

# Freedom and Justice in Trade Governance

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*Consent and Trade: Trading Freely in a Global Market*, Frank J. Garcia (Cambridge, U.K.: Cambridge University Press, 2018), 236 pp., cloth \$39.99, eBook \$32.

*On Trade Justice: A Philosophical Plea for a New Global Deal*, Mathias Risse and Gabriel Wollner (Oxford: Oxford University Press, 2019), 288 pp., cloth \$40, eBook \$39.99.

In December 2019, the World Trade Organization's (WTO) Appellate Body lost the quorum of three members that it needs in order to decide on appeals of dispute settlement panel rulings. The United States has repeatedly blocked the appointment of new judges to the Appellate Body, and two of its existing members had reached the end of their four-year terms. Although interim arrangements have forestalled a crisis, the future of the WTO's dispute settlement process remains uncertain. So does the future of the WTO itself.

Two recent books in political theory consider the future of trade governance. *Consent and Trade* proposes reforms to preferential and regional trade agreements so that states can consent more freely to their terms. *On Trade Justice* proposes reforms to the WTO, arguing that multilateralism is the necessary foundation for a "new global deal" on trade. Frank J. Garcia, the author of *Consent and Trade*, and Mathias Risse and Gabriel Wollner, the coauthors of *On Trade Justice*, have made substantial contributions to liberal theories of global justice and trade.<sup>1</sup> These books present the authors' latest arguments about the distinctive principles that should apply to both trade governance and trade itself.

## TRADE AND TRADE GOVERNANCE

What is trade? As Garcia describes it, trade consists in “voluntary, bargained-for exchanges of value among persons for mutual economic benefit” (p. 26). According to Risse and Wollner, “‘Trade’ covers everything from primordial exchanges across village lines and one-time interactions among strangers to modern highly structured exchanges governed by domestic and international law, from personal exchanges to refined supply chains sustained by fleets of container ships” (p. 1).

Normative arguments are based on principles. There are several methods of inquiry into principles for trade. Some philosophers argue that principles of moral cosmopolitanism apply to trade and to other global phenomena, such as migration and anthropogenic climate change.<sup>2</sup> This method emphasizes trade’s commonalities with these other subjects. Several theorists have extended John Rawls’s liberal theory of social justice into a theory of global justice.<sup>3</sup> According to Rawls, justice governs the rules and institutions that together constitute a holistic system, or a “basic structure.”<sup>4</sup> If there is a global system that is comparable to a society’s basic structure, global justice should govern the global system. This method describes trade as one part of a global system, which is itself governed by justice.

*On Trade Justice* and *Consent and Trade* follow a different method. They inquire into distinctive principles for trade, using descriptions of trade that emphasize its specific features. Risse and Wollner ask, “What, if anything, is it about trade that generates obligations, and what is the nature of these obligations?” (p. 1). Garcia states his hope “that if we can identify what is essential to trade *as trade*, we can better understand how to facilitate, protect and enhance it, and thereby better understand how to promote a flourishing system of global economic relationships” (pp. 1–2).

Neither book is concerned solely with “trade” as such, following its definition as economic exchanges that can cross borders. *Consent and Trade*’s subjects are trade and trade agreements, focusing on preferential and regional trade agreements.<sup>5</sup> *On Trade Justice*’s subjects are trade and the trade regime. Risse and Wollner refer to a general definition of a “regime,” which consists in “sets of implicit or explicit principles, norms, rules and decision-making procedures around which expectations converge in a given area of international relations.”<sup>6</sup> Relevant organizations for the trade regime include the WTO, regional and preferential trade agreements,

cartels, fair trade organizations, civil society groups, and many additional international organizations (pp. 66–67).

*Consent and Trade* and *On Trade Justice* propose principles that should apply to both trade and trade governance. Garcia argues that a principle of consent should govern economic exchanges and trade agreements. Risse and Wollner argue that a principle of nonexploitation should govern the behavior of market actors as they cooperate in trade, and it should govern the trade regime itself. However, trade and trade governance are different forms of cooperation, with different agents and different interests at stake. I will argue that consent and nonexploitation are less compelling as principles for trade governance than for trade itself. Both books understate the extent of conflict between their principles for trade governance and liberal justice.

## CONSENT TO TRADE AND TO TRADE AGREEMENTS

According to *Consent and Trade*, economic exchanges must secure their participants' full consent to be worthy of the term "trade." Otherwise, exchanges may be predatory, coercive, or exploitative. Human beings generally know the difference between trade and these other types of exchange from their own experiences with consensual and nonconsensual interpersonal interactions. Garcia argues that we can use this knowledge to understand why a state's consent is important in trade agreements. He asks: "So, what has happened such that in the aggregate we behave as if we don't know what trade really is, when in our daily lives we do?" (p. 128).

*Consent and Trade's* argument relies primarily upon its analogy between economic exchanges and trade agreements.<sup>7</sup> Respect for participants' consent is important in economic exchanges, and economic exchanges are similar to trade agreements. Therefore, trade agreements should respect the consent of their participants, namely, the state signatories. I will describe two of the most interesting ideas in *Consent and Trade* that are presented through this analogy. Garcia develops these two ideas about consent in economic exchanges and argues for their relevance in trade agreements.

The first idea is that the participants must consent to an exchange in order for it to be ethically acceptable. This is a very plausible idea. However, it seems clear to me that participants' consent is only one relevant consideration for the ethics of economic exchanges.<sup>8</sup> Does the exchange set back a participant's objectively

important interests? Is the person degraded by his or her participation? What is the impact of the exchange on third parties, who could experience harms or other dislocations, and on the interests of society as a whole? If participants' consent is only one consideration in the context of trade, by analogy state consent should be only one consideration in the context of a trade agreement.

*Consent and Trade* evaluates two trade agreements involving the United States to determine whether its trading partners freely consented to the terms. It compares CAFTA-DR (the Central America–Dominican Republic Free Trade Agreement) to KORUS (the United States–Korea Free Trade Agreement). Garcia argues that the trading partners of the United States did not fully consent in both agreements because they lacked “the power of refusal,” either for economic reasons or for reasons of national security. Garcia’s analysis builds upon philosophical studies of coercion, domination, and exploitation in agreements between persons. *Consent and Trade* investigates states’ political and economic conditions, in order to identify the constraints on their choices during the trade negotiations.

Analogies are useful when they identify similarities between subjects, showing how our existing knowledge about one subject can teach us about another. But, in my view, *Consent and Trade’s* analogy can be misleading. Garcia proposes that U.S. trading partners, if they had enjoyed alternative options, would have pressed the United States for concessions. But these states might have used their bargaining power to press for concessions the United States never would have accepted. Instead of obtaining better terms, these states might have prolonged trade negotiations for an indefinite period (as is currently the case in the WTO’s Doha Round, or Doha Development Agenda). My point is not merely that the counterfactual is unknown. An individual often has a moral right to bargain imprudently on his or her own behalf in an economic exchange. By contrast, a state lacks the moral right to bargain imprudently during trade negotiations, because doing so neglects the state’s duties of liberal justice to its citizens.

Garcia acknowledges that there are cases without “easy answers” about whether and how to reform trade agreements to better respect states’ consent. For instance, he asks: “Is the domestic distribution of gains from trade so skewed, or the domestic regime so non-representative, that even a ‘fairer’ bargain for the state as a whole is not likely to lead to fairer outcomes for its citizens?” (p. 159).<sup>9</sup> I suspect such cases are common. Later in *Consent and Trade*, Garcia argues that trade agreements should have specific provisions for state signatories to address the negative consequences from increased trade flows. Trade agreements should have

provisions requiring states to fulfill “the domestic social contract,” such as requiring financial support for displaced workers (pp. 183–190). I fully endorse this proposal. However, it seems to me that Garcia does not fully engage with the proposal’s implications for the broader argument of his book. The proposal implies that states generally should have less freedom—not more—to shape their trade agreements, in order for their participation in these agreements to actually benefit their citizens.<sup>10</sup>

A second idea presented by Garcia is that it can be desirable for courts to intervene in significantly unequal contracts when the weaker party may not have fully consented. Garcia argues for the relevance of “adhesion contracts” in the context of trade agreements. Adhesion contracts are “contracts with commercial parties or manufacturers who possess greater bargaining power, and which are presented in a ‘take it or leave it’ manner.”<sup>11</sup> In contract law, a court can determine that certain provisions of a contract are inappropriate to enforce. Similarly, a trade agreement could be reviewed to determine if its provisions are unfair, in the course of a complaints and appeals process. Garcia cautiously considers whether an appeals court could amend or refuse to enforce unfair provisions of a trade agreement (pp. 163–66). It is an interesting proposal that trade agreements could be written or interpreted to include such regulatory authority for the courts.

However, there are two relevant differences between trade and trade agreements. A domestic court may have reasons to avoid making public institutions complicit in the private violation of consent by market actors.<sup>12</sup> But an appeals court lacks an analogous reason to suspend its enforcement of a trade agreement. A domestic court may decline to enforce a contract’s unfair provisions in the hope that the parties will cooperate on fairer terms. But in a trade agreement, the participants are not the most vulnerable parties with interests at stake. A state might file a complaint against a trading partner with the aim to improve its status as a negotiating partner, for its benefit in future trade agreements. If the state’s initiative backfires, however, its vulnerable citizens will suffer economic losses from restricted trade with their state’s trading partner.<sup>13</sup>

In my view, *Consent and Trade* understates the potential for tensions between its principle of respect for state consent in trade agreements and liberal justice. States often engage in imprudent negotiating behavior and fail to pursue trade agreements that would have a positive impact on social justice. There is limited value in a state’s “power of refusal” to a trade agreement that would benefit its citizens economically and provide other goods of justice. It is the state’s duty—rather

than the exercise of its freedom—to consent to trade agreements that would help it to realize justice for its citizens.

## NONEXPLOITATION IN TRADE AND IN THE TRADE REGIME

*On Trade Justice* describes trade and the trade regime as two different forms of cooperation. Trade is the exchange of goods and services, which makes the agents better off in a material sense. The trade regime is cooperative governance about trade. When market actors trade, their exchanges are “subject” to the trade regime’s standards, rules, and norms. Risse and Wollner argue that this subjection is a “ground of justice.” The idea of subjection explains why their argument is for trade *justice*. It also explains why trade justice applies to both forms of cooperation, requiring nonexploitation in trade and nonexploitation in the trade regime.

There are many ideas about exploitation and why it is wrong.<sup>14</sup> Taking a pluralist and ecumenical approach, Risse and Wollner offer a hybrid account that draws most heavily from the ideas they find most persuasive. A feature of their hybrid account is that each of its ideas asserts its relevance in a particular context. Thus, the meaning of exploitation depends on the context in which it takes place. Risse and Wollner’s generic idea of exploitation is “unfairness through power.” They refine this generic idea of exploitation into a more specific idea for the context of trade: “power-induced failure of reciprocity” (p. 88). Exploitation in trade and exploitation in the trade regime have different meanings, because trade and trade governance are different contexts of cooperation.

On Risse and Wollner’s argument, exploitation in trade is primarily a form of substantive unfairness. For instance, they argue that labor contracts are exploitative when workers’ incurred costs and contributions to the financial success of their firm are not reciprocated in their wages. By contrast, they argue that exploitation in the trade regime is primarily a procedural injustice. Developing countries are exploited in the trade regime when they make policy concessions and comply with WTO rules, without full reciprocation from more powerful WTO member states.

In Risse and Wollner’s reflections about how the WTO could be nonexploitative, they take inspiration from proposals for the New International Economic Order in the 1970s. *On Trade Justice* declines to speculate about whether this particular institutional design was ever feasible. The history of its failure simply highlights the missed opportunities for an alternative trade regime that would provide

reciprocity and thus greater gains for developing countries.<sup>15</sup> Other commentators have argued that procedural fairness in the WTO would have a beneficial impact on trade flows to developing countries.<sup>16</sup> But there is reason for doubt. The WTO is procedurally fair in a formal sense because it requires a consensus among all 164 member states to reach an agreement to liberalize trade. As Risse and Wollner acknowledge, developing countries have made use of the consensus rule and their growing power by blocking potential WTO agreements (p. 141).

In my view, the trade regime's fundamental problem is not the lack of political will to cooperate on reciprocal terms. Its fundamental problem is that many states, both rich and poor, no longer seem persuaded that cooperation on trade governance provides worthwhile benefits. The United States has imposed trade restrictions on China in retaliation for various grievances about China's trading practices. The United Kingdom's political leadership claims that it is acceptable for the Brexit transition period to end without a trade deal in place with the European Union. I write this in summer 2020, in the early stages of the global economic catastrophe resulting from the COVID-19 pandemic. States should be taking a greater interest in trade governance to manage global supply chains for medical equipment and other essential goods. In domestic social policy and in trade governance, states should pursue the protection of public health and the economic benefits (among other goods) that they need in order to satisfy liberal justice.

Risse and Wollner argue that liberal justice requires respect for human rights, which in turn requires institutions to promote development in poor countries. Since trade can foster economic development, the trade regime has an important role in realizing liberal justice. In my view, the authors' argument from liberal principles is more persuasive than their argument from the principle of nonexploitation in trade. Their principle of nonexploitation in trade is not equipped, for example, to criticize a trade regime with fully fair procedures, whose cooperation is so limited that the regime fails to significantly further any state's interests and aims.<sup>17</sup> Moreover, Risse and Wollner's principle of nonexploitation in trade could be used to identify injustices in the trade regime that are actually benign. Imagine a state with growing economic and political power, which cooperates on trade governance in order to bring about rules that would extend its influence over poorer countries. If wealthy states were to use the WTO's unfair procedures to thwart the state's pursuits, this could meet Risse and Wollner's definition of a "power-induced failure of reciprocity" in the trade regime. But I submit that this is

not an injustice “all things considered” or even ethically wrong at all, because extending influence over poor countries is not a valid aim for states’ cooperation on trade governance.

Risse and Wollner argue that there is extensive overlap between liberal justice as it applies to the trade regime and nonexploitation in the trade regime. By this, they mean that liberal justice and trade justice independently produce similar evaluations of the trade regime’s deficiencies of justice. The overlap is not fully complete because, even in a world that fully satisfies liberal principles of global justice and social justice, there can be exploitation in trade. “The just world as discussed so far (without adding trade justice) might be highly unequal, with unequal bargaining power in trade negotiations reflecting differences in size and economic success of countries. Possibly, also, to build on this point about countries, workers for multinational corporations might be exploited vis-à-vis workers in other countries. Worker X in country A might not be treated unjustly vis-à-vis worker Y in A but vis-à-vis Z in B who works for the same corporation” (p. 69). Personally, I struggle to muster much ethical concern for these cases. I am distracted by the excluded cases of poor countries and precarious workers in our unjust world.

*On Trade Justice* does not merely intend to provide insight into the residual cases, where liberal justice is silent. Nonexploitation in trade is a concept Risse and Wollner use to provide new insights into cases of trade and trade governance where liberal justice is unsatisfied. Liberal justice criticizes trade governance for its failure to do more to promote development. By contrast, nonexploitation in trade criticizes the procedural unfairness in the trade regime that may have produced this unsatisfactory outcome. In addition, exploited states can make claims against the trade regime about their unfair treatment. I appreciate Risse and Wollner’s conceptual innovation. However, I disagree with their assessment that their novel principle of nonexploitation in trade overlaps extensively with liberal justice. As I argued two paragraphs above, nonexploitation in trade does not condemn symmetrical failures of cooperation in trade governance and it may overidentify injustices in some cases of procedurally unfair treatment. For these reasons, I believe the principle of nonexploitation should be used only as a supplement to liberal justice. Exploitation in the trade regime is a morally concerning phenomenon when states are unfairly thwarted by power in the pursuits they *ought to have* in this context.<sup>18</sup>

*On Trade Justice* is dense with provocative ideas and arguments that reward careful study. It is a pluralistic argument with threads that will engage political



philosophers, trade scholars, and business ethicists. Setting aside many of the book's interesting discussions, I will conclude with my reservations about the coherence of trade justice. A crucial idea in trade justice is that trade is subject to the trade regime. By "subjection," Risse and Wollner mean that the trade regime imposes constraints on agents' options (p. 68). I am not persuaded that the idea of subjection successfully joins together the book's criticisms of exploitation in the trade regime and exploitation in trade.

All market actors are "subject" to the trade regime. But the trade regime is not a determinative structure: the trade regime's exploitation does not determine that economic exchanges take place on exploitative terms. Risse and Wollner explore a variety of different kinds of exploitative trade, including discretionary exploitation, structural exploitation, and group-based exploitation. Since there are different kinds of exploitative trade, there must be similarly variable links between exploitative trade and exploitation in the trade regime. Exploitation presupposes a power discrepancy between agents who are vulnerable and agents who are less vulnerable. There is a source of the power to exploit and there is the use of this power within the exploitative relationship.<sup>19</sup> The trade regime's exploitation could contribute to the power discrepancies between firms, workers, and consumers by restricting options for some market actors to a greater extent than for others. But *On Trade Justice* rightly notes that power discrepancies between market actors have many sources, including accidents and failures of liberal justice. So exploitation in the trade regime is not an especially important cause of exploitation in trade.

Thus, in my view, *On Trade Justice*'s principles of nonexploitation in the trade regime and nonexploitation in trade are mutually separable. The first principle can criticize the use of power asymmetries to induce developing countries to make unreciprocated policy concessions. This argument stands, even if the developing countries' concessions actually improve trade flows and increase their citizens' share of the financial benefits from trade. The second principle can criticize a business's decision to prematurely withdraw its foreign direct investment from a country, for instance. This argument stands, even if the business's decision and the workers' options are primarily constrained by factors that are distinct from the trade regime's standards, rules, and norms. Readers are free to be more persuaded by one argument than by the other.

## CONCLUSION

*Consent and Trade* and *On Trade Justice* share a method of inquiry into principles for trade and trade governance. Reading the two books together is rewarding because they have complementary strengths. *Consent and Trade* excels with its proposals for reforms to trade agreements. These interesting proposals are supported by the author's analysis and broad knowledge of law, economics, and politics. *On Trade Justice* is philosophically rigorous, thorough in its argumentation, and conceptually innovative. The principle of respect for state consent and the principle of nonexploitation are closely related to the liberal principles of freedom and fairness in cooperation, respectively. Still, in my view, both books understate the extent of conflict between their principles for trade governance and liberal justice.

I have argued that states do not always have good claims for their aims and interests to be treated respectfully and fairly in trade agreements and the trade regime. This is not a general argument against national self-determination or a general assessment that many states are not "well-ordered" societies.<sup>20</sup> It is a specific assessment that many states do not pursue morally appropriate aims through trade agreements and the trade regime. I have used liberal principles of justice to specify these morally obligatory aims, although other principles can serve this same purpose. Arguably, some states—as a result of their experiences of oppression and exploitation—have lost interest in pursuing their morally obligatory aims in trade governance. Why should a state bother to pursue development in trade agreements, given its trade partners' failures to make reasonable concessions? Why not obstruct cooperation in the WTO and engage in a symbolic performance of the political leader's power for domestic and global audiences?

The daunting task ahead for trade governance is the construction of better participants. States need to be persuaded of the valuable benefits from cooperative trade governance, such as economic gains and the protection of public health, which can be used to secure justice for their citizens. In democratic countries, citizens need to be assured they will benefit from their state's participation in trade agreements, rather than suffering economic displacement or a loss in social status.<sup>21</sup> States should participate in trade agreements and the trade regime in ways that help to secure social justice and global justice. These changes in trade governance to realize liberal justice will, incidentally, also help to limit exploitation in trade between individuals.

