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On Whose Terms? Power and Exploitation in Trade

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David Ricardo, John Stuart Mill and other classical economists highlighted the important potential gains from specialization and trade. Today, economists refer to the concept of the terms of trade to analyze which trading party manages to obtain what share of those gains. From a normative perspective, trade is a prime example of what Rawls calls the “circumstances of justice”: trading parties have both overlapping interests—they can enhance their wealth through trade—and conflicting interests—they want to maximize their share of the gains from trade.

Mathias Risse and Gabriel Wollner’s book *On Trade Justice* provides us with a normative toolkit to assess what terms of trade can be considered just. Their analysis of justice in trade is not limited to trading relations between states, even though they recognize the important role that states play, but extends to the obligations that arise from trade for other actors such as corporations.

On Trade Justice represents an important and unique contribution to the growing literature on trade justice. The contributions to this special issue critically assess some of the central arguments put forward by Risse and Wollner. Encouraging this constructive dialogue on the different facets of trade represents one important step towards more just trading practices.

The goal of this brief introduction is twofold. First, we pick up on a number of fundamental questions raised by both Risse and Wollner and by the contributors to this special issue. Second, we provide a short overview of each of the articles.

To begin with, we would like to address a question raised by Risse and Wollner themselves. Does trade give rise to separate and distinct obligations of justice, or can questions of trade justice be reduced to general questions of domestic and global justice?¹ Risse and Wollner reject a purely instrumentalist view of trade (see

¹ See also the discussion of *isolationism* versus *integrationism* by Andreas Cassee in this special issue.

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chapter 3), that is, one that would call for the trade regime to be structured with the sole objective to maximally satisfy criteria of domestic and global justice.

To capture the sense in which trade gives rise to distinct obligations of justice, the authors draw a distinction between five different grounds of justice, drawing on Risse's earlier work *On Global Justice*. Of these five, subjection to the global trade regime represents the ground that entails obligations of trade justice. More specifically, according to Risse and Wollner, it entails the obligation to refrain from engaging in exploitative trade relations (see chapter 5).

The distinction between different grounds of justice is helpful, because it allows for a nuanced analysis of the moral obligations of certain actors. For instance, it is possible that "company A exploits workers abroad but improves their situation vis-à-vis their status quo ante" (p. 72). In this case, while justice on the ground of common humanity would be served, justice on the ground of trade would be violated. Conversely, there may be situations where no exploitation occurs, but other duties of justice are not met.

While the distinction between different grounds of trade as well as the related distinction between duties *from trading* versus duties *in the context of trade* are helpful, they also raise thorny questions that deserve more attention. First, what happens in case of conflicts between different grounds of justice? Risse and Wollner's stepping-stone argument (see chapter 14 in particular), that is, the idea that sometimes tolerating a form of exploitation in the short term may be a price worth paying for a greater good in the future seems to instrumentalize trade to a certain extent. However, no general arbitration criterion between the different grounds of justice is provided in the book. This is a promising question for further research.

Second, and more fundamentally, suppose we accept the idea of different grounds of justice. This still leaves several questions open. Risse and Wollner acknowledge this when they say that "more could be said about why the list should include these grounds and possibly others. What concerns us most, however, is why *trade* should be on it" (p. 65). There are multiple ways to do this, even for those who agree with Risse and Wollner that trade needs to be put on the justice agenda. This matters, particularly if one thinks, as the authors do, that the duties of justice are sensitive to the underlying ground of justice. If principles of justice are to some extent practice-dependent in this sense, our taxonomy of the practices and the resulting taxonomy of grounds of justice is important.

The contribution to the special issue by Aaron James provides a nice illustration of what is at stake here. Does trade include monetary arrangements? If so, how does this influence the obligations that arise from trade? Similar questions could be asked regarding the relationship between trade and international taxation. In sum, if the way we conceptually carve up different grounds of justice matters for the duties of justice that arise on those grounds, it seems that accounts

such as Risse and Wollner's need to provide a justification for why their particular way of carving up the grounds of justice is a salient one.

A second broad theme that has attracted significant attention in the special issue, and certainly merits further research, is the notion of structural exploitation and the responsibility for change it entails. One of the strengths of Risse and Wollner's account lies in the fact that it allows for actor pluralism, where exploitation occurs not necessarily among individuals, but can also take the form of *non-individual exploitation* (by groups, such as firms or states), *non-agential exploitation* (where non-agential groups can be both exploiters and victims) and *structural exploitation* (where "structures determine costs and payoffs for acts") (p. 100), thus giving actors incentives to exploit or to accept being exploited (see chapter 5.8 as well as the contribution by Katla Hedinsdóttir to this special issue).

