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REDESIGNING GLOBAL TRADE INSTITUTIONS

*John Linarelli*¹

We are at what might be the most propitious moment for change in international trade institutions since Bretton Woods. After seven years, the Doha Round stalled in July 2008.² While multilateral negotiations faltered, bilateral and regional trade agreements proliferated, in what have become known as a “spaghetti bowl of crisscrossing arrangements.”³ To date, 474 regional trade agreements have been notified to the WTO, with 283 in force.⁴ While regionalism seems to be becoming dominant as the approach of choice for states to pursue their trade policies, a number of proposals to reform and improve the WTO have been put on the table,⁵ with one of the latest at the Davos World Economic Forum in January 2011 suggesting a radical change in the way the WTO system operates.⁶

All of this momentum for change comes at a time when the world has changed a great deal even since the Uruguay Round.⁷ The Bretton Woods-Geneva-Havana triad of negotiations seems so far in the distant past.⁸

¹ Associate Dean for Academic Affairs and Professor of Law, University of La Verne College of Law. Many thanks to comments received during the presentation of my ideas for this essay at the 2020 conference.

² See Carla A. Hills, *The Stakes of Doha: Jump-Starting a Stalled Process* __ FOREIGN AFFAIRS __.

³ Richard Baldwin & Patrick Low, *Introduction, in MULTILATERALIZING REGIONALISM: CHALLENGES FOR THE GLOBAL TRADING SYSTEM* 1-10, 1 (Richard Baldwin & Patrick Low eds. Cambridge University Press 2009).

⁴ 351 regional trade agreements were notified to the WTO under GATT 1947/1994 Article XXIV, 31 under the Enabling Clause, and 92 under GATS Article V. http://www.wto.org/english/tratop_e/region_e/region_e.htm (last visited March 10, 2011). See Theresa Carpenter, *A Historical Perspective on Regionalism*, in MULTILATERALIZING REGIONALISM, *supra* note 3, at 13.

⁵ Bernard Hoekman, *Proposals for WTO Reform: A Synthesis and Assessment*, World Bank Policy Research Paper No. 5525, Jan. 2011.

⁶ GLOBAL REDESIGN: STRENGTHENING INTERNATIONAL COOPERATION IN A MORE INTERDEPENDENT WORLD (Richard Samans, Klaus Schwab, & Mark Malloch-Brown eds. 2010 World Economic Forum), <http://www.weforum.org/issues/global-redesign-initiative/index.html> (last visited March 6, 2011).

⁷ The Uruguay Round had its official start in September 1986 in Punta del Este Uruguay and concluded with the signing of the Uruguay Round agreements, which, among other things, established the WTO, on April 15, 1995 in Marrakesh Morocco. http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm (last visited March 6, 2011).

⁸ It is beyond the scope of this essay to discuss Bretton Woods, Geneva, and Havana negotiations in detail. At the 1944 conference at Bretton Woods the International Monetary

Global economic power is becoming more distributed, with fast developing countries such as China and India, and the middle-income countries of Asia, emerging as growing economic forces to contend with the slow growing economies of the United States, the European Union, and Japan.⁹ Trade policy is no longer a matter of simple trade liberalization along nationalist lines, but a matter of production sharing and global supply chains.¹⁰ Interdependence is a fact of global economic life. The facts of globalization seem beyond the comprehension of the ordinary citizen. Talk of offshoring and outsourcing jobs is becoming quaint, as it fails to capture the complexities of global production sharing, the global labor markets it requires, and the benefits and burdens it distributes.

Where do we go from here? We can understand and try to predict, if ever so generally, legal change. The table below provides a way to understand legal change, picturing for us the distinctions between changes in rules versus structure of institutions, evaluation of change from an internal versus an external perspective, and the distinction between the prescriptive and the descriptive or predictive.

Structural	Internal (values given)	Prescriptive
Rules	External (critical)	Descriptive/Predictive

The distinction between understanding legal change on the basis of rules versus structure lies in understanding the differences between these sorts of claims: “The rule on last substantial transformation as determinative of the origin of a good when more than one country is involved in the production

Fund and the International Bank for Reconstruction and Development (the World Bank) were established. At Bretton Woods, countries agreed that a need existed for an intergovernmental organization to deal with international trade. An agreement was reached in Geneva in October 1947 on the General Agreement on Tariffs and Trade. (GATT) and in March 1948, an agreement was reached in Havana on the International Trade Organization (ITO) Charter. The U.S. Congress foiled the ITO’s creation by repeatedly failing to approve U.S. entry into the ITO. *See* ANDREAS F. LOWENFELD, *INTERNATIONAL ECONOMIC LAW* 23-28 (2nd ed. Oxford University Press)(overview of the negotiations and process).

