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Human Rights, Justice, and Global Markets

(1) The Human Rights and International Trade Project

In the Introduction to *International Trade and Human Rights*,¹ the editors identify what they claim was the shared objective, in the period following the Second World War, of both “trade regulation” and “human rights protection,” the objective of trying to bring about, on a global scale, “welfare in the pursuit of human happiness.” This objective was, they think, crucial to such post-war developments as adoption of the General Agreement on Tariffs and Trade (GATT) in 1947 and the Universal Declaration of Human Rights in 1948. The various Bretton Woods institutions that came into existence after the Second World War – the GATT, the International Monetary Fund (IMF), and the World Bank – pursued this general objective in the economic domain while the various UN institutions that were established during this period pursued it in the political domain. In the half-century that has followed, these (economic and political) international institutions have evolved, they claim, in ways that have contributed to “trade liberalization” going hand in hand with enhanced protection of human rights. They acknowledge, however, that the relationship between these institutions has been marked by some not insignificant tensions, mainly in the area of the “structural adjustment” policies demanded by the IMF. These tensions have made it necessary for special steps to be taken (a) to support agriculture on a sustainable basis, (b) to assist the rural poor, and (c) to create safety nets and job-retraining programs for low-skilled workers in developed countries.

¹ *Human Rights and International Trade*, edited by Thomas Cottier, Joost Pauwelyn, & Elizabeth Burgi, Oxford University Press (2005)

The period following the Second World War has also been characterized, they say, by the gradual development of “linkages” between trade regulation arrangements and arrangements for the protection of human rights. For example, United Nations embargoes have been imposed on countries in which human rights were being grossly violated (a notable example being the embargo on trade with apartheid South Africa). Again, in the International Labor Organization, there have been attempts to ratchet up labor standards in the global marketplace – even though these standards are not yet embedded in the multilateral trading system under World Trade Organization (WTO) rules. Moreover, human rights conditions are not infrequently attached both to domestic trade promotion programs and to bilateral or regional agreements for preferred market access. And human rights considerations are to some extent reflected in the conditions the IMF imposes on the loans it grants as well as in the World Bank’s project guidelines on indigenous peoples.

Some new features in the debate about the relationship between trade and human rights have emerged in recent years. First, there has been an expansion of trade regulation into fields of intellectual property and services – which is reflected, most clearly, in the patent protections built into the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), an agreement reached in 1997 under the auspices of the WTO (successor institution to the GATT). The HIV-AIDS crisis and the resurgence of malaria as a health threat (especially on the African continent) have generated human-rights-based concern about TRIPS. (Here the target of criticism, it’s worth noting, has been not trade liberalization but curtailment of trade in the form of patent protection.) Third, the tough enforcement arrangements in the WTO (automatic rulings, sanctions for violation of WTO rules, procedures for the adjudication and enforcement of these rules, etc.) have raised general human rights concerns. These rules – whether permissive or restrictive – are thought by critics to be at variance in certain recurring situations with effective recognition, and protection, of human rights. Finally, these rights-based concerns about trading system rules parallel a number of other trade-related concerns, whether or not these are articulated in terms of human rights – concerns about the impact of trading arrangements on labor standards or on the environment or on culture.

All these developments have forced attention by trade lawyers (at the WTO and elsewhere) to the question how trade regulation arrangements can be reconciled with – ideally, perhaps, harmonized or integrated with – arrangements for the protection of human rights and for the effective recognition of concerns about labor standards, the environment, and culture.

Among the most general of the questions to which participants in the Human Rights and International Trade project have given consideration is the question of the normative underpinnings of trade regulation law and human rights law. It is a question at no great distance from this question that I would like to consider in the next two sections. The question I take up is, however, a somewhat different, even if closely related, question, in that I want to try to identify the normative underpinnings of the doctrine of human rights and of defensible versions of global market arrangements without having to refer either to existing human rights **law** or to current trade regulation **law**, and without having to make

any assumptions about the degree to which these bodies of international law already give recognition to a defensible doctrine of human rights or to a defensible version of a global free market system.