This taxonomy is useful for diagnosing different types of exploitation. In addition, it raises interesting questions about the responsibility for effecting change to reduce instances of exploitation in the world. Take structural exploitation as an example. More specifically, consider the case of Nike producing sneakers in an authoritarian regime like Indonesia (see p. 244). Risse and Wollner provide a framework to analyze Nike's actions in such a scenario. If there is a chance that Nike's presence in the country represents a stepping-stone away from authoritarianism, the firm should pursue its operations. If not, it should withdraw.

However, Nike is only one agent in this scenario. Moreover, as Risse and Wollner emphasize on several occasions, it is one with constrained agency in the sense that Nike's ability to change the exploitative *structure* itself under which it operates is limited. This raises the question of what other agents might bear a responsibility to attempt to change the structure itself, for example by paving other paths for Indonesian workers towards empowerment that do not pass through an exploitative relationship with Nike. This is a complex question but one that a comprehensive theory of trade justice centered on the concept of exploitation should have an answer to.² Risse and Wollner's book provides us with the conceptual tools to frame this question, and thus advance the theorizing on trade justice.

Third, it is noteworthy and distinctive that Risse and Wollner's account of trade justice is based on an understanding of just trade as trade "free of exploitation." In their words, "the distribution of gains from global trade is just only if these gains have been obtained without exploitation" (p. 78). Or, put more pithily, "Trade justice ... is the absence of exploitation" (p. 79). This might strike some readers as a curious formulation, a kind of positive built around a negative: a book about X becomes an account of how X consists of the absence of Y. Nevertheless, there is an important

2 In his contribution to this special issue, Kevin Ip takes this question up with respect to liberal states' decisions to trade with authoritarian regimes, and the obligations this entails.

intuition at work here, namely that much of what is specifically unjust *in trade*, and not just in the *context* of trading, can be captured by the notion of exploitation (p. 79).

Risse and Wollner's approach can be seen as echoing Amartya Sen's injunction in *The Idea of Justice* (2009) that we abandon efforts to prove the superiority of one grand theory about justice if we want to make the world a more just place, since that's where all the disagreements arise. Instead, says Sen, we should focus on the grave *injustices* in the world, since we all more or less agree on those, and support efforts to end them from a multitude of normative perspectives (p. 9). In this sense, Risse and Wollner seek to organize us around the *injustice* of trade, namely exploitation, an approach which also finds support in the early social psychology research into justice that documented the galvanizing strength of our emotional responses to the perception of *injustice*.³

There is another way, however, to engage with the injustice of exploitation in trade while offering an affirmative view of our normative and regulatory goals in trade justice. In *Consent and Trade* (2018), Garcia offers a related view of trade and its relationship to justice that in many ways fits naturally as the other side of the proverbial Risse–Wollner coin.⁴ Garcia also emphasizes exploitation, but begins with an affirmative view of what trade consists of, namely *consensual exchange*—for trade to be trade, as we understand it, requires some degree of consent among the parties.⁵ Consent, in this context, is about economic freedom and agency—including the freedom to refuse unfavorable bargains—and the positive individual and social benefits that flow from enhancing economic freedom and agency in a market society like ours.

It is clear, however, from a moment's reflection, that transactions can be both consensual and mutually beneficial at some level, yet fall disturbingly short of normative standards of fairness for any number of reasons. Risse and Wollner recognize this—indeed, they rightfully consider it one of the strengths of their theory that it offers a way to account for “what may go wrong when transactions are voluntary and mutually beneficial” (p. 79).

A consent approach offers another way to do this—to recognize such exploitation as a “pathology” of trade, while maintaining a positive vision of trade as consensual exchange. Here Garcia, Risse and Wollner line up well: the idea of exploitation is key to understanding both where trade falls short of justice, and

³ See, e.g., Klaus R. Scherer, “Issues in the Study of Justice,” in Klaus R. Scherer (ed.), *Justice: Interdisciplinary Perspectives*, Cambridge: Cambridge University Press, 1992, pp. 3–7.

⁴ Frank J. Garcia, *Consent and Trade*, Cambridge: Cambridge University Press, 2018. Reviewing *Consent and Trade* and *On Trade Justice*, Goff states that “reading the two books together is rewarding because they have complementary strengths.” Sarah C. Goff, “Review Essay: Freedom and Justice in Trade Governance,” *Ethics and International Affairs* 34/3 (2020) 401–12, p. 410.

