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## Doha, Security, and Justice: A Response to Professor Raj Bhala

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ARTICLE

DOHA, SECURITY, AND JUSTICE:  
A RESPONSE TO PROFESSOR RAJ BHALA

FRANK J. GARCIA

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I. INTRODUCTION

In his characteristically challenging manner, Professor Raj Bhala confronts us with a strong thesis: that the Doha Development Round (“DDR”) is a failed counterinsurgency operation.<sup>1</sup> Bhala argues that the DDR was launched to spur development and reduce poverty—particularly among Muslims—and thereby increase security in a post-9/11 world, only to fall back into the all too predictable pattern of powerful states pursuing their national interest (narrowly conceived).<sup>2</sup>

Bhala situates this thesis in a broader context, namely that trade has always been about development and national security, and Muslims have always been fundamentally engaged in trade.<sup>3</sup> In this sense, the connection between trade, development, and security is not new, nor is Muslim participation. What *has* changed is the scope of this phenomenon and the current

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1. Raj Bhala, *Poverty, Islamist Extremism, and the Debacle of Doha Round Counter-Terrorism: Part One of a Trilogy—Agricultural Tariffs and Subsidies*, 9 U. ST. THOMAS L.J. 5, 9 (2012).

2. *Id.*

3. *Id.* at 11; see also Asif H. Qureshi, *International Trade for Development: The WTO as a Development Institution?*, 43 J. WORLD TRADE 173, 173 (2009) (reviewing and debunking the argument that the WTO is not a development institution).

level of global concern about it.<sup>4</sup> We are no longer talking simply of local or regional trade patterns, but global trade, and in a similar sense we are concerned with global security, not merely national security. That is the chief blessing (and burden) of globalization: We now sink or swim, develop or fail to develop, grow more or less secure, *together*, and we understand this as never before.<sup>5</sup>

If Bhala is correct, then the failure of the DDR is more than just the failure of any ordinary trade round. It represents a historic failure to decisively shift global trade in the direction of increased support for development—a paradigm shift, if you will<sup>6</sup>—and a lost opportunity to increase global security and cross-cultural understanding at a time when we can ill afford to waste any such opportunity.<sup>7</sup>

My role in this conversation is to help ensure that we consider his arguments in the largest possible context. We do not want to lose sight of the fundamental importance of the issues Bhala is raising about the nature and long-term impact of the contemporary trading system, even as we debate whether the DDR is in the end entirely, or even partly, about combating Islamicist extremism.<sup>8</sup> In the end, I think Bhala is right about the larger stakes of the game, and the ongoing threat to security, let alone prosperity, posed by the persistence of narrow mercantilist strategies among the world's wealthiest nations.

To begin with, I applaud Bhala's efforts to situate trade in the larger context of fundamental human needs and endeavors. In my view, trade is a fundamental part of human experience. It encapsulates our relation to the world, our encounter with the world, and our domination of the world. Trade is fundamentally an exchange of goods and services, an exchange of economic value. Through this exchange we come into contact with different people, lands, cultures, and ideas. We discover and create our own identity

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4. Rokiah Alavi, *Trade Protectionism Under the WTO: The Impact on Muslim Countries*, 23 J. ECON. COOPERATION 1, 1 (2002); Raj Bhala, *Poverty, Islam, and Doha: Unmet Challenges Facing American Trade Law*, 36 INT'L L. 159, 159 (2002).

5. The current crisis with Greece of course illustrates this phenomenon, as does financial globalization in general: The fiscal policies of a country of roughly 10 million people can threaten the stability of world financial markets. Kemal Derviş, *Small Economies, Big Problems, and Global Interdependence*, BROOKINGS (July 19, 2011), [http://www.brookings.edu/opinions/2011/0719\\_greece\\_economy\\_dervis.aspx](http://www.brookings.edu/opinions/2011/0719_greece_economy_dervis.aspx).

6. See Frank J. Garcia, *Beyond Special and Differential Treatment*, 27 B.C. INT'L & COMP. L. REV. 291, 299–301 (2004).

7. The High Level Trade Experts Group Interim Report notes that the role of development in the WTO has changed as developing countries such as China and Brazil have been rapidly growing; nevertheless, a development-friendly deal must necessarily be proportionate to a country's development. HIGH LEVEL TRADE EXPERTS GRP., *THE DOHA ROUND: SETTING A DEADLINE, DEFINING A FINAL DEAL* 6 (Jan. 2011, Interim Report), available at [http://www.acp-eu-trade.org/library/files/High%20level%20trade%20experts%20group\\_EN\\_010111\\_The%20doha%20round%20setting%20a%20deadline.pdf](http://www.acp-eu-trade.org/library/files/High%20level%20trade%20experts%20group_EN_010111_The%20doha%20round%20setting%20a%20deadline.pdf).

8. See Robert J. Delahunty, *Trade, War, and Terror: A Reply to Bhala*, 9 U. ST. THOMAS L.J. 161, 162 (2012).

as we come into contact with others through trade. In this way, trade is a primal form of communication, expressing who we are, what we make, what we want, and how we exchange.<sup>9</sup>

In an equally fundamental sense, trade has also always been about justice, both at the transactional level (fair bargains, which presuppose consent) and at the structural level (just economic arrangements within and between states through fair and freely bargained treaties).<sup>10</sup> Here I believe we find the core of Bhala's argument, with which I entirely agree: the current pattern of trade and trade regulation is skewed against development, it is particularly skewed against the possibility of benefits flowing to Muslim participants, and this bears a clear, if complex, relationship to security. In other words, his argument is that the contemporary trading system is unjust and that this injustice matters on normative grounds and on security grounds.

The normative reasons we should care about injustice are well documented, and I will say more about them in a moment—they range from secular cosmopolitan arguments about global justice to pathbreaking work such as Bhala's book on trade and Catholic social thought.<sup>11</sup> On the security side, the social science literature on justice supports Bhala's argument as well. Psychologists have established an important empirical relationship between trade, justice, and security, involving the social consequences of perceptions of injustice.<sup>12</sup> Their research suggests that the human perception of injustice is one of the most powerful motivators in the human psyche.<sup>13</sup> For this reason, our perceptions of the relative justice or injustice of the trading system, and our emotive response to these perceptions, add an important dimension to trade's capacity to increase or decrease peace and security.<sup>14</sup>

This is the context within which I believe we should evaluate Bhala's argument and the parallel thesis I would offer in tandem with Bhala's own: that Doha is about—or should have been about—remedying unjust trade

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9. See Frank J. Garcia, *Is Free Trade "Free?" Is it Even "Trade?" Oppression and Consent in Hemispheric Trade Agreements*, 5 SEATTLE J. FOR SOC. JUST. 505, 507 (2007) [hereinafter Garcia, *Is Free Trade "Free?"*].

10. On the relationship between trade and justice, see Frank J. Garcia & Lindita Ciko, *Theories of Justice and International Economic Law*, in RESEARCH HANDBOOK ON GLOBAL JUSTICE AND INTERNATIONAL ECONOMIC LAW (John Linarelli ed., 2012) (forthcoming).

11. RAJ BHALA, *TRADE, DEVELOPMENT, AND SOCIAL JUSTICE* (2003); see also Raj Bhala, *Philosophical, Religious, and Legalistic Perspectives on Equal Human Dignity and U.S. Free Trade Agreements*, 28 ST. LOUIS U. PUB. L. REV. 9 (2008).