(2) The Normative Underpinnings of the Doctrine of Human Rights

A defensible doctrine of human rights – one that hopes to be able to establish the existence of human rights and to determine their content and scope – cannot simply invoke the documents, national and international, which purport to identify and list such rights, impressive though the similarities no doubt are between such documents. The mere fact that the Universal Declaration of Human Rights and the International Covenants on Civil and Political Rights and on Economic, Social and Cultural, Rights can be cited as giving recognition to largely overlapping lists of human rights doesn't settle the question whether – normatively speaking – such rights exist let alone whether the rights on these lists are either the only human rights there are or all the human rights there are, any more than the fact that legal recognition is given, within this jurisdiction or that, to readily identifiable rights serves to show, conclusively, that the rights in question are normatively unproblematic. Nor, of course, can questions about the existence (or content, or scope) of human rights be established by appeal to people's intuitions, partly because such intuitions are notoriously variable but also because the rights to which people are ready to accord recognition are rights for which they give reasons – which is incompatible with the supposition that the rights in question are self-evident.

When questions arise about the rationale for normatively interesting rights – rights that have a claim to endorsement that is independent of whether recognition is actually accorded them within some system of law, national or international – it is a commonplace that reasons must be given in support of statements about their existence. It is particularly clear that reasons have to be given when disputes surface about the precise content or scope of such rights. These familiar features of our attitude towards the existence and content of more-than-merely-legal rights strongly suggest that the attention of defenders of a doctrine of human rights should be fixed on the arguments there are for supposing that this or that is a human right or that it has this or that determinate content or scope.

Human rights are by definition rights human beings have simply as human beings rather than because of some special action they have performed or because of some group or organization or association to which they happen to belong or because of some special relationship in which they stand to others. This means that human rights must be attributable to human beings on the basis of features they share and on the basis of shared features of the circumstances under which they live their lives. Each of the ingredients in arguments for human rights must consequently highlight considerations to which weight is assignable independently of characteristics only **some** human beings have or features of the conditions under which only **some** human beings have to live their lives.

There are three familiar facts about human beings and the circumstances of their lives that arguably form the natural backdrop to the considerations emphasized in

persuasive arguments for human rights. The first is that human beings, whatever their differences, attach importance to the protection and promotion of their own well-being – or, to put the same point in other familiar terms, that they all attach importance to the protection and promotion of their fundamental interests. The second is that despite the many capacities they have as individuals to protect and promote their own interests – the many capacities they have as individuals to contribute, by the doing of things within their power, to the achievement of their own well-being – human beings lack the power, on their own, to do all that is needed to secure their own well-being or to protect their most basic interests. The third is that human beings – again regardless of the many differences there are in their individual capacities – are all dependent on others for the achievement of many of the most basic conditions of personal well-being, unavoidably dependent on others for the effective protection and promotion of many of their most fundamental interests. In many of the areas in which they lack the power, as individuals, to secure their own well-being or to protect their own basic interests, the things they need can be supplied by others provided cooperative arrangements for the meeting of the needs in question are put in place.

What, then, are the normative considerations embedded in arguments for human rights? Three recurring ingredients, I want to suggest, can be distinguished within such arguments.

First, it's crucial to a persuasive argument for the view that human beings have a right to, say, X, to show that X is indeed something that stands in some plausible relationship to the securing of their own well-being – to the securing of their own fundamental interests. (This is what might be called the **well-being** or **interest** component in arguments for human rights.)

Second, if a successful argument is to be constructed in support of the view that human beings have a **right** to X, it must be possible to assume, or to show, that securing X isn't something they have, as individuals, a **duty** or **responsibility** to do. Sometimes all that is needed to secure fulfillment of what might be dubbed the **non-responsibility** condition is that securing X by their own unaided efforts is something they are **incapable** of doing.² Sometimes, what needs to be shown is that, even if it were possible – barely possible, perhaps -- for human beings, if left to their own devices, to secure X for themselves, it would be unreasonably demanding to regard them as having a duty to do so, when much less onerous cooperative strategies for the securing of X either lie to hand or could be devised. In cases of the first of these two sorts, a duty to secure X cannot, meaningfully, be ascribed to individuals: if they are simply incapable of securing X by their own efforts, it is unintelligible to suppose that they have a duty or responsibility to do so. In cases of the second sort, what needs to be shown is that it's only on the basis of