⁵ Garcia, *Consent and Trade*, pp. 23–27.

where it ceases to be trade at all and becomes something much darker. Either way, the regulatory and normative goals are the same: to develop rules, standards and institutional practices that minimize exploitation and promote consensual exchange. Risse and Wollner's account of exploitation in trade as "power-induced failures of reciprocity" does significant work here in outlining for us what would be involved in such an enterprise.

Building on that work, what a consent-based theory of trade would add is the energy that comes from a different aspect of human psychology, namely the importance of a positive framing vision when doing justice work. Recent social psychology research into justice suggests that putting identical distributive principles into a positive frame (the benefits they confer) rather than a negative frame (the harms they avoid) contributes to a more positive evaluation of the principles themselves.⁶ Put another way, we humans seem to do best when we know both what we are moving away from, and what we are moving *toward*.

In the area of trade and justice, what are we moving toward? A global economic regime that is free from exploitation, or a global economic regime that promotes consent and consensual exchanges? Both visions are mutually reinforcing, and a world more aligned with either vision would be a distinct improvement on this one.

Finally, we want to say a word about the institutionalist implications of Risse and Wollner's account, which coalesce naturally around the World Trade Organization (WTO), the premiere multilateral international organization employed by states to regulate international trade. From a Risse–Wollner perspective, states by nature bear the primary responsibility to promote trade justice, that is, to promote trade free from exploitation and to remedy power-induced failures of reciprocity (p. 132). This duty, and the fact that it is naturally shared among states, should lead states to create an international organization to facilitate meeting these obligations (p. 133). When states do create such international organizations, these IOs also have obligations to support justice (p. 133).⁷ States have, in fact, created the WTO, though not explicitly for justice reasons. The interesting question for us, then,

⁶ See, e.g., Eyal Gamliel & Eyal Peer, "Positive versus Negative Framing Affects Justice Judgements", *Social Justice Research* 19/3 (2006) 307–22.

⁷ Risse and Wollner also state that IOs have no independent existence, given that they are founded by states. We might put it a bit differently: if the IO in question is chartered by states to have a legal personality under international law, then it has a kind of independent existence under law, though one constrained by the decision-making control that states may exercise over its policies, programs and activities. The WTO is one such IO, endowed by states with legal personality (see Article VIII, Marrakesh Agreement establishing the World Trade Organization). In this way, international law supports the view that the WTO is itself a moral agent, albeit a constrained one, with its own duty to support trade justice as well as its derivative duty to facilitate the discharge of state obligations.

which they take up in Part II, is the degree to which the current WTO does in fact help states meet these goals, and if not, how it should be reformed.⁸

Risse and Wollner unequivocally conclude that the WTO as constituted does not in fact help states discharge their obligations, because it is “a forum where power is deployed to undermine reciprocity”⁹ (p. 121). The power-based nature of WTO rule-making, and its flawed legal structure, allow for both formalistic reciprocity when it suits powerful states (with the attendant unequal impact of such formalism on states with different capacities), and violations of reciprocity when it doesn’t (such as in the realm of agriculture).¹⁰ Risse and Wollner’s analysis thus echoes other normative and legal critiques of the WTO’s shortcomings but allows us to address their core: beneath the surface level of flawed governance procedures and the patchwork of apparent reciprocity, apparent adjustments to reciprocity and blatant exceptions to reciprocity, developing countries have been asked to make commitments that benefit developed countries, and they have not received reciprocal benefits in return (p. 149).

Risse and Wollner’s suggested remedies also follow the flow of contemporary criticism. They echo calls for increased and effective participation by developing countries in WTO decision-making and dispute resolution (pp. 149–151), and argue for putting the development mandate “front and center” in all WTO deliberations and enforcement actions in order to focus the organization towards ensuring the necessary reciprocal gains for developing countries that might remedy the WTO’s trade injustice. What is distinctive about their approach lies not so much in the prescriptions as in the rationale: instead of cobbling together a range of human rights, development or policy justifications for such measures, Risse and Wollner offer a coherent and compelling account of how such measures flow from a requirement that trading practices be free of exploitation. This rationale goes to the heart of the WTO’s role in creating and perpetuating trade injustices, and explains why this failure must be addressed as a central element in promoting just trade.

To give the reader a sense of the contours of the discussion in this special issue, here is a brief synopsis of the individual contributions.