12. See generally Kjell Tornblöm, *The Social Psychology of Distributive Justice*, in JUSTICE: INTERDISCIPLINARY PERSPECTIVES 177 (Klaus R. Scherer ed., 1992).

13. Klaus R. Scherer, *Issues in the Study of Justice*, in JUSTICE: INTERDISCIPLINARY PERSPECTIVES 1, 7 (Klaus R. Scherer ed. 1992) ("Strong expectations coupled with the feeling of having invested in making the expectations come true obviously produce feelings of entitlement. Violations of such entitlements can then be defined as perceived injustice and will reliably provoke strong negative emotional reactions.").

14. See Frank J. Garcia, *Trade, Justice and Security*, in TRADE AS GUARANTOR OF PEACE LIBERTY & SECURITY? (Padideh Ala'i et al. eds., 2006).

patterns, which, in addition to violating our core values about fairness, also breed resentment and anger and thereby increase the potential for violence. In order to develop this argument, I will introduce the global justice debate about economic fairness, and the social psychology literature about the effects of injustice.

## II. TRADE, JUSTICE, AND SECURITY

The question of justice and international trade is at heart a question of fairness: Are the rules, institutions, and outcomes in transnational economic relations “fair” or “unfair?” Addressing this question involves us in some of the most complicated and contentious issues of economic and political theory today. Here I will approach this question from two directions: first, within the global justice debate about the overall fairness of the global economic system; and second, within the social psychology literature about injustice and its effects on people and society.

### A. *Why Justice Matters to Trade and Trade Law*

I will address the question of trade and justice in three ways: first, by offering a general overview of the relationship between trade and justice; second, by looking at trade and justice from an external perspective involving normative political theory; and finally, taking a different, internal approach to the question of fairness in trade and trade law.

#### 1. *The Fundamental Relationship Between Trade and Justice*

I want to begin by making three interrelated points about the relationship between theories of justice and international trade law today.<sup>15</sup> First, international trade is part of a larger field we have come to call international economic law.<sup>16</sup> By this I mean the public international law of economic relations between states and, to an extent, between states, individuals, and firms, together with the treaty-based institutions (such as the WTO, the IMF, and the World Bank) created to implement, monitor, and adjudicate this body of law. This field is dominated by legal regimes whose aim is trade liberalization but also includes international financial law, international investment law, and the international law of economic development. This is significant, because we are no longer just talking about the terms of trade involving goods and services: We are talking about the comprehensive regulation of a global economy.

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15. In the discussion that follows, I am drawing on a more extensive treatment of these issues in Garcia & Ciko, *supra* note 10.

16. See John Linarelli, *Introduction* to RESEARCH HANDBOOK ON GLOBAL JUSTICE AND INTERNATIONAL ECONOMIC LAW, *supra* note 10; Steve Charnovitz, *What is International Economic Law?*, 14 J. INT'L ECON. L. 3, 3–22 (2011); Joel P. Trachtman, *The International Economic Law Revolution*, 17 U. PA. J. INT'L ECON. L. 33, 36–37 (1996). See generally IGNAZ SEIDL-HOHENVELDERN, INTERNATIONAL ECONOMIC LAW (1999).

Second, by theories of justice I mean that branch of political theory (going back to Aristotle) that concerns itself with the allocative fairness of social institutions.<sup>17</sup> In other words, justice concerns itself with how rights, resources, privileges, and opportunities are divided among those with a share in the relevant community, system or enterprise, and whether that allocation is “fair” according to the relevant standards of those affected by it.<sup>18</sup> In the trade and justice debate, we are not just talking about procedural or “legal” justice; we are talking about the basic socioeconomic organization of an emerging global society.

And, finally, there is an essential and increasingly recognized relationship between these two fields, and we call it global justice or the global justice debate. International economic law and its institutions are powerful engines of resource allocation, between states and within states among various groups, entities, firms, and individuals.<sup>19</sup> This is particularly well understood with respect to trade<sup>20</sup> and is also increasingly studied with respect to international investment and financial law as well.<sup>21</sup>

This relationship is of more than academic interest—as Bhala’s work makes clear. There is a lot at stake in the fairness or unfairness of the trading system. This is so for three reasons: poverty, globalization, and governance. The stark figures on global poverty, with an undeniable (but contentious) connection to economic relations between and within countries, highlight the human costs associated with this relationship.<sup>22</sup> Second, globalization and the debate on global justice have foregrounded the key role that international economic law and its institutions play in shaping the

17. For an overview, see Gillian Brock, *Theories of Global Justice*, in RESEARCH HANDBOOK ON GLOBAL JUSTICE AND INTERNATIONAL ECONOMIC LAW, *supra* note 10; see also SIMON CANEY, JUSTICE BEYOND BORDERS: A GLOBAL POLITICAL THEORY (2006).

18. See generally FRANK J. GARCIA, TRADE, INEQUALITY AND JUSTICE: TOWARD A LIBERAL THEORY OF JUST TRADE (2003) [hereinafter GARCIA, TRADE, INEQUALITY AND JUSTICE].

19. See Aaron James, *Distributive Justice Without Sovereign Rule: The Case of Trade*, 31 SOC. THEORY & PRAC. 533, 533 (2005); Joost Pauwelyn, Christian Barry, Susan Esserman & Frank J. Garcia, *Just Trade Under Law: Do We Need a Theory of Justice for International Trade Relations?* 100 AM. SOC’Y INT’L L. PROC. 375, 376–77 (2006); Ernst-Ulrich Petersmann, *De-Fragmentation of International Economic Law Through Constitutional Interpretation and Adjudication with Due Respect for Reasonable Disagreement*, 6 LOY. U. CHI. INT’L L. REV. 209, 247 (2008).

20. See generally GLOBAL JUSTICE AND INTERNATIONAL ECONOMIC LAW: OPPORTUNITIES AND PROSPECTS (Chios Carmody, Frank J. Garcia & John Linarelli eds., 2012).

21. See generally Linarelli, *supra* note 16.

22. See Thomas Pogge, *Severe Poverty as a Human Rights Violation*, in FREEDOM FROM POVERTY AS A HUMAN RIGHT 11, 11–53 (Thomas Pogge ed., 2008); see also Chantal Thomas, *Poverty Reduction, Trade, and Rights*, 18 AM. U. INT’L L. REV. 1399, 1401–04 (2003); Joel Trachtman, *Legal Aspects of a Poverty Agenda at the WTO: Trade Law and ‘Global Apartheid’*, 6 J. INT’L ECON. L. 3, 3 (2003). The nature of the connection between poverty and transnational economic relations is a highly contentious question, but scholars from all points on the spectrum agree that there is one. See, e.g., Thomas Pogge, *Moral Universalism and Global Economic Justice*, 1 POL. PHIL. & ECON. 29, 29–58 (2002); Fernando R. Tesón & Jonathan Klick, *Global Justice and Trade*, in GLOBAL JUSTICE AND INTERNATIONAL ECONOMIC LAW (Chios Carmody, Frank J. Garcia & John Linarelli eds., 2012) [hereinafter Tesón and Klick, *Global Justice*].

contours of the global economy and its opportunities, burdens, and resources.<sup>23</sup> And, third, the increasing scope and power of such institutions as a form of transnational governance has brought them into greater and much-needed scrutiny with respect to their normative underpinnings, legitimacy, and allocative effects.<sup>24</sup>

In view of these developments, theories of justice play a critical role in helping us evaluate whether or not the trading system as a whole, and specific treaties, rules, and institutions, are “fair” or “unfair” according to our various competing understandings of such principles. Amartya Sen has recently written persuasively about the two major differing approaches to such an inquiry: the “transcendental institutionalism” approach in which we seek a single comprehensive view of fairness; and the “realization-focused comparison” approach in which multiple competing views of fairness (and unfairness) help us reach a decision to act against grave injustice according to a variety of reasons.<sup>25</sup> He favors the latter approach, and his essential point is that we need a rich multitude of critical views on fairness and unfairness in global economic relations if we are to persuasively and effectively address social injustice.<sup>26</sup> My discussion here will proceed in that spirit.