² Obvious examples might be cases where what they have a right to is “security of the person” – where it's clearly impossible for individual human beings on their own to do all that might be needed to protect themselves against the risk of being assaulted, or killed, or tortured. Or there are cases where what they have a right to is “education” – where, again, it's impossible for human beings, as individuals, to secure, entirely on their own, the sorts of education that are essential to the achievement of their well-being or to the protection and promotion of their fundamental interests over time.

an indefensibly demanding version of the self-reliance or self-help ideal that it could be supposed that an individual has a duty or responsibility to secure X by her own efforts **whenever** it is possible for such efforts, if made with sufficient seriousness and single-minded determination, to result in the securing of X.

The third crucial ingredient in arguments for human rights involves appeal to considerations of distributive justice. This **justice** or **fairness** condition requires that any putative right that satisfies the first two conditions must be distributed fairly or justly among human beings. Since, ex hypothesi, human rights are rights enjoyed by human beings as such – and since it is crucial to the meeting of the first two conditions that it be demonstrable, for any putative right to X, both that X is a necessary condition of the well-being of any human being and that it is either impossible or unreasonable to expect any human being to secure X without the forbearance or assistance of others -- it seems clear that the appropriate “just distribution” requirement is that one that calls for equality in the enjoyment of human rights. All human beings, and all equally, ought as a matter of elementary justice or fairness to be provided with all those opportunities for the living of their lives in ways that protect their fundamental interests that they are either powerless to bring about by their own unaided efforts or that it would be unreasonable to expect them to try to bring about without the cooperation of others, whether the needed cooperation has to take the form of forbearance merely or, more demandingly, of assistance.³

If human rights have the kind of basis in considerations of justice or fairness I’ve been discussing, then the duties that would have to be fulfilled for effective recognition to be accorded to such rights are appropriately describable as duties of **justice**. While the duties in question – like the rights with which they can be correlated – are duties ascribable to **all** human beings, it’s important to note that while, abstractly characterized, they are duties to do whatever may be needed to secure effective protection of human rights, the concrete content of these duties is of course bound to be highly variable. This variability in their content is a natural – and untroublesome – consequence of the fact that what individuals can in fact do, given the capacities they have and given the circumstances in which they find themselves, is highly variable. If, as seems likely, the greater part of what needs to be done if human rights are to be universally recognized and respected will be mediated by institutional arrangements of a wide variety of kinds – social, economic, political, legal; local, regional, national, and international; public, private; and so on – the duties of justice that individuals must be presumed to have under a doctrine of human rights will for the most part be duties to be supportive of the

³ To say that the “just distribution” rule that helps to underpin a doctrine of human rights is an “equal distribution” rule is consistent, it should be noted, with the recognition that justice in distribution doesn’t always call for equal distribution. Indeed, justice in the distribution even of rights doesn’t always call for equal distribution. The rights that people have in virtue of the morally unproblematic special relationships in which they stand to others or in virtue of the special roles they play within morally unproblematic institutions, associations, and organizations need not, and typically do not, satisfy any “equality” requirement. But where the fundamental interests protected by rights are interests human beings share – and where the general conditions for the protection of these interests are conditions they all have the same stake in enjoying on an assured basis – justice considerations require that the rights in question satisfy an equal distribution rule, which is to say, of course, that they are the sorts of rights embedded in the doctrine of **human** rights.

formation and maintenance of institutional arrangements that will help to ensure that human rights are everywhere protected. It is not surprising, consequently, that much of the burden of adopting measures for the effective protection of human rights falls in practice on those who play important decision-making roles within institutions of all these kinds. To recognize, for example, that people in important government positions (local, regional, national, international) or that people with leadership responsibilities in economic institutions (businesses, unions, investment firms, banks, etc.) have crucial duties of justice to discharge if human rights are to be respected is wholly consistent with recognizing that all human beings have such duties because, even when they are not in a position to participate directly in the making of the decisions at these levels called for by considerations of justice, there are many indirect ways in which they can hope to be able to influence such decisions.

