Risse on Justice in Trade

Helena de Bres

Many people believe that international trade, as it is currently conducted, involves serious injustice.[1] But it is hard to know whether this belief is justified and, if it is, how exactly to characterize the injustice at issue. Until recently, someone who turned to the philosophical literature in the hope of finding answers to these questions would likely have been disappointed. Despite the recent surge in writing on global justice, work specifically on justice in international trade has been scarce. This gap is unfortunate, given the moral importance of the issue and the degree of public interest in it.

Mathias Risse is one of a few philosophers who have stepped into the breach. The account of justice in international trade that is included in Risse's recent book, *On Global Justice*,[2] is an updated version of the account that appeared in a pair of articles published in 2007–2008[3] and it remains one of fewer than five substantial positive treatments of the topic in the philosophical literature. This alone would make it a highly valuable addition to contemporary debates on global justice, and the philosophical subtlety and empirical sophistication of Risse's account render that judgment all the more secure.

Like the broader theory of global justice of which it is a part, Risse's position on justice in trade is an attempt to stake out a middle ground between those who (in Risse's view) fail to recognize the full normative significance of contemporary international relationships and those who overreach in that department, grounding highly demanding moral requirements in social structures that cannot bear the weight. I sympathize with Risse's aim, and he and I agree on our assessments of the extremes along this spectrum. However, the spectrum is a large one. In this commentary I will argue that Risse's argument concerning justice in international trade does not succeed in ruling out positions that likewise skirt the

Ethics & International Affairs, 28, no. 4 (2014), pp. 489–499.

doi:10.1017/S0892679414000628

extremes, but are better able to capture the full scope of legitimate concerns about trade justice than Risse's more minimalist account.

Let me begin with a brief sketch of the general shape of Risse's account. As one subject within Risse's "pluralist internationalist" theory of global justice, trade is to be regulated by three distinct sets of principles: human rights–related principles grounded in our common humanity; domestic justice principles grounded in citizens' shared membership in a state; and international justice principles grounded in shared subjection to the international trading system. Where human rights are concerned, Risse argues that trade must be conducted in a way congruent with states' general duties to assist developing countries in building human rights–supporting institutions. In practice, given the plausible links among trade, development, and poverty reduction, this probably requires developed countries to eliminate their export subsidies, which function as trade barriers against developing countries. However, Risse is sensibly cautious about this recommendation, given significant uncertainty about its consequences for development. Where domestic justice is concerned, states must satisfy their citizens' legitimate claims to government support in the face of competitive pressures caused by international trade. If citizens had a claim to export subsidies in particular, this requirement might conflict in practice with the aforementioned duty to support the human rights of foreigners. But, in a careful and interesting discussion, Risse argues that this conflict will not plausibly arise: either there will be other ways to support domestic producers who lose out in trade or citizens' claims will be insufficiently weighty to compete with the urgency of securing the basic rights of foreigners. Finally, where international justice is concerned, Risse argues that no country should enjoy gains from trade that come "at the expense" of people involved in the trade. As Risse explains, this requirement is violated when:

> [Either trading partner's] (a) contributions to the production of goods or the provision of services for export do not make them better off (than if they were not producing those goods at all) to an extent warranted by the value of these contributions (and they did not voluntarily accept such an arrangement), or (b) their involvement in the trade has emerged through human rights violations (e.g., they are coerced into working in the relevant industries), or both (p. 272).

I will have more to say about this complex principle shortly.

The most controversial component of Risse's account (and therefore the one on which I will focus here) is the third of those described above: the claim that shared

subjection to the international trading system generates a particular set of international responsibilities. One source of controversy here is Risse's proposal that the international trading system *itself* grounds principles of international justice. It is fairly commonplace to say that trade, like anything else, should be constrained by duties to secure human rights and domestic justice, although how exactly to spell this out as a matter of policy is, as Risse shows, a difficult question. But the idea that participation in international trade generates *new* demands of justice, this time holding across countries rather than within them, yet distinct from generally recognized human rights norms, is much more contentious. Many commentators attempt to reject this idea by denying that the simple act of exchanging goods and services across borders for mutual benefit could raise any distinctive concerns of justice.

Risse agrees with *that* claim, but denies the broader claim that it is designed to support. Although, indeed, "one-time trading does not generate a justice relationship," contemporary "international trade is a structured and repeated exchange involving markets and bodies of law (domestic and international) that regulate them" (p. 272). As such, it constitutes a standing form of social organization that directs and constrains the actions and expectations of its participants over time. Once we recognize this, the claim that distinctive requirements of justice apply to the workings of the trade regime becomes plausible.

