

This conclusion should not be surprising. The argument advanced is not that, as an ontological matter, states *are* an aggregate of their citizen's duties. Rather I assert that if one accepts the relational distributive analysis, then in the world we live in, where states are necessary to promote any large scale redistribution among peoples,

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<sup>125</sup> As mentioned our current order is facilitated by international organizations such as the WTO, IMF and OECD. The ideology of these organizations is that market participation and the guarantee for freedom of contracts and protection of property rights are the way of improving human welfare.

<sup>126</sup> For analyses that reach somewhat similar observations see Ronald U. Mendoza, *The Multilateral Trade Regime: A Global Public Good for All?*, 1 Providing Global Public Goods 455 (2003); Thomas W. Pogge, *Realizing Rawls* 249 (1989).

<sup>127</sup> Joel Feinberg, *Noncoercive Exploitation*, in *Paternalism* (Rolf Sartorius ed., 1983). (stating that state interference is needed not only to protect the exploited party but also to protect the exploiter from engaging in a behavior that inflicts moral harm).

<sup>128</sup> Pablo De Greiff & Ciaran Cronin, *Introduction: Normative Responses to Current Challenges of Governance*, in *Global Justice and Transnational Politics* 19, (Pablo De Greiff & Ciaran Cronin (Eds.) eds., 2002). This of course is also occasionally perceived as true in domestic settings, where the state regulates non-monopolistic private transactions. See *supra* note 1105.

<sup>129</sup> Alexander W. Cappelen, *The Moral Rationale for International Fiscal Law*, 15 *Ethics & International Affairs* 97 (2001) (making somewhat of a similar statement).

policymakers should think of the state construct as a way to meet the relational duties of their citizens. This is a modest claim, which aligns well with the institutional analysis scope of the Article, which seeks to examine how existing real-world institutions should operate justly.

To be sure, global trade is not new; neither are the unfair and exploitive practices associated with it. The world has witnessed rapidly growing volumes of international trade since the early days of imperialism, which was bluntly oppressive and exploitive towards the developing world. However, in the days of colonization it was easy to determine relational duties because members of one nation (the colonizers) were directly exploiting members of another one (the colonized). Even though these duties were hardly ever met, it was easy as a normative matter to determine the obligation. The current situation of economic integration and interrelatedness among different countries' economies diffuses this chain of responsibility. As a result, we witness a web of international relations, which allows all developed countries to benefit from the vulnerabilities of developing countries but does not hold any of them responsible for that. This diffusion of responsibilities and the inability of private parties or state actors to un-coordinately act against it is the essence of the common action problem which this proposal seeks to address.

Determining the actual duties that states have towards others states should be made with reference to the following factors: their relative economic positions in terms of per-capita GNP (to indicate their relative inequality), their poverty measurements, and the volume of trade. The poverty and inequality measurements between two trading countries offer a proxy for the potential existence of unfair relationships between the peoples. For example, an unfair relationship is likely to exist between two countries when one has a GNP per-capita in the top quintile (in terms of total human population) and the latter has a GNP per-capita in the bottom quintile. To provide further support for unfair trade relationships, it would have to be shown that the average income in the less-developed country does not allow for a decent standard of living. By using an average GNP figure, this mechanism assures that relational distributive claims would not be triggered towards countries with high poverty rates that result from unequal intra-nation wealth distributions.<sup>130</sup>

After the standards for inequality and poverty have been determined, the existence of an actual relationship and the level of this relationship should be assessed. The volume of trade serves this function by indicating the intensity of the relational duties.<sup>131</sup> The

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<sup>130</sup> For example, Russia, a country endowed with enormous natural resources, and, as a result, has a relatively high per-capita GDP. It, nevertheless, has high poverty measures because of the manner these resources are allocated. In the previous (semi democratic) elections, Russians seem to endorse this allocation of wealth. National sovereignty therefore prescribe that Russians, and not peoples of developed countries, are held accountable to their political decisions and should preclude any relational distributive duties towards them. The analysis would be very different for a country like Bolivia, even though it has the same problems of inequality and inadequate political institutions as Russia. The Bolivian political system may indeed contribute to the poverty of its citizens, but even if allocation was more equal, most Bolivians would be unable to attain a decent living standard.

<sup>131</sup> Since we are dealing with proxies and since we are dealing with multiparty scenarios we need to think of a way to correlate the level of duty. For example I owe my brother more than I owe my cousin, and I would owe my cousin much more if I was the only relative he had than if he had numerous others that are much more affluent than what I am. In the same way, the obligation of country A to country B may depend on other relationships they both have with other countries.

relative volume of trade that specific developed countries have with a disadvantaged developing country could also be used to determine the relative burden that each country should have in fulfilling those duties.

The above suggestion is just one example of a possible metric that could help establish the existence of relational duties among peoples. In the example I gave, this metric relies on crude GNP measurements, because GNP is a relatively familiar and well established concept. There are other indicators, however, which are perhaps superior to GNP.<sup>132</sup> The factors it sets forward are dynamic and should be revised periodically—so that when the economic positions of two countries converge (whether because the poor country gets richer or vice versa), and the disparity in their bargaining positions is assumingly mitigated, their relational duties would be reduced and eventually eliminated. The Article's suggestion, that some dynamic factors should be used in international agreements, is not new, and such dynamic factors do indeed play an important role in fundamental international agreements.<sup>133</sup> There are other variations and alternative metrics that nation-states could use to measure the relational-distributive duties and claims of their peoples. This Article does not claim there is only one metric through which relational duties could be met, but that establishing international and supranational institutions that promote considerations of relational distributive obligations is the affirmative duty of sovereigns.

The notion that international and supra-national political institutions should be modified to correct systemic problems is not very controversial. It builds on a body of literature in liberal thought stressing individuals' duty to establish just institutions,<sup>134</sup> especially when concerns over protecting the vulnerable are involved.<sup>135</sup>

Once a systemic injustice is recognized, establishing just institutions to correct it is necessary to reduce the injustice by setting a common standard with which all people should comply. This common standard helps achieve two goals. First, it makes it easier to determine that everyone is contributing at least their fair share—which, as in the case of any common action, helps to deter free rider incidents.<sup>136</sup> Second, it sets a benchmark for what different parties “owe” to each other and relieves them from the constant need to ameliorate injustices for which they are not directly responsible.

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<sup>132</sup> Other more elaborated indicators could take into account purchasing-power indexes and, more importantly, capabilities development indexes developed in accordance with Sen and Nussbaum's capabilities approach. See *supra* note 78. The UN development program has recently adopted such a capabilities index in its report. See Undp, *Human Development Reports*. at <http://hdr.undp.org/en/>.

<sup>133</sup> For example the Kyoto protocol gives developing countries more time to meet their emission targets. David G. Victor, *The Collapse of the Kyoto Protocol and the Struggle to Slow Global Warming* 33-44 (Princeton University Press. 2001).