(3) Human Rights, Market Freedoms, and the Voluntary Transactions Principle

Some contributors to the International Trade and Human Rights project expressed the view that a close relationship between International Trade Law and Human Rights Law can be established by noting either (a) that the “market freedoms” that are presupposed by the global trading system are themselves among the economic rights embedded in the doctrine of human rights, or (b) that there are certain rights – notably, the right to freedom of expression (and perhaps also the right to freedom of association) – that are crucial to the maintenance of free market arrangements even though they are often thought of more as civil and political rights than as economic rights in familiar catalogues of human rights.

Both of these suggestions run the risk of being too hasty even if both can be defended if adequately qualified.

As for the first suggestion, it is potentially problematic if care isn’t taken in specifying the rights that go hand-in-hand with recognition of market freedoms within the global trading system. If, for example the “market freedoms” to which, allegedly, all human beings, as market participants, have a right are all the freedoms to which recognition is given in still-influential “neo-liberal” versions of the free market ideal,⁴ then an indefensibly expansive account is being given of the “economic” rights allegedly built into the doctrine of human rights. This sort of inflated view of the freedoms that allegedly ought to be enjoyed as a matter of right by all participants in (what is taken to be) a genuinely “free market” system is reflected in the so-called Economic Freedom Index underwritten by the Wall Street Journal, the Heritage Foundation in Washington and the Fraser Institute in Canada.

⁴ These freedoms provide the basis for the Economic Freedom Index ratings cited by Alan O. Sykes in his contribution to *International Trade and Human Rights* (University of Michigan Press, 2006) when he is constructing his own argument in defense of WTO trading rules against critics who think human rights are threatened by some of these rules. (See Alan O. Sykes, “International Trade and Human Rights: An Economic Perspective,” *op cit*, pp. 69-91.)

Many of the freedoms to which recognition is given in this Index are in fact freedoms to which, arguably, market participants do **not** have any (human) right. Indeed, they are freedoms to which, when not further constrained, there are human rights objections. For example, it's assumed by the sponsors of the Economic Freedom Index that non-tariff barriers to trade are undesirable because they restrict economic freedom. Among other things, this is taken to imply that laws that require the labeling of goods are objectionable because they restrict the freedom of those who manufacture or market such goods. Yet labeling requirements are needed by consumers if they are to be in a position to make informed purchasing decisions. Since it is clearly much more important that this sort of consumer right be protected than that manufacturers be granted the freedom to market their products unconstrained by product-labeling rules, the idea that market participants have a human right to the marketing of inadequately labeled goods must be rejected.

Again, the fewer "regulatory" burdens there are on business in a country, the better the economic freedom rating it receives from sponsors of the Economic Freedom Index. Countries in which there are no health and safety regulations to which businesses and industries are subject, or in which there are no environmental protection rules to burden their operations, receive, other things being equal, a higher economic freedom rating. Yet it's obvious that countries that do **not** impose significant requirements on businesses and industries for the protection of the health and safety of workers or for the protection of members of the community from industry-caused degradation of the environment, are precisely **not** respecting certain basic human rights.

The view that free market global arrangements can be squared with – and perhaps grounded in – the doctrine of human rights because such undoubted human rights as freedom of expression and freedom of association provide a crucial part of the normative underpinning for a global free market system is potentially problematic for at least two reasons. For one thing, rights to freedom of expression and association may have to be defended, when applied to market relations, in ways that reflect some of the special features of economic activity. For example, it's at least highly controversial whether freedom of speech guarantees (of the kinds a doctrine of human rights might endorse) have a straightforward application to "commercial" speech. Significant restrictions on freedom in the advertising of products and services may have to be recognized, not only to prevent fraudulent misrepresentation, but also to require provision of adequate information about products and services. As for freedom of association, anti-combines legislation in its familiar forms points clearly to the fact that it is far from being an unproblematic freedom in the economic domain. A second objection to supposing that the rules governing a global market can be brought into harmony with the doctrine of human rights by highlighting the role played by such rights as the right to freedom of expression and freedom of association is this. Even when these rights are formulated circumspectly as rights properly invocable in the economic domain, the possibility of conflict on **other** fronts between the rules governing international trade and important human rights has to be allowed for. For example, it isn't because there is any violation of benign versions of the right to freedom of expression or the right to freedom of association that there are human-rights-based objections to the rules of the international

trading system when they permit economic transactions that breach morally important labor or environmental standards.

