Distributive Justice without Sovereign Rule: The Case of Trade

The existing system of international trade is marked by both economic interdependence and political decentralization. These features place opposing pressures on the scope of distributive justice. The fact that many societies are now economically interdependent, as a result of trade, suggests we should compare how people fare both within and across societies. On the other hand, trade, like the larger state system, is politically decentralized. Although the World Trade Organization (WTO) offers a forum for negotiation, dispute adjudication, and the coordination of reciprocal trade sanctions, economic interdependence between societies is currently regulated, if regulated at all, by bargains struck and renegotiated between distinct sovereign governments.¹ This calls into question whether issues of distributive justice and injustice properly apply outside of particular societies, in the absence of centralized rule. If trade does pose questions of distributive justice across societies, and not simply within them, we need to explain why.

Why should political decentralization call the applicability of distributive justice into question? In part, because assessment of distributive justice is most familiar, and least open to question, when the target of assessment is a centralized political authority such as that which exists in most countries. When subjects of such an authority face significantly unequal prospects, the inequality can be seen to reflect a morally serious failure of governance; the system of legislative, judicial, and administrative authorities fails to distribute the many advantages and disadvantages of domestic social life in a non-arbitrary or evenhanded way. This hardly entails that assessment of distributive justice is by its very nature assessment of how a sovereign rules—that it would be inappropriate to level essentially the same charge outside of domestic society, in the absence of centralized government. Recently, however, philosophers such as Thomas Nagel and Ronald Dworkin have defended just this conclusion.

¹This claim is compatible with the existence of governance “networks” across societies, such as those recently highlighted by Anne-Marie Slaughter, *A New World Order* (Princeton: Princeton University Press, 2004), so long as officials exercise powers granted to them within their respective sovereign institutions.
According to what I will refer to as the Sovereignty View, centralized political authority is indeed a necessary condition for the application of any principles of social (and therefore distributive) justice.²

The Sovereignty View can allow that trade is morally problematic—rich countries may self-interestedly exploit their bargaining power in trade negotiations, for instance. Its claim is specifically about social and distributive justice: the consequences of trade can at most be assessed as distributively just or unjust within a given society, where a sovereign rules. According to what is perhaps the standard view, the Sovereignty View is fundamentally mistaken, because political organization at most has instrumental importance for the question how an independently just distribution might best be brought about.³ My critical aim in this paper is to develop a quite different, dialectically stronger challenge to the Sovereignty View.⁴ I will accept the fundamental relevance of political organization. Nevertheless, I will claim, non-parochial principles of distributive justice can be justified, as applied to the existing multilateral system of trade.⁵

My aims are also constructive. I want to develop and apply, to the case of trade, an underappreciated, broadly Rawlsian way of understand-

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² Nagel has been most explicit in defending such a view, albeit somewhat tentatively, in an (unpublished) paper called “The Problem of Global Justice,” presented at UCLA, Winter 2004. Dworkin defends a similar position in an unpublished manuscript. For a similar view, which emphasizes the fact of state coercion and its threat to individual autonomy, but which makes no explicit restriction to sovereign rule, see Michael Blake, “Distributive Justice, State Coercion, and Autonomy,” Philosophy and Public Affairs 30 (2001): 257-96.
⁵ Because Nagel and Dworkin have not at present published their defenses of the Sovereignty View, it may be difficult for the reader to assess whether my argument refutes this position. One can instead consider my argument as a challenge to any defense of this view.
ing the nature and role of principles of social justice. According to what may be called a governance conception of social justice, any principle of social (and therefore distributive) justice has as a necessary (but not sufficient) condition of its application to the world some appropriate form of organizational control. Where states of affairs are beyond anyone’s control, individually or collectively, principles of justice do not apply. In these terms, the Sovereignty View is a governance conception; it merely adds that the “appropriate form of organizational control” is sovereign rule. According to the more relaxed governance conception I want to describe, informal and decentralized governance of a social practice also qualifies as appropriate control. This is to admit that the Sovereignty View is in one crucial way correct: economic influence by itself, aside from its relation to some social practice that its participants in an appropriate sense control, is not sufficient for assessment of distributive justice to be appropriate. But the more informal governance conception I will describe avoids the Sovereignty View’s implication that distributive justice applies only within the domestic sphere. The existing multilateral system of trade, I will suggest, meets the appropriate informal and decentralized governance pre-conditions. It can be assessed as socially just or unjust, because of how it is governed—that is, because of how it distributes its advantages and disadvantages across societies—despite the absence of centralized political authority.

Although the informal governance conception I want to describe will be of interest for its own sake, it also refutes a two-pronged sovereignty-based attack on the suggestion that trade raises questions of distributive justice. The first prong of the attack asserts that, when trade is at issue, we are limited to moral assessment of particular market exchanges or trade bargaining—as coerced, exploited, or bullied, but not as distributively just or unjust. The second prong asserts that, in any case, trade fails to qualify for assessment of social justice, properly speaking. Even when it is governed in informal or decentralized ways, this does not involve the distinctive form of power exercised when a sovereign rules.

My reply to this challenge will unfold as follows. I first suggest in a preliminary way (in section 1) that trade constitutes a social practice, which raises moral issues distinct from the issues that arise in particular transactions. I then consider (in section 2) how two kinds of principle that apply to trade, when it is viewed as a social practice, place limited but significant constraints on how trade distributes its advantages and disadvantages across societies. This establishes a presumption that trade

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6I believe the conception I will present is Rawls’s own, but I will not defend that claim here.
7This two-pronged attack was voiced by Thomas Nagel in the discussion period of his presentation at UCLA (2004) and in further conversation.
is a proper subject of distributive justice. In the remainder of the paper, I defend this presumption against possible sovereignty-based objections. I respond (in section 3) to objections that, in the absence of a sovereign, assessment of trade as a social practice is undermined by problems of assurance and the role of bargaining. This will expose the way in which trade is both assured and governed in informal and decentralized ways. I then respond (in section 4) to the objection, suggested above, that trade does not involve the distinctive form of power exercised in sovereign rule. I argue that such power may be of distinctive importance, but that other, more informal ways in which power is exercised in a social practice equally qualify for assessment of social justice.

1. Trade as a Social Practice

The Sovereignty View asks us to deny that there is any distributive justice or injustice in existing levels of inequality across societies. This can also seem to be the upshot of more informal governance conceptions, which do not require sovereign rule. Rawls, in *The Law of Peoples*, accepts a governance conception of justice insofar as he makes governance relations of the sort that actually exist between societies a pre-condition for the applicability of his theory. He writes: “The idea of a reasonably just society of well-ordered peoples will not have an important place in a theory of international politics until such peoples exist and have learned to coordinate the actions of their governments in wider forms of political, economic, and social cooperation.” Rawls also suggests that principles of distributive justice at most apply parochially—within societies, but not across them. He rejects a “global difference principle” in favor of a duty of assistance that calls only for a certain absolute level of provision. And aside from passing remarks about fair trade, he makes no suggestion that economic relations otherwise give rise to significant requirements of distributive justice.