This much Risse shares with another prominent philosopher of trade, Aaron James, who likewise emphasizes that contemporary international trade constitutes an organized social practice rather than merely a sequence of market transactions.[4] However, Risse differs significantly from James in the content of the principles that he claims derive from this justice-generative relationship. (This is the second source of controversy.) For James, the international social practice of "mutual market reliance" generates demanding egalitarian requirements. The default requirement is that the gains from trade be shared equally across trading nations. Departures from this rule will be acceptable only if it is poorer countries who receive the greater gains. In addition, richer nations must assist poorer nations in establishing and funding the nonmarket institutions necessary to ensure a fair domestic distribution of the gains from trade and to ensure that each person harmed by trade receives adequate compensation. For Risse, the international trading system supports only the much weaker "at-the-expense-of" principle cited above, which makes no mention of equality or indeed of any redistributive demands between trading partners. Instead, Risse claims that international responsibilities to

rectify the forms of injustice included in his principle are restricted to the subset of cases in which human rights violations occur. In such cases, "other states ought to help end the human rights violations rather than end their association with violations through trading" (p. 274). He also suggests that states should be required to report to the World Trade Organization (WTO) periodically on the degree to which the benefits that they receive from their imports and exports are tainted (judged against Risse's principle).

If the international trading system, like an individual state, is a morally consequential rule-governed scheme, why does it not generate the pressure toward egalitarianism that Risse recognizes within the state and that James endorses internationally? Risse's answer points to the differences between the relationships that he argues generate duties of justice within states and those that we find within the trading regime. According to Risse, state membership is normatively peculiar in two ways. First, it involves the direct and pervasive exercise of *coercion* (by law enforcement agencies against citizens) in a political environment that is profoundly significant, given its importance for the realization of basic moral rights. Second, state membership involves an especially dense form of social *cooperation*, aimed at maintaining and reproducing a society's basic structure. Although the international trading system likewise involves coercion and cooperation, both are less pervasive and profound than the sort that we see within the state. Moreover, any coercive power that the trading regime has is mediated through states, rather than reaching individual persons directly. These differences matter, for Risse, because he holds that our reasons to pursue equality are grounded in the relationships that we share with others. Those reasons, we are told, are activated within strongly coercive and cooperative schemes, but not without them.

What should we think of this account? I will leave it to others to dispute the special normative significance of cooperation and coercion for distributive justice, either as a general matter or in the state-specific forms that Risse highlights (although I am sympathetic to such doubts). Some critics will advocate an alternative account of the moral basis of egalitarian justice that does not appeal to these two features; other critics will claim that the forms of coercion and cooperation that we see in international trade, while different, are at least sufficiently similar to those that we see within the state to generate similar requirements. I will also leave it to others to criticize the more general pluralistic approach that forms the background to Risse's discussion of trade. While Risse's "statist" and "globalist" opponents will reject that approach in favor of advancing a single ground of justice, I endorse

Risse's view that norms of justice arise on a variety of quite distinct bases and that this translates into a variety of quite distinct principles. In fact, as I will now suggest, I think that Risse's approach is, if anything, not pluralistic enough.

How so? While Risse's "pluralist internationalism" is appealingly capacious with respect to the *grounds* of justice (some are internal to the state, some external; some are relational, some not), his vision of the available *contents* for the principles of justice that arise from these grounds comes across as very narrow. In particular, there is a lot of space—space that goes unacknowledged in Risse's book—between the position that trade generates full-blown egalitarian requirements, as James argues, and the position that trade generates only the minimal international principle that Risse advocates. One option here is to claim that trade should be regulated by a norm of "inclusion," of the kind that Joshua Cohen and Charles Sabel have advocated, according to which it is unjust when "against the background of a cooperation-organizing regime . . . the very urgent needs of some people are going unaddressed, although they could be addressed without large costs to others, whose circumstances are improving a great deal."[5] Another option (more procedural in nature, but still more demanding than Risse's proposal) is an equality-of-opportunity-oriented ideal that requires trade to take place on a level playing field: all parties should exchange goods and services under a uniform set of rules, unless departures are necessary to compensate for special burdens faced by less developed countries. In both cases, the idea is not merely that lack of inclusion and a bumpy playing field are bad for human rights (a concern that Risse's theory can accommodate). Instead, the concern is specifically with the *unfairness* of more powerful countries abusing their position in these familiar ways.