## NOTES

- <sup>1</sup> See, especially, a few of the authors' previous books: Mathias Risse, *On Global Justice* (Princeton, N.J.: Princeton University Press, 2012); Frank J. Garcia, *Global Justice and International Economic Law: Three Takes* (Cambridge, U.K.: Cambridge University Press, 2013); and Frank J. Garcia, *Trade, Inequality, and Justice: Toward a Liberal Theory of Just Trade* (Transnational, 2003).
- <sup>2</sup> For philosophical treatments of trade alongside other topics of global concern, see Peter A. Singer, *One World: The Ethics of Globalization* (New Haven, Conn.: Yale University Press, 2004); Simon Caney, *Justice beyond Borders: A Global Political Theory* (Oxford: Oxford University Press, 2005); and Gillian Brock, *Global Justice: A Cosmopolitan Account* (Oxford: Oxford University Press, 2009). For an argument that applies principles of global luck egalitarianism to trade, see James Christensen, *Trade Justice* (Oxford: Oxford University Press, 2018).
- <sup>3</sup> Charles R. Beitz, *Political Theory and International Relations* (Princeton, N.J.: Princeton University Press, 1979); Darrel Moellendorf, *Cosmopolitan Justice* (Boulder, Colo.: Westview, 2002); and Thomas W. Pogge, *World Poverty and Human Rights* (Cambridge, U.K.: Polity, 2005).
- <sup>4</sup> John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971).
- <sup>5</sup> WTO agreements are discussed on pp. 94–105 of *Consent and Trade*.
- <sup>6</sup> For the definition of a regime, see Stephen D. Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables," in Stephen D. Krasner, ed., *International Regimes* (Ithaca, N.Y.: Cornell University Press, 1983), p. 2, cited in *On Trade Justice* on p. 66.
- <sup>7</sup> Rather than providing a "full-blown normative account of consensual trade" (p. 41), Garcia's argument draws from his reflections about the "meaning of trade as a human experience" (p. 1). In another strand of the argument, Garcia notes that patterns of nonconsensual trade are inefficient and impose social costs (pp. 42–48). *Consent and Trade* also agrees with interpretations of international law that recognize a role for state consent.
- <sup>8</sup> See Margaret Jane Radin, *Contested Commodities* (Cambridge, Mass.: Harvard University Press, 1996); and Debra Satz, *Why Some Things Should Not Be for Sale: The Moral Limits of Markets* (Oxford: Oxford University Press, 2010).
- <sup>9</sup> See Leif Wenar, *Blood Oil: Tyrants, Violence, and the Rules That Run the World* (Oxford: Oxford University Press, 2015) on trade with "kleptocracies" that steal natural resources that rightfully belong to the people; and Christian Barry and Sanjay G. Reddy, *International Trade and Labor Standards: A Proposal for Linkage* (New York: Columbia University Press, 2008) on trade with states that violate labor standards.
- <sup>10</sup> Others argue that societies should provide compensation for their citizens and other adjustments through their domestic policies. See Aaron James, *Fairness in Practice: A Social Contract for a Global Economy* (Oxford: Oxford University Press, 2012), pp. 203–45; Christensen, *Trade Justice*, pp. 63–90; and *On Trade Justice*, pp. 202–31.
- <sup>11</sup> For this definition, see Todd D. Rakoff, "Contracts of Adhesion: An Essay in Reconstruction," *Harvard Law Review* 96, no. 6 (April 1983) pp. 1173–1284, cited in *Consent and Trade* on p. 29.
- <sup>12</sup> See Shauna Valentine Shiffrin, "Paternalism, Unconscionability Doctrine, and Accommodation," *Philosophy & Public Affairs* 29, no. 3 (Summer 2000) pp. 205–50 on "unconscionable contracts." See also Wenar, *Blood Oil*, pp. 102–22 on the essential role of domestic property laws in recognizing the rights of foreign dictators to export natural resources they have stolen from their people.
- <sup>13</sup> On developing countries' duties to liberalize trade, even on a unilateral basis, see Fernando R. Tesón, "Why Free Trade Is Required by Justice," *Social Philosophy and Policy* 29, no. 1 (January 2012), pp. 126–53.
- <sup>14</sup> My selected recommendations from the literature on exploitation include: Hillel Steiner, "A Liberal Theory of Exploitation," *Ethics* 94, no. 2 (January 1984), pp. 225–41 on exploitation as a trilateral relationship; Alan Wertheimer, *Exploitation* (Princeton, N.J.: Princeton University Press, 1999) on exploitation as unfairness; Ruth J. Sample, *Exploitation: What It Is and Why It's Wrong* (Lanham, Md.: Rowman & Littlefield, 2003) on exploitation as degradation; and Nicholas Vrousalis, "Exploitation, Vulnerability, and Social Domination," *Philosophy and Public Affairs* 41, no. 2 (Spring 2013) pp. 131–57 on exploitation as a subcategory of domination. For a theory of exploitation in global trade that is based upon a failure of beneficence, see Richard W. Miller, *Globalizing Justice: The Ethics of Poverty and Power* (Oxford: Oxford University Press, 2010).
- <sup>15</sup> The authors disagree with James's suggestion in *Fairness in Practice* that these gains can be estimated with any precision, due to the difficulty of distinguishing the trade regime's impact on national incomes from other sources of economic change.
- <sup>16</sup> Joseph E. Stiglitz and Andrew Charlton, *Fair Trade for All: How Trade Can Promote Development* (Oxford: Oxford University Press, 2005); and Andrew G. Brown and Robert M. Stern, "Fairness in