Rawls does mention several reasons why inequality across societies might be objectionable: it may reflect relievable poverty, tend to create stigmatizing differences in status, and create or reflect unfairness in political processes. I doubt that such considerations exhaust the concerns commonly voiced in complaint against the “increasing size of the gap between rich and poor.” We find a further basis for taking this complaint seriously in a distinct but familiar idea of distributive justice: the idea

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9 Ibid., p. 19; my italics.
10 Ibid., pp. 113-15.
that an established social practice can be unjustly organized, because it distributes its benefits and burdens inequitably. The objection here, I take it, is not to inequality as such, but rather that a practice is not justifiable to those it affects when it creates inequalities among them while lacking the appropriate grounds for the difference in treatment. As examples in the case of trade, think of volatile and largely unregulated capital markets that have profited rich countries (and elites everywhere) while creating financial crises for poorer and developing Latin America and Southeast Asia. Or consider multi-billion-dollar U.S., European, and Japanese agri-business subsidies that benefit an increasingly small number of affluent farmers while impoverishing millions of already poor agriculturally dependent and/or low-skilled workers. The objection in these cases is not simply that the poor are poorer (a concern that is equally appropriate in the wake of a natural disaster), nor is it simply that many are politically disenfranchised or stigmatized as inferior. It is also that many people are treated unfairly, specifically, that the advantages and disadvantages of trade are not equitably distributed.

It is easy to be skeptical whether this idea of distributive justice really does apply to trade. Is trade really the kind of activity that can itself be fair or unfair, over and above the fairness or unfairness of particular transactions? Is trade really a social practice? I will return to these questions momentarily. The crucial point is that, if existing trade is indeed best seen as a kind of social practice, it will thereby be appropriate to assess trade in light of the distinctive kinds of moral concerns that practices raise. This is not to say we cannot also assess particular market exchanges, as well as bargaining in trade negotiations, within what might be called the *morality of transactions*—the class of responsibilities that fall to particular parties, to avoid domination, bullying, coercion, exploitation, and other pro tanto unjustifiable acts that one agent might commit against another on a particular occasion. The claim is simply that any complete moral assessment must also consider what might be called the *morality of practices*—the class of specifically collective responsibilities that a group organized as a practice has for the way it treats individuals.

The notion of collective responsibility at issue here is one in which

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11This is in part the force of Brian Barry’s skeptical remark that “Trade in pottery, ornamentation, and weapons can be traced back to prehistoric times, but we would hardly feel inclined to think of, say, the Beaker Folk as forming a single cooperative enterprise with their trading partners. No more did the spice trade unite East and West.” Brian Barry, “Humanity and Justice in Global Perspective,” in J.R. Pennock and John W. Chapman (eds.), *Ethics, Economics, and the Law* (NOMOS 24) (New York: New York University Press, 1982), PAGES??, at p. 233. More recently, Blake, “Distributive Justice, State Coercion, and Autonomy,” cites this passage approvingly (p. 292, n. 46), in support of his own skepticism about the distributive significance of trade. Note that the existing system of trade can constitute a social practice even if earlier forms of trade did not.
responsibility falls to a group, as a collective. The way responsibility is to be distributed among particular members of the responsible collective is a distinct and secondary question. As a “non-distributive” notion, this is to be distinguished from cases in which responsibility falls without remainder to each or many members of a nation, corporation, family, or other group, and not to the group as a collective. It is also distinct from responsibilities that merely concern a group, such as the Hart/Rawls principle of fair play—that those who receive the benefits of an established practice are under a duty of fidelity to do their part when it comes time to do so. This principle concerns the group of agents organized as the practice in question, since, when someone takes a free ride, any participant can complain on the group’s behalf. But this is not to say that there is any collective responsibility here; the responsibility not to free-ride falls only to particular individuals.

Some philosophers believe that a randomly collected group of agents can be held collectively responsible. The notion of collective responsibility at issue in the morality of practices, by contrast, arises because of prior social organization. That is to say, there may be no specifically collective fault when people fail because of unfavorable conditions or lack of willingness to organize themselves. But so long as valued ends are not achievable on an act by act basis, and the behavior of more than one agent is in fact coordinated in regularized ways over time, this generates special moral concerns. The structure of any such coordination normally has important consequences for people’s lives. Because it does so quite independently of particular actions (a contrast I return to momentarily), it is something for which those affected can demand justification.

Or at least social coordination is something for which people can demand justification so long as such a demand can be appropriately addressed to some agent or agents. A demand for justification, if it is to be appropriate, must be addressed to some agent or agents whose conduct is to be regulated or governed according to certain, appropriate principles. Otherwise, the charge is simply against the universe (perhaps as the personified Hand of Fate, if not as an impersonal cosmos). Complaints against a social practice cannot normally be addressed to particular individuals as such. No one can be held responsible for more than what is in his or her power, and no individual will have power over the structure of a practice of the sort they have over their attitudes and bodily movements.


(even if some office-holders happen to be empowered by organization and patterns of deference). Social organization will always depend on the choices of many agents, precious few of which (save special cases of manipulation and mind control) will be in any one individual’s control to regulate by mere act of will.

Are practices therefore a mere unfortunate fact of nature? Not according to the morality of practices: participants can nevertheless be held collectively responsible for the structure of their organization. It is sufficient for this that the group of participants does in fact have collective power to adjust and regulate its organization, if not by centralized control then by informally modifying the many particular choices that sustain it, through individual reform and joint efforts of moral argument and social sanction. A group that has this power can be expected to govern itself by any applicable terms of justification; the collective is an appropriate addressee of demands that those terms be fulfilled.

According to what might be called a governance conception of the morality of practices, such organizational control is not only sufficient but also necessary for principles within the morality of practices to apply. In order for there to be a violation of relevant terms of justification, there must be some failure of collective self-governance; it is not enough for the morality of practices to apply that the world contains undesirable or “cosmically unfair” states of affairs. Is trade subject to the morality of practices, so understood? In the remainder of this section, I will suggest a preliminary affirmative answer. Existing trade has three important features: (i) it is undertaken for common purposes, (ii) it involves the coordination of action, and (iii) it provides a distinct subject of assessment. I leave aside the question whether each of these features is a necessary condition for a practice in the appropriate sense. For present purposes, it is enough that these features, taken together, provide prima facie grounds for supposing that the morality of practices does indeed apply to trade. (I return to the issue of whether trade is also suitably governed in sections 3 and 4.)

Markets generally have large-scale effects that cannot be brought about by particular acts of buying or selling, or by the sole efforts of any particular economic agent. Large-scale effects are not sufficient by themselves for the morality of practices to apply, however. The cumulative effects of some “black markets” may be beyond the control or regulation of any economic agent, state action, or state agency. In this sense, they may exist in a state of nature. But most economic activity is not like this. Even if no individual can single-handedly prevent the unconstrained production and consumption common in his or her society from polluting air and water beyond its borders, the members of such a society can be held collectively responsible for the economic activity that their legitimate
government can control but nevertheless allows. This is plausible as a claim within the morality of practices, because government does constitute a kind of social practice, and because pollution is a predictable result of its organization. In this sense, international trade (aside from black markets) does not exist in a state of nature. If buying and selling in one society has significant and foreseeable effects on another society, it is only because such effects are preventable but permitted by particular governments.

This does not show that there exists a “practice of trade” to which the morality of practices might apply. Mere failure of governments to prevent bad consequences for foreigners does not show the presence of coordinated extra-national activity shaped by standing expectations and a generally held belief that regular coordination has some point. Social practices normally exist only because those who participate in them share or at least implicitly understand certain common purposes, purposes that rationalize a form of regular coordination and its specific roles. This is the first feature that suggests trade is a social practice. Present-day governments actively rely on global markets, often as a conscious policy decision, usually with the expectation of similar reliance by other governments. Whether in bilateral or multilateral arrangements, this is generally done for the common purpose of mutual economic benefit—at a minimum, the gains of specialization.

Mere coincidence of interests is not sufficient for a practice. Action must also be coordinated. This is the second feature that suggests that trade is a social practice: trade involves coordinated action, specifically, mutual market reliance. We see coordinated action, in bilateral and multilateral trade, in the problems of assurance that arise from the standing threat of unilateral trade protection. When countries trade, industries and jobs in each country are both created and destroyed. As industries survive only because of continued demand for exports and ongoing supply of cost-saving imports, each participant economy becomes increasingly dependent on continued market access, and therefore increasingly vulnerable to foreign market barriers or intervention. At the same time, trade protection on specific issue-areas can be volatile (it is popular in election years, for example). This is important in any practice, because one will have little reason to do one’s own part, and perhaps strong reason not to comply, if one lacks sufficient assurance that one’s action is coordinated with others—assurance, that is, that others will do their part when the time comes to do so. So it is in the case of trade: when continued profitable access is insufficiently assured, people often see strong reasons to curtail the market access of others.14

14Economists often point out that even protected market access is beneficial so long
The third and final suggestive feature is that trade provides a *distinctive subject of assessment*. In general, even if we can and should assess particular economic transactions, this does not show that our moral concerns should be limited to them, at least provided that the appropriate organizational conditions obtain. Coordination may exist beyond the interaction of particular parties, on particular occasions. It may, in fact, have a kind of structure over some amount of time, and across some group of individuals. That does not entail that structure has any special significance over and above particular transactions. But structure does indeed have this significance when, in fact, its organization has its own significant consequences, over and above any particular transactions. In this case, we can appropriately assess the structure itself, according to how it treats those it affects. This assessment may or may not coincide with our assessment of particular transactions. Transactional wrongs may be done within a generally justifiable structure. Alternatively, an unjustifiable structure may exist although every particular transaction is justified.\(^\text{15}\)

The structure of existing trade is constituted by the standing trade policies of trading countries, their official treaties, and larger informal expectations, all of which, as a whole, shapes the economic choices and expectations of consumers, firms, and state agencies in trading countries. The effects of this structure can be assessed independently of particular transactions. Even if every economic transaction were perfectly fair, the cumulative effect of those transactions, organized in a particular way, may not be fair to each person affected by trade. Moreover, in this case, further transactions will not necessarily suffice for rectification. For suppose the members of a nation treated unfairly in trade are fully compensated for their losses by a by-standing beneficent society or billionaire. We will then have no objection against the standing distribution; by hypothesis, any unfairness in the distribution will have been rectified. Still,

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\(^{15}\)The distinctive role of social structure is often obscured by the consequentialist assumption that what is ultimately to be assessed as just or unjust is the resulting distribution of goods and resources. In that case, practices are not distinctive, because a distribution might equally be brought about, or at least promoted, by particular transactions. (See, for example, Cohen’s critique of Rawls’s focus on the “basic structure” of society in G.A. Cohen, “Where the Action Is: On the Site of Distributive Justice,” *Philosophy and Public Affairs* 26 (1997): 3-30.) Within the morality of practices, as I understand it, collective responsibilities for a practice are only indirectly concerned with outcomes. Although an unequal distribution can be unfair, any such unfairness reflects a more fundamental disorder in the structure of the practice itself—disorder in that which, as it were, does the distributing.
this may have made no difference to the structure of the practice itself, to
the way trade relations distribute benefits and burdens over time. The
practice itself may not treat the otherwise disadvantaged any less un-
fairly. Rectification of that unfairness must change the very structure of
trade.

2. Due Care and Fair Distribution

I conclude, tentatively, that trade is subject to assessment according to
any principles associated with the morality of practices. I return in sec-
tion 3 to objections to this claim. Even if it is correct, however, it does
not follow that principles within the morality of practices are principles
of social and distributive justice. In this section, I make a prima facie
case that this is indeed the case; principles that plausibly apply to trade
impose significant constraints on how its structure distributes its advan-
tages and disadvantages. I will consider two kinds of principle in some
detail. My aim will not be to demonstrate or justify these principles in
any strong sense, but merely to show that they plausibly explain several
kinds of intuitive or pre-reflective objections of social injustice. For all
I will argue, different principles may ultimately be justified. The ones I
consider will suffice for my purpose—to suggest, if only tentatively, that
the practice of trade does indeed raise issues of distributive justice.

The two principles I will consider are as follows. The first may be
called *Collective Due Care* (or simply Due Care): when people (or their
activities) are organized as a governable social practice, we can expect
them, as a collectivity, to take reasonable precautions to prevent foresee-
able negative consequences of their joint activity, and to compensate for
any resulting harm. The second principle may be called *Fair Distribu-
tion*: a given, governable practice is to be organized so that those who do
their part receive an equal or otherwise acceptable share of its benefits,
and no more than an equal or otherwise acceptable share of the burdens
that make those benefits possible.

Since my concern is primarily with the applicability of principles, I will ignore
deeper questions about their ultimate justification. I do suppose the principles I consider
are those that, in T.M. Scanlon’s terms, no one could reasonably reject as a basis for the
general regulation of the relevant social organization. T.M. Scanlon, *What We Owe to

Much of Barry’s skepticism about trade (in Barry, “Humanity and Justice in Global
Perspective”) was addressed under the heading of the Hart/Rawls principle. This prin-
ciple, which specifies responsibility for individuals, is quite different from Fair Distribu-
tion, which specifies collective responsibilities within the morality of practices. Barry
does consider a more closely related idea of fairness under the heading of “justice as
requital.” But he considers only requirements for a “fair price,” doubting that even higher
commodity prices would appreciably improve the position of poor countries (pp. 227-28).
The idea behind Fair Distribution is that, in any social practice, the goods that give a practice its point will only exist because many agents act in specified ways. Given that people can be asked, in the name of the organized group, to make specified sacrifices in order that certain goods are realized, such persons can also reasonably claim fair return on those sacrifices, in terms of the promised benefits or an acceptable substitute. The idea is not that equal distribution has value as such, but rather that each participant, as a moral equal, has a presumptively equal claim to the fruit of the joint effort, in light of his or her contribution to that venture.

Although Fair Distribution is in this way demanding, its demands are narrowly concerned. The principle concerns only those who do their part in sustaining the practice, and, among those persons, only interests related to the benefits or burdens of participation. Those who make no contribution to the practice are not in a position to lay claim to fair return. It is important to notice, however, that this is not to say that non-participants lack weighty claims. At very least, the moral equality of non-participants secures a right to Due Care (as well as any inclusion or assistance provided by further principles). Due Care is more broadly concerned with anyone a practice affects, whether a participant or an outsider, and with any way one may be affected, whether according to the practice’s design or as an unintended side-effect.

For its greater breadth, Due Care is comparatively less demanding. It requires only that people be made no worse off than they would have been had the harmful activity not been undertaken. Compensation when harm is done requires only restoration to this level of well-being. Under Fair Distribution, by contrast, the relevant baseline is not causal or historical, but subjunctive. Even if one is better off than one would have been had the practice not been undertaken, one can be treated unfairly because one would be even better off still (in relevant respects) under feasible alternative arrangements. Here there is a presumption in favor of equality. Departures from equal distribution, among participants, must be justified on special grounds.

Both of these principles, as I will understand them, are restricted in one general way: they provide a basis of assessment, not for any way in which people’s lives go better or worse, but for the benefits and burdens that the relevant practice actually creates. Those unaffected by a practice

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18The familiar idea here is that goods of incommensurable value cannot be compared as fairly or unfairly distributed. I take it that which goods are relevant in a given context is to be determined on a case-by-case basis.

19This poses familiar complications. If a first harm is eliminated by the practice, can introducing a second harm of equal significance be justified? I leave aside these questions.
have no claim under either principle. I will return to the rationale for this restriction. For present purposes, it should be emphasized that this does not entail a restriction on the scope of social justice as such. Persons unaffected by a practice may well have claims of justice, say, to assistance or to inclusion. The present restriction implies only that these must be provided by distinct principles. The system of trade most certainly exists against a background of significant injustice—at very least, failure to rectify innumerable past injustices, as well as the ongoing injustice in widespread and relievable poverty. I will simply bracket these conditions. What I want to consider in this section is the extent to which existing trade might be objectionable on its own terms, under the two kinds of principle I have outlined.

Global capital markets illustrate the applicability of Due Care. Such markets exist because governments allow and rely on them for the sake of their large-scale economic benefits. By comparison to domestic capital markets, global exchange of capital (including bank lending, stocks and bonds, and direct investment) provides to market actors markedly greater financial opportunities for borrowing and lending. The net gain in monetary terms is enormous, nearly as great as trade in goods and services. Yet reliance on such markets is also an ultra-hazardous activity. Because the value of capital is essentially dependent on bets about an uncertain future, its assessment is more prone to error than assessment of the value of ordinary goods and services. Even in domestic society the practice inherently creates risks of catastrophic banking and financial failure. These risks compound over greater distance. They are only further exacerbated when huge amounts of capital are allowed to flow quickly in and out of economies according to the tides of investor confidence.

Historically, the result has been numerous financial crises, for whole economies, entire regions, and the global economy. Even if crises somewhere are virtually assured, various possible precautionary measures are and have been available (for instance, focusing on less-risky capital, bank regulation, and capital controls). These have only been seriously considered very recently, although the dangers of capital markets were, and are, entirely foreseeable. It is therefore plausible to hold that failure to take greater precaution has violated Due Care. The chief beneficiaries of trade in capital, the richest countries, can presumably find ways to compensate the countries and regions that have suffered the greatest

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21Certainly hard lessons from the “lost decade” in Latin America, the 1980s, could have prevented or mitigated the East Asian crises in the 1990s. Yet well into the 1990s those most influential over the “architecture” of global finance, the U.S. Treasury and the International Monetary Fund, pressed recklessly for full capital liberalization. Government representatives often willingly, if not eagerly, complied.
losses in financial crises. If so, then under Due Care continuing inequality between such societies, at least in the amount of unpaid compensation, is unjustifiable.

Capital markets are perhaps a special case. Trade in ordinary goods and services may be more manageable, and so more readily arranged so as to benefit everyone who participates without harming those who do not. There are great benefits to trade: the gains of specialization make any market participant more likely to gain in real income, to have more diverse goods and services, and to avoid high prices and poor services from monopolies, which face greater competition. The first question of justice, the question of Due Care, is whether one can compensate for the downside, increased economic vulnerability. In theory, trade does not change the total number of jobs, but it does shift them toward export industries, which tend to be higher-skilled. The educated and highly-skilled can often absorb the costs of temporary unemployment without net loss. Low-skilled workers (who tend already to be the most disadvantaged: women and/or the uneducated\footnote{For discussion, see Lori G. Kletzer, “Trade and Job Displacement in U.S. Manufacturing: 1979-1991,” in Susan Collins (ed.), Imports, Exports, and the American Worker (Washington, D.C.: Brookings Institution, 1998).}) may lose their jobs in import industries and be unable to find employment in an increasingly high-skilled employment climate. The prospect of having higher real income, if one has a job, will have little value if one’s employment prospects are dim. However, goods and services markets are unlike capital markets insofar as compensation for past harm is not the only option. Transitional protections—in the form of unemployment pay, paid retirement, job training programs, and the availability of loans and education—can often reduce economic vulnerability, at least so that no person suffers net economic loss. Due Care requires that trading societies implement such protections, and share their cost.\footnote{Poverty poses special difficulties for transitional protections. Special domestic and international infrastructure, funded by richer nations, may be necessary. Developing or underdeveloped countries will fairly take special permissions (such as special subsidies or tariffs, or greater time for liberalization). The needs of the very poor, “least developed” countries may even give rise to demands on rich ones for special trade concessions, which, in the absence of poverty, would make trade unfair.}

Trade will not violate Due Care so long as it is of some net benefit to everyone. Still, doesn’t it matter how great each person’s net benefit is? Might not Fair Distribution also apply? For example, major industrialized nations routinely use their lesser dependence and greater power to discriminate against cheaper foreign goods. Trade protection may be indirect, as in the case of farm subsides, or it may be outright, as when “anti-dumping” duties are imposed although there is no evidence of the anti-competitive market behavior needed to justify them. In these cases,
rich countries exploit their greater power. That itself is not sufficient for Fair Distribution to apply; we must also be able to say that trading partners make specified sacrifices in order that the benefits of trade may be realized, and that the members of such countries can reasonably claim fair return on those sacrifices, in terms of the promised benefits or an acceptable substitute. But the above cases are plausibly understood in these terms. Rich countries only enjoy the benefits of access because other countries contribute their essential part and accept the burdens of vulnerability. Yet rich countries do not fully reciprocate: they partake of access while refusing to accept the vulnerability required if trading partners are to receive the full benefits of access as well. This arguably violates Fair Distribution: the benefits of access, and the burdens of vulnerability, are not equally shared, and there is little reason to suppose that inequality is otherwise acceptable.

Although this way of applying Fair Distribution is plausible enough at first blush, it must be defended in light of two, related limitations on what the principle could require. The first is the stipulated restriction to created benefits and burdens. If trade can only be assessed under Fair Distribution because of benefits and burdens it creates, then any objection must lie in how the gains of trade are distributed. That is to say, factors that equally existed in the absence of trade—factors such as the size of a society, its chosen economic organization, its natural endowment, and its past good fortune—are in an important way morally relevant or non-arbitrary. If societies benefit unequally from trade, simply as a result of such independent factors, the inequality is “otherwise acceptable,” or not unfair, under Fair Distribution.

This general limitation is supported by a plausible if minimalist conception of what the aim or point of trade is. Since Fair Distribution is essentially concerned with the benefits that give a practice its point, a restriction to socially created advantages would be arbitrarily narrow if the aim of trade were some essentially redistributive goal, such as to achieve material equality. But I take it that trade is better interpreted, even from a moral point of view, as a joint venture to expand markets across societies for the sake of mutual economic improvement, as compared to a benchmark of non-expansion. In this case, trade can be fair to everyone it affects, according to its purpose, without amounting to a scheme for redistributing goods that exist or would equally have existed in the absence of trade. Trade can certainly be appropriated as a means to redistribution, as is proposed when rich countries promise poor ones “trade as aid.” But poverty reduction per se is not the generally understood and accepted aim of trade.

The second and related general limitation on Fair Distribution, at least as applied to existing trade, is that the principle is, in effect, an essen-
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It supports comparisons between societies as wholes, but not comparisons between classes across different societies. However, if trade improves prospects for the best off in one trading society much more than it improves prospects for the worst off in another, might not the difference in gain be unfair? Are not such class-comparisons across societies at least relevant, if not important? Since such a difference can seem relevant or even unfair, it is worth considering why Fair Distribution is an international principle in some detail.

Consider first how the gains of trade are to be assessed within a given society. When a society has not undertaken trade, any justification of the holdings of limited but distributable goods associated with one class cannot be justified without considering that others are effectively deprived of greater shares of those goods. The commencement of trade does not clearly change this fact. The value of trade, in general, lies in the way it improves general goods such as income, wealth, and labor opportunities, which will only exist because of local market activity and its organizing social practices. So at least in the early stages of trade, we cannot assess benefits that fall to the upper class of a society as fairly distributed without comparing the level of benefit to the lower class of that same society.24

It does not follow from this, however, that we are required to assess benefits that fall to the upper class of one society by comparing benefits to the lower class of a different trading society. This follows only provided an extremely demanding condition is met: trade must have effectively united societies, so that participation in one society is not relevantly different from participation in another. Even on generous assumptions, this is by no means automatically the case. We can assume, for instance, that every member of two or more trading societies counts as a full participant in the economic activity that creates the economic benefits to which Fair Distribution applies, so that, according to Fair Distribution, every such member has presumptive claim to benefit equally from any improvements their joint market activity helps to create.25 Still, it is a further question what these improvements are. In the absence of trade

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24 Trade may of course change what is required under domestic distributive principles, such as Rawls’s difference principle. For instance, how much inequality is necessary to maximize prospects for the worst-off person may depend on the size of the pie. Since trade increases the size of the pie, the inequality necessary for the greatest possible benefit to the worst-off representative person will, presumably, decrease.

25 It is an open question here what participation consists of, how much one must contribute to count as a full participant. This opens the possibility that one’s participation-based claim can vary within societies (isolated people, or the severely handicapped might lack it, for example). This issue does not determine the scope of social justice, however. Other principles of justice, such as Due Care, or requirements of fair inclusion, will also apply.
(and any further interaction), inequality across societies in total economic output, under Fair Distribution, is not unfair to members of a worse-off society, since no one can claim to have had a hand in creating the social advantages realized in a foreign society. But the situation can be essentially the same when trade exists, so long as inequality in benefit arises from factors (such as those mentioned above) that equally gave rise to inequality in the absence of trade. The worst-off class cannot then lay claim to advantages that accrue to such factors, because they have had no hand in creating them.26

For all this says, of course, trade may already have fully integrated many if not most societies. But whether full integration now exists depends on further, difficult questions. At what point can we no longer properly distinguish between the benefits or burdens created by a practice and independent or pre-existing conditions when their causal interaction increases in complexity over time?27 How quickly does the distinction between independent and created factors become arbitrary? I cannot provide general answers to these questions here. But I take it that the issues they highlight make it seem unlikely that the world is now fully integrated as a result of trade. Even if trade is beginning to approach a condition of full integration in some areas (perhaps within the European Union), this is not clearly a global rather than a regional phenomenon.28

It is hard to deny that, at least at present and for the near future, local differences in culture, population, organization, and technological development determine how great the gains of trade are.

So Fair Distribution is limited in important ways as a basis for objection to inequality. Nevertheless, when combined with Due Care, the principle places significant limits on how the advantages and disadvantages of trade are distributed. This is for at least three reasons. First, Due Care is not an essentially international principle; it requires direct comparisons of everyone affected by trade, regardless of what society they belong to. Under Due Care, we can argue that net benefits to any class of a better-off trading society are unfair because some class in a worse-off trading society is (foreseeably) a net loser.

Because Due Care is a demanding principle, it is less significant if the

26Among what little Rawls says in *The Law of Peoples* about “associations,” beyond his main concern with “international law and practice,” he writes: “larger and smaller peoples will be ready to make larger and smaller contributions and to accept proportionately larger and smaller returns” (p. 115).

27Such a distinction is required, for example, if the scope of justice is to depend on whether or how far a form of disadvantage is “natural” or socially created. For discussion, see Thomas Nagel, “Justice and Nature,” in *Concealment and Exposure* (New York: Oxford University Press, 2002), PAGES??, esp. p. 125.

demands of Fair Distribution are limited. But second, Fair Distribution is significant in its own right. We have seen that Fair Distribution provides only small positive claims to fair gains at the commencement of trade relations. But how relevant is this today, given that substantial trade has existed without the complications of the cold war for well over a decade?29 Even if the globe is not fully integrated, as suggested above, independent or pre-existing factors that were once relevant or non-arbitrary will inevitably become irrelevant or arbitrary over time. The value of local factors will become inseparable from the influence of global markets. As markets are increasingly opened, the moral trajectory is toward ever greater positive claims to fair gains. As integration increases, such claims will only increase—and perhaps increase quickly—over time.

Third, Fair Distribution generates a general presumption against inequality. We have hardly said when a given trade policy would violate Fair Distribution with determinacy that could guide a judge on a WTO panel or a representative in trade negotiations. But suppose that we have determined which factors can give rise to inequality and how much influence they may appropriately have. Trade will be unfair when inequalities emerge over time and societies are, before and during trade relations, roughly similar in all such relevant, independent factors. This is of course rarely ever the case in fact. But this general truth means that any unequal gains must meet a burden of justification: in order to be justified as fair, any inequality must be explained as the predictable and appropriate result of one or more independent and relevant factors. The price discrimination, anti-dumping duties, and agribusiness subsidies so common in rich countries have little hope of passing any reasonable and impartial interpretation of this test. Since extremely large sums are involved in trade, such measures can create significant losses for even the most prosperous trading economies over relatively short periods of time. The burden of otherwise comparable losses is only more onerous for poor members of underdeveloped or developing societies.

3. Assurance, Bargaining, and Collective Self-Governance

We are now in a position to pose our challenge to the Sovereignty View. I have provided prima facie grounds for taking trade as a proper subject of assessment under the morality of practices, and I have suggested that

29To be sure, there are regions in which trade remains relatively light in proportion to GDP, as in sub-Saharan Africa. Insofar as rich country cotton subsidies make poor West African cotton farmers even poorer, they violate Due Care. Such subsidies also arguably violate Fair Distribution, because they amount to restriction of access to foreign markets, the best chance the poor have of being compensated for their vulnerability to foreign market forces.
such assessment places limited but significant restrictions on how trade distributes its benefits and burdens. None of this entails that the principles I have considered are bona fide requirements of social and distributive justice, but it certainly strongly suggests it. Then when deny this? To do so, as the Sovereignty View does, seems implausibly restrictive.

In order to defend the Sovereignty View, it needs to be argued that the prima facie grounds I have suggested are inconclusive. To this end, it may be claimed that only the morality of transactions applies to trade, because there are at least two ways in which the absence of sovereign rule calls assessment of a practice into question. First, because the terms of trade are not centrally enforced, it is a prima facie open question whether compliance with an agreed-upon trade practice is sufficiently assured. Second, even if compliance is sufficiently assured, bargaining between representatives of trading countries will have a role in determining the structure of trade that it would not have if an independent and impartial trade legislature existed. In this section, I will argue that neither of these factors undermines application of the morality of practices. Neither the problem of assurance nor the role of bargaining shows that only the morality of transactions applies.

Consider first the issue of assurance. As noted above, assurance of general compliance is essential for any practice if each participant is to have sufficient reason to do his or her own part. Centrally imposed sanctions are one particularly effective way of providing assurance, but their absence does not entail that compliance will not be sufficiently assured for other reasons. Because threats of world war have given way to smaller-scale threats of regional crisis and terrorism, there is strong reason for members of trading countries to see that substantial market reliance on the part of others is all but inevitable for the foreseeable future.

To be sure, in trade there are real threats to the stability of market access on particular issue-areas. But these threats are mitigated by at least two factors. First, effective enforcement can be decentralized. The WTO, for example, not only rules on trade policies under the terms of its treaty, but also coordinates reciprocal trade sanctions. As recent experience has shown, this effectively enforces WTO rulings against even the richest and most powerful countries. Second, even when no enforcement mechanism is in place, the power relation involved in trade (at least in the absence of severe poverty) encourages compliance. Trade involves mutual but asymmetric dependence, not complete dependency by one party and domination by the other.30 Although lesser dependence allows

some countries to erect trade barriers without immediately threatening their own access to the markets of more dependent parties, this power is limited by their own dependence and vulnerability to trade protection. As a result, more dependent and relatively less powerful parties are not wholly powerless. They can threaten partial or issue-specific retaliation without wholly ceasing trade; they can increase the costs of retaliation by banding together in coalitions; they can legitimate the specified retaliation, or induce capitulation, by seeking rulings in local and foreign courts; they can rely on moral argument with the support of international civil society; and, if nothing else, they can impose the costs of an inconvenient trade war (which may have implications for other issue-areas, such as security, where the less dependent parties may have greater power, or at least be able to bring more powerful countries to the bargaining table).

A more troubling threat to assessment of trade, as a social practice, is the role of bargaining. To focus on its role, we can assume that perfect compliance with any agreed-upon terms of trade is fully assured. Even so, when agreements on the terms of trade are being made or remade, there may be no assurance that some parties will not negotiate and renegotiate out of pure self-interest, exploiting to the hilt their bargaining power. Would retaliatory self-interested negotiation then be permitted, as a matter of self-defense? If so, as it may seem, would not trade exist in a state of nature?

Not necessarily. We can distinguish the activity of doing one’s specified part in a social practice from the governance activity of negotiating its terms. Let us say that there exists a social state of nature when the coordination of behavior for common purposes is not yet established, when compliance with any agreed-upon terms is not generally assured, or when participants are unable to adjust their organization over time, whether by centralized control or by informally modifying the many particular choices that sustain the practice, through individual reform and joint efforts of moral argument and social sanction. Let us also say that there exists a political state of nature when, but only when, one lacks assurance that others will not bargain over the terms of a practice purely out of self-interest.

We can grant for the sake of argument that, in a social and political state of nature, retaliatory self-interested negotiation with respect to a proposed (but as of yet nonexistent) practice is permissible. Even so, this will not necessarily be permissible in a political but not social state of nature. For, as we have seen, according to a governance conception of the morality of practices, we can hold those who participate in a practice collectively responsible for any failure to adjust their organization according to any appropriate terms of justification. Since this does not en-
tall any assignment of responsibility to individual group-members, such assignment will require further reasoning or evaluation. But at this further stage, we can view each participant as in effect holding a legislative office: each participant is required do his or her necessary part in governing the practice in accord with the appropriate standards of justification. At very least, then, when a practice is being negotiated, by participants or their representatives, no one will be permitted to bargain out of pure self-interest; no one may exploit or enable the balance of bargaining power.

Although I take it that such legislative responsibility arises within bilateral trade arrangements and regional treaties, the multilateral system provides the clearest example. Ongoing trade within the WTO treaty is more or less assured, and its terms can be adjusted by individual change, decentralized sanction, and moral argument. Consequently, all participants in the practice, but particularly office-holders such as the WTO panel judge, the trade negotiator, and the state administrator, are required to ask what principles the group of trading societies should govern itself by and to govern trade agreements accordingly. Greater responsibility no doubt falls to the richest and most influential countries. So also does the preponderance of blame, since they consistently hold out for self-interested and avowedly unfair terms (as in the case of farm subsidies, for example). Yet even if parties in a stronger bargaining position egregiously fail to do their part, weaker parties can still do theirs by adopting measures such as those mentioned above. They can form bargaining coalitions (such as the “G20” at the September 2003 Cancún trade talks), bring their cases before WTO judges (as Brazil recently has against U.S. cotton subsidies), increase trade with one another in order to reduce dependence that empowers rich countries (an emerging trend). In a specifically moral voice, they can also forcefully remind the strong of their greater responsibility to offer fair terms of cooperation, and plausibly defend their own tactics in the name of fair terms.