⁹ GLOBAL REDESIGN, *supra* note __.

¹⁰ Richard Baldwin & Patrick Low, *Introduction, in* MULTILATERALIZING REGIONALISM: CHALLENGES FOR THE GLOBAL TRADING SYSTEM 2 (Richard Baldwin & Patrick Low eds. Cambridge University Press 2009). *See infra* notes __ and accompanying text.

of a good, as found in Article 9 of the WTO Rules of Origin Agreement,¹¹ will (or should) change to better reflect the nature of national contributions to products,” versus “rules of origin no longer do the work they were originally designed to do and broader concepts need to be developed to take the value of innovation into account.”¹² An evaluation of legal change from an internal standpoint means that we take the values in the legal rules as unalterable givens and evaluate rules on the basis of coherence, certainty, predictability, completeness, and so on. An evaluation of legal change from an external standpoint means that we evaluate the values the legal rules reflect, possibly in addition to the things we evaluate when we evaluate from an internal perspective. For example, we might find from an internal evaluation that the Trade Related Aspects of Intellectual Property Rights Agreement (TRIPS) requires an extensive system of patent protection but an external evaluation might find that requiring some developing countries to implement extensive patent protection is unfair or bad for their economies or societies.¹³ External evaluations are critical, which means they inquire whether the law might be justified from some criterion such as morality, justice, welfare, or efficiency. An evaluation of legal change from a descriptive or predictive standpoint is an attempt to determine the actual direction of the law. An evaluation of legal change from a prescriptive standpoint argues for a direction the law should or ought to take.

These evaluative tools often work together. For example, we may want to evaluate legal change from structural, external, and prescriptive standpoints. Or we may want to evaluate legal change from a rules, internal, and descriptive standpoint. Points in between these two extremes are also available to us. The analysis of variable geometry in part I below is structural, has elements of both the internal and the external, and is mainly prescriptive. The discussion of basic operating or “constitutional” principles beyond progressive trade liberalization, found in part II, is structural, external, and both descriptive and prescriptive.

¹¹ The WTO Rules of Origin Agreement may be found at http://www.wto.org/english/tratop_e/roi_e/roi_e.htm (last visited March 6, 2011).

¹² For an example of the deficiencies in rules of origin analysis to understand international trade flows, see Andrew Batson, *Not Really “Made in China:” The iPhone’s Complex Supply Chain Highlights Problems with Trade Statistics*, WALL ST. J., Dec. 16, 2010, at B1-B2.

¹³ For an overview, see MICHAEL J. TREBILCOCK & ROBERT HOWSE, *THE REGULATION OF INTERNATIONAL TRADE* 437-40; 448-72 (3rd ed. Routledge 2005).

II. VARIABLE GEOMETRY

In the coming decades, one of the most important issues countries (and their populations) will likely confront is in what framework they will conduct most of their negotiations for trade agreements. Will the dominant model be multilateral or regional? For those of us who lived as trade lawyers through the Uruguay Round, the WTO has had a formative influence on us. If one were to survey international trade lawyers of a certain generation, you will basically hear, “it’s the WTO; is there anything else?” This perception of the state of affairs is rapidly changing, if it has not already changed, as the spaghetti bowl of regional trade agreements grows in size and complexity. The 2011 Obama Trade Agenda makes the case for continuing with the Doha Round but it also spends many pages explaining US regional and bilateral initiatives.¹⁴

The phrase “variable geometry” has developed to refer to situations in which a multilateral set of agreements exists, under some form of overarching organizational structure, but not all countries adhere to the same agreements the organizational structure covers.¹⁵ It is often a term used to refer to a way to move European Union enlargement forward.¹⁶ The European Union website defines “variable geometry Europe” to “describe the idea of a method of differentiated integration which acknowledges that there are irreconcilable differences within the integration structure and therefore allows for a permanent separation between a group of Member States and a number of less developed integration units.”¹⁷

There has been some recent discussion of applying variable geometry concepts to the WTO and its multilateral agreements, particularly because of the lack of movement in the Doha Round. Robert Lawrence’s “club-of-clubs” approach for WTO reform¹⁸ was the subject of the January 2011 discussions of the World Economic forum in Davos.¹⁹ The proposals are currently short on specifics, but appear to advocate the dismantling of the

¹⁴ See 2011 Trade Policy Agenda and 2010 Annual Report, http://www.ustr.gov/2011_trade_policy_agenda (last visited March 8, 2011).