There are several ways through which the fairness of international institutions such as trade law can be assessed. The most common approach is to look at trade law through the lens of normative political theory and assess institutional consistency with broad political values such as cosmopolitanism, egalitarian fairness, or democratic participation.<sup>27</sup> Another approach is to use what Aaron James has called “internal” approaches to justice, in which one looks either at the mandate and formal structure of an organization as well as its members’ expectations (what James calls “structural eq-

23. See, e.g., GLOBAL JUSTICE AND INTERNATIONAL ECONOMIC LAW: OPPORTUNITIES AND PROSPECTS, *supra* note 20, at 1–13; DAVID KINLEY, CIVILISING GLOBALISATION: HUMAN RIGHTS AND THE GLOBAL ECONOMY 1–3 (2009); RICHARD W. MILLER, GLOBALIZING JUSTICE: THE ETHICS OF POVERTY AND POWER 3–5 (2010); Antony Anghie, *Time Present and Time Past: Globalization, International Financial Institutions, and the Third World*, 32 N.Y.U. J. INT’L L. & POL. 243, 244 (2000); Frank J. Garcia, *Globalization and the Theory of International Law*, 11 INT’L LEGAL THEORY 9, 9–10 (2005); Ernst-Ulrich Petersmann, *Human Rights, International Economic Law and ‘Constitutional Justice’*, 19 EUR. J. INT’L L. 769, 770–71 (2008); Mathias Risse, *How Does the Global Order Harm the Poor?*, 33 PHIL. & PUB. AFF. 349, 350 (2005).

24. Allen Buchanan & Robert O. Keohane, *The Legitimacy of Global Governance Institutions*, 20 ETHICS & INT’L AFF. 405, 405–07 (2006); Robert Howse & Kalypso Nicolaidis, *Enhancing WTO Legitimacy: Constitutionalization or Global Subsidiarity?*, 16 GOVERNANCE 73, 73 (2003); Patricia Nanz, *Democratic Legitimacy of Transnational Trade Governance: A View from Political Theory*, in CONSTITUTIONALISM, MULTILATERAL TRADE GOVERNANCE AND SOCIAL REGULATION 59, 59–82 (Christian Joerges & E-U Petersmann eds., 2006).

25. AMARTYA SEN, *THE IDEA OF JUSTICE* 24–27 (2009).

26. Frank J. Garcia, *Three Takes on Global Justice*, 31 U. LA VERNE L. REV. 323, 347–48 (2010).

27. An excellent recent example is GILLIAN BROCK, *GLOBAL JUSTICE: A COSMOPOLITAN ACCOUNT* (2009).

uity”)<sup>28</sup> or at core constitutive elements of the underlying social interaction (here, the role of consent in trade as a human experience)<sup>29</sup> and then evaluates the performance of the organization against those “internal” elements.<sup>30</sup>

## 2. *The External Approach to Trade and Justice*

The essential characteristic of all external approaches (and most current approaches are external) is that they take a particular normative theory and apply it to a body of law.<sup>31</sup> They are “external” because the theory underlying the analysis is not “legal” in a positive sense but comes from moral theory, political theory, or some other branch of social theory that concerns itself with fairness.<sup>32</sup> On this view, even an economic analysis of trade law is really just another external analysis of trade and justice, though one that has (perhaps unfairly and certainly uncritically) held a privileged place in the analysis of international trade law.<sup>33</sup>

One way to ground an external critique of the fairness of trade law is to base the relationship between political theory and trade law on the functional characteristics of trade law as a social institution. The primary impetus towards justice, according to Rawls, is the fact that social cooperation gives rise to certain benefits and burdens, which need to be allocated. For that cooperative social scheme to be just, those benefits and burdens should be allocated according to some relevant idea of what is “right.”<sup>34</sup> In Beitz’s words, “the requirements of justice apply to institutions and practices (whether or not they are genuinely cooperative) in which social activity produces relative or absolute benefits or burdens that would not exist if the social activity did not take place.”<sup>35</sup>

International economic relations satisfy this condition because they create rights, privileges, and obligations through trade agreements and can

28. Aaron James, *Global Economic Fairness: Internal Principles*, in *DISTRIBUTIVE JUSTICE AND INTERNATIONAL ECONOMIC LAW* (Frank Garcia, Chios Carmody & John Linarelli, eds.) (forthcoming) [hereinafter James, *Internal Principles*].

29. See Garcia, *Is Free Trade “Free?”*, *supra* note 9, at 507.

30. See Garcia & Ciko, *supra* note 10.

31. See, e.g., Brock, *supra* note 27, at 48–58.

32. A wide range of social theory concerns itself with justice and is therefore relevant to the inquiry. See Karl R. Scherer, *JUSTICE: INTERDISCIPLINARY PERSPECTIVES* ix–xi (1992).

33. Garcia, *TRADE, INEQUALITY AND JUSTICE*, *supra* note 18, at 14–19. *But see* Tesón & Klick, *Global Justice*, *supra* note 22, at 217–60.

34. JOHN RAWLS, *THEORY OF JUSTICE* 4–5 (Oxford Univ. Press 1999) (1971).

35. CHARLES R. BEITZ, *POLITICAL THEORY AND INTERNATIONAL RELATIONS* 131 (1979). Barry objects to the extension of justice as fairness obligations to international society on the basis of such economic relations, questioning whether such relations are in fact sufficiently reciprocal and dependent. See Brian Barry, *Humanity and Justice in Global Perspective*, in *NOMOS XXIV* 219, 232–34 (J. Roland Pennock & John W. Chapman eds., 1982). As Beitz has since clarified, however, he is not arguing for the necessity of such obligations on the grounds of such relations but merely for their relevance. See Charles R. Beitz, *Cosmopolitan Ideals and National Sentiment*, 80 *J. PHIL.* 591, 595 (1983).



lead to increases in individual and national wealth through the operation of comparative advantage and principles of efficiency in general. Justice is therefore relevant to the operation of the social institutions that effectuate the international allocation of the benefits and burdens of international economic cooperation, principally international trade law.

This “institutionalist” approach is only one way to justify the normative study of trade law. Alternative approaches to this analysis include a cosmopolitan approach emphasizing trade law’s impact on individuals’ life prospects<sup>36</sup> or a human rights approach emphasizing trade law’s impact on fundamental rights.<sup>37</sup> Naturally, different theories will articulate this relationship in the distinct terms relevant to that theory.<sup>38</sup> Together, these accounts perform the same conceptual function, namely to justify the relationship between trade law and an extrinsic normative theory as a general matter, before proceeding to apply a particular theory to trade law.