Brian Berkey (“Exploitation, Trade Justice, and Corporate Obligations”), while largely sympathetic to Risse and Wollner’s account of trade justice, identifies

⁸ Oisín Suttle’s contribution to this volume offers a useful critique of Risse and Wollner’s view on these issues, questioning for a number of reasons whether the WTO is really a suitable focus for justice reforms.

⁹ Pietro Maffetone’s contribution to this issue offers an interesting counterpoint here, in that he challenges the strength of this argument.

¹⁰ See, e.g., Garcia, *Consent and Trade*; Oisín Suttle, *Distributive Justice and World Trade Law*, Cambridge: Cambridge University Press, 2017; Richard W. Miller, *Globalizing Justice: The Ethics of Poverty and Power*, Oxford: Oxford University Press, 2010.

a tension at the heart of their position between a structural versus a transactional understanding of trade justice. On a structural account, “subjection to the trade regime as a whole generates fairness-based claims” (p. 14), and both states and firms have obligations, within the limits of their constrained agency, to satisfy these claims. On a transactional account, states and firms have to ensure that the benefits of the cooperative activities they engage in are distributed fairly, but what counts as fair does not depend on the satisfaction (or not) of more general fairness-based claims. After documenting how Risse and Wollner oscillate between these two kinds of accounts, Berkey then argues that “an account of obligations of trade justice that is genuinely unified under a principle of non-exploitation grounded in a fairness-based view of the wrong of exploitation” (p. 15) is better served on grounds of coherence with a structural account of trade justice, and concludes by sketching some implications of reframing Risse and Wollner’s argument along these lines.

Andreas Cassee’s (“Trade, Exploitation, and the Problem of Unequal Opportunity Costs”) paper starts from the observation that in one important sense Risse and Wollner’s approach to trade justice is isolationist, that is, “independent of moral considerations about distributions that obtain in other domains” (p. 32). They hold that the way the benefits from trade should be distributed “depends solely on the contributions [the trading parties] make and on the costs they incur in doing so” (p. 32). The central question of the paper is whether or not the notion of “costs” includes the opportunity costs the trading parties incur by engaging in the trade in question. This question presents Risse and Wollner with a dilemma: either they do include opportunity costs, which leads to the implausible conclusion that those with higher opportunity costs should get a larger part of the gross benefits of cooperation. Since those with higher opportunity costs tend to be the more powerful, this runs counter to the intuition underpinning Risse and Wollner’s “power-induced failure of reciprocity.” Or they exclude opportunity costs. The article demonstrates that this option risks either inefficiency or additional unfairness. As a solution to this dilemma, the author proposes to rely on hypothetical rather than actual opportunity costs for determining the just gains from trade.

Katla Hedinsdóttir’s (“Moving Beyond the Individualist Paradigm? Risse and Wollner on non-agential exploitation”) contribution puts the spotlight on Risse and Wollner’s account of exploitation and, more specifically, welcomes their account as broader than the traditional idea of exploitation as occurring between individuals only. Risse and Wollner distinguish three kinds: “exploitation of and by agential groups (non-individual exploitation), of or by non-agential groups (non-agential exploitation) and by social structures (structural exploitation)” (p. 51). Hedinsdóttir focuses on the second and argues that, ultimately, Risse and Wollner fail to present an account that manages to transcend the individualist

paradigm of exploitation. *On Trade Justice* analyses instances of non-agential exploitation where an uncoordinated division of labour occurs among group members. Consider *The Swimmer*: “A is a good swimmer, B is drowning, and paraplegic C needs a kidney. Suppose A offers B to rescue her if B gives C a kidney” (p. 99). A has power over C but does not benefit from saving B, whereas C has no power but benefits. Together, so Risse and Wollner’s argument, they exploit B. The paper recognises that cases such as this one merit more theoretical attention, but suggests Risse and Wollner fail to show that the exploitation cannot be reduced to exploitation by and of individuals.

Kevin Ip (“When (Not) to Trade with Autocrats: Complicity, Exploitation, and Human Rights”) engages Risse and Wollner on another aspect of state policy relating to trade justice, namely liberal states’ decisions to trade or not with autocratic regimes. Ip accepts Risse and Wollner’s conclusion that such trade is morally permissible but only under very limited circumstances, and seeks to build on it by arguing that liberal states that *do* decide to trade with authoritarian regimes have a special obligation to improve human rights conditions in those regimes; and that this opens space for a further criterion beyond Risse and Wollner’s necessity and permissibility criteria. That criterion is whether trade is likely to improve the human rights conditions in the autocratic state. Based on this, Ip recommends that states (a) impose export controls on products and technologies that could worsen human rights (like surveillance technology), (b) add strong human rights conditionalities to preferential trade agreements, and (c) use both trade sanctions and financial sanctions against authoritarian regimes, while recognizing their collateral effects on the general citizenry and their often disappointing results on the authoritarian regime itself and its principals.