Because Risse does not discuss these options, it is difficult to know why he rejects them. The few competing principles that he does discuss and dismiss are much less appealing to begin with. For instance, Risse is surely right to claim that trade does not itself generate a requirement to secure a basic standard of living for one's trading partners. Cooperation per se does not, as a quite general matter, activate that kind of sufficientarian requirement. But cooperation does quite regularly activate requirements of fairness in the division of the benefits (including opportunities) of cooperation. So conceptions of justice in trade that are concerned with relative position or benefit deserve more sustained attention than Risse gives them.

My first concern about Risse's account, then, is that the failure to discuss and refute such intermediate positions constitutes a gap in his argument. My second,

more important, concern is that this gap is troubling, because such intermediate positions seem better able than Risse's account to capture some prima facie legitimate and urgent concerns in public debate about justice in trade.

The "At-the-Expense-of" Principle

To see this we need to look more closely at Risse's "at-the-expense-of" principle. That principle covers three forms of injustice suffered by producers of goods and services for export. We have cases where people benefit from their work, but not as much as they should; cases where people do not benefit at all; and cases where people are pushed into their work through human rights violations. Risse claims that international trade in the goods or services thus produced generates "ill-gotten gains" and is thereby unjust. The type of international wrong articulated in this principle has three distinctive features: it involves *taking advantage* of unjust terms of *employment* that occur within *other countries*. This currently happens in two ways: through simple cross-border purchasing of goods produced unjustly or through more active on-site involvement in unjust production (as when transnational corporations based in developed countries employ local workers or suppliers at unfair wages or rates of exchange).

A theory of justice in trade should condemn such wrongs. But a theory of justice in trade that *solely* condemns them is lacking in a crucial respect. To see this, note that there is a kind of advantage-taking, rampant in international trade, that does not directly concern unjust terms of employment occurring in foreign lands. Instead, it involves rich countries themselves routinely taking advantage of the weaker position of poorer countries in trade policy and multilateral trade negotiations. In such cases, the international wrong does not ride on the back of domestic wrongs, but inheres in the basic institutional framework of contemporary international trade relations.

Such cases do not fit well under the umbrella of Risse's "at-the-expense-of" principle. That is because the problem in this domain is not that workers in developing countries are being inadequately compensated for their contributions. Instead, in many cases those workers are being actively *prevented* from contributing (to full capacity) within a consequential rule-governed regime that massively affects their interests. Take, for example, the tariff structures of developed countries, which are systematically biased against products in which developing countries have a comparative advantage. Tariff peaks (where certain products, such as

labor-intensive textiles and clothing, are subject to especially high tariffs) and tariff escalation (where finished products, such as sweeteners, face higher tariffs than raw materials, such as sugar beets) serve to obstruct market access, prevent developing countries from accessing the greater value at the higher end of the production chain, and deter them from industrial diversification. Such measures conform with the letter of WTO law, but violate its spirit, in that they result in developing countries facing higher trade restrictions overall in developed country markets than do other developed countries. Another example is the use by developed countries of an array of WTO-permissible non-tariff barriers in order to restrict competitive imports from developing countries. These include dumping duties, which are levied against imports that are allegedly being sold below cost; countervailing duties, which can be applied to subsidized commodities; and safeguards, which are permitted as a temporary measure in the case of an import surge. Although non-tariff barriers sometimes have a legitimate rationale, they are frequently used against poor countries for protectionist purposes by wealthy countries that are in a good position to weather trade shocks without them.

The ability of rich countries to maintain such discriminatory "at the border" policies, despite their clear violation of the spirit of the WTO regime, derives from those countries' greater power within the international trading system. That power generates troubling results with respect to "behind the border"[6] measures too, which often impose special burdens on developing countries that are not imposed on developed countries. These burdens come in three forms. First, the rules at issue prevent developing countries from using domestic policy instruments that may be important to their development. For instance, the Agreement on Trade-Related Investment Measures prohibits countries from imposing local content and sourcing requirements on foreign direct investors (strategies designed to promote "backward linkages" with the domestic economy), and the Agreement on Subsidies outlaws export subsidies (except in the case of the very poorest countries). Both of these measures were employed by the East Asian "tigers" during their meteoric industrialization.[7]

Second, even when complying with the rules would not be harmful in itself, developing countries face large costs in achieving that compliance. For many developing countries, getting all relevant laws, regulations, and administrative procedures in line with WTO rules requires major investments in institutional infrastructure, equipment, and staff training. For poor countries, the cost will sometimes be equivalent to a year's development budget,[8] and is likely to divert scarce

financial and administrative resources and political capital from projects that are of greater urgency from a development perspective.[9] Developed countries face much lower compliance burdens, given their greater resources and the fact that WTO rules are often closely modeled on their own existing regulations.