<sup>134</sup> Charles R. Beitz, *Political Theory and International Relations*, 171 (1979); George Klosko, *Presumptive Benefit, Fairness, and Political Obligation*, 16 *Philosophy and Public Affairs* 241 (1987); Andrew Kuper, *More Than Charity: Cosmopolitan Alternatives to the "Singer Solution"*, 16 *Ethics & International Affairs* 107 (2002); Martha C. Nussbaum, *Frontiers of Justice* 306-10 (2006); Thomas Pogge, *Severe Poverty as a Violation of Negative Duties*, 19 *Ethics & International Affairs* 55 (2005); John Rawls, *The Law of Peoples* 98 (1999); Kok-Chor Tan, *Justice Without Borders – Cosmopolitanism, Nationalism and Patriotism* 34 (2004).

<sup>135</sup> Rawlsian Maximin arrangement is arguably primarily motivated by the intuition that the least well off should be protected. See Robert Goodin, *Protecting the Vulnerable* 111 (1985).

<sup>136</sup> Onora O'neill, *Bounds of Justice*, 140-42 (2000); Onora O'neill, *Agents of Justice*, 32 *Metaphilosophy* 180 (2001).

### *B. Understanding the Difference between Brazil and Bhutan*

The argument that relational duties are a source of global distributive claims differs from the more traditional impartial-justice Liberal-Cosmopolitan argument because it bases redistributive relational claims on actual trade relationships. By basing these claims on an actual relationship, it recognizes that in a world with multiple sovereigns, basing cross-border redistribution on impartial factors is unsustainable. It is also more intuitive than the Liberal-Cosmopolitan argument because it does not classify the primary allegiance individuals feel towards their compatriots as immoral.

To illustrate this point, let us take four countries: the United States, Botswana, Brazil, and Bhutan. Of the four, the United States is the richest country, in the sense that it has the highest per-capita GNP.<sup>137</sup> Botswana is a poor country. However, because of its relatively small population, democratic government, and huge diamond resources, all of its citizens have access to reasonable health and education services. Brazil and Bhutan are also poor countries, but many of their citizens do not enjoy minimally acceptable levels of subsistence. In these two countries the largest causes of mortality are preventable diseases such as dysentery; there is also no comprehensive children immunization program, illiteracy rates are high, and many families face food and shelter insecurity.

The United States has some degree of commercial relationships with Botswana and practically no such relationships with Bhutan. On the other hand, the United States has extensive commercial and diplomatic relationships with Brazil. American corporations are heavily invested in Brazil, and American shareholders have yielded substantial profits on their Brazilian investments over the years. Brazilian businesses use intellectual property developed in the United States, and a lot of Brazilian manufactured and agricultural goods are sold in U.S. markets.

According to Liberal-Cosmopolitan notions of impartial distributive justice, because all human beings require equal moral consideration and/or because the United States shares the same economic system with the other three countries, it is required to transfer funds to them. Pogge's modified "do no harm" Liberal-Cosmopolitan argument would claim that the international economic order harms the poor countries, and the United States should compensate them for that harm. Under the Liberal-Cosmopolitan approaches, Americans should provide the other three peoples with a similar and equal moral respect and resources so that all individuals in them may have a chance to lead meaningful (decent) lives. It is important to recognize that Liberal-Cosmopolitans may realize that they need to compromise and as a result allow American citizens to exhibit a distributional preference towards their compatriots. However, the American citizens would not be allowed to prefer Brazilians over the Bhutanese as long as the levels of poverty in both countries are the same. The major difficulty with Pogge's "do no harm" argument is that it is difficult to establish actual reasons for why Americans should be considered as harming Bhutan or Botswana—countries with which they have very little contact.

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<sup>137</sup> I chose these countries because there has not been any direct form of oppression or war among these countries in the recent past so the analysis would not be complicated by possible claims for compensation based on historic events.

Liberal-Statists such as Rawls claim that the United States has no obligation towards any of these countries other than in cases of acute humanitarian crises. If earthquakes hit Bhutan, Botswana, and Brazil, the United States is equally obliged to help all of them. Unless such a devastating occurrence happens, American citizens have the same non-duty relationship with poor Brazilians as they do with poor people in Bhutan. They should have no special duty to Brazilians raising their coffee, and have no responsibility if, as a result of the decision to subsidize corn for the purpose of producing ethanol in the United States, many poor Brazilian families experience food insecurity. The fact that the Brazilian economy is connected to the American economy, and rather dependent on it, does not strengthen or weaken Brazil's plea for American help; therefore, it is in exactly the same position as Bhutan.

Unlike the other approaches, the relational-distributive obligations I propose, the commercial relationships between Americans and Bhutanese are insignificant, so Americans may have humanitarian duties towards Bhutanese, but not relational duties. The case of Botswana is slightly more complicated, because its citizens may not qualify as poor in an absolute sense, and their commercial relationships with American are not very intensive. Accordingly, if one adopts the position that relational duties should only exist for those that qualify as poor, it is reasonable to expect that Americans do not hold any relational duties towards the people living in Botswana. If one adopts a continuum approach, it may be argued that the United States has to account for some, relatively weak, relational duties that Americans owe to people living in Botswana.

Under the relational duties framework, Americans have major distributive obligations towards Brazilians. Brazil's poverty and unequal position suggest that there is a high probability for unfair exchanges between the two peoples; the high volume of trade between them suggests, moreover, that their relationship is very strong. The relational duty framework uses trade relationships between countries as a proxy for the relational duties between their peoples. Therefore, since the United States and Brazil are currently the best representatives of their peoples, there should be a direct correlation between those factors and the wealth transfers from the United States to Brazil.

Assume that apart from the United States, Brazil has extensive commercial relationships with Portugal, Britain, and France. In this case the burden of meeting the relational-distributive duties towards Brazil should be allocated among these four countries according to two factors: their actual volumes of trade with Brazil and their capacity to help it. Even though in all four of the above-mentioned countries, the vast majority of people enjoy an above-decent living standard, there are great differences between Portugal and the United States, the latter commanding much more wealth and having a greater capacity to help.

### *C. Some Final Remarks*

The above proposal may raise some concerns. First, the existence of a collective action problem, which makes it difficult to impose faire trade practices, reduces but does not necessarily nullify the possibility for fair conduct. Some companies may actually be engaging in those practices today. Therefore shifting the responsibility to the state level may reduce the "demand" for private fair conduct. This may absolve existing practices, and be less accurate because states are only crude proxies to the level of their peoples'



implication in international trade.<sup>138</sup> The response to this concern is that adopting the above notion would impact the behavior of private parties (although one can imagine other scenarios),<sup>139</sup> but that this is true for any type of state and regulatory actions. Government action is therefore justified only if the common action is so severe that curtailing it would yield more beneficial results than just leaving it to the preferences of private parties. Policymakers face this problem all the time—more welfare results in less charity, and setting state standards on environmental and safety issues may lower the actual practices of certain businesses. In the above discussion I have demonstrated why the common action problem associated with the competitiveness and interrelatedness disables parties from effectively addressing the issue of fair practices. In this setting, private actions can only be sporadic, anecdotal, and motivated by public relation concerns<sup>140</sup>—so that the benefits that stem from any potential state action would likely compensate for any reduction in those practices.

Second, the Article's argument implicitly assumes that governments are benevolent and competent agents serving their peoples' interests. This, unfortunately, is not the case with many governments in developing countries that suffer from weak institutions, low expertise, and corruption.<sup>141</sup> It is, however, important to recognize that this is a general problem with any transfer to such countries, and not only with the redistributive transfers. For example, when the United States and its residents enter into oil production contracts with countries like Angola or Nigeria, they in effect support corrupt governments. Very little of this oil money is invested in the people of those countries, some of it finds its way to private bank accounts in Switzerland and some of it is actually used to oppress opposition groups in those countries. Therefore, the problem of what corrupted governments do with money they should invest on behalf of their citizens is broader than the issue of redistributive payments. In the context of redistributive payments, there are actually some solutions that can help to partly overcome some of these problems.<sup>142</sup> However, given the need to limit its scope, the paper will not address any of them in details.

Third, some may regard this idea of relational-distributive duties as too limited. Many of the least-developed countries (e.g., many sub-Saharan countries, East Timor, Bangladesh) are so disadvantaged that they do not have any external trade relationships with developed countries. Therefore, countries with the most dire need for external resources would not benefit from this framework.

The above concerns are valid. The advantage of the relational distributive framework over the Liberal-Cosmopolitan ideal lies not in its comprehensive coverage,

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<sup>138</sup> I thank Lee Fennell for bringing this point to my attention.

<sup>139</sup> For example, such a policy can help center the issues of fair conduct in the heart of the political debate.

<sup>140</sup> The Economist, *Special Report: Corporate Social Responsibility*, The Economist January 19th. 2008.

<sup>141</sup> Charles R. Irish, *International Double Taxation Agreements and Income Taxation at Source*, 23 *Int'l & Comp. L.Q.* 292 (1974) ; Mathias Risse, *How Does the Global Order Harm the Poor?* , 33 *Philosophy and Public Affairs* 349 (2005)

<sup>142</sup> My general impression is that this problem could be, partially, dealt with by having a rule that if the corruption measurements of a certain developing country exceed a certain level, the developed country would make transfers to a trust of NGOs that would invest it in the development of the country. This system is far from offering a perfect solution but it provides an avenue to pressure governments to reduce their levels of corruption and to improve their legal institutions. *See generally* Dale Jamieson, *Duties to the Distant: Aid, Assistance, and Intervention in the Developing World*, 9 *Journal of Ethics* 151 (2005).

**[XXshould look for footnotes to make some citation to this point from outside the tax law areaXX]**

however. The advantage of the relational setting is that it rejects the idea that cross-border transfers of wealth are a form of charity and establishes, instead, a system of entitlements backed by concrete duties that address how the redistributive burden should be systematically and fairly allocated. It relies on the premise that even though human relationships may in many cases be a product of coincidence,<sup>143</sup> they are not morally arbitrary. It achieves all this while avoiding the Liberal-Cosmopolitan absurdity, which requires the United States to distribute funds to Bhutan and North Korea, thus putting forward a claim for redistributive justice that could not be met in the absence of a world government.

The relational duty theory is not a Liberal-Cosmopolitan impartial-justice theory because it does not try to eliminate the role of luck and coincidence. Instead, it relies on intuitive notions that taking unfair advantage of the vulnerable is immoral and, most importantly, that people have greater responsibility to those distant peoples with which they have actual economic relationships.<sup>144</sup> It also incorporates some notion of impartiality, because it determines distributive obligations in accordance with objective indicators. For example, the United States may disagree with some policies executed by the Mexican or Chinese governments. However, as long as there are commercial trade relationships with them, the United States must ensure that Americans' relational-distributive duties towards the people of Mexico and China are met.

This Article began by explaining that liberal thinkers avoid making partial claims because they perceive moral arguments based on actual human interactions as less ambitious. They identify partial arguments as trying to change individual conduct rather than the conduct of political institutions and the universal rules according to which they operate.<sup>145</sup> Here, I have demonstrated that this is not necessarily the case, and that relational duties—which impose a systemic problem—can and should be translated to impartial political claims over issues of global wealth redistribution and serve to reform international institutions. Combined together, my relational framework claims that it is immoral to ignore the interests of all foreigners but allows sovereigns to discount the interests of foreigners in comparison with those of compatriots. Furthermore, it offers an impartial way in which the interests of foreigners should be prioritized and addressed by developed countries in a way that aligns with common political intuitions; it argues that people owe more to those that they are closely connected with and who depend upon them. And, further, individuals' relational duties depend on both their capacity to help and on the other party's actual level of disadvantage.

Finally, in a somewhat similar vein, there is a valid concern that by imposing duties on transactions with developing countries we would provide residents of developed countries a disincentive to engage in trade relationship with them. The first response to this is that every voluntary transaction results in a welfare surplus. When dealing with a vulnerable party, the non-vulnerable party is not required to give up their surplus, and not even to reduce it to the level in which they would be indifferent to doing

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<sup>143</sup> Actual trade relationships are a matter of moral coincidence. For example, I can buy my groceries in numerous shops—and my eventual decision to buy them in one place rather than the other is a matter of moral coincidence.

<sup>144</sup> Darrel Moellendorf, *Person's Interests, States' Duties and Global Governance*, in *The Political Philosophy of Cosmopolitanism*, 149, (Gillian Brock & Harry Brighouse eds., 2005).

<sup>145</sup> Thomas W. Pogge, *Cosmopolitanism and Sovereignty*, 103 *Ethics* 48 (1992)

the transaction with a non-vulnerable party, but just to allocate it more evenly. Accordingly, if the relational duties are imposed uniformly, there would still be benefits in buying coffee at developing countries rather than trying to produce it in developed countries, because the developing countries have some factors (e.g., sun and cheap labor) that make it cheaper to produce coffee. Relational duties would not eliminate the surplus, they would just allocate it so that the coffee farmers, and not just the Starbucks customers, would be able to attain basic health and education services for their children. The second response is that there are ways to recognize those duties without imposing any penalties on those individuals and business in the developed world that directly engage in trade with the developing world. The below analysis demonstrates how international tax policy could be designed to take account of such duties without imposing direct penalties on private parties engaged in cross border transactions.

## VII. Potential Policy Implications

Until now, this Article has dealt only with the source of the duty for redistribution in a world economy comprised of people living in separate nation-states, which are connected through (intensive) trade relationships. It has introduced a novel conception of a relational global distributive duty, but did not indicate a specific institutional arrangement through which this duty should be fulfilled. These relational-distributive duties could be met in many ways—lump sum transfers among states, global labor safety regulations, and anti-child labor initiatives— to name only a few examples.