Coming back to the present inquiry, let us then look at just a few of the arguments about the justice or injustice of the trading system. For example, cosmopolitans would argue that the contemporary trading system is unjust according to cosmopolitan principals of justice. There are almost as many different accounts of what cosmopolitan justice would look like as there are cosmopolitans, and they can be deontological, consequentialist, or rights based, but they share certain features in common.<sup>39</sup> Principally, cosmopolitanism in its purest form maintains that all persons must be included within the scope of distributive justice regardless of territory or nationality and that their moral equality must be reflected in their distributive treatment.

What exactly that treatment must consist of will differ according to the theorist, but cosmopolitan accounts all share the view that the current trading system fails to meet this obligation. The precise nature of the failure will again differ by theorist but can include the trading system’s not supporting the capacities of vulnerable human actors, thus failing a core Kantian requirement;<sup>40</sup> not minimizing or preventing avoidable harmful

36. See, e.g., CANEY, *supra* note 17, at 3–7 (setting out cosmopolitan criteria for just social arrangements); see also Priscilla Schwartz, *Development in World Trade Law*, 4 J. INT’L COM. L. & TECH. 50, 50 (2009). The most prominent theory on the relation of international economics and human development is the capabilities approach developed by Amartya Sen with Martha Nussbaum and others. For an overview of the capabilities approach, see generally Ingrid Robeyns, *The Capability Approach: A Theoretical Survey*, 6 J. HUM. DEV. 93 (2005).

37. See, e.g., Carol C. Gould, *Approaching Global Justice Through Human Rights: Elements of Theory and Practice*, in GLOBAL JUSTICE AND INTERNATIONAL ECONOMIC LAW: OPPORTUNITIES AND PROSPECTS, *supra* note 20, at 27, 33–39; Gillian Moon, *The WTO-Minus Strategy: Development and Human Rights Under WTO Law*, 2 HUM. RTS. & INT’L LEGAL DISCOURSE 37, 38 (2008).

38. Utilitarian or libertarian approaches would, for example, focus on the utility effects of trade rules or their impact on individual liberty and property rights. See GARCIA, TRADE, INEQUALITY AND JUSTICE, *supra* note 18, at 53–64.

39. CANEY, *supra* note 17, at 70, 105–07, 116–19.

40. See, e.g., ONORA O’NEILL, BOUND OF JUSTICE 136–42 (2000). A principle of justice must be universalizable to meet the Kantian test of justice, and O’Neill argues that in the economic

outcomes;<sup>41</sup> or not recognizing or enforcing key human rights such as subsistence.<sup>42</sup> Together, these views agree that the trading system is not meeting core normative standards in the way it treats individual human beings everywhere, particularly the most vulnerable and those suffering readily avoidable harms.

One can also argue that the contemporary trading system is unjust from the perspective of Rawlsian egalitarian liberalism, which I consider as distinct from cosmopolitanism.<sup>43</sup> On this view, the trading system is unjust because it does not satisfy the requirements of an international difference principle, namely that inequalities in social goods (such as the rights, privileges, and opportunities of trade law and the wealth they create) be justifiable by virtue of their benefit to the least advantaged.<sup>44</sup> While trade preferences and other forms of special and differential treatment (“S&D”) designed to benefit the least favored states might contribute to such justification in principle, the current structure of S&D fails, thereby leaving the trading system unjustified and unjust on a structural level.<sup>45</sup> The system is in fact promoting the interests of the most advantaged, rather than the least advantaged, giving rise to a legitimate grievance on the part of the least advantaged.

From an entirely different perspective, Richard Miller also objects to certain aspects of the trading system. Miller, a nationalist, is opposed to the cosmopolitan global justice project but nevertheless acknowledges a vast unmet obligation on the part of developed states to developing states on the basis of an abuse of power and position.<sup>46</sup> In particular, with respect to the trading system, Miller characterizes the one-sided dominance of the WTO rule making process by wealthy developed states as an abuse of power that has resulted in exploitative rules that would not have been agreed to in a process of reasonable deliberation.<sup>47</sup> From this perspective, the overreaching that characterized the Uruguay Round gives rise to a duty to address and

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sphere this requires institutionalizing support for not only human agency but the capacities of more vulnerable human beings. *Id.*

41. See, e.g., PETER SINGER, *ONE WORLD: THE ETHICS OF GLOBALIZATION* 156–58 (2002).

42. See, e.g., CHARLES JONES, *GLOBAL JUSTICE: DEFENDING COSMOPOLITANISM* 34–35 (1999).

43. Caney includes within cosmopolitan accounts such theories which argue that participation in an institutional scheme is essential to distributive obligations, which he terms “institutionalist” cosmopolitan theories (following Pogge). See CANEY, *supra* note 17, at 105–06. However, in my view, such theories (Rawlsian accounts being a chief example) are not as truly cosmopolitan as what Caney calls “interactionalist” theories, where one’s distributive obligations exist independently of there being a requisite institutional participation, because I take the essence of cosmopolitanism to be a non-contingent universalism. In this sense, I believe Caney conflates transboundary normative obligations with cosmopolitanism.

44. See GARCIA, *TRADE, INEQUALITY AND JUSTICE*, *supra* note 18, at 147–92.

45. *Id.* at 190–92.

46. MILLER, *supra* note 23, at 70–71.

47. *Id.* at 69–83.

remedy this injustice in subsequent rounds, such as Doha.<sup>48</sup> Miller characterizes the current impasse in Doha as “an ongoing process of bullying,” since maintaining the status quo means maintaining the exploitative rules enacted in the Uruguay Round that are the basis for developing country objections.<sup>49</sup>

### 3. *The Internal Approach to Trade and Justice*

What these external approaches have in common is that they superimpose principles of justice such as human rights or liberal distributive principles on the present structure of international economic law institutions. However, there is another way to approach the relationship between principles of justice and international economic law, from an entirely different direction that does away with the need for complex attempts at mediating the gap between theory and practice. We can look for principles of justice *within* the systems and institutions we are studying, rather than outside of them.<sup>50</sup> Alternatively, we can focus on a phenomenological investigation of trade as a human experience and analyze the role that consent plays in making trade “trade” and not something else—exploitation, coercion, or predation.<sup>51</sup>

In his “structural equity” approach, Aaron James examines principles of fairness that are inherent within the global economic system by virtue of the structure of that system. These principles comprise “structural equity,” the manner in which an institution distributes its advantages and disadvantages in order to achieve equitable results.<sup>52</sup> Thus, instead of discussing justice in international trade from the point of view of external approaches (such as nationalism or cosmopolitanism), internal approaches look at the system as it is already structured and offer a prescriptive analysis rooted in the framework of the trade regime. Through the concept of “structural equity,” which dictates how gains and burdens are shared within a system,<sup>53</sup>

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48. *Id.* at 73.

49. *Id.* at 73. Miller cites as examples the same agriculture negotiations which Bhala highlights in his article, for the same reasons.

50. *See, e.g., id.* at 71 (suggesting that it is important to look within organizations for demands of justice distinctive to their internal framework); James, *Internal Principles*, *supra* note 28, at 100–02.

51. *See Garcia, Is Free Trade “Free?”*, *supra* note 9, at 506.

52. James distinguishes three principles of structural equity in trade relations. The first principle concerns the harms from trade, that is, certain individuals will be adversely impacted by free trade and measures should be taken by states to alleviate such impact. An example of this principle is the controversial Trade Adjustment Assistance that was attached to the bills of the FTAs between the United States and Korea, Panama and Colombia in U.S. Congress. The second principle requires that the gains of trade be equally distributed within a society or in manner acceptable to all members of that society. The third principle is simply the second principle brought up on a global basis so that trading societies share equally in the gains of trade or distribute those gains in a manner acceptable to them all. James, *Internal Principles*, *supra* note 28, at 110.

53. *Id.* at 114–15.

we can try to deduce standards of justice, which can be applied to international economic law as a means of evaluating policies and procedures and offering policy recommendations.

In view of the present inquiry, I will begin with the WTO. The aim of the WTO is clear: “to preserve the basic principles and to further the objectives underlying this multilateral trading system.”<sup>54</sup> The WTO agreements have established a series of rights and obligations for its members and created a series of expectations in these members. The organization seeks to protect these expectations through various channels exemplified by the Dispute Settlement Understanding, which authorizes prevailing parties to suspend trade concessions against losing parties to a WTO dispute that fail to comply.

There is a growing body of literature analyzing the asymmetrical effectiveness of the “suspension of concessions” system since large prevailing parties can more effectively enforce their judgments due to the significance of their market to the losing party, whereas smaller prevailing parties cannot because their market is too small for loss of access to be an effective sanction.<sup>55</sup> At one level, this is an issue of institutional design and treaty compliance. However, a structural equity analysis also reveals this to be a question of justice. When an authorized suspension of concessions is an effective compliance tool in a case brought by a developed country, but the same rule is not as effective when a developing country is awarded the right to suspend concessions, we are faced with an unjust result.<sup>56</sup> This is an internal issue because this failure reflects a frustration of member expectations through an ineffective means of dispute settlement. It is a justice issue because, as Chios Charmody points out, WTO justice is about maintaining an equal distribution of expectations regarding trade related behavior; the ethos is justice-as-equality.<sup>57</sup> Thus, on this account justice and fairness are intrinsic parts of the WTO because they are integral parts of the system itself, and its failures are internal failures of structural equity.

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54. Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 194, pmbl.

55. See, e.g., Gregory Shaffer, *Developing Country Use of the WTO Dispute Settlement System: Why it Matters, the Barriers Posed*, in TRADE DISPUTES AND THE DISPUTE SETTLEMENT UNDERSTANDING OF THE WTO: AN INTERDISCIPLINARY ASSESSMENT 167, 182 (James C. Hartigan ed., 2009); Gregory Shaffer & Yvonne Apea Mensah, *Institutional Choice in the General System of Preferences Case: Who Decides the Conditions for Trade Preferences? The Law and Politics of Rights*, 39 J. WORLD TRADE 977, 989–95 (2005); see also Håkan Nordström and Gregory C. Shaffer, *Access to Justice in the World Trade Organization: A Case for a Small Claims Procedure?*, 7 WORLD TRADE REV. 587, 590, 594–604 (2008). See generally SONIA E. ROLLAND, DEVELOPMENT AT THE WTO (2012) (reviewing in chapter seven the obstacles to successful participation in the DSU by developing countries).

56. See, e.g., Appellate Body Report, *United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS285/AB/R (Apr. 7, 2005).

57. See Chios Carmody, *A Theory of WTO Law*, 11 J. INT’L ECON. L. 527, 542 (2008).

Another approach looks at the nature of trade itself as a human experience. On this view, trade is fundamentally a voluntary, bilateral exchange of economic value. Individuals and peoples enter into trade relationships with the same fundamental motivation: to improve their condition. Thus, in general, people will enter into trade relations that they consider fair if they are free to make and choose their own bargains, and this shapes the nature of the trade regime in the long run.

However, not everything called “trade” is really trade—economic exchanges have also been used to dominate and conquer.<sup>58</sup> There are many types of transactions that involve transfers of value, but they are not trade because the absence of consent undermines the requisite voluntary element of a trade relationship. In the words of Simone Weil, when one seeks consent where there is no power of refusal, the result is not trade, but oppression.<sup>59</sup> In such cases, an economic benefit flows from one party to the other, but it is not mutual in any meaningful way.

The same can be said in cases of coercion, where there is some consent on the surface but the artificial restriction on the range of possible bargains makes consent a pure formality. Furthermore, exchanges that do not involve roughly equal value cannot be considered trade but are really exploitation; when the prevailing party has excluded a potentially higher bidder from the exchange, that party is exploiting the other in the resulting bargain.<sup>60</sup>

In all three cases, what is ostensibly called trade is really something else—predation, coercion, or exploitation—and the distinguishing mark is an absence of real or fully free consent to the bargain. Such dynamics by their nature mean that affected individuals will accept transactions that are disadvantageous or unfair by external standards because they are not free to do otherwise. Consent can thus function as a standard of justice, but it is not an external principle; instead, it is a characteristic of the phenomenon itself. Moreover, unlike WTO members’ “equality,” it is not derived from the structure of an institution but from an intuitive understanding of trade generally.

Applying a consent approach to actual international trade agreements illustrates the subtle but important forces at work in contemporary trade relations, particularly as they involve substantial inequalities in power among participating states. These inequalities and their structural consequences undercut economic fairness through their effects on the rules of the

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58. For example, trading companies asserted sovereignty and extended the colonizing states’ dominion over vast territories the European states were not ready to administer directly. See ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY, AND THE MAKING OF INTERNATIONAL LAW* 68 (2005).

59. Simone Weil, *Are We Struggling for Justice?*, in SIMONE WEIL 116, 121–23 (Eric O. Springsted ed., 1998).

60. Hillel Steiner, *A Liberal Theory of Exploitation*, 94 *ETHICS* 225, 231–33 (1984); see also MILLER, *supra* note 23, at 60–69 (describing exploitation as a form of ‘taking advantage’ of the weak bargaining position of those in dire need).

game, making it less likely that trade law and institutions will either meet members' legitimate expectations of equality or establish rules supporting true consensual exchanges among market actors. Without consent, agreements structuring economic exchange will be a form of oppression, or worse, predation, which cause systemic disadvantages to certain players.<sup>61</sup>

Returning to the WTO, we can see that many of the complaints persistently raised by developing countries share a common theme: The trading rules are made without their effective consent<sup>62</sup> and establish trade relations between developed and developing countries along coercive or exploitative lines.<sup>63</sup> Bhala's analysis of Doha's current position on agriculture alone gives us many illustrations of the one-sided bargains that continue to disadvantage Muslim and other developing countries and plague WTO negotiations.<sup>64</sup> Sadly, many regional trade agreements such as the recent Central America Free Trade Agreement (DR-CAFTA), a 2004 regional trade agreement between the U.S., five Central American states, and the Dominican Republic, also furnish examples of what is ostensibly free trade but is in fact a form of coercion (no free bargaining), exploitation (no equivalent value), or predation (no consent).<sup>65</sup>

#### 4. Summary

Both external and internal approaches to the problem of trade and justice paint a damning portrait of the unfairness of the contemporary trading system. When cosmopolitans, egalitarians, and nationalists agree, then there is good reason to treat this as an emerging global consensus. This is, incidentally, an illustration of Sen's plural grounding approach in action: We need a multitude of cogent arguments evaluating injustice and compelling us to action.<sup>66</sup> It remains for those in power to shift the system in a more just direction, or those with less power will make their frustrations known in whatever ways they can. This is central to the problem that Bhala tackles, because it is precisely this perception of unfairness that raises the security concerns Bhala writes about.