the WTO Trading System,” in Amrita Narlikar, Martin Daunton, and Robert M. Stern, eds., *The Oxford Handbook on the World Trade Organization* (Oxford: Oxford University Press, 2012), pp. 677–93. For criticism of the idea of procedural fairness in trade negotiations, see James Christensen, “Fair Trade, Formal Equality, and Preferential Treatment,” *Social Theory and Practice* 41, no. 3 (July 2015), pp. 505–26.

- <sup>17</sup> This trade regime may fail to promote development precisely because it has fully fair procedures.
- <sup>18</sup> I believe Risse and Wollner use their generic account of exploitation as “unfairness through power” for their evaluation of the trade regime in roughly the supplemental way I have sketched. They write, “The failure to proportionately satisfy all relevant claims creates unfairness. There is exploitation if that failure is due to one party’s power over others” (p. 148). This is different from their use of the specific principle of nonexploitation in trade for the purpose of evaluating the trade regime.
- <sup>19</sup> Risse and Wollner discuss a case in which an authoritarian regime is the source of a power discrepancy between domestic workers and a foreign firm (*On Trade Justice*, pp. 242–43). They argue that the regime and the firm exploit the workers *together*, in that the regime uses power to induce the workers to accept the firm’s low wages and the firm derives the benefits. But it seems more likely that the regime represses workers in order to gain something for itself, such as consolidating its power. This latter scenario is a demonstration of how an exploiter (the firm) instrumentalizes vulnerability (in workers) for which a third party (the regime) is responsible.
- <sup>20</sup> See John Rawls, *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999) for the idea of a “well-ordered” society.
- <sup>21</sup> Sarah C. Goff, “The Impact of Trade Policy on Social Justice,” *Res Publica* (published online April 2020), [doi.org/10.1007/s11158-020-09461-5](https://doi.org/10.1007/s11158-020-09461-5).

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Abstract: Two recent books consider the future of trade governance. *Consent and Trade* proposes reforms to trade agreements so that states can consent more freely to their terms. *On Trade Justice* defends reforms to the World Trade Organization, arguing that multilateralism is the foundation for a “new global deal” on trade. Each book describes trade’s distinctive features and proposes a principle to regulate both trade and trade governance. *Consent and Trade* defends a principle of respect for state consent in trade agreements. *On Trade Justice* offers a theory of trade justice that requires nonexploitation. Consent and nonexploitation are important principles for economic exchanges. However, trade governance and trade itself are different forms of cooperation, with different agents and different interests at stake. Consent and nonexploitation are less compelling as principles for trade governance than for trade itself. Both books understate the conflict between their principles for trade governance and liberal justice.

Keywords: consent, exploitation, freedom, cooperation, global justice, liberalism, fair trade