¹⁵ See Mini-Symposium: The Future Geometry of WTO Law,” published at 9 J. INT’L ECON. L. 775 (2006).

¹⁶ The phrases “concentric circles” and “multi-speed Europe” are used to explain similar concepts. See J.A. Usher, *Variable Geometry or Concentric Circles: Patterns for the European Union*, 46 INT’L & COMP. L. Q. 243 (1997).

¹⁷ http://europa.eu/legislation_summaries/glossary/variable_geometry_europe_en.htm (last visited March 7, 2011).

¹⁸ Robert Z. Lawrence, *Rulemaking Amidst Growing Diversity: A Club-of-Clubs Approach to WTO Reform and New Issue Selection*, 9 J. INT’L ECON. L. 823 (2006).

¹⁹ GLOBAL REDESIGN, *supra* note __, at 67.

multilateral or single undertaking approach to WTO membership and ministerial round negotiations.

The club-of-clubs approach may be postulated with or without a single undertaking.²⁰ There can be a set of plurilateral agreements with or without most favored nation obligations, or, alternatively stated, with conditional or unconditional most favored nation obligations.²¹ What countries would prefer depends on whether they care about free riding by countries who do not agree to specific plurilateral obligations yet still reap the benefits.²²

A move towards plurilateralism may be seen as a move backwards from a WTO perspective, from Uruguay Round and on back to the Tokyo Round.²³ The WTO Agreement on Government Procurement (GPA) is held out as an example of the right direction.²⁴ This is ironic because the push has been towards making the GPA multilateral. The WTO and powerful WTO members have been trying to devise ways of broadening participation in the GPA. One such effort was the attempted move during the Doha Round to transform the plurilateral GPA into a multilateral framework agreement with fewer obligations and focusing on transparency in government procurement.²⁵ The work on transparency in government procurement is officially on hold.²⁶ Another such effort was a revision of the GPA text, completed in December 2006, partly designed to provide

²⁰ Hoekman, *supra* note __, at 13-15.

²¹ *Id.*; see JOHN H. JACKSON, THE JURISPRUDENCE OF THE GATT AND WTO: INSIGHTS ON TREATY LAW AND ECONOMIC RELATIONS 58-59 (Cambridge University Press 2000)(distinguishing conditional from unconditional most favored nation obligations).

²² Hoekman, *supra* note __, at 13.

²³ The WTO website summarizes the negotiating history of the Tokyo Round as it is traditionally understood:

[A] series of agreements on non-tariff barriers did emerge from the negotiations, in some cases interpreting existing GATT rules, in others breaking entirely new ground. In most cases, only a relatively small number of (mainly industrialized) GATT members subscribed to these agreements and arrangements. Because they were not accepted by the full GATT membership, they were often informally called “codes”.

They were not multilateral, but they were a beginning. Several codes were eventually amended in the Uruguay Round and turned into multilateral commitments accepted by all WTO members. Only four remained “plurilateral” — those on government procurement, bovine meat, civil aircraft and dairy products. In 1997 WTO members agreed to terminate the bovine meat and dairy agreements, leaving only two.

http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm (last visited March 8, 2011).

²⁴ Lawrence, *supra* note __, at __; GLOBAL REDESIGN, *supra* note __ at __.

²⁵ See http://www.wto.org/english/thewto_e/minist_e/min03_e/brief_e/brief09_e.htm (last visited March 10, 2011).

²⁶ *Id.*

incentives to broaden participation, in particular by developing countries.²⁷ Finally, there has been a significant move to make GPA accession a condition for WTO accession, a move that makes the GPA close to being multilateral. Mandated GPA accession as a condition to WTO accession is especially critical for countries with large public procurement markets, such as China.²⁸ The point here is not to outline events that have shaped the GPA but to inform the reader that many WTO members may be dissatisfied with having plurilateral agreements in the WTO system. To suggest a move away from multilateralism is a cut far away from the trend and conventional thinking about the WTO. The perception of plurilateralism as defeat may prove to be a significant obstacle to variable geometry in the WTO agreements.

Variable geometry, moreover, may be seen as already with us. It is currently accomplished through regionalism, outside the WTO but notified to the WTO.²⁹ To date, 474 regional trade agreements have been notified to the WTO, with 283 in force.³⁰ The variable geometry on the table right now may be seen as a move to simply internalize regionalism within the WTO structure.