While it's clear, I think, that the voluntary transactions principle is the principle that animates a free market system, this principle can be more or less heavily constrained in its application to economic decision-making. In its least constrained version – the version in which it would permit market participants to make, freely, decisions of absolutely **any** of the sorts it lay within their power to make – it would be incompatible with **all** freedom-restricting rules. Although careless defenders of free market arrangements may sometimes talk as though this is the ideally preferred version of the principle, it seems clear that no serious advocate of the free market ideal could on reflection recommend an approach to the making of decisions that permitted market participants to advance their economic interests by resorting, whenever they had the power to do so, to force, fraud, or theft. It is not surprising, consequently, that even the staunchest defenders of economic freedom – those who are most strongly opposed to legal or regulatory constraints on economic decision-making – recognize that a free market system is not only consistent with but presupposes (as a condition of its possibility) enforceable rules prohibiting resort to force, fraud, and theft on the part of market participants.

More heavily constrained versions of the voluntary transactions principle – and thus also of a free market system – are possible. For example, market interaction can be further constrained by various forms of anti-combines legislation, which significantly restricts the freedom of powerful market participants to make deals with one another that reduce the market options of other participants. Again, with a view to mitigating the problem presented by “asymmetries of information” in the marketplace, additional constraints on the voluntary transactions principle may be needed in the form of measures to restrict the freedom of market participants to devise and implement their own promotional strategies. These measures may not only prohibit misleading advertising but also require more adequate information to be provided about proffered products and services. Yet again, the voluntary transactions principle may have to be qualified in ways that would undercut appeals to the principle in defense of exploitative market transactions (e.g., employment contracts that take advantage of the weak bargaining position of workers) or of economic decisions that are seriously harmful to third parties (as is the case when industries are permitted either to persevere in the use of pollution-generating processes that are damaging to the environment on condition that they pay pollution taxes or to ignore altogether the environmental concerns of members of the public).

The fact that the voluntary transactions principle in its application to market arrangements can be formulated in a number of ways and that a choice among these can only be made by careful review of the considerations that support the constraints (modest, or more substantial) that serve to differentiate the various versions, provides the basis for at least two normatively interesting conclusions. The first is that it's a mistake to view the voluntary transactions principle as a self-vindicating or free-standing principle, one that can be endorsed simply by noting that it underwrites freedom in the making of economic decisions. The second is that, if the rationale for several of the constraints built

into a defensible version of the voluntary transactions principle, is a justice or fairness rationale – and this is arguably the plausible view to take when the principle calls for voluntary market interaction to be constrained by the right workers have not to be taken advantage of or by the right of members of the public not to have to accept the damaging consequences of pollution-generating industrial processes – then the view that a fairly sharp distinction should be drawn between **free** market arrangements and **fair** or **just** market arrangements must be rejected. This means that there need be no barrier in principle to the rules of an international trading system that purports to exemplify the free market ideal giving recognition, expressly, to the principles of distributive justice that underpin the doctrine of human rights. Indeed, insofar as the rules regulating global trading relationships countenance economic transactions that violate human rights, the idea that these rules, whatever the objections to them, can at least be defended in the name of **freedom** – on the basis of appeal, in effect, to the voluntary transactions principle that animates a free market system – will have to be rejected. Any defensible version of the voluntary transactions principle, I suggest – and thus any defensible version of the free market ideal – must give recognition to the importance of constraining voluntary market interaction on the basis of justice or fairness considerations. And if I'm right about the doctrine of human rights having, in part, a distributive justice rationale, this means that the economic decisions and practices of market participants, operating under the auspices of the voluntary transactions principle, must be consonant with human rights. Consequently, no systematic conflict between human rights and the rules that regulate trade within a global market system need be faced.