According to a governance conception of the morality of practices, then, the Sovereignty View mistakenly supposes that the absence of centralized political authority reduces moral assessment to the morality of transactions when in fact the morality of practices both applies and has important implications for how bargaining transactions are to be conducted. In order to throw these implications into relief, we can allow that transactions that do not involve bargaining (as when exchanges proceed according to fixed market prices) are subject only to the morality of transactions. We can further allow that the morality of practices has no implications when bargaining is involved but only a particular transaction, and not an ongoing practice, is at issue. The morality of practices has its implications, for bargaining transactions, when an ongoing practice is being negotiated. In this kind of case, participants, or parties who
negotiate a practice on behalf of participants, are required to do their part in governing the structure of the practice in accord with the morality of practices—in accord, for instance, with principles such as Due Care and Fair Distribution. In other words, even if the least interested party in a one-off bartered exchange can in all fairness receive the better end of the deal, at least so long as unfairness-making conditions such as coercion and fraud are absent, this will not be the case when practices are at issue.\textsuperscript{31} When practices are at issue, it will be unfair of any participant to hold out for the self-interestedly best terms possible. Because of the morality of practices, parties in the strongest bargaining position are not permitted to threaten to walk, or otherwise exploit their superior position, in order to win the better end of the deal.

4. Sovereign Power

I have now presented a governance conception of the morality of practices and defended its application to trade. If this conception is correct, we can explain why the absence of sovereign rule might be significant. If a world government would be either unworkable or illegitimate, as Kant for example argued,\textsuperscript{32} then it is an open question whether the organizational conditions necessary for collective responsibility are indeed met outside of domestic society. I have claimed, however, that the necessary organizational and governance conditions are in fact met in the existing system of trade. I have also argued that trade, viewed as a governed social practice, gives rise to limited but significant distributive requirements. So we are again in a position to pose our challenge to the Sovereignty View: why deny that such requirements are bona fide demands of distributive justice? To do so would seem unduly restrictive.

To this challenge there remains a powerful sovereignty-based rejoinder. It may be argued that so long as a centralized authority is absent, even under the informal governance conditions I have described, the kind of power chiefly at issue in appraisal of social justice simply does not exist. A traditional version of this objection would be that a monopoly on the means of force within some territory is absent. This leaves it unclear how requirements of distributive justice might arise within a society. By

\textsuperscript{31}Some hold, further, that an exchange is only fair if its surplus value is divided (approximately) equally. I deny this view merely for expositional purposes. This helps to show that Fair Distribution can apply to the practice of trade, without applying to particular market transactions.

contrast, the appeal to power favored by Nagel, following Dworkin, is not skeptical about the very application of distributive justice and injustice. According to Nagel and Dworkin, any sovereign government determines the resources of its subjects under the coercively enforced legal order, claiming to rule in their name. This generates a duty of equal concern; if each subject’s life is not treated as having “equal importance,” such rule is mere tyranny. But if tyranny is the characteristic threat that gives rise to concerns specifically of social justice, as Nagel claims, then these concerns do not include the requirements of fair distribution that I have considered. For in the case of trade, the characteristic threat is that relatively powerful participants will exploit relations of asymmetric dependence, not that ruling parties will rule tyrannically.

In reply, I accept that different kinds of power are at issue here, but I deny that the difference marks the boundary of social justice. Once an alternative conception of that boundary is brought into view, we expose insistence on sovereign power as unduly narrow.

The alternative conception is as follows. When social justice is at issue, in the sense that applies paradigmatically to social organization, what concerns us is the exercise of power—specifically, some way or ways a group organized as a social practice exercises power over particular persons. What concerns us, in other words, is whether the absolute and relative burdens created by the practice can be justified as rightfully and equitably imposed. Here judgments of rightful or equitable treatment presuppose a background of de facto treatment—some way or ways in which power is in fact exercised over persons by a social practice. Even in the abstract, this background presupposition has considerable force: it means that only manifest power is relevant. That is, what matters, from the point of view of social justice, is how an organized and self-governing group treats those it already or will inevitably affect, not the group’s mere capability to affect people’s lives, or even its capability to promote just organization in some further practice (which may or may not be a requirement of social justice, as opposed to a mere “natural” duty). In the terms used above, social justice assessment is limited to socially created advantages and disadvantages.

This broad appeal to power does not limit the purview of social jus-

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33“The Problem of Global Justice.”
35Here and below I will discuss necessary conditions for appraisal of social justice only insofar as they are relevant to the main line of argument. I explain how a similar Rawlsian conception of the scope of social justice can include a wide variety of informal social practices within major institutions while excluding the particular actions of individuals in my “Power in Social Organization as the Subject of Justice,” *Pacific Philosophical Quarterly* 86 (2005): 25-49.
Distributive Justice without Sovereign Rule

tice to assessment of how a sovereign rules. It can also include assessment of whether the structure of a practice, and the resulting distribution of its benefits and burdens, embodies the unjustified exercise of arbitrary bargaining power. The idea that a practice can “embody” the arbitrary exercise of bargaining power is the negative corollary of Rawls’s well-known thesis that a free agreement in fair conditions (the original position) necessarily gives rise to a fair practice. Negatively expressed, the thesis is that if a practice is a mere function of relative bargaining advantage, then the ongoing collective activity will itself embody or reflect an unfair or arbitrary exercise of power. The argument for this depends in part on the fundamental moral requirement, applicable to any human activity, that persons are not to be treated in ways that cannot be justified to them. It also depends on the idea that being subject to a practice whose structure is determined by mere de facto bargaining advantage constitutes morally arbitrary treatment—in the following narrow sense of “morally arbitrary”: there is no general reason to suppose that any or all of the many factors that influence bargaining advantage are other than irrelevant to the question of whether the practice is fair or justified. That is to say, in a practice such as trade, we might well suppose that any actually negotiated trade agreement would give rise to a fair trade practice if there were indeed some reason to suppose the various determinants of bargaining advantage tracked considerations that are relevant to the fairness or justifiability of trade (considerations such as respective levels of real benefit and sacrifice). But in the world as we know it, in which bargaining power depends on many potentially irrelevant realities, there is no reason to suppose this is generally the case.

In light of the broader appeal to power that I have now described, advocates of the Sovereignty View cannot simply insist that social justice is limited to assessment of how the sovereign rules. The question is why this limitation should be natural or justified given that it excludes other important ways in which the exercise of power can be embodied in a social practice. Indeed, since the unjustified exercise of power in a social practice is quite naturally counted as a social injustice, we can presume against the Sovereignty View, and in favor of the more inclusive appeal

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to power—at least until some further reasons for narrowing justice’s scope are provided.