The biggest obstacle to variable geometry at the WTO level is its potential difficulties in dealing with complex global problems in need of cooperation and compliance by significant numbers of countries. Variable geometry may work for some trade issues that have to do primarily with economics, such as tariffs, but there are hardly any of those left for advancing cooperation among countries. It could make linkage of trade and other issues, such as carbon taxes or labor standards more difficult to accomplish. A number of common problems will require multilateral solutions.

II. FROM VARIABLE GEOMETRY TO CONSTITUTIONAL ORDER?

Clubs do not function without common values.³¹ Three iterations or generations of values seem to be at work, or should be at work, in the world

²⁷ See http://www.wto.org/english/tratop_e/gproc_e/negotiations_e.htm (last visited March 10, 2011).

²⁸ See Ping Wang, *China's Accession to the WTO Government Procurement Agreement – Challenges and the Way Forward*, 12 J. INT'L ECON. L. 663 (2009).

²⁹ 351 regional trade agreements were notified to the WTO under GATT 1947/1994 Article XXIV, 31 under the Enabling Clause, and 92 under GATS Article V. http://www.wto.org/english/tratop_e/region_e/region_e.htm (last visited March 10, 2011).

³⁰ *Id.*

³¹ Values discussed at January 2011 World Economic Forum, but the focus was almost entirely on religious values. See “Moral Economy Dialogue: Global Agenda Council on

trading system. The first is progressive trade liberalization, the second is production sharing, and the third should be justice. “Should be” not “is” is the right language for the third stage of values because justice ought to be a goal for the world trade order in the coming decade and decades to come, but it is by no means certain that it will be. In the schema of legal change identified above, the discussion to follow is mainly prescriptive, external, and structural, though we should not rule out the connection to the internal. Values are important to legal analysis of WTO and regional trade agreements. Attend any meeting of international trade lawyers, and the implicit premise underlying their analysis, a concept of constitutional magnitude, akin to liberty or equality in domestic constitutional law, has been the idea of progressive trade liberalization, and now production sharing.

Given the limits on the scope of this essay, what follows is only a brief sketch of some of the issues relating to values in the world trading system. The focus will be on justice, but nothing like a comprehensive justification of the argument for justice as an operating or constitutional principle for international economic institutions. I would refer the reader to just a sampling of the recent literature on global justice, not all cosmopolitan in approach, some in fact liberal nationalist in approach, but all of which argue that justice is not simply a national or domestic concern.³²

Faith” in GLOBAL REDESIGN, *supra* note __, at 229; John DeGioia, *Creating a Values Framework*, in GLOBAL REDESIGN, *supra* note __, at 443. The exclusive focus on religious morality ignores the vast literature on global justice in moral and political philosophy. See *infra* note __ for a selective sampling of very recent literature.

³² See, e.g., MARTHA C. NUSSBAUM, *CREATING CAPABILITIES: THE HUMAN DEVELOPMENT APPROACH* (Harvard University Press 2011); IRIS MARION YOUNG, *RESPONSIBILITY FOR JUSTICE* (Oxford University Press 2011); RICHARD W. MILLER, *GLOBALIZING JUSTICE: THE ETHICS OF POVERTY AND POWER* (Oxford University Press 2010); THOMAS POGGE, *POLITICS AS USUAL: WHAT LIES BEHIND THE PRO-POOR RHETORIC* (Polity 2010); GILLIAN BROCK, *GLOBAL JUSTICE: A COSMOPOLITAN ACCOUNT* (Oxford University Press 2009); DARREL MOELLENDORF, *GLOBAL INEQUALITY MATTERS* (Palgrave Macmillan 2009); DENIS PATTERSON & ARI AFILALO, *THE NEW GLOBAL TRADING ORDER: THE EVOLVING STATE AND THE FUTURE OF TRADE* (Cambridge University Press 2008); DAVID MILLER, *NATIONAL RESPONSIBILITY AND GLOBAL JUSTICE* (Oxford University Press 2007); MARTHA C. NUSSBAUM, *FRONTIERS OF JUSTICE: DISABILITY, NATIONALITY & SPECIES MEMBERSHIP* (Harvard University Press 2006); *GLOBAL INSTITUTIONS AND RESPONSIBILITIES: ACHIEVING GLOBAL JUSTICE* (Christian Barry & Thomas W. Pogge eds. Blackwell 2005); *CURRENT DEBATES IN GLOBAL JUSTICE* (Gillian Brock & Darrel Moellendorf eds. Springer 2005); SIMON CANEY, *JUSTICE BEYOND BORDERS: A GLOBAL POLITICAL THEORY* (Oxford University Press 2005); ALLEN BUCHANAN, *JUSTICE, LEGITIMACY, AND SELF DETERMINATION: MORAL FOUNDATIONS FOR INTERNATIONAL LAW* (Oxford University Press 2004); *THE ETHICS OF ASSISTANCE: MORALITY AND THE DISTANT NEEDY* (Deen K. Chatterjee ed. Cambridge University Press 2004); KOK-CHOR TAN, *JUSTICE WITHOUT BORDERS: COSMOPOLITANISM, NATIONALISM AND PATRIOTISM*