Here I want to demonstrate how the ITR could be made to promote relational-distributive duties. I suggest that even though we think of the tax system as a way to primarily promote domestic distributional outcomes, international tax arrangements also offer a promising avenue through which relational-distributive claims could be met. The ITR is the set of norms and soft law rules through which countries divide the rights to tax cross-border economic activities.<sup>146</sup> Accordingly, it assumes the existence of states *and* the existence of trade relationships among them, which are the cornerstone assumptions of the relational-distributive duties analysis. Since the ITR mirrors the international trade regime, the tax relationships between countries can serve to correct the relational claims arising from their trade relationships. Instead of regulating trade and investments, ITR conventions can require developed countries to transfer some of their taxing rights to developing countries, thus addressing relational duties by serving as an indirect macro price-correction mechanism. Startlingly, even though the ITR deals with allocating taxing rights between nations, global redistributive considerations play little (if any) role in policy and scholarly debates about the ITR. Although explaining the ITR's structure in depth is impossible within the framework of this Article, I briefly explain how relational duties should affect a number of core income tax arrangements.

Tax distributive arrangements provide effective mechanisms and do not require extensive on-the-ground cooperation of foreign countries' enforcement branches such as other alternatives. However, one does not have to subscribe to the notion that tax practices are categorically more effective to accept my argument. The skeptic reader should agree that given doubts about the effectiveness of direct trade regulation,

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<sup>146</sup> Michel J Graetz, *The Foundations of International Income Taxation* 11 (Foundation Press, 2003)

policymakers should be willing to consider using the ITR to meet relational-distributive duties of their peoples—so as not to put all the eggs in the same basket.<sup>147</sup>

*A. Using International Taxation to Promote Relational-Distributive Duties*

The ITR has several distinctive features.<sup>148</sup> Primarily, it requires an economic relationship that could be taxed by two nation states—meaning the existence of transactions that are subject to tax under the laws of more than one country. Only present economic relationships trigger ITR analysis, and it only takes into account taxes levied by nation-states—not by state and local governments. Hence, once a transaction has been identified as a potential tax subject of more than one jurisdiction, the distribution of these tax rights is regulated by ITR conventions.<sup>149</sup> The ITR deals with these taxing rights conflicts through a set of soft law principles embedded in domestic tax legislation and bilateral double taxation treaties.<sup>150</sup> Double taxation treaties are contractual arrangements that countries enter to reduce the risk of double taxation that would hinder trade and investment relationships between them.<sup>151</sup>

The ITR allocates wealth—in the form of taxing rights—among sovereigns when persons within them share some relational trade or investment relationships. It therefore seems like an optimal mechanism to settle relational-distributive claims triggered by trade relationships. It also aligns well with the assumptions of my analysis; it accepts the existence of sovereign nation states and their imperative role in any mass global redistribution enterprise, and develops a distributive framework that is based on observable current-trade-indicators, avoiding problems of causation associated with corrective justice. Most importantly, it avoids both the daunting gaps in recognizing foreigners' rights and the task of assigning those rights with meaningful correlative duties.

Using the ITR to promote relational-distributive duties has some other significant benefits. First, under the relational framework, duties correlate with the level of association, and this correlation is built-in into the tax arena. For example, assume that a double taxation treaty between a developed and a developing country assigns proportionally high taxing rights to the developing country. As the volume of trade between the two countries increases, the stronger their relational duties are assumed to be. As their trade relationships intensify, the ITR would account for the higher level of duties automatically—simply by assigning more taxing rights to the developing country.

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<sup>147</sup> On this issue see also Nancy Staudt, *Redundant Tax and Spending Programs*, 100 Nw. U.L. Rev. 1197 (2006).

<sup>148</sup> Alexander W. Cappelen, *The Moral Rationale for International Fiscal Law*, 15 Ethics & International Affairs 97 (2001) (providing an excellent summary for non-tax scholars)

<sup>149</sup> Ilan Benshalom, *The Quest to Tax Interest Income: Stages in the Development of International Taxation*, 27 Va. Tax Rev. 631 (2008).

<sup>150</sup> The key example for such a principle is that when a non-resident engages in an economic activity in a foreign country, that foreign country has the right to first levy income taxes on the proceeds of this activity. The country in which that individual resides may also have a residual right to levy taxes and must provide some type of relief to the taxes paid in the country where the activity has taken place. Most of these norms are codified in a model tax treaty published by the OECD. See OECD, *Model Tax Convention on Income and on Capital*, Jan. 28, 2003.

<sup>151</sup> Ilan Benshalom, *The Quest to Tax Interest Income: Stages in the Development of International Taxation*, 27 Va. Tax Rev. 631 (2008) (mentioning a variety of other reasons for which countries enter double taxation treaties).

Second, allocating taxing rights seems to be a relatively effective way to fulfill relational redistributive obligations. Other ways of meeting relational redistributive duties could involve particular price-control and labor-law standards that would be difficult to regulate and enforce.<sup>152</sup> Moreover, any attempt to regulate the production of goods and labor standard in developing countries seems politically infeasible because of the (justified) suspicion that it is really an excuse for protectionism. Any such attempt is therefore likely to be classified by developing countries as an imperialist intervention and rejected on that account. Developed countries can obviously address their relational duties also by directly spending to help others in developing countries; however, gaining the necessary domestic support for large lump-sum transfers would be difficult.<sup>153</sup>

In comparison to those mechanisms, fulfilling relational-distributive duties through the ITR would provide a crude and more administrable macro price-correction mechanism. Rather than making sure that importers of coffee pay a fair price to the farmers, the developing country would retain a greater right to tax the profits of this transaction. It can then use the extra revenues generated to provide better services to their low-waged citizens. Money is fungible, and once it is allocated to a developing country, there is no way to trace whether it has reached the “farmers.” However, it will serve to raise the living standards and government services in a way that should also benefit the farmers. Oddly, this argument relates in an interesting way with the current orthodoxy that the tax system redistributes more efficiently than regulation.<sup>154</sup> Admittedly the way in which the Article describes international taxation and its relationship with international trade seems to align with what critics of this orthodoxy claim—that the distinction between state tax and regulatory actions tend to blur on the margins.<sup>155</sup> However, the Article also illustrates that the tax system is the most *effective* way to redistribute. This effectiveness stems from the crudeness of tax rules and their (limited) reliance on few indicators as rough proxies to determine the appropriate distributive outcome.<sup>156</sup>

Third, private parties from the developed world would not necessarily be penalized with excessive duties because they chose to undertake a transaction with parties in developing countries. Their taxes do not necessarily have to increase because developed countries would be required to give up some of their taxing authority, and, more importantly, developing countries may choose not to exercise all their taxing rights, or to exercise them at lower rates to encourage foreign investment. There is a genuine fear that developing countries would be forced through a tax-competitive process to omit

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<sup>152</sup> For example, any attempt by the WTO to set safety or labor standards in developing countries would be ineffective and inefficient due to the lack of enforcement and information gathering capacities. *See also* George F. Demartino, *Global Economy, Global Justice – Theoretical Objections and Policy Alternatives to Neoliberalism*, 209-14 (Routledge 2000) (discussing some of the other alternatives that would assure that free trade amounts to fair trade).