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61. See Garcia, *Is Free Trade "Free?"*, *supra* note 9, at 514–15.

62. Sonia E. Rolland, *Redesigning the Negotiation Process at the WTO*, 13 J. INT'L ECON. L. 65 (2010) (citing disenfranchisement of developing countries in WTO decision making and suggesting strategies for overcoming this).

63. MILLER, *supra* note 23, at 77–79 (citing agricultural subsidies and mandated liberalization as examples).

64. Bhala, *supra* note 1, at 11–12.

65. See generally Garcia, *Is Free Trade "Free?"*, *supra* note 9, at 514–22. On RTAs generally see Chin Lim, *The Trade Agreements Regime: WTO and the RTAs*, in RESEARCH HANDBOOK ON GLOBAL JUSTICE AND INTERNATIONAL ECONOMIC LAW, *supra* note 10.

66. See SEN, *supra* note 25, at 12–15, 301–04.

### B. Trade, Security and the Social Psychology of Justice

Social psychologists are interested in justice in a particular way, namely in the social formation of perceptions of justice and injustice and their effect as motivators—the human emotional responses they provoke.<sup>67</sup> Understanding the psychology of justice is important for this conversation and for the trading system in general, because trade's contribution to peace and security depends upon people's beliefs about the justice or injustice of the trading system.<sup>68</sup>

One way to explore the psychology of justice is through equity theory, which views all interpersonal interactions, including trade transactions, as exchange transactions involving various resources.<sup>69</sup> People make certain investments or inputs, in return for which they expect to receive certain rewards, or outputs. Justice involves their evaluation of the relationship between inputs and outputs.

This relationship can be analyzed along two dimensions: reciprocity between inputs and outputs and proportionality between inputs and outputs. Reciprocity consists of receiving when one has contributed, and proportionality consists of the relationship between the level of one's contribution and the level of one's received outputs.<sup>70</sup> One's perception of justice or injustice depends upon one's evaluation of the proportionality and reciprocity between one's inputs into the social system and the outputs one receives. Inputs create expectations that vary in proportion to the inputting person's evaluation of the level of input. These expectations also involve a social comparison process, in which people evaluate their own returns by comparison with the returns and investments of others and judge their situation not only by their absolute outcome but by whether their comparisons with others meet or disappoint their expectations.<sup>71</sup>

In this framework, when people judge their social rewards to be proportional to their costs and investments, both absolutely and relatively, they deem their situation as just or equitable.<sup>72</sup> This supports the establishment

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67. This section draws upon and updates earlier work on trade, security, and justice. See Garcia, *supra* note 14.

68. See, e.g., AMERICO BEVIGLIA ZAMPETTI, FAIRNESS IN THE WORLD ECONOMY: US PERSPECTIVES ON INTERNATIONAL TRADE RELATIONS 26–40 (2006) (reviewing the role fairness plays in legitimizing and even constituting markets and international institutions).

69. See, e.g., C. Wesley Younts & Charles W. Mueller, *Justice Processes: Specifying the Mediating Role of Perceptions of Distributive Justice*, 66 AM. SOC. REV. 125, 126 (2001) (suggesting equity theory continues to play dominating role in the field). See generally Tornblöm, *supra* note 12, at 179–82.

70. Scherer, *supra* note 13, at 6–7.

71. Tornblöm, *supra* note 12, at 181 (citing Peter M. Blau, *Justice in Social Exchange*, 34 SOC. INQUIRY 193, 194–95 (1964)). See generally PETER M. BLAU, EXCHANGE AND POWER IN SOCIAL LIFE 143–67 (2d prtg. 1964) (reviewing role of expectations in comparative evaluations of fairness of outcomes).

72. Tornblöm, *supra* note 12, at 181. This is a foundational tenet of exchange theory. See also GEORGE CASPER HOMANS, SOCIAL BEHAVIOR: ITS ELEMENTARY FORMS 30–111 (1961).

and maintenance of orderly social relations, or security as we are calling it today. Injustice involves the defeat of these expectations. Perceived discrepancies between the actual and the expected match between inputs and outcomes result in the subjective experience of inequity.<sup>73</sup> Outputs can be deficient either in terms of their proportionality, their reciprocity, or both. When the rewards are perceived to be insufficient in either sense, a condition of inequity prevails, giving rise to psychological distress and a desire to terminate the relationship, or at least alter it in the direction of equity.

This is the core reaction mechanism that can lead to social conflict over perceptions of injustice. In the words of one theorist: “Strong expectations coupled with the feeling of having invested in making the expectations come true obviously produce feelings of entitlement. Violations of such entitlements can then be defined as perceived injustice, and will reliably provoke strong negative emotional reactions.”<sup>74</sup> These reactions manifest themselves socially in disaffection, underproduction, anger, conflict, boycott, and sabotage. In other words, perceptions of injustice contribute to individual and group behavior that threatens peace and security.

This is where the trading system and, in particular, the DDR come in. If we want to understand trade’s contribution to peace and security, and the stakes for all of us if Bhala is right that we have abandoned Doha’s emphasis on security through justice, we first need to understand people’s perceptions about the justice of the trading system and the global economy it structures in terms of its effects on people’s inputs and outputs. In particular, Bhala has reminded us that we need to understand the perceptions of the Muslim world with respect to the justice of the trading system.

The theoretical starting point in terms of people’s expectations of trade, including Muslim expectations, is that trade is supposed to be a win-win proposition. According to conventional liberal trade theory, we can reasonably expect that freer trade will lead to overall welfare increases. Of course, there will nevertheless be short-term and individual uncompensated losses. These individual losses create social welfare problems for states but should in theory be manageable through first-best policies that do not distort trade as they address the particular problem in question.<sup>75</sup>

However, when we look at the global economy and levels of global development today, we see evidence suggesting that in practice trade may not be a win-win proposition, even over the long term, for certain states and social groups within states.<sup>76</sup> Looking horizontally between states, we see

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73. Tornblöm, *supra* note 12, at 181.

74. Scherer, *supra* note 13, at 7.

75. See, e.g., MICHAEL J. TREBILCOCK & ROBERT HOWSE, *THE REGULATION OF INTERNATIONAL TRADE* 3–4, 14–15 (3d ed. 2005) (discussing classic trade theory and effects on social welfare legislation).