I shall return in the concluding section to take up briefly the question whether this means that all trade-related injustices (including all trade-related violations of human rights) can be prevented by judiciousness in the articulation of the rules governing international trade.

I turn first to a brief critical discussion of an “economic perspective” on the relationship between human rights and a global free market system that differs in some respects from the account I have been offering.

(4) International Trade and Human Rights: Critique of an “Economic Perspective”

In a paper entitled “International Trade and Human Rights: An Economic Perspective”, Alan Sykes (Greenberg Professor of Law at the University of Chicago), tacitly opts for a version of the voluntary transactions principle that lies at the “less constrained” end of the spectrum I have alluded to – a version that does not incorporate the kinds of fairness or justice constraints that would require participants in the global marketplace not to violate human rights in any of the economic activities in which they engage. In addition to trying to argue that international trade even under the more permissive rules he favors can be expected, on the whole, to increase respect across the world for human rights through the contribution it can be expected to make to boosting the GNP of all countries, Sykes argues -- in a way he says most economists would endorse -- that, if and so far as, here or there, international trade is found to violate certain

human rights, the preferred (and the more “efficient”) response is to deal with these piecemeal by adopting small-scale remedial measures, measures specifically tailored to addressing the specific violations. The wrong response is to try to modify the rules of the international trading system by imposing tighter constraints on the decisions of participants in the global marketplace.

An example that seems to illustrate the sort of local remedy Sykes has in mind is perhaps provided by the plight of workers whose jobs are threatened by the relocation of the enterprises that have employed them to countries with significantly lower wage-levels. If these losses in income are deemed to be unfair or unjust – unfair or unjust, even, in ways that breach economic rights workers may be thought to have – a choice may have to be made between, on the one hand, revising the rules that regulate the global marketplace in ways that would protect the jobs (and thus the incomes) of workers who are at risk of losing their jobs under the existing rules and, on the other hand, retaining the rules while arranging, at the appropriate local level, for income-maintenance and job-retraining programs to be adopted. The second of these might then be argued (as it is by Sykes) to be the preferable option, for two reasons. (1) First, local measures – suitably designed and implemented – are probably a more effective means of protecting workers who lose their jobs because of the way the global market typically operates under the rules of the existing trading system. (2) Second, there may be good reason to think that changing the rules of the trading system in a generally protectionist direction, through the imposition of constraints on the relocation of manufacturing enterprises to take advantage of lower wages in developing countries, would have a seriously harmful impact on efforts, through international trade, to improve living standards across the world, the sort of improvement that people everywhere have a right to expect. Thus, even if existing rules governing the global market stand in need of revision, partly on human rights grounds, changes in the rules in a protectionist direction may be difficult to justify even on human rights grounds. Any short-term gains more protectionist trading rules might secure (perhaps by saving the jobs in developed countries of those who currently hold them) would arguably be at odds not only with a fairer distribution across the world of opportunities for paid employment but also with protection of the longer-term stake even currently employed workers in developed countries have in being able to participate in the more vibrant economy that greater openness in global trading relationships might plausibly be thought likely to help bring about.

However, while there may be cases where trade-related human rights violations can be best dealt with by the adoption of piecemeal remedial measures, there are also cases – including some that Sykes would prefer to see handled in a piecemeal way – where the human rights threatened by global trading rules cannot be adequately protected by local action that leaves the rules intact and where, consequently, modification of the rules is needed. Take, for example, the human rights violations associated with child-labor practices or, more generally, with the laxness of the labor standards embedded in the rules for international trade. If what is needed – in view of the stark conflict there is between employment practices that countenance child labor and respect for the rights of children not to be required, or permitted, to become full-time workers -- is the **elimination** of child labor practices, then piecemeal measures, with local application, are

unlikely to be superior to more systematic alternatives (alternatives that take the form of incorporating constraints on the hiring practices permitted by the rules governing the global market).