<sup>153</sup> Alexander W. Cappelen, *National and International Distributive Justice in Bilateral Tax Treaties*, 56 *Finanzarchiv* 424 (1999) (providing a brilliant analysis of this issue)

<sup>154</sup> Louis Kaplow & Steven Shavell, *Should Legal Rules Favor the Poor? Clarifying the Role of Legal Rules and the Income Tax in Redistributing Income*, 29 *J. Legal Stud.* 821 (2000). For a different position *see* Anthony T. Kronman, *Contract Law and Distributive Justice*, 89 *Yale L.J.* 472 (1980).

<sup>155</sup> Kyle Logue & Ronen Avraham, *Redistributing Optimally: Of Tax Rules, Legal Rules, and Insurance* 56 *Tax L. Rev.* 157 (2003).

<sup>156</sup> Addressing the above distinction between efficient and effective distribution is a topic that transcends the scope of this article and deferred to future research.

all of their tax rights in an effort to attract foreign investments. These are of course very serious concerns for any operational global redistributive ITR arrangement, which are mostly relevant in the context of corporate taxation. However, if developing countries are provided also with the ability to effectively waive some of the taxes to attract investments, this form of wealth redistribution could not be portrayed as promoting developed countries' protectionism.

In other Articles, I have stressed that the problem of tax competition is probably the most salient challenge facing ITR policymakers today, especially in the case of MNEs.<sup>157</sup> However, the scope of the current paper is limited to discussing the normative claim or relational distributive duties and the general aspects of the ITR that may help address them. Without undermining the difficulty that tax competition imposes on using the ITR as a mechanism to promote global redistribution, addressing these issues in detail is deferred to a future paper which specifically deals with allocating the tax base of MNEs.

As I demonstrated, some of the above points involve complicated tradeoffs and should be viewed as promising reform options but also as potential reasons for concern. However, the ITR's relational framework still appeals to a strong intuition that some economic relationships entail certain costs and that parties should not be able to contract aspects of the transaction involving negative externalities. If international trade gives rise to unfair patterns, that should be corrected, and the ITR seems to provide a proper involuntary framework to impose those duties on specific agents. Taxes are coercive costs imposed on agents to finance the government's activities and to achieve certain distributional goals, and parties cannot and should not be able to exercise full contractual control to determine their tax treatment. The involuntary nature of tax transactions makes them an ideal mechanism to address distributive concerns on both the domestic and international frontiers.

Unlike the Liberal-Cosmopolitan ideal, the ITR relational-distributive justice framework depends upon the actual choices of agents in different countries who decide to interact with others. Put differently, rather than trying to establish a flawless world, my proposal offers a principled framework of how to establish a system of fair international trade. This is an achievable ambition and should make the ITR a plausible mechanism for achieving the type of global wealth redistribution that would appeal to policymakers, more so than any other Liberal-Cosmopolitan cross-border regulatory or transfer framework.<sup>158</sup>

### *B. The Current ITR Arena*

Finally, this Article surveys the ITR's current institutional and scholarly arena. It demonstrates how the ITR conventions developed today fall short of addressing any issue of distributive justice. It then explains the sources of this conceptual deficiency and briefly mentions a few potential issues within the ITR income tax conventions that could be reformed to promote the fulfillment of relational-distributive duties.

As mentioned, unlike the domestic realm, where philosophers, economists and legal scholars all recognize that tax policy is the key policy instrument to promote

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<sup>157</sup> Sourcing stages I-III.

<sup>158</sup> Richard W. Miller, *Moral Closeness and World Community*, in *The Ethics of Assistance*, 101, (Deen K. Chatterjee ed., 2004). (presenting somewhat of a similar argument).

distributive objectives, the distributive impact of the ITR has received little attention by the literature. Even though more collaboration among economists, policymakers, and normative philosophers would generally be more desirable,<sup>159</sup> the gap in the case of the ITR is especially alarming. Philosophers concerned with promoting global distributive justice tend to completely neglect ITR arrangements and focus instead on how to better regulate trade. In particular, they focus on issues such as privatization, deregulation, and agricultural protectionism as they are facilitated by institutions such as the WTO and IMF.<sup>160</sup> Tax rules are complex and the tradeoffs associated with them are often not intuitive so philosophers tend to avoid addressing them altogether. Tax scholars, on the other hand, find it difficult to offer a normative judgment about certain tax arrangements without a concrete foundation of a normative theory.

One factor that could account for the gap in the literature dealing with domestic and international tax redistribution is the way in which ITR international institutions have developed over the last half-century. Currently, there is no international organization that directly regulates international taxation. Taxation has long been categorized as an explicit feature of national sovereignty, and, as such, there has been no substantial shift in taxing authority from the nation-state to international and supra-national institutions, as it has in the case of trade.<sup>161</sup> The major international forum in which ITR policy is deliberated and coordinated is the OECD, which is a forum established and dominated by Western, developed countries. The OECD has been able to create the tax component of the international trade public grid<sup>162</sup> through the model tax treaty (and commentary) that helps countries to establish treaties to avoid double taxation, but also through numerous, reports, policy briefs and other publications dealing with tax treaties and issues of international taxation. The treaty and various other reports and policy briefs, the OECD has created a network. The United Nations and the IMF have also made some efforts to aid developing countries in establishing their tax systems and in negotiating tax treaties.<sup>163</sup> The history of those institutions indicates, however, that they have no serious

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<sup>159</sup> Ethan B. Kapstein, *Models of International Economic Justice*, 18 *Ethics & International Affairs* 79 (2004).

<sup>160</sup> Ronald U. Mendoza, *The Multilateral Trade Regime: A Global Public Good for All?*, 1 *Providing Global Public Goods* 455 (2003); Helen V. Milner, *Globalization, Development and International Institutions: Normative and Positive Perspectives* 3 *Perspectives on Politics* 833 (2005). The best example is the following collection of essays: Christian Barry & Thomas W. Pogge (eds.), *Global Institutions and Responsibilities* (2005). This book was written and edited by the leading philosophers dealing with issues of global distributive justice and institutional reforms necessary to achieve it, and provides novel insights about how many institutional framework should be re-conceptualized to achieve this end. None of the articles in this book addresses issues of international taxation, however.

<sup>161</sup> Ilan Benshalom, *A Comprehensive Solution for a Targeted Problem: A Critique of the EU's Home State Taxation and CCCTB Initiatives*, *European Taxation* (forthcoming 2009); Diane M. Ring, *What's at Stake in the Sovereignty Debate?: International Tax and the Nation-State* (SSRN.).

<sup>162</sup> See *supra* note 87 and accompanying text. See also Eduardo A. Baistrocchi, *The Use and Interpretation of Tax Treaties in the Emerging World: Theory and Implications*, *British Tax Review* (2008)

<sup>163</sup> U.N. Dept. of Econ. & Soc. Affairs, *United Nations Model Double Taxation Convention Between Developed and Developing Countries* (2001). Whitney Whisenhunt, *To Zedillo or not to Zedillo: Why the World Needs an ITO*, 16 *Temp. Int'l & Comp. L.J.* 541 (2002) (describing such recent efforts made by the United-Nations).

ambition to promote global wealth redistribution;<sup>164</sup> this is particularly true with regard to the OECD, which is by far the most dominant international ITR forum.

In this respect, it is important to note the two following notions. First, even though coordination has been the main goal of the OECD, there is no *a priori* reason to think that it should be their only goal.<sup>165</sup> If institutional reform is required to prevent unfair trade, the historical limitations of the ITR framework should not be seen as a normative constraint.

Second, the loose level of ITR regulatory control on the actual allocation of taxing rights among nation-states does not mean that no allocation paradigm exists. Even though coordination between sovereigns is not intensive—as in the case of trade—taxing rights of profits from global trade *are de facto allocated* all the time. The decision not to engage in an explicit agreement between sovereigns about how to allocate taxing rights is a decision in itself, which has its own underlying implications and normative assumptions. For example, the fact that we have no comprehensive multilateral agreement that prevents income shifting to low income tax jurisdictions does not mean that there is no allocation of benefits. Sophisticated taxpayers use the absence of such a comprehensive agreement to allocate more income to low-tax countries such as Ireland and the benefits of this allocation is shared by Ireland and the investors at the expense of other countries.<sup>166</sup>

As some important scholars have noted, current ITR debate adopts a neo-liberal discourse that highlights contractual equity considerations—e.g., reciprocity, non-discrimination, and economic neutrality/efficiency<sup>167</sup>—and marginalizes issues of redistribution and poverty reduction.<sup>168</sup> This marginalization of global redistributive issues should not be determinative of future actions. The ITR involves a number of key issues that bear directly on the question of how taxing rights between developed and developing countries should be allocated. The most well-known issue is the conflict between the notions of source and residency taxation. Many countries, including, most notably, the United States and the United Kingdom, have reserved the right to tax the income their individual and corporate residents derive from their activities and investments in foreign jurisdictions. Even though many other sovereigns have recently limited or eliminated their residency-based taxes, it has been the dominant approach throughout most of the twentieth century.<sup>169</sup> The main rationale supporting residency

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<sup>164</sup> Ilan Benshalom, *The Quest to Tax Interest Income: Stages in the Development of International Taxation*, 27 Va. Tax Rev. 631 (2008).

<sup>165</sup> Steven Weber, *International Organizations and the Pursuit of Justice in the World Economy*, 14 Ethics & International Affairs 99 (2000).

<sup>166</sup> Ilan Benshalom, *Sourcing the "Unsourceable": The Cost Sharing Regulations and the Sourcing of Affiliated-Intangible Related Transactions*, 26 Va. Tax Rev. 631 (2007) (providing an example for such transactions in the context of intangibles-related transactions).

<sup>167</sup> Alvin C. Warren Jr., *Income Tax Discrimination Against International Commerce*, 54 Tax L. Rev. 131 (2001). See also Charles R. Irish, *International Double Taxation Agreements and Income Taxation at Source*, 23 Int'l & Comp. L.Q. 292 (1974) (providing a critical analysis for why reciprocity should not be the principle governing the tax relationships between developed and developing countries).

<sup>168</sup> Richard J. Vann, *Reflections on Business Profits and the Arm's-Length Principle*, in *Taxation of Business Profits Under tax Treaties*, 145, (Brian J. Arnold, et al. eds., 2003).

<sup>169</sup> Ilan Benshalom, *Sourcing the "Unsourceable": The Cost Sharing Regulations and the Sourcing of Affiliated-Intangible Related Transactions*, 26 Va. Tax Rev. 631 (2007); Ilan Benshalom, *The Quest to Tax Interest Income: Stages in the Development of International Taxation*, 27 Va. Tax Rev. 631 (2008).



taxation is that the burden of financing the government should be allocated among residents and citizens in accordance with their ability to pay the tax. Since foreign income has exactly the same purchasing power as income earned from domestic activities, it should receive precisely the same tax treatment when determining taxpayers' ability to pay.<sup>170</sup>

An additional basis of taxation is source taxation—or the right of the state to tax the income arising from an economic activity that is taking place within its jurisdiction. The rationales for taxing non-residents at the source are not self-evident. The main explanations view the source tax as a benefit tax in which the country of source charges the business enterprise for using its infrastructures.<sup>171</sup> Developing countries are typically net-capital-importers and therefore source jurisdictions; in contrast, developed countries, where most investors reside, have traditionally been perceived as residence jurisdictions.<sup>172</sup>

In previous articles, I have argued that source rules' notorious complexity is primarily due to a lack of normative comprehension as to what they are expected to achieve.<sup>173</sup> The nexus which ties an economic activity to a source jurisdiction is primarily a normative one, and source rules are bound to be complicated as long as this normative benchmark is not fully elaborated. The relational distributive analysis provides an example of such a normative benchmark. When tax policymakers consider the scope of source and residency taxation, they should consider the impact of relational duties on the allocation of taxing rights between countries. Increasing the scope of source jurisdiction, *at the expense of residency*,<sup>174</sup> therefore, *may be required* for

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<sup>170</sup> Stephen E. Shay, et al., "What's Source Got to Do With It?" *Source Rules and U.S. International Taxation*, 56 Tax L. Rev. 81 (2002). See generally Robert J. Peroni, *A Hitchhiker's Guide to Reform of the Foreign Tax Credit Limitation*, 56 SMU L. Rev. 391 (2003).

<sup>171</sup> Peggy B. Musgrave, *Interjurisdictional Equity in Company Taxation Principles and Applications to the European Union*, in *Taxing capital income in the European Union* 152, (Sijbren Cnossen ed., 2000).; Stephen E. Shay, et al., "What's Source Got to Do With It?" *Source Rules and U.S. International Taxation*, 56 Tax L. Rev. 81 (2002). Other explanations stress the administrative and political difficulty of taxing businesses and investments of foreigners at potentially lower effective tax rates than those of domestically owned enterprises.

<sup>172</sup> In Recent years this distinction has been blurred. More importantly, the emergence of the tax planning industry, which allows many investors to shelter their income in low tax jurisdictions and to avoid both high source and resident tax rates, suggests that the residency source conflict is not a zero sum game between developed and developing countries but a (zero-sum-game) between investors, tax-havens, developing and developed countries. Ilan Benshalom, *The Quest to Tax Interest Income: Stages in the Development of International Taxation*, 27 Va. Tax Rev. 631 (2008).

<sup>173</sup> Ilan Benshalom, *Sourcing the "Unsourceable": The Cost Sharing Regulations and the Sourcing of Affiliated-Intangible Related Transactions*, 26 Va. Tax Rev. 631 (2007); Ilan Benshalom, *The Quest to Tax Interest Income: Stages in the Development of International Taxation*, 27 Va. Tax Rev. 631 (2008). For articles discussion the source rules see Reuven S. Avi-Yonah, *For Haven's Sake: Reflections on Inversion Transactions*, 95 TNT 1793 (2002); Michel J Graetz, *The Foundations of International Income Taxation* (Foundation Press. 2003); Michael J. McIntyre, *The Design of Tax Rules for the North American Free Trade Alliance*, 49 Tax L. Rev. 769 (1994).

<sup>174</sup> Source taxation typically has the primary right to tax. Residence taxation is a secondary layer – which typically provides credit relief to any source taxes paid. Accordingly, many of the tax benefits that developing countries try to offer foreign investors are “swallowed” by developed countries' residual residence taxation. My analysis of relational-distributive-justice may dictate that developing countries have *the right* to offer tax holidays to investors or that certain investments in developing countries should be exempt (fully or partially) from residence taxation. See also Karen B. Brown, *Missing Africa: Should U.S.*

developed countries to satisfy their relational-distributive duties towards developing countries. This shift in the “right to levy tax” benefits the governments of developing countries over the governments of developed countries. However, it does not create a direct penalty on parties in developed countries for the trade relationships they have with members in developing countries and does not create any disincentives to engage in such trade.<sup>175</sup> Despite the various costs associated with international trade, countries engage in it because they think that overall they benefit from it. Meeting the allocative costs associated with distributive-relational duties that stem out from international trade are only one type of costs that should be addressed as part of that tradeoff.

A simple example of how relational distributive duties could impact actual tax allocation arrangements may be helpful. Current ITR conventions grant the residence country, in which investors reside, the right to tax interest payments they receive on loans made to foreigners.<sup>176</sup> The source country, in which the borrowers reside, has the right to implement a withholding tax on those payments, but this right is limited in two important ways. First, over the years, double taxation treaties have reduced withholding tax rates on interest, so that most interest payments are subject only to low or no withholding taxes. Second, any attempt of the source country to waive some of its taxing right is “swallowed” by the residual tax laid by the residence country. Accordingly, a source country, like Uganda, is effectively very limited in its ability to tax interest payments, or to attract foreign investors by waiving its rights to tax them. This state of affairs is by no means neutral or natural but a result of a long struggle between capital-importing and capital-exporting countries in the first half of the twentieth century.<sup>177</sup> A possible arrangement that would take into account developed countries relational distributive duties toward developing countries would give the latter exclusive taxing rights in interest payments paid by borrowers within it. This would leave a source country like Uganda with the exclusive right to tax and with the ability to waive some of its rights to tax in order to attract foreign investments.

Developed countries sometimes make certain concessions to developing countries—typically within the framework of double taxation treaties. These concessions are, however, part of the treaty negotiation process and not a normative benchmark that developing countries can assert. Current practices allow helping developing countries as a form of foreign policy “charity” given in the form of taxing rights which are “tax-expenditures” and not an integral component of the tax system.<sup>178</sup> This differs from this

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*International Tax Rules Accommodate Investment in Developing Countries?*, 23 U. Pa. J. Int'l Econ. L. 45 (2002); Yoram Margalioth, *Tax Competition, Foreign Direct Investments and Growth: Using the Tax System, to Promote Developing Countries*, 23 Va. Tax Rev. 161 (2003).

<sup>175</sup> The notion here conforms with the analysis presented in Part VI, which requires using countries as proxies to the relational duties of their peoples.

<sup>176</sup> Ilan Benshalom, *The Quest to Tax Interest Income: Stages in the Development of International Taxation*, 27 Va. Tax Rev. 631 (2008).

<sup>177</sup> *Id.* at 644

<sup>178</sup> Karen B. Brown, *Missing Africa: Should U.S. International Tax Rules Accommodate Investment in Developing Countries?*, 23 U. Pa. J. Int'l Econ. L. 45 (2002); Anup Malani & Eric A. Posner, *The Case for For-Profit Charities*, 93 Va. L. Rev. 2017 (2007) (suggesting that some practices taken by commercial parties that involve fair trade should get a favorable tax treatment); Yoram Margalioth, *Tax Competition, Foreign Direct Investments and Growth: Using the Tax System, to Promote Developing Countries*, 23 Va. Tax Rev. 161 (2003). For a general description of what tax expenditures are see Ilan Benshalom, *The Dual Subsidy Theory of Charitable Deductions* 8-9 (SSRN. 2008).

Article's proposal, which suggests that revising the soft law principles defining the international income tax base should give heed to global relational-distributive concerns. Accordingly, the notion that developing countries should be allocated a greater share of the taxing rights arising from cross-border transactions should be integrated into the mainstream of OECD double taxation treaty negotiation policy *and* into the domestic tax legislation of developed countries dealing with the taxation of cross-border transactions.<sup>179</sup> This is only one example of how this Article's normative analysis bears concrete significance on fundamental questions of allocating taxing rights among sovereigns.

The most important issue of taxing rights allocation in the contemporary ITR arena, however, is the taxation of MNEs. MNEs are wealthy, sophisticated taxpayers with an exceptional ability to reduce their tax liabilities and are also generators of economic activity who know how to organize particularly effective tax lobbies.<sup>180</sup> Therefore, the corporate tax rate is particularly susceptible to pressures of tax competition, and recent evidence suggests that effective corporate income tax rates on certain activities are very low, partly as a result of tax competition.<sup>181</sup> More importantly, intra-MNE trade accounts for much of international trade and is currently one of the weakest links in the existing ITR paradigm, considering MNEs' ability to manipulate intra-group prices to inflate their deductible costs in high tax jurisdictions and to shift their income to low tax jurisdictions (especially with regards to intangible-related and financial transactions).<sup>182</sup> However, MNE taxation is technically complicated and sophisticated from a policy perspective, because it connects global relational-distributive duties with issues of tax-competition, tax-avoidance, and tax-cooperation. Because of this complexity, and because this Article is deliberately focused on conceptual theory and argumentation, the precise redistributive role of relational-distributive duties on the allocation of the MNE tax base will be addressed in a future paper.<sup>183</sup>

It is, however, important to note that MNEs' dominant position in global economy dictates that the MNE tax base allocation bears immense international distributive implications and should therefore take into consideration relational distributive obligations. Furthermore, many tax academics believe that effective tax cooperation is necessary to address problems associated with tax competition over MNE investments. To achieve effective tax coordination, states would have to assure that a critical mass of states coordinate with it. This would obviously include most developed countries, which are typically high tax countries, but would also have to include many low tax developing and emerging economies—such as Brazil, China, India, Indonesia, which are key players

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<sup>179</sup> See generally Michael S. Knoll, *International Competitiveness, Tax Incentives, and a New Argument for Tax Sparing: Preventing Double Taxation by Crediting Implicit Taxes* (SSRN. 2008) (providing a novel analysis on this issue).

<sup>180</sup> Julie Roin, *Taxation Without Coordination*, 31 J. Legal Stud. s61 (2002)

<sup>181</sup> James R. Hines & Adam B. Jaffe, *International Taxation and the Location of Inventive Activity*, in *International Taxation and Multinational Activity*, (James R. Hines Jr. ed., 2001).

<sup>182</sup> See generally Ilan Benshalom, *Sourcing the "Unsourceable": The Cost Sharing Regulations and the Sourcing of Affiliated-Intangible Related Transactions*, 26 Va. Tax Rev. 631 (2007); Ilan Benshalom, *Taxing the Financial Income of Multinational Enterprises by Employing a Formulary Arm's Length Allocation Mechanism*, 28 Va. Tax Rev. (forthcoming 2009).

<sup>183</sup> For a partial discussion of this issue see Ilan Benshalom, *Taxing the Financial Income of Multinational Enterprises by Employing a Formulary Arm's Length Allocation Mechanism*, 28 Va. Tax Rev. (forthcoming 2009).

in the global economy. These developing countries typically use their low corporate tax rates to attract foreign investment. Accordingly, unlike the developed countries, which stand only to gain from effective tax coordination, developing countries may fear to enter such a cooperation scheme because the short-term costs may outweigh the long-term (speculative) benefits.

To assure effective cooperation developed countries needs to assure a prisoner dilemma type of setting where all participants stand to gain from tax-cooperation. This can be done in three ways, which are not mutually exclusive and could be implemented simultaneously. First, developed countries can threaten developing countries so that they are penalized if they do not tax-cooperate (e.g., via trade sanctions). Second, developed countries can try to buy the cooperation of a sufficient number of developing countries. Third, and most relevant in the context of this inquiry, tax-cooperation could be facilitated if it involves an organizing principle which parties consider as fair. This pre-coordination stage is essentially a constitutive moment. Upon entering a long term cooperation scheme, more states would be willing to cooperate if they have the confidence that the agreement they are entering into is a fair one, and that it would be a fair one twenty years down the line whether their economic position improves or gets worst relatively to the position of other countries. In a way, this Article addresses the type of questions over what is a fair arrangement that would be asked once nations realize that tax coordination is essential.

Relational-distributive duties should not be restricted to income tax allocation, however. Many developing countries have weak income tax regimes and rely on tariffs, real-estate taxation and natural resources taxation. Relational-distributive duties require policymakers to expand beyond traditional ITR arrangements, which for historic reasons focus on the allocation of income taxation.<sup>184</sup>

The above discussion of how the ITR's income tax allocation could be reformed to promote relational-distributive duties emphasizes the importance of this Article's proposal. The relational-distributive duties' framework aims to promote a realistic utopia. Rather than erasing all flaws from the world and reconstructing novel political institutions, it accepts some existing political structures and tries to make the world a better place by pointing out how and why these institutions should promote justice. Rather than promoting a set of "soft" principles of cosmopolitan justice, it provides guidance for constructing a global system which redistributes wealth among sovereigns by assigning concrete entitlements and duties.

How these duties should be assigned is not an easy task. Globalization gave rise to new types of tax practices and created a powerful new class of international investors, comprised of MNEs and individuals with liquid wealth. Sovereigns have found it increasingly difficult to address these problems by themselves. In the long run, this inability to address problems of eroding tax bases would likely pressure governments to engage in cartel-like arrangements to combat tax avoidance and tax competition tendencies. Any future tax cooperation arrangement would have to include important developing economies to be effective and would have to grant them some concessions in return for their willingness to limit the tax breaks with which they lure foreign investors. Developing a normative benchmark over the proper global distributive role of the ITR is

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<sup>184</sup> Ilan Benshalom, *The Quest to Tax Interest Income: Stages in the Development of International Taxation*, 27 Va. Tax Rev. 631 (2008).

therefore essential to provide any future coordinated scheme with the necessary global political legitimacy.

The notion that to gain political legitimacy, international institutions should be taking a more active role in promoting fair trade and assuring the rights of peoples living in the developing world has been receiving growing support.<sup>185</sup> As such, delineating an international ITR framework that addresses peoples' relational-distributive duties is crucial to help politically legitimize the operation of institutions coordinating global ITR policy. Specifically, this legitimacy will be vital to further allow the ITR to evolve and meet the challenges of the twenty first century. More importantly, however, an ITR that explicitly addresses issues of global relational-distributive duties would help to morally legitimize the political structure of global trade itself and the actions of agents participating in it.<sup>186</sup>

Even though the ITR may be an effective tool to address relational distributive duties in a multi-state global environment, the above analysis suggests that current ITR arrangements require many modifications before they actually meet this goal. This need for modifications does not weaken the argument for the appropriateness of the tool, however. ITR arrangements are *relatively* superior to any type of alternative arrangements and the modifications required in them do not undermine the underlying premises of our political reality. They do not require the abolition of states or the regulation of commerce in foreign countries—and they cannot be viewed by developing countries as unjustified imperialist intervention in domestic matters.

### VIII. Conclusions

This Article broadens the exploration of current political philosophy over the scope of distributive duties in an economically integrated world. Our international trade relations give rise to relational duties to those we trade with. These duties give rise to obligations when developed countries unfairly trade with disadvantaged developing countries, even if we cannot agree on the scope of (impartial) distributive justice. These relational-distributive duties deviate from the traditional political philosophy debate about issues of impartial global distributive justice. Instead of drawing on either Cosmopolitan or Statist theories, it draws on the intuitive notion that the advantaged have an obligation to establish political institutions that protect the vulnerable from being unfairly exploited.

This approach of seeking justice through relationships succeeds where both Liberal-Statist and Liberal-Cosmopolitan positions fail, by providing guidance to real world policy questions of how to best construct international institutions. While not the only mechanism available to construct international institutions, this Article demonstrated how the ITR could be modified to accommodate considerations of relational-distributive duties.

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<sup>185</sup> See generally D. Haubrich, *Normative Concepts of Global Distributive Justice and the State of International Relations Theory*, 15 *Cambridge Review of International Affairs* 183 (2002) (drawing a connection between the September 11 attacks and the calls for assuring that the benefits of globalization are distributed more fairly between peoples).

<sup>186</sup> Sol Picciotto, *International Business Taxation* 65 (1992); Miranda Stewart, *Global Trajectories of Tax Reform: The Discourse of Tax Reform in Developing and Transition Countries*, 44 *Harv. Int'l L.J.* 139 (2003).

Taxes involve money, and (whether intended or not) the way sovereign states allocate the right to tax among each other has a significant distributive impact on the way global wealth is allocated. Thinking about global wealth distribution through the ITR will be useful to policy makers because it accepts the existence of states and relies on the importance of actual relationships, which, whether we like it or not, are key to any real world attempt to promote issues of wealth redistribution among peoples.