Aaron James (“What the Trade Pioneers Missed: Money”) argues in his contribution that accounts of trade justice ignore the role and governance of money at their peril. They tend to build upon economic models of trade, and the paradigm models of international trade also ignore money in the sense that they treat it as a “mere veil.” The paper has two main objectives. First, James uses the debate around money to arbitrate one central issue in the ongoing debate between Risse and Wollner’s *On Trade Justice* (2019) and his own *Fairness in Practice* (2012). The issue in question is whether or not “we should speak of trading *countries* being treated fairly or unfairly for their aggregate gains or losses” (p. 96). James holds that this question is integral to trade fairness, whereas Risse and Wollner do not necessarily “see societies and their governments as the basic players” (p. 94). Second, James argues that the governance of money, both nationally and internationally, has a direct impact on the productive capacity of states. In short, the governance of money affects countries’ terms of trade. This is why an account of

trade justice needs to have something to say on phenomena such as “currency manipulation” or “monetary externality” (p. 91).

Sylvie Loriaux (“Subsidies, Relocations, and Social Justice”) engages with Risse and Wollner’s position on two key domestic trade policies often advanced by developed country governments: the subsidization of their producers (at a cost to developing country producers), and measures to prevent firms from relocating production to developing countries. Risse and Wollner argue against these policies in both cases, concluding (a) that such subsidies are not justifiable, and (b) that such offshoring can with certain caveats be justifiable (hence it is not restricting). Loriaux argues that Risse and Wollner fail to discuss an important potential justification for both subsidies and measures to discourage offshoring: the “equal citizenship” strategy. According to this argument, both subsidies and limits to offshoring can play a role in securing “full and equal participation in [domestic] society” (p. 109) for all of its members by ensuring that jobs are available for equal citizenship reasons. She rejects Risse and Wollner’s arguments that governments have other mechanisms available, such as redistributing the gains from international trade to members of society who have lost out as a result from processes of relocation, in part because trade liberalization itself makes it difficult to implement such redistributions.

Pietro Maffetone (“On Trade and Exploitation”) challenges the Risse–Wollner account of exploitation on several grounds: on its own terms as a matter of ideal theory, its application characterizing the WTO as exploitative and its application to the issue of fair wages. While Maffetone is in deep sympathy with the aims of the Risse–Wollner approach, he concludes that despite their making several intriguing proposals, Risse and Wollner do not decisively resolve the theoretical issues raised by their argument, nor do they successfully carry out its application to either the WTO or the issue of fair wages. On the theoretical level, Maffetone rejects their claim that we would need a theory of exploitation in a perfectly just world—in such a world, there would be legal, policy and market mechanisms in place that would eliminate the circumstances under which people would feel they must submit to exploitation. Regarding the WTO, Maffetone argues that it is impossible to establish that there has been a failure of reciprocity towards developing countries without offering a robust account of what they are owed. Finally, Maffetone concludes with a number of objections to how Risse and Wollner argue their position against exploitation by firms, while supporting their conclusions.

Oisín Suttle’s (“On Trade Justice, Power and Institutions - Some Questions for Risse and Wollner”) paper formulates three sets of questions for Risse and Wollner. The first starts from their premise that it is subjection to the international trade regime that triggers duties of trade justice. The paper analyses this regime and

what it means to “be subject to it.” The author is sceptical that it can ground the specific duties of justice identified by Risse and Wollner, in part because they underappreciate the role of “the most significant institution in governing international trade, namely individual states” (p. 150). Second, the paper argues that the WTO has less power than Risse and Wollner suggest—as an intergovernmental organisation, the real power resides with states—and that, to the extent that it has power, it has been invested with this power to regulate mutually advantageous trade, not to promote trade justice. Finally, the paper probes Risse and Wollner’s core notion of exploitation as power-induced failure of reciprocity. The author suggests that the broad definitions both of power and of unfairness in Risse and Wollner make it difficult to delineate exploitation from non-exploitation and risk rendering exploitation so pervasive in economic interactions as to undermine the usefulness of the concept.