One obvious reason is this. Strategies that rely on the well-intentioned policies of multi-national enterprises – policies prohibiting the hiring of underage workers, e.g. – are likely to be too piecemeal to deal with a problem that has global dimensions. Even if well-intentioned enterprises are able to survive and prosper without resorting to child labor practices, other enterprises not so well-intentioned may continue to employ underage workers if this is permitted by the rules of the international trading system. Moreover, even well-intentioned enterprises that attempt to implement their own ban on child labor may find that acceptance of significantly reduced profit margins may not suffice to ensure their survival in face of the competition offered by their less scrupulous rivals in the global marketplace.

The same difficulties arise if child labor is prohibited by law at a local (or national, or regional) level while still being permitted by the rules governing global market arrangements. For one thing, merely local (or national, or regional) laws banning child labor are powerless to prevent the practice of employing underage children in countries with no such laws – which means of course that the desired objective of eliminating the practice across the world will not have been achieved. For another, the fact that there are countries without such laws is likely to generate, for unscrupulous profit-maximizing enterprises operating within a global market that permits child labor, an incentive to locate (or relocate) in countries not affected by anti-child-labor legislation.

Much the same argument can be presented against reliance on a piecemeal approach to the implementation of labor standards more generally – standards that call for health and safety in the workplace or for the avoidance of a broad range of potentially profitable but exploitative workplace practices. Here, too, piecemeal measures are not only – by definition – insufficiently comprehensive in their scope to prevent the human rights abuses that lax rules of market interaction permit but they also generate avoidance incentives. That is, they make it advantageous for enterprises that are more concerned about maximizing their profitability than about minimizing human rights violations to locate (or relocate) in jurisdictions not affected by merely local measures for the upholding of labor standards. And where fair labor practices are practices to which, on a voluntary basis, “ethically responsible” economic enterprises are committed, it is only too likely both (a) that there will be too few enterprises prepared to adopt these kinds of “ethically responsible” labor employment practices, and (b) that competitive pressure from less scrupulous rival enterprises may make it impossible for them to survive, even when their ambitions, on the posting of profits front, are comparatively modest.

(5) Human Rights Constraints on Global Markets and the Elimination of Trade-Related Injustices

I have been arguing in this paper – albeit only in outline and in highly abstract terms – that there is no barrier in principle to harmonization of human rights and the rules of a global free market system provided recognition is given to the role principles of distributive justice play both in the justification of human rights and in the vindication of the version of the voluntary transactions principle that underpins a defensible version of the free market ideal. However, if my argument is on the right lines, it clearly needs both to be fleshed out in various ways and to be defended against objections I have not even attempted to identify. It must also be supplemented in several ways if a rounded account is to be given of what it would take to eliminate trade-related injustices across the world.

Let me close by identifying some of these supplementary tasks.

First, even if the human rights constraints that should ideally be embedded in the rules regulating international trade have to be seen as grounded in principles of distributive justice, it remains to be determined both what the content of these constraints should be and how precisely it would be best for recognition to be accorded them within a global market system. As I recognize in my discussion of Sykes’ “economic perspective” on the relationship between human rights and international trade, a distinction needs to be drawn between the sorts of human rights violations that might fruitfully be combated by revision of the rules regulating international trade and those that call for a variety of piecemeal remedies that are independent of the structure of the global trading system. Although I have pointed to examples of human rights violations that seem to fall on different sides of this line, how this distinction is to be refined and applied needs to be worked out. While exploration of the nature of the connection between these violations and principles of distributive justice is presumably one part of this task, even more importance is likely to attach, it seems safe to say, to trying to determine whether trade-related or trade-independent institutional measures are more likely, in practice, to reduce the incidence of human rights violations.

Second, even if the rules that regulate international trade within a global marketplace were to be circumspectly articulated to take proper notice of the human rights constraints to which they should be subject – and even if arrangements for the proper implementation of these rules could be devised and adhered to – international trade under these rules could still be expected to generate distributive injustices of various sorts. The reason is that it is impossible to establish and apply any general system of rules that can anticipate, and cope with, all relevant contingencies. For example, it would be much too sanguine to hope that the economic inequalities, both within and between societies, that would be generated, even if only indirectly, by market interaction under feasibly ideal trading rules are all inequalities that can be accepted with equanimity from the standpoint of justice. Yet although unjust economic inequalities of this kind are trade-related, in that they must be seen to be among the consequences of interaction in the global marketplace even under circumspectly articulated trading rules, the fact that these consequences are unpreventable (and for the most part, unpredictable) means that it wouldn’t be reasonable to hope that they could be moderated by any envisageable change in the rules themselves.