76. U.N. Dev. Programme, *Human Development Report 2011*, at 2 (2011), <http://hdr.undp.org/en/reports/global/hdr2011/> [hereinafter 2011 UNDP].



states that seem to persist in the loser position over time.<sup>77</sup> There are winners—Chile, India, Poland, and Turkey (the one Muslim exception), for example, with export growth averaging more than 5% per year<sup>78</sup>—but there are losers, too, such as Niger, Bangladesh, and Sierra Leone.<sup>79</sup> As Bhala points out, there is a disturbing preponderance of Muslim countries in the latter group, with Pakistan and Yemen being notable examples with respect to contemporary security issues.<sup>80</sup> Looking vertically within states, there is also evidence of persistent and growing inequality between individuals and between groups, and evidence that free trade may be intensifying these conditions for the least advantaged individuals and groups.<sup>81</sup> As Bhala points out, this also applies to Muslim populations within non-Muslim states.<sup>82</sup>

The many states, individuals, and social groups—too many, in my view—that find themselves in the persistent losing position become sources of the potentially destabilizing perceptions of trade injustice that are the subject of Bhala's argument. Media accounts of trade and globalization reveal ample evidence of ambivalence and conflict over the perceived fairness of globalization and international economic policy and their effects on poorer people and states.<sup>83</sup>

Looking horizontally between states, there is evidence of a growing disillusionment among non-OECD countries (including in particular Muslim states or states with large Muslim populations) with respect to the perceived failure of globalization's promised benefits for their people.<sup>84</sup>

77. See, e.g., *New Forum May Be Necessary to Tackle Globalization: Supachai*, JAPAN ECON. NEWSWIRE, Feb. 12, 2000, available at LexisNexis (developing countries concerned that globalization is widening economic gap between industrialized and developing countries).

78. 2011 UNDP, *supra* note 76, at 126.

79. *Id.*

80. See generally Alan B. Krueger & David D. Laitin, *Kto Kogo?: A Cross-Country Study of the Origins and Targets of Terrorism*, in TERRORISM ECONOMIC DEVELOPMENT AND POLITICAL OPENNESS 148–73 (Philip Keefer ed., 2008); see also JEREMY M. SHARP, CONG. RESEARCH SERV., RL34170, YEMEN: BACKGROUND AND US RELATIONS 1–17 (2010); Bruce Reidel, *Pakistan and Terror: The Eye of the Storm*, 618 ANNALS AM. SOC'Y POL. & SOC. SCI. 31, 31–32 (2008).

81. See, e.g., Hardev Kaur, *Unfair Trade Practices of Developed Nations*, NEW STRAIT TIMES MALAYSIA, Oct. 17, 2000, at 12 (illustrating globalization is characterized by growing gap between rich and poor within countries); see also Injustice and Poverty Root Causes of Terrorism: Moin, THE NEWS INT'L, Oct. 30, 2011, <http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=75218&Cat=4>.

82. Bhala, *supra* note 1, at 17.

83. See, e.g., *Annan Calls for Fair Globalisation, World Leaders Divided*, THE PRESS TRUST OF INDIA, Sept. 21, 2004, available at LexisNexis (UN Secretary General notes that too many people feel excluded by globalization); see also Radio Interview by Michael Martin with Raj Shah, Admin. U.S. Agency Int'l Dev. (June 22, 2011), available at <http://www.npr.org/2011/06/22/137342466/usaid-administrator-on-food-costs-shortages>.

84. This is particularly noteworthy in Muslim states such as Pakistan, Malaysia and Saudi Arabia. See, e.g., *Economist: Selective Liberalization is Better*, THE MALAYSIAN STAR, Feb. 28, 2000 (changing perception among developing countries towards globalization attributable to lack of tangible benefits, economic costs and social dislocations); *Malaysia Urges Developing Nations to Voice Globalization Fears*, ASIA PULSE, Jan. 26, 2000, available at Factivia, Doc. No. apulse0020010804dw1q016ht (stating globalization is widening, not decreasing, the knowledge

Globalization is criticized for being in the control of wealthy states that structure it for their own benefit.<sup>85</sup> Moreover, there is a widespread perception, both within the Muslim community and generally, that globalization is making inequality worse between states.<sup>86</sup>

Looking vertically within states, one again finds the perception that globalization is widening the gap, this time between rich and poor groups within states.<sup>87</sup> There is particular concern that globalization is not addressing the poorest and neediest within states.<sup>88</sup> Overall, one finds that many of the criticisms of globalization explicitly use normative language to describe globalization as unjust.<sup>89</sup> Indeed, the entire system of trade and globalization has been called “exploitative” of the developing world.<sup>90</sup>

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gap between societies); *Saudi Minister Warns Impacts of Economic Globalization*, XINHUA GENERAL NEWS SERVICE, Jan. 22, 2000, available at LexisNexis (suggesting that globalization is damaging both new industries and traditional exports in many developing countries); see also *Militancy & Poverty Make a Never-Ending Vicious Cycle*, THE NEWS INT'L, Mar. 17, 2011, <http://www.thenews.com.pk/PrintEdition.aspx?ID=36455&Cat=6&dt=5/4/2011>; *Kill Poverty to Fight Terrorism: Rahul Ghandi*, UNITED NEWS OF INDIA, Mar. 15, 2011, available at LexisNexis; *PM: Terrorism Can't Be Defeated Without Eradication of Poverty*, RIGHT VISION NEWS, Oct. 18, 2010, available at LexisNexis.

85. See, e.g., *Nigeria: Multilateralism at Crossroads*, AFR. NEWS, Apr. 26, 2005, available at LexisNexis (suggesting that globalization being driven by multinational corporations “masquerading under the flags of western nations”); *Globalization can be Reshaped*, ASIA AFR. INTELLIGENCE WIRE, Feb. 28, 2005 (fairer globalization requires reform of globalization institutions created for the good of OECD countries); *Developing Nations Urged to Resist Globalization*, XINHUA NEWS AGENCY, June 10, 2002, available at Proquest, Doc. No. 453478561 (arguing that globalization favors developed countries which are already beneficiaries of current system); see also Raja Aqeel & Abdul Rasheed Azad, *Food, Human Insecurity Breed Extremism and Terrorism: Moot*, BUS. RECORDER, Mar. 14, 2011, <http://www.brecorder.com/component/news/single/627:news.html?id=1165990>.

86. See, e.g., *India: Globalization Promotes Monopolies*, GLOBAL NEWS WIRE, NOV. 21, 2001 (global markets have failed to converge and inequality of income between countries has increased); *Myanmar Warns of Challenges Brought by Globalization*, KYODO NEWS INTERNATIONAL, NOV. 2, 2000, available at Proquest, Doc. No. kyodo00020010807dwb201dzb (quoting that globalization is creating a ‘development divide’ and widening the gap between rich and poor nations); Abdul Razak Ahmad, *The Darker Side of Globalization*, NEW STRAITS TIMES MALAYSIA, NOV. 16, 1998, at 5 (suggesting that globalization is causing a gap between rich and poor to increase with little redress for the poor); see also *NHRC Chairperson Justice Anand Calls for Making Human Development a Basic Human Right*, HINDUSTAN TIMES, June 28, 2006, available at Factivia, Doc. No. HNTM000020060705e26s00161.

87. See, e.g., *Ghana: The Globalisation Debate: An Opportunity or Threat to Developing Economies*, AFR. NEWS, Mar. 23, 2005, available at LexisNexis (arguing that globalization is increasing the resource drain from the poor majority to the wealthy elite within developing and even developed countries); *India: Globalization Promotes Monopolies*, GLOBAL NEWS WIRE, NOV. 21, 2001 (global markets have failed to converge and inequality of income within countries has increased).

88. See, e.g., *Sinha Urges More Aid to Poor Nations*, THE HINDU BUS. LINE, Oct. 29, 2000, <http://www.hindu.com/businessline/2000/10/29/stories/142920.jz.html> (citing economic and social distortions of globalization, Indian Finance Minister urges focus on equity and concern for the poor).

89. See, e.g., *Saudi Minister Warns Impacts of Economic Globalization*, *supra* note 84 (stressing that globalization highlights the need for a “fair” world economic system).

90. *Sinha Urges More Aid to Poor Nations*, *supra* note 88 (suggesting that anti-globalization protests reflect perception that globalization exploits the poor of developing countries); Kayode

Such perceptions do not bode well for trade's capacity to promote security—quite the opposite.<sup>91</sup> Recall that equity theory suggests that perceptions of injustice will be accompanied by patterns of civil disaffection, underproduction, anger, conflict, boycott, and sabotage.<sup>92</sup> Such behavior in an international context is certainly multi-causal, but we must nevertheless consider the relationship between widespread negative perceptions of trade and globalization and the existence of the types of conflict and instability, which the social psychology literature cautions us to expect. At its most extreme, there is a troubling correlation—which equity theory predicts—between the targets and rhetoric of terrorism and the patterns of global economic inequality and attendant perceptions of injustice.<sup>93</sup> I agree with Bhala's point about the empirics of poverty and terror: It is a mistake to focus too narrowly on establishing a link between poverty and extreme acts (“Are the violent actors poor?”)—instead, we need to look at poverty and the political climate it creates in support of Western-targeted violence. While I take Delahunty's point that there is no simple linear connection between injustice and terrorism,<sup>94</sup> one can point to a link between inequality and the *targets* of terrorist activity, consistent with third-world public opinion and perceptions of economic injustice.<sup>95</sup> Moreover, the culture of resentment and grievance is at least as dangerous to economic prosperity and security as specific violent acts by individuals, poor or not. The rhetoric

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Komolafe, *World Summit, Just Another Review of Poverty?*, THIS DAY, Sept. 13, 2005, available at General Reference Center Gold, Doc. No. GALE|A136283840.

91. See, e.g., *Annan Calls for Fair Globalisation, World Leaders Divided*, *supra* note 83 (suggesting too many people feel threatened by globalization); *Globalization and Poverty*, J. BANKING & FIN. SERVICES, Dec. 1, 2001, at 18, 18–20 (dealing with problem of peace requires dealing with problem of poverty and inequity).

92. See *supra* note 74 and accompanying text; see also U.N. Dev. Programme, *Human Development Report 1999*, at 11 (1999) (migration pressure, environmental pressure, social conflict and instability of many forms attributable to perceived widening income gap between countries).

93. See, e.g., Alan Friedman, *Forum Focuses on 'Wrath' Born of Poverty; Rich and Powerful Debate How to Bridge Wealth Gap*, INT'L HERALD TRIB., Feb 5, 2005, at 11 (arguing terrorism and anti-globalization violence can be manifestations of frustration over inequitable globalization).

94. See Delahunty, *supra* note 8, at 161; see also Alberto Abadie, *Poverty, Political Freedom and the Roots of Terrorism*, 96 AM. ECON. REV. 50, 50 (2006) (indicating no clear link between poverty levels and levels of terrorism); Alan B. Krueger & Jitka Maleckova, *Education, Poverty, Political Violence and Terrorism: Is There a Causal Connection?*, Nat'l Bureau of Econ. Research, Working Paper No. 9074 (2002), available at <http://www.nber.org/papers.w9074> (arguing there is no link between levels of poverty or education and participation in politically motivated violence).

95. See, e.g., Krueger & Laitin, *supra* note 80, at 4 (stating research suggests terrorism targets states perceived to “bask in economic success”); *Annan Calls for Fair Globalisation, World Leaders Divided*, *supra* note 83 (quoting Brazilian president reminding that the “most destructive weapon of mass destruction in the world is poverty”); *Nigeria: Between Globalisation and Glocalisation*, AFR. NEWS, Mar. 14, 2005, available at LexisNexis (quoting that local effects of globalization mean that US hope that globalization would promote peace “could [not be] further from the truth”); *Zambia; Gap Between Rich and Poor Nations Worries Prof. Chinene*, AFR. NEWS, Aug. 8, 2002, available at LexisNexis (growing imbalance between rich and poor nations a major threat to global peace and security).

and dark vision of the aggressively resentful remain and persist in their negative effects long after rubble is cleared and bodies buried.

This brings us back to Doha. If we combine the persistent and pervasive assertions of national interest on the part of wealthy WTO member states in the Round, the persistent and pervasive negative perceptions of the unfairness of the WTO and the trading system today, and the tangible loss of momentum on growth and development due to the global financial crisis, we have an explosive combination of blindness, selfishness, despair, and loss of opportunity that cannot help but have serious negative repercussions for all of us everywhere. The failure of Doha is a loss of historic magnitude.

Bhala correctly points out that the WTO's political arguments in favor of Doha have now shifted in response to changes in the prevailing winds, with job creation and global recovery being the latest mantra in the wake of the current global financial crisis.<sup>96</sup> In one sense, that is not surprising—a good advocate will link her arguments to the priorities of the forum. However, this may also suggest a larger problem: that the original link between Doha, development, and security was itself an earlier, similar move—a superficial gloss to the Round seeking to capitalize on the politics of the moment—in that case, the post-9/11 moment.

If so, this does not so much weaken Bhala's argument as suggest an even deeper reason for concern: that as early as 2001, the WTO was seeking rhetorical justifications for a Round that was fundamentally created not to sincerely address the concerns of the bottom billion but to resolve a political impasse in the WTO in favor of wealthier states. This impasse was born out of acute economic frustration on the part of developing countries, manifesting itself not as terrorism but as a commitment in Seattle to obstruct any progress on developed countries' priorities until these concerns were addressed. Unfortunately, these priorities reasserted themselves almost as soon as the Round was under way, once the rhetorical nod towards development had been sufficient to broker the start of another Round. Doha was never really going to be about justice, or development, or for that matter security.

### III. CONCLUSION

Many of us who wrote about trade or international relations immediately following 9/11, myself included, commented on the relationship between trade and security—in a sense, we were all national security scholars for a moment. Bhala has not let us forget that fact and reminds us that every trade agreement, and every piece of trade scholarship, is necessarily about poverty and justice. The key question is whether it will be explicitly so and whether it will aim to move the system in the right direction—towards reduced poverty and increased justice—or not.

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96. Bhala, *supra* note 4, at 141–42.

I have been fortunate to teach and lecture about trade and globalization to students from many parts of the world, and most recently I found myself in Australia in a globalization seminar of twenty-four students, eight of whom were Muslim men from Saudi Arabia. It was a remarkable opportunity for an offshore conversation on sensitive subjects with a group I was otherwise unlikely to be able to speak with in this way. Amidst all of the complex cultural and political issues one can imagine would be a part of our dialogue, every single Saudi student had the same concern and the same goal for themselves and their country, and it was not an ideological one: They all wanted a job, and the prospects of having one were not good. Given the nature of the global trading system as it now stands, I had no good answer for them.

If the WTO and its dominant states heed Bhala's call to return to the founding rhetoric of the Doha Development Round—that poverty, development, and justice matter to all of us, if for no other reason than our basic security—then perhaps if I see those students again, I will have something hopeful to tell them.