Third, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in particular involves a direct transfer of resources from the developing to the developed world, since the huge majority of the intellectual property rendered eligible for international patent protection under TRIPS derives from industrialized countries.[10] Moreover, little progress has been made on "behind the border" rules that would benefit developing countries but would impose unwanted burdens on developed countries. One of the clearest and most significant ways in which such developing countries as India, the Philippines, Pakistan, and Bangladesh could benefit from trade liberalization would be access to developed-world visas for their service providers. However, although the General Agreement on Trade in Services includes "Temporary Movement of Natural Persons" among its four modes of service provision, negotiations over that mode have stalled in the Doha Round, due to political resistance to increased immigration in Organisation for Economic Co-operation and Development (OECD) countries.

The Issue of Structural Fairness

To be clear, my point here is not that Risse's theory does not contain the resources to criticize these and similar measures. Most of them have troubling consequences for development, and so will fall under Risse's human rights–related constraints on international trade. But the measures that I have just listed seem *unfair* in a way that is not adequately captured by principles concerned exclusively with human rights promotion and poverty alleviation. In fact, what seems unfair is not only these individual measures in isolation but the entire broader system of which they are a part. The Uruguay Round that established the WTO can be seen as a bargain of the following nature. Developed countries would achieve their aim of including intellectual property, services trade, and investment under the regulatory framework of the multilateral trading regime. In return, developing countries would receive increased access to OECD markets, principally via reduced tariffs in the textiles and clothing sectors and reduced export and production subsidies in agriculture. One 1993 study estimated that the result would

be a total annual gain of $270 billion, of which roughly a third would go to developing countries.[11] However, many believe that this "grand bargain" turned out in retrospect to be a bad deal for developing countries overall. The promised OECD agricultural reforms involved little substantive change in the degree of protection; the removal of textile and apparel quotas actually reduced the market access of smaller developing country exporters in favor of India and China; and, most significantly, even those countries that did gain in these areas found their gains swamped by the costs of compliance with their new obligations, particularly the payment obligations that they incurred under TRIPS.[12] As a result, not only did developing countries gain less than they had hoped in the Uruguay Round but many were made absolutely worse off.[13] Although this fact is now widely acknowledged, the ensuing Doha Round has so far provided very little in the way of compensating benefits to developing countries.

An adequate theory of justice in trade ought to be able to support the judgment that, in light of these facts, the WTO system is currently seriously unjust. Because it directs attention solely to the fairness of particular trading transactions rather than the fairness of the institutional framework within which those transactions operate, Risse's principle of justice in trade is not up to the task.[14]

How could we capture the forms of injustice that Risse's account leaves out? One way is to retain Risse's focus on unjust advantage-taking, but formulate a principle of justice that outlaws it in the negotiations that determine the rules of the trading regime as well as in the discrete interactions and transactions that occur within that regime.[15] Another is to abandon the exclusive focus on advantage-taking and articulate (in addition or instead) a compelling substantive distributive standard to which the international trading system should be held, such as the norms of inclusion or equality of opportunity mentioned earlier. Doing so would not require endorsement of full-scale global egalitarianism, or even all that much egalitarianism within the trading regime itself. It would simply require accepting that, even in the absence of the "immediate" coercion of individuals and the all-pervasive cooperation that we see in the state, justice imposes *some* substantive constraints on the overall distribution of benefits and burdens within a rule-governed, highly consequential scheme of joint social production.

To sum up: I am sympathetic to Risse's claim that "we need relations to get stronger principles of justice than we can get with no relations" (in particular, that supra-sufficientarian requirements are relational) and his claim that "thinner relations yield weaker principles" (p. 59). But those appealing commitments alone

will not get us very far in determining the specific content of justice in trade if there is a wide range of principles to choose from. To adequately defend his account, Risse needs to rule out at least some of the more prominent and plausible competing options, and to explain why the appearance of unfairness in the structure of the trading regime that I have highlighted here is just that: an appearance and no more.

I will conclude by hazarding a broader point about how best to go about formulating a pluralistic theory of global justice. Risse's strategy is to start by identifying the features of relationships within the state that seem to generate principles of egalitarian justice, and then to search for those same features in other relationships outside the state. When he finds them in international politics, albeit in a weaker form, he identifies an additional site of justice, to which weaker, nonegalitarian principles apply.[16] While this method is understandable, given the history of theorizing about justice, it has the effect of narrowing one's focus from the outset. One risks missing relational grounds of justice that differ significantly from those that one encounters in the state, and one risks focusing overly on the differences between domestic and transnational structures, thereby overcompensating in the direction of anti-egalitarianism. What if, instead of starting with the state, one began by considering international practices directly, on their own terms, and asking, "What kinds of relationships do we see here?" and "What kinds of values and interests do those relationships embody or affect?" My hunch is that a theory of justice in trade that operated in this way would better capture the moral phenomena of contemporary globalization.

NOTES

[1] This essay was prepared for an author-meets-critics session at the American Philosophical Association Pacific Division meeting, San Diego, April 19, 2014. I am grateful to Gillian Brock for organizing the panel; to the other participants, Richard Arneson and Anna Stilz, for their contributions; and to Mathias Risse for his thought-provoking book.

[2] Mathias Risse, On Global Justice (Princeton, N.J.: Princeton University Press, 2012). The bulk of the account appears in chapter 14.

[3] Mathias Risse, "Fairness in Trade I: Obligations from Trading and the Pauper-Labor Argument," *Politics, Philosophy & Economics* 6, no. 3 (2007), pp. 355–77; Malgorzata Kurjanska and Mathias Risse, "Fairness in Trade II: Export Subsidies and the Fair Trade Movement," *Politics, Philosophy & Economics* 7, no. 1 (2008), pp. 29–56.

[4] Aaron James, Fairness in Practice: A Social Contract for a Global Economy (New York: Oxford University Press: 2012).

[5] Joshua Cohen and Charles Sabel, "Extra Rempublicam Nulla Justitia?," *Philosophy and Public Affairs* 34, no. 2 (2006), pp. 147–75, at p. 154.

[6] One of the most significant and controversial features of the Uruguay Round that instituted the post-GATT WTO regime was its expansion of the scope of multilateral trade rules much further into countries' internal regulatory and legal systems than had previously been attempted. The most prominent instances were the agreement on Trade-Related Aspects of Intellectual Property, the

agreement on Trade-Related Investment Measures, the General Agreement on Trade in Services, the Agreement on Sanitary and Phytosanitary Measures, and the Subsidies Agreement. These agreements were intended to protect existing market access commitments (by preventing governments from using domestic policy to disadvantage imports once they had crossed the border) and/or to extend and facilitate trade flows.

[7] Joseph Stiglitz and Andrew Charlton, *Fair Trade for All* (New York: Oxford University Press, 2005), p. 103.

[8] J. Michael Finger, "Implementation and Imbalance: Dealing with Hangover from the Uruguay Round," *Oxford Review of Economic Policy* 23, no. 3 (2007), pp. 440–60, at p. 440.

[9] Dani Rodrik, "The Global Governance of Trade: As if Development Really Mattered" (New York: United Nations Development Programme, 2001), pp. 25–27.

[10] It is sometimes argued that, despite the burdens mentioned above, the Uruguay Round's "behind the border" rules are nonetheless of net benefit to developing countries, given that they promote free trade. This overstates the economic rationale for the rules in question. In the case of TRIPS, for instance, many economists have claimed that the standard welfarist arguments for domestic intellectual property protection are insufficiently compelling in the international case to justify a global intellectual property regime. See, e.g., Michael Trebilcock and Robert Howse, *The Regulation of International Trade*, 3rd ed. (New York: Routledge, 2005), pp. 400–401.

[11] OECD, "Assessing the Effects of the Uruguay Round," *Trade Policy Issues* 2 (Paris: OECD, 1993).

[12] Finger estimates that, for China, TRIPS generated payment obligations that were five times larger than the gains from goods liberalization achieved in the Uruguay Round (Finger, "Implementation and Imbalance," p. 456).

[13] Stiglitz and Charlton claim that, taken together, the forty-eight least developed countries may be losing U.S. $600 million a year in total (net) due to the round (Stiglitz and Charlton, *Fair Trade for All*, p. 47).

[14] I have focused here on the normative concerns that Risse's principle leaves out. But I am also concerned about the specific content of Risse's principle. Risse acknowledges that his suggestion that workers be compensated in accordance with the value of their contribution (where that value is not determined purely by facts about supply and demand) requires more theoretical development (Risse, *On Global Justice*, p. 273). I am not confident that an adequate account is to be found.

[15] Richard Miller's theory of global justice, and of justice in trade in particular, centers on such a duty. See Richard Miller, *Globalizing Justice* (New York: Oxford University Press, 2010), pp. 60–83.

[16] See Risse, *On Global Justice*, p. 49: "If indeed the conditions characterizing shared membership in a state as a ground are jointly sufficient to generate principles of justice, we can sensibly inquire about a set of weakened versions of the conditions that apply to states and explore whether they *too* generate principles of justice, which would be *different* principles nonetheless."