Third, there is another reason why conformity within a global system even to benignly formulated free market rules can't be expected to generate a distribution of income and wealth across the world that is wholly consonant with principles of distributive justice. The reason is that there is a very important general condition of the justice of market outcomes that is independent of the rules that govern market interaction. As Robert Nozick famously noted in *Anarchy, State and Utopia* when he set out the principles of distributive justice to which he was committed as a defender of what he called "the historical entitlement" approach to questions of economic distribution, meticulous conformity on the part of market participants to the principle of "just transfer" (his version of what I have been referring to as the voluntary transactions principle) will **not** contribute to a just – market-generated -- economic distribution **unless** the initial (i.e. "pre-transaction") distribution of economic resources ("holdings" in Nozick's terminology) can be presumed to have been just. Unlike advocates of a broadly "libertarian" approach to questions about the justice of markets – an approach that seems to be somewhat uncritically endorsed by "neo-liberal" defenders of the ideal of economic freedom presupposed by the Economic Freedom Index – Nozick rejects the view that the distribution of income and wealth that eventuates from market interaction can be assumed to be just provided (only) that all the transactions to which market participants have been parties have been concluded freely or voluntarily. While his principle of justice in "transfer" does indeed call for all market transactions to be fully voluntary, meticulous observance of this principle by market participants is only a necessary – not a sufficient – condition of the justice of the distribution of income and wealth yielded over time by market interaction. A second necessary condition is the justice of the baseline – or "pre-transaction" – distribution of the resources at the command of market participants. Although Nozick's own account of the principle that must be satisfied if this additional (baseline) condition is to be met – the principle of "justice in acquisition," as Nozick dubs it – is highly problematic (and not merely because the account he offers of it is seriously under-developed), and although Nozick's principle of justice in "transfer" is an insufficiently constrained version of what I have been calling the "voluntary transactions" principle, Nozick is quite right to insist that the voluntary interaction of market participants in an ideally "free" market cannot be expected to yield a just distribution of economic resources if the baseline distribution of the marketable assets at the disposal of market participants isn't a just distribution. And Nozick is surely also quite right to take for granted that the principle of justice in transfer cannot do double-duty (so to speak) as a principle for determining the justice of the pre-transaction distribution of economic assets. It follows that, since what constitutes a just initial (or pre-transaction) distribution cannot be explicated by appeal to the voluntary transactions principle, the explication must proceed independently of the question whether the transactions to which market participants are parties have been wholly in conformity with the voluntary transactions principle. While injustices in the pre-transaction distribution will almost certainly be reflected in some of the injustices that eventuate from market interaction under rules mandated by the voluntary transactions principle, **these** injustices will precisely not be attributable to any (correctable) deficiency in the rules. Remedial strategies – whatever the precise form they are to take – consequently cannot be expected to take the form of further adjustment in the rules of a free market trading system.

One final disclaimer about the line of argument I have been developing in this paper. Since I have nowhere taken up any of the hard questions that have to be faced about what the conditions are under which it would be reasonable to hope for the adoption by the international community of global trading rules that are adequately constrained by the justice considerations underpinning the doctrine of human rights, I shall close with an admission and a prediction. The admission is that the prospects for the adoption of more fully just rules of interaction in the global marketplace are not good given the stranglehold the most powerful political and economic players on the world stage have over the decision-making procedures of such major international institutions as the World Trade Organization, the International Monetary Fund, and the World Bank. The prediction is that the required changes in the structure of global markets are unlikely to come about until those who make decisions within these institutions are more representative of, and accountable to, the peoples of the world who have hitherto played little or no role in giving shape to the processes of economic globalization.

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