Might further reasons be given? One way of doing so is to identify some distinctive moral feature of sovereign rule that other ways in which social practices exercise power do not share. It may be argued, for example, that the threat of tyranny is characteristically far graver than the threat arising from informal forms of social control, and for this reason is the exclusive concern of social justice. This thought is tempting, but ultimately insufficient. The broad appeal to power does not preclude sovereign rule from having distinctive moment. It does not necessarily assign equal importance to every kind of practice, or every way a given practice exercises power. Coercive enforcement of a legal order may, for example, create special threats to individual liberty that are in particular need of justification. The requirement of equal concern in a legal order may also give rise to legislative demands to compensate for undeserved misfortune that would not arise under a social order such as international trade. On the broader appeal to power, we can simply view these as special, subject-specific demands. And if they are merely special demands, there is no reason to deny, in the case of trade, that quite different principles provide the appropriate standards of equitable treatment. Due Care and Fair Distribution, for instance, might provide the appropriate standards if practices of trade are not to reflect the unjustified exercise of bargaining power.

Defenders of the Sovereignty View can instead go on the offensive. There are, it may be argued, essential features of a governance conception of justice that the broader appeal to power cannot adequately preserve. It may be claimed, for example, that even if trade is a social practice that exercises power, and even if participants in a practice ought to govern its structure, it cannot properly be seen as in fact governed, well or badly, if the agents involved in trade negotiations are merely advancing their own interests.

In response, we should not consider whether trade might be viewed as more like state government but consider whether state government might be more like trade. The paradigm case of sovereign rule is the single absolute monarch; the law is given by the decrees of a single human agent, expressing a single human agent’s state of mind. But conscientious judges also normally view the varying minds of a single legislature as a sovereign, and we often personify varying and opposed members of different branches of government as constituting a single authority. Such personification is arguably quite appropriate, as Dworkin, for instance, believes.37 But if it is appropriate, why stop at state government? Why

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37Dworkin, Law’s Empire, pp. 167 ff.
not personify in trade?

A line must be drawn somewhere, to be sure. Personification is inappropriate, for example, when agents are wholly unorganized, or organized but unable to conceptualize (and therefore to regulate) larger patterns of behavior. But the case of trade is much more like state government than this case, since it does involve social coordination for largely understood and shared purposes. Although trade talks are not tightly constrained by established procedural rules that unite branches of government or a legislative house, they do normally proceed within in a larger “round” of negotiations that has previously formulated negotiation goals. The analogy is perhaps closest to state government when legislators are at political war—when procedural rules become fluid tools of manipulation, and laws emerge more than usual as mere creatures of political bargaining advantage. Even so, judges commonly personify such a legislature as being of one mind. If this is appropriate, the difference between state government and trade negotiations is at most a difference in degree, not a difference in kind.

No doubt important differences between state government and trade negotiations remain. But the two are sufficiently similar to qualify under a common governance conception of justice. Both are large-scale social structures, which are beyond any individual person’s control. Yet both significantly influence the course of people’s lives and seem, from the point of view of those affected, to be an appropriate object of moral complaint. The complaint at issue is quite correctly not a complaint about a force of nature, a mere complaint of “cosmic unfairness.” In each case the consequences complained of count as an exercise of power by a group of agents; the structure that gives rise to the resulting benefits or burdens reflects or expresses faulty collective self-governance. Much as domestic inequality can reflect a failure of domestic legislators to legislate even-handedly, according to the appropriate requirements of distributive justice, the consequences of trade can reflect the fact that trading nations violate their collective responsibility to distribute the benefits and burdens of trade fairly.

This concludes my main argument against the Sovereignty View. It is worth noting, however, one final strategy for its defense. Any governance conception must affirm that states of affairs that are not subject to appropriate conditions of organizational control fall outside the domain of social justice. On the broader appeal to power, these are states of affairs in which people’s lives go well or badly independently of the specific benefits or burdens created by some social practice. Skepticism is in order whether a fully general, perhaps metaphysical distinction of this kind can be forged, let alone guide substantive assessment of justice. But, it may be argued, such pessimism is less justified when sovereign rule is
at issue. For we at least have a guiding rationale: if concerns of social justice arise because of the threat of tyranny, then the relevant states of affairs are those that the sovereign both can and must bring about in order to avoid the charge of tyrannical rule.

This raises large methodological issues that I cannot consider in full. I grant that the distinction between socially created and independent conditions is not likely to be forged in a morally informative way. But this is not to say that assessment of particular social practices does not assume and justify the distinction. The distinction may not provide a basis for concrete assessment of particular social practices, but rather, as it were, simply fall out of them. On a governance conception of justice, principles of justice are requirements according to which we are to govern ourselves when we are engaging in a relevant form of activity. Thus, in specifying what the principles of justice are, we work back and forth between the content of the relevant principles and morally informed interpretation of the social form those principles are to govern. The appropriate reasoning is piecemeal and case-specific; it seeks the most plausible candidate principles, but which candidates are acceptable is informed by interpretation of the social forms that condition their application. I undertook just this kind of approach for the case of trade, offering an interpretation of the nature of trade and the benefits and burdens it characteristically creates along with possible distributive principles. The resulting account is derived neither from general principles of justice, nor a general account of the distinction between socially created and uncreated consequences. I believe our approach to state institutions can and should proceed in much the same way, without focusing narrowly on what makes for tyrannical rule. We consider possible principles as candidates for the assessment of how state institutional power is wielded, and, at the same time, we tailor proposed principles in light of morally informed interpretation of the social organization involved in government rule and the forms of power it characteristically exercises.38

5. Conclusion

I have described a governance conception of justice, defended its application to the existing system of trade, and argued that we should not restrict the scope of social and distributive justice to assessment of how a sovereign rules. I have not offered a full-dress defense of a governance

conception of justice; for all I have argued, even the informal governance conception I have described may be open to the charge of undue narrowness. What I have shown, however, is that we are not forced to choose between a view that places governance at the heart of social justice and the plausible view that issues of distributive justice are among the important moral concerns that confront the global scene today.

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39 As would be argued by “luck egalitarians” such as Cohen, “On the Currency of Egalitarian Justice,” and Arneson, “Equality and Equal Opportunity for Welfare.” In reply, a governance conception can admit that “natural” inequality can be “cosmically unfair,” but insist that our reason to rectify such unfairness is different in moral kind from the reason we have, as organized groups, to rightly and equitably exercise our manifest power.

The charge of undue narrowness is also likely to be voiced by those who characterize the “international order” as a single subject of justice (see, for example, Thomas Pogge, World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms (Cambridge: Polity Press, 2002), and Beitz, Political Theory and International Relations). In reply, a governance conception can argue either that the international order can satisfy appropriate conditions of organization control, or that there is a plurality of social practices of different kinds, each with subject-specific distributive principles. On the latter strategy, it may be added that injustice in any one such distributive domain can be systematically rectified in any of the following ways: by (i) internal reform, (ii) creation of a new, supplementary practice, (iii) establishing coordination with an existing practice, (iv) adjustment of existing coordination between practices or the internal structure of some further, connected practice, or (v) any combination of (i)-(iv).

40 For comments I am grateful to Marshall Cohen, Christine Chwaszcz, David Dolinko, Pamela Hieronymi, Philip Nickel, Chris Naticchia, and Nicholas White.