When the GATT started out in 1947, the aim of the GATT Contracting Parties was trade liberalization, mainly for tariffs. This was accomplished through successive rounds of trade negotiations³³ The operating principle for these trade negotiating rounds was progressive trade liberalization, structured around the political influence of producers in national governments and the power of governments in trade negotiations. As Paul Krugman explains, “[i]f economists ruled the world, there would be no need for a World Trade Organization. The economist’s case for free trade is essentially a unilateral case – that is, it says that a country serves its own interests by pursuing free trade regardless of what other countries may do. . . . Fortunately or unfortunately, the world is not ruled by economists. The compelling economic case for unilateral free trade carries hardly any weight among people who really matter.”³⁴ Krugman elaborates: “Anyone who has tried to make sense of international trade negotiations eventually realizes that they can only be understood by realizing that they are a game scored by mercantilist rules, in which an increase in exports – no matter how expensive to produce in terms of opportunities foregone – is a victory, and an increase in imports – no matter how many resources it releases for other uses – is a defeat.”³⁵ What happens in trade negotiations is governed by politics. Governments want to close markets in which their country lacks comparative advantage and open markets in which it does. The result is global markets for goods and services that cannot be described as “free” but in which the legal rules of the game are ever so important in determining the market for particular goods and services.

The progressive liberalization operating principle could be said to have transformed into a production-sharing norm after the Uruguay Round. As Baldwin and Low explain:

This is a world in which production processes are spread through multiple jurisdictions across the world. The political economy effects of this fragmentation have been significant – blunting the old distinctions between “us” and “them” that use to drive trade policy. Producer interests that previously

(Cambridge University Press 2004). My apologies to any authors and their works I have omitted. I have not included the recent human rights/international trade literature, which is also vast. A crass commercial message for my own work: *GLOBAL JUSTICE AND INTERNATIONAL ECONOMIC LAW; OPPORTUNITIES AND CHALLENGES* (Chi Carmody, Frank Garcia, & John Linarelli eds., Cambridge University Press forthcoming 2011). I am also at work as editor on *RESEARCH HANDBOOK ON GLOBAL JUSTICE AND INTERNATIONAL ECONOMIC LAW*, to be published by Edward Elgar.

³³ LOWENFELD, *supra* note __, at 48-71.

³⁴ Paul Krugman, *What Should Trade Negotiators Negotiate About?*, 35 J. ECON. LIT. 113 (1997).

³⁵ *Id.*, at __.

sought to protect their local markets from outsiders now worry about market access conditions and trade costs in a range of other markets as well. Hence the growing political economy forces that favor more open markets.³⁶

Two results (and no doubt more) are likely to derive from this shift to a production sharing norm. First, in the drive to open markets to facilitate production sharing, producers lobby national governments to open more markets. If the WTO process fails to deliver, regional arrangements are sought. Second, producer interests are now more disconnected with citizen interests than ever before, if they were ever aligned very much to begin with, even in the era of the progressive trade liberalization norm. We are in a time of the state-less multinational enterprises. But the politicians, subject to the usual public choice ills, still promote the interests of these enterprises as if their interests aligned with the interests of the polity and its citizens.

The result is that the international economic order, as a legal system or legal order, is seriously *disordered*. The basic operating principle for deciding the values or interests trade agreements should promote is that of the multinational enterprise. Those values are decided upon essentially by national governments even though the interest of multinational enterprises are decidedly not national in their scope and indeed are sometimes contrary to national interests. Whether the interests of multinational enterprises align with those of citizens, labor, and consumers is really quite accidental, and often in conflict.

There has been a good deal written about whether the WTO or the world trading system is a constitutional order.³⁷ It clearly is not.³⁸ Constitutions serve a number of purposes that the WTO or any set of international economic institutions, even if considered together, were not conceived to deal with. I will try to sketch out very briefly some of the important features of constitutions. Among other features, constitutions resolve moