The New Poor at Our Gates: Global Justice Implications for International Trade and Tax Law

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

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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. In a competitive market, private parties cannot address these relational distributive duties by themselves, because doing so would put them at a competitive disadvantage. This Article therefore argues that the only collective-action solution to this systemic problem in the current global political setting is wealth transfers among states.

The Article proceeds to suggest some policy implications 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 in 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 into tax allocation arrangements.

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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 address the question of how developed countries should prioritize between their distributive obligations to foreigners and relational duties.

"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.”¹

"If there will be among you a needy person: [Meaning that the most needy person has priority . . . in one of your cities: [Meaning also that the poor of your city have priority over the poor of another city.”²

¹ Deuteronomy 15:7.
and the duties to their own citizens and residents. It offers a concrete prescription for policymakers through the use of international trade policy, particularly, 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. Although legal scholars perceive the tax system as the key policy tool to promote redistribution on the domestic front, the legal scholarship hardly addresses the tax system’s role in international redistribution. This silence is alarming, because international tax arrangements were delineated by developed countries and designed to promote their interests. From a global distributive standpoint, this set of rules is anything but neutral.

The primary reason for this lack of scholarship derives from a broader unresolved conflict in liberal political philosophy over the scope of distributive justice claims. For the last four decades, philosophers have engaged in an essentially stagnated debate over whether considerations of distributive justice should be limited to the realms of the nation state. However, globalization—that is, the growth of economic interconnectedness and interdependence among peoples—has forced this question out of the ivory tower.

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.

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. 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

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5 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).

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. 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 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 conflict between the two approaches centers on the inherent clash within 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 the North Koreans’ poverty and the reasons for it. The distinct and dichotomous nature of the Liberal-Statist and Liberal-Cosmopolitan positions means that the conflict over the scope of distributive justice claims is not likely to be resolved in the foreseeable future.

Both Liberal-Statist and Liberal-Cosmopolitan approaches fail to provide any guidance to policymakers operating in the current global system. The current system 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 Article does what the Statists and Cosmopolitans have thus far failed to do: provide concrete and realistic solutions to policymakers in order to achieve a more just global wealth distribution. It does so 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. It does not aim to “solve the world” by inventing alternative political institutions to replace the current international political system.

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The Article advances the normative argument that it is not necessary to resolve the Liberal Statist v. Cosmopolitan debate in order 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 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 the global economy makes obligations to foreigners more tangible.

The main theoretical contribution this Article offers is the claim that the relational duties caused by actual commercial relationships trigger distributive obligations towards foreigners and that these duties should affect the structure of international and supranational institutions governing global trade. I establish this claim by demonstrating that commercial relationships between peoples living in developed and developing countries may frequently 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.

The potentially unfair pattern, should not lead us to conclude that engaging in global trade with developing countries is morally wrong, or that global trade harms individuals in developing countries. 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 collective-action problem, which justifies a political response that ensures 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

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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 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.
second objective is to suggest some concrete measures to aid policymakers in quantifying and balancing that duty with other considerations. In this context, I suggest that international tax allocation arrangements are one appropriate way to address 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. Accordingly, in the international context, 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 be understood as a macro price-correction mechanism that relies on the volume of trade between developed and developing countries as a proxy for the relational duties between their peoples. I contextualize the analysis by briefly discussing a few examples. 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, the underlying relationship between ITR arrangements and different theories of global distributive justice have been largely neglected. 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.

This Article’s approach to 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

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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 controversy in liberal theory over the international scope of distributive justice is decades old. While liberal cosmopolitanism stresses the importance of global redistribution across-borders, liberal statism argues that wealth redistribution should be limited to the politically accountable unit of the nation state. Rather than exploring each of these positions in great depth, this Article explains 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. 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 countries that are member of the Organization for Economic Co-operation and Development (OECD), and maternity mortality rate is fifty times higher in the developing world than in the developed world. 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.

Human poverty is hardly new; in fact, in relative terms it has declined during the last decade. What is new, however, are the changes in the socio-political frameworks in which global poverty and inequality exist. These changes warrant a renewed look on human poverty and global inequality to try and assess whether these changes impact the moral duties that humans living in different countries owe to one another.

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, which 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

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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.¹⁴

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 requires that individuals should not be put at a relative disadvantage because of things beyond their control.¹⁵ 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.¹⁶

From these common goals emerged two different liberal approaches to global distributive justice. The debate between these two approaches, known as Cosmopolitanism and Statism, is described in detail in the next two Subparts.

B. Cosmopolitanism

Contemporary Liberal-Cosmopolitan philosophers argue that policymakers should abandon current state-centered redistribution conceptions in favor of a position that does not distinguish among individuals by their nationality.¹⁷ 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 accordingly¹⁸—are forceful and deserve addressing.

¹⁴ As the references below reveal, the vast majority of the literature dealing with this issue has been written in the last ten years.
¹⁶ 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.
Liberal-Cosmopolitans evaluate political institutions in accordance with how they promote the welfare and living conditions of all human beings. 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 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 current position in society, the possible positions available, and the probability of each position. 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. 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.

The first stage of Liberal-Cosmopolitanism challenged this confinement of the Rawlsian analysis to the nation state political unit. 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 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). 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 look only at individuals. 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 happened, the Rawlsian framework itself would prescribe that just political institutions would apply the two principles of justice to...
all human beings.26 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.27 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,28 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.29 Some of his other claims are, nevertheless, well established. For example, the international legal system harms people of developing countries when 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 causal 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 inflict on developing countries.30 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

26 Beitz, supra note 23, at 138–140, 151–152, 164 (1979); Pogge, supra note 6, at 240–44.
27 Rawls, supra note 7, at 113–20. Rawls argues that the underlying motivation behind this 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.
29 Mathias Risse, How Does the Global Order Harm the Poor?, 33 PHIL. & PUB. AFF. 349, 367 (2005).
30 See generally Alan Patten, Should We Stop Thinking about Poverty in Terms of Helping the Poor?, 19 ETHICS & INT’L AFF. 19 (2005); Mathias Risse, Do We Owe the Global Poor Assistance or Rectification?, 19 ETHICS & INT’L AFF. 9 (2005).
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. 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 causally linked disadvantages. Therefore, he essentially adopted his second-best 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 for 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 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 for 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?

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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 agree that a moral political structure would have to account for foreigners’ common humanity. 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. 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 in Africa, but endorse the political reality in which providing costly medication to Medicaid recipients has priority over providing food to distant foreigners.

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

33 *Id.*; Miller, *supra* note 7, at 69–70; Nagel, *supra* note 7, at 130–138; Sangiovanni, *supra* note 18, at 5.
human beings. 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.

Regardless of whether Liberal-Cosmopolitans regard this as right or wrong, this tendency of human nature is something (non-utopian) political philosophy should take into account.

More importantly, despite the recent trend towards 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 as states do—they lack coercive power and have no effective mechanism to directly assign personal claims or duties.

Each country has to consider the policies of other governments but is accountable only 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. Second, and more importantly, the notion of national self-government and accountability is inconsistent with the ideals of cosmopolitan egalitarianism. This is because government policies reflect, to a certain extent, the preferences of their peoples—so each people should bear the consequences of its policies. 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 rather 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

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34 Henry Shue, Mediating Duties, 98 ETHICS 687, 689–91 (1988); David Miller, Cosmopolitanism: A Critique, 5 CRITICAL REV. OF INT’L SOC. AND POL. PHILOS. 80, 81–82 (2002). See also Andrew Mason, Special Obligations to Compatriots, 107 ETHICS 427, 445–47 (1997) (providing an interesting account of what the concept of citizenship should mean to justify these obligations).
36 Mathias Risse, What We Owe to the Global Poor, 9 J. OF ETHICS 81, 91 (2005).
37 Miller, supra note 7, at 57.
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 Syria 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 cosmopolitan duties to distribute wealth 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. While there is no controversy that, by the virtue of their common humanity, Syrians and Israelis owe humanitarian duties to each other, 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 (relatively) poor Germans in 1944, and that (relatively) rich Tutsis living at Burundi had distributive duties towards poorer Hutus living in the neighboring Rwanda during the 1994 genocide. In these scenarios it seems very odd to argue that there were any cosmopolitan distributive duties at all.

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 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. 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.” Although the world may, hopefully, be progressing to a 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.

The above examples demonstrate why redistribution on the international level differs 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 they are 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?

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: that rules should be impartial and 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

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43 These questions demonstrate how the Cosmopolitan Statist debate within liberalism echoes 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.
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. 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). For this reason, partiality is often considered 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. 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. In contrast, very few Liberal-Cosmopolitans argue that a world democracy would be an optimal arrangement—precisely because they fear that these characteristics can only be achieved within nation-state frameworks.

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44 This claim that the international arena cannot provide a stable political framework could be traced to Hobbes. See Hobbes, supra note 42, at 63 (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”).
45 Rawls, supra note 7, at 3–6, 10–15, 47–52.
46 ROBERT GOODIN, PROTECTING THE VULNERABLE 1 (1985).
48 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, 661 (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, 686 (1988) (arguing that “Territorial boundaries are 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-à-vis each particular person.”).
49 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 Goldsmith, supra note 7, at 1669–70 (making this point brilliantly).
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. 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. 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.

E. Why Deadlock?

The difficulty in finding the middle ground between the Liberal-Statist and Liberal-Cosmopolitan positions 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.

To understand the deadlock claim, one does not need to determine the relative persuasiveness of the Liberal-Statist or Liberal-Cosmopolitan positions. Instead, it is important to recognize that the source of the conflict between liberal intuitions of impartiality and national democratic sovereignty is inherent to the fundamentals of each position so that reconciling them seems unlikely. Hence, the deadlock in the current political debate comes from the inability of the (dichotomous) 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 current World Trade Organization (WTO) trade liberalization initiatives unfairly disadvantage developing countries by excluding agriculture. However, given their State-centric position, they would be unable to ground their criticism to any obligation that requires developed countries to “give up” their superior bargaining positions to better promote the interests of developing countries. Nor would Cosmopolitans be able to provide policymakers with any guidance on how to design those political institutions. Obviously, from a 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

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51 Goodin, supra note 48, at 663 (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).
52 See supra note 12.
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. Accordingly, Cosmopolitan theory does little to inform policymakers on how actual global redistributive arrangements should be structured in a multi-state reality, and whether a certain scheme should be preferred over another.

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 to examining the commitments of peoples living in developed countries to those living in developing countries. In presenting this approach, two additional concepts should first be carefully explained and distinguished: impartial justice and the key concept of 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

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 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.\(^53\)

\(^{53}\) These impartial distributive justice claims manifest in the domestic tax-spending systems of liberal democracies. In those systems high income taxpayers are required to pay taxes that indirectly finance
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. Therefore, the rights and obligations emerging from these relationships are always agent-dependent, and therefore partial because they require agents to prefer allocating their scarce resources to those 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. 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 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.

54 That 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.


56 Goodin, supra note 46, at 24.
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 with respect)? Consider also the situation of a small lifeboat filled with twenty strangers, one of whom possesses all the food. 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.

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. From a practical legal-perspective, it is important to

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58 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, 371 (2003).
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. 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 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. This is because 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

The 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. This Article’s “realistic utopia” adopts three assumptions, each of which I consider as straightforward and conservative—though not beyond challenge. The ambition of this Part is therefore not to engage in a normative discussion about the desirability of these 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. However, the complexity of human history and the difficulty of determining causality make rectification an arduous and potentially problematic task.

62 Rawls, supra note 7, at 11.
63 For example, 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?
64 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.
65 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.
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. Would peoples in the above countries have better or worse 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’ inabilities 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. 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 the global political arena, and that they are currently the only framework in which schemes promoting notions of impartial distributive justice exist.

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? 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 & INT’L AFF. 79, 85 (2004) (describing what such an internationalist position would entail).
The analysis hereinafter 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, 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. 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 not, nation-states 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’ misfortunes from their moral concern. This assumption suggests that even though institutional considerations of democratic accountability may prevent liberal democracies from engaging in cosmopolitan-egalitarian actions, foreign policy of liberal democracies is not categorically limited 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 indicate the validity of this assumption. These phenomena suggest that the social welfare function of States should be modified to include the condition of foreigners—at least to some extent.

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

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67 The recent rejection of the EU constitution is a reminder of how fragile, this exception is.
70 Goldsmith, supra note 7, at 1679–80.
72 See also JOSEPH E. STIGLITZ, MAKING GLOBALIZATION WORK 9 (2007) (echoing this sentiment).
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 that require distributive justice considerations. Scholars have suggested a number of such “currencies”—including opportunities, primary goods, and capabilities.

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?

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. However, the Article contends that the answer to these questions of currency and depth of global redistribution should be made

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73 Dworkin, supra note 15.
74 Rawls, supra note 7, at 54.
76 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 (2000).
77 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.
with reference to the capabilities literature—as advanced by Martha Nussbaum and Amartya Sen.\footnote{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* (2000); Martha Nussbaum, *Capabilities and Human Rights, in Global Justice and Transnational Politics*, (Pablo De Greiff & Ciaran Cronin (Eds.) eds., 2002); Sen *supra* note 75; Leif Wenar, *The Legitimacy of Peoples, in Global Justice and Transnational Politics* 67 & 70-73, (Pablo De Greiff & Ciaran Cronin (Eds.) eds., 2002).}

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 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
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 assuming 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. 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 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 that 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.

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79 Part V.B advances a comprehensive discussion of this controversial claim.
Proximity has been widely recognized as a source of special duty. 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 this relationship, formerly discrete economies have now been drawn “materially closer” to each other.

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, 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.

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80 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 stranger, even though it is nothing more than a coincidence that he is drowning next to me. See generally Murphy, supra note 76, at 127–32 (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 allocation of responsibility 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, 598 (1983) (recognizing that the proximity can be a source for special duties, which is astonishing given the author’s well known cosmopolitan position); 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, 507 (2003).

81 Beeson, supra note 48, at 6.


83 Simon Caney, Cosmopolitanism and the Law of Peoples, 10 J. OF POL. PHILO. 95, 119 (2002) (arguing that environmental issues can no longer be regulated effectively on the national level and that this fact...
Globalization’s pervasiveness may be best reflected in the recent food and financial crises. For example, around June 2008, 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. This example does not suggest that the 2008 food crisis was “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.

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 vacuum but within a well developed set of legal and coordination norms. 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.

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, these norms standardize 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

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84 For a somewhat similar analogy see Shue, supra note 34, at 694.
85 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); Caney, supra note 83, at 118.
86 To an extent, the division of labor in the 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 Charles R. Beitz, International Liberalism and Distributive Justice: A Survey of Recent Thought 51 WORLD POL. 269, 293 (1999).
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.88 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.89 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,
privatization, and deregulation). Viewed wholly, the process of rulemaking and norm-
setting has reached far beyond the original purpose of coordination. It has become a
process that allows international institutions to reformulate the economic design of
sovereigns.90

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 the 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

88 Philippe Van Parijs, Global Distributive Justice (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).
89 WALTER GOODE, DICTIONARY OF TRADE POLICY TERMS 476 (Cambridge University Press 5th ed. 2007).
90 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).
specific nation. MNEs therefore demonstrate that the regulatory gap, in which standard-setting economic powers lie, are beyond sovereigns’ control.

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.

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 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 consumers 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, 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.

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91 Avi-Yonah, supra note 9, at 1586-97.
92 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.
93 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 worse. 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 fewer services to their citizens. See Ilan Benshalom, Taxing the Financial Income of Multinational Enterprises, VA. TAX REV. (forthcoming 2009).
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 assuming 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 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.”94 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 margin.\(^95\)

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.\(^96\) 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.\(^97\) 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.\(^98\) 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 distributive 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).

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.\(^99\)

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,\(^100\) it is difficult to draw the line between what is mere survival and what is an option for a decent life.\(^101\) Nevertheless, it seems relatively straightforward to argue

\(^95\) 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 98–120.


\(^97\) See text following infra notes 98–120.


\(^99\) Feinberg, supra note 96.

\(^100\) The challenge of defining the core minimum is the essence of the capabilities approach mentioned earlier. See supra note 78.

\(^101\) Demartino, supra note 78, at 104 (drawing a connection between this type of argument and Marxian exploitation theory). See also Hillel Steiner, Exploitation: a Liberal Theory Amended, Defended and
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. 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 arising 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. 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.

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. 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. Disadvantaged parties are de facto forced to enter long-term economic relationships even though their market returns do not provide for decent lives because they simply do not have any acceptable alternatives. This type of disadvantage is of particular concern when it is not something the disadvantaged can

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103 Goodin, supra note 46, at 36.
104 Id. at 28–41.
105 Demartino, supra note 78, at 77–88 (arguing against the market mechanism of aggregating preferences and explaining, among other issues, that neo-classical economic analysis accounts for the way inequality in initial resources impacts preferences and the ability to exercise free choice).
106 Feinberg, supra note 96, at 208.
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. For example, some Polish and Lithuanian individuals that extracted huge amounts of resources from ghetto-imprisoned starving Jews in return for basic food products during WWII. 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. These examples do not have to relate to such extreme scenarios, however. They can also be contemporary “everyday” occurrences where American employers, who could not be held directly responsible to any poverty in foreign countries, take advantage of their employees’ illegal immigration status to deny them basic labor rights and employment conditions. 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 this redistribution. Such an arrangement would arguably be more efficient than the distortion of market transactions. 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.

107 YITZHAK ARAD, GETTO IN FLAMES 308 (1982).
109 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 positions 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).
110 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 Shaviro, 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).
111 Kaplow & Shavell supra note 3.
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 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. This, in fact, assumes that a certain degree of uncompensated vulnerability is an inherent part of 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 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

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112 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.
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 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 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 are “taking our jobs,” 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 relationships 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. 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.

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 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. Regardless of whether one thinks that this is the responsibility of developing countries, it is important to recognize that in this

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113 Jan Nederveen Pieterse, Global Inequality: Bringing Politics Back In, 23 THIRD WORLD Q. 1023, 1023 (2002).
114 Beitz, supra note 5, at 373; Thomas Pogge, Severe Poverty as a Violation of Negative Duties, 19 ETHICS & INT’L AFF. 55, 72 (2005). For a contrasting view see Risse, supra note 29, at 373.
115 Pogge, supra note 28, at 37 (coining the term “radical inequality” as pervasive inequality that keeps the worst off in a bad position in both relative and absolute terms).
cycle are individuals from the developing world that participate in global trade with few chances to realize a genuine opportunity for a decent life.

Two main 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. The most well-known incident of this is the agricultural exception in trade agreements. 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.

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. 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.

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. As mentioned, the relatively modern phenomenon of enhanced 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

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116 A third element, which was mentioned in Part IIB, is 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.


118 On this issue see DANI RODRIK, ONE ECONOMICS, MANY RECIPES: GLOBALIZATION, INSTITUTIONS, AND ECONOMIC GROWTH 222–23 (2007).

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


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.

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 for 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 decent K-12 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.

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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.\footnote{123 See Part IV.C.} 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, increases 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.
VI. Institutionalizing Relational Duties

Up to this point, this Article established that relational duties exist and that some features of international trade exhibiting 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 collective-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, physician-patient and teacher-student relationships—do 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. 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 acting to meet those obligations.

Just as in the case of individuals, peoples compete for resources. In an insufficiently regulated social structure, this competition may lead to immoral actions.\textsuperscript{125} Current international trade relies primarily on parties’ ability to advance their position through free contractual bargaining;\textsuperscript{126} it is therefore inappropriate to address the problem of unfair relationships between developed and developing countries.\textsuperscript{127} 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.\textsuperscript{128}

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.\textsuperscript{129} 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.\textsuperscript{130} 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.\textsuperscript{131}

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

\begin{itemize}
\item \textsuperscript{125} Jeremy Waldron, \emph{Who is my Neighbor?: Humanity and Proximity}, 86 MONIST 333, 349 (2003).
\item \textsuperscript{126} As mentioned earlier, 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.
\item \textsuperscript{127} For analyses that reach somewhat similar observations see Ronald U. Mendoza, \emph{The Multilateral Trade Regime: A Global Public Good for All?}, 1 PROVIDING GLOBAL PUB. GOODS 455, 475 (2003); Pogge, \textit{supra} note 6, at 249.
\item \textsuperscript{128} Feinberg, \textit{supra} note 96 (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).
\item \textsuperscript{129} Greiff & Cronin, \textit{supra} note 90, at 19. This of course is also occasionally perceived as true in domestic settings, where the state regulates non-monopolistic private transactions. \textit{See supra} note 110.
\item \textsuperscript{130} This of course is a refutable assumption, and we may eventually witness other actors—perhaps multinational NGOs such as Oxfam International, 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.
\item \textsuperscript{131} Cappelen, \textit{supra} note 4 (making somewhat of a similar statement).
\end{itemize}
states are necessary to promote any large scale redistribution among peoples, 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 that examines 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. This diffusion of responsibilities is the essence of the collective action problem 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.

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. The

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132 For example, Russia, a country endowed with enormous natural resources, 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 prescribes that Russians, and not peoples of developed countries, are held accountable for their political decisions and should preclude any relational distributive duties towards them. The analysis would be 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.

133 Since we are dealing with proxies and 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
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 on behalf of its citizens.

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. 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 presumably 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. 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 argue that 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 builds on a body of literature in liberal thought
stressing individuals’ duty to establish just institutions, especially when concerns over
protecting the vulnerable are involved.

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. Second, it sets a benchmark

much more if I was the only relative he had than if he had numerous others that are much more affluent
than me. In the same way, the obligation of country A to country B may depend on other relationships they
both have with other countries.

134 There are other indicators, however, which are perhaps superior to GNP. More elaborate 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

135 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

136 Beitz, supra note 23, at 171; George Klosko, Presumptive Benefit, Fairness, and Political Obligation,
16 Phil. & Pub. Aff. 241 (1987); Kuper, supra note 124, at 112; Nussbaum, supra note 75, at 306–10;
Pogge, supra note 114, at 66; Rawls, supra note 7, at 98; Tan, supra note 19, at 34.

137 Rawlsian Maximin arrangement is arguably primarily motivated by the intuition that the least well off
should be protected. See Goodin, supra note 46, at 111.

138 Onora O’Neill, Bounds of Justice 140–42 (2000); Onora O’Neill, Agents of Justice, 32
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.

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, consider 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. 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 Bhutanes as long as the levels of poverty in both countries are the same. The major difficulty with Pogge’s “do no harm”

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

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, under 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 Americans 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 of 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. Relational Duties Among Countries: 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. The response to this concern is that adopting the above notion would indeed impact the behavior of private parties (although one can imagine other scenarios), but that this is true for any type of 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. The above discussion demonstrated why the common action problem associated with global markets’ competitiveness and interrelatedness disables parties from effectively addressing the issue of fair practices. In this market setting, private actions can only be sporadic, anecdotal, and motivated by public relation concerns—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. 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. However, given the need to limit its scope, the paper will not address any of them in detail.

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140 I thank Lee Fennell for bringing this point to my attention.
141 For example, such a policy can help center the issues of fair conduct in the heart of the political debate.
143 Irish, supra note 9, at 300; Risse, supra note 29.
144 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 J. OF ETHICS 151 (2005).
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, 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, 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. 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. 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

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145 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.

146 Darrel Moellendorf, Person’s Interests, States’ Duties and Global Governance, in THE POLITICAL PHILOSOPHY OF COSMOPOLITANISM, 149, (Gillian Brock & Harry Brighouse eds., 2005).

147 Thomas W. Pogge, Cosmopolitanism and Sovereignty, 103 ETHICS 48, 50–52 (1992).
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 vain, 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 relationships 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 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., appropriate climate 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 businesses 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

So far, 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 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. Accordingly, it assumes the existence of states and the existence of trade relationships among them, which are the cornerstone assumptions of the Article’s 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.

This Part discusses why tax distributive arrangements provide effective mechanisms and do not require the extensive on-the-ground cooperation of foreign countries’ enforcement branches that the alternatives do. 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, policymakers should be willing to consider using the ITR to meet relational-distributive duties of their peoples.149

A. Using International Taxation to Promote Relational-Distributive Duties

The ITR has several distinctive features.150 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.151 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.152 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.153

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 it develops a distributive framework based on observable current-trade-indicators, avoiding problems of causation associated with corrective

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149 On this issue see Nancy Staudt, Redundant Tax and Spending Programs, 100 NW. U.L. REV. 1197 (2006).
150 Cappelen, supra note 4, at 98–99 (providing an excellent summary for non-tax scholars).
151 Benshalom, supra note 82, at 636–42.
152 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.
153 Benshalom, supra note 82, at 657–58 (mentioning a variety of other reasons for which countries enter double taxation treaties).
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. These duties align well with the tax framework because countries’ obligations under tax agreements correlate with the level of trade relationships between them. 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.

Second, a redistributive allocation of 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. Moreover, any attempt to regulate the production of goods and labor standards 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.

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.

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 at the

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154 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 Demartino, supra note 78, at 209–14 (discussing some of the other alternatives that would assure that free trade amounts to fair trade).

155 Cappelen, supra note 9 (providing a brilliant analysis of this issue).

156 Kaplow & Shavell supra note 3. For a different position see Anthony T. Kronman, Contract Law and Distributive Justice, , 89 YALE L.J. 472 (1980).
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.

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 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 a redistributive ITR framework also provides developing countries with the ability to effectively waive some of the taxes to attract investment, this form of wealth redistribution could not be portrayed as promoting developed countries’ protectionism.

In another Article, 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. 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 that involve 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.

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158 Addressing the above distinction between efficient and effective distribution is a topic that transcends the scope of this article and defers to future research.
159 See infra note 179 and accompanying text.
160 Benshalom, *supra* note 82, at 700–03.
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.\footnote{Richard W. Miller, Moral Closeness and World Community, in THE ETHICS OF ASSISTANCE 101, (Deen K. Chatterjee ed., 2004). (presenting a somewhat similar argument).}

\textbf{B. The Current ITR Arena}

Finally, this Article surveys the ITR’s current institutional and scholarly arena. It demonstrates how the ITR conventions 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 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 desirable,\footnote{Kapstein, supra note 66, at 79–80.} 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.\footnote{Mendoza, supra note 127, at 455; Milner, supra note 120, at 833. 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.} 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.\footnote{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); Ring, supra note 68.} 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 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. Through 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. The history of those institutions indicates, however, that they have no serious ambition to promote global wealth redistribution; 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 tax-coordination has been the main goal of the OECD, there is no a priori reason to think that it should be their only goal. 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 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 political 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 those low-tax countries and the investors at the expense of other (high-tax) countries.

As some important scholars have noted, current ITR debate adopts a neo-liberal discourse that highlights contractual equity considerations—e.g., reciprocity, non-

167 Benshalom, supra note 82, at 666.
discrimination, and economic neutrality/efficiency— and marginalizes issues of redistribution and poverty reduction. 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. This approach has been the dominant approach throughout most of the twentieth century, even though in recent years many other sovereigns have limited or eliminated their residency-based taxes. The main rationale supporting residency 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.

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. 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.

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

170 Alvin C. Warren Jr., Income Tax Discrimination Against International Commerce, 54 Tax L. Rev. 131, 135 (2001). See also Irish, supra note 9, at 295–96 (providing a critical analysis for why reciprocity should not be the principle governing the tax relationships between developed and developing countries).
172 Benshalom, supra note 169, at 633–34; Benshalom, supra note 82, at 644–74.
174 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 Chossen ed., 2000); Shay, et al., supra note 173, at 90-92. 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.
175 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. Benshalom, supra note 82, at 672 & 702–03.
achieve. 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 also 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, therefore, may be required for 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. 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 stemming 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. 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 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. A possible

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177 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 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); Yoram Margalioth, Tax Competition, Foreign Direct Investments and Growth: Using the Tax System, to Promote Developing Countries, 23 VA. TAX REV. 161 (2003).

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

179 Benshalom, supra note 82, at 636-42.

180 Id. at 644.
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. This differs from this 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. 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. 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. 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). However, MNE taxation is technically complicated and sophisticated from a policy perspective, because it connects global relational-distributive

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181 Brown, supra note 177
185 See generally Benshalom, supra note 169, at 644–45; Benshalom, supra note 93.
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. ¹⁸⁶

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 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 worse relative 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. ¹⁸⁷

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 arrangement. Rather than erasing all flaws from the world and reconstructing novel

¹⁸⁶ For a partial discussion of this issue see Benshalom, supra note 93.
¹⁸⁷ Benshalom, supra note 82, at 644–45.
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 developing economies such as China and India 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 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. 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. 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.

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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 with 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, the notion of relational-distributive duties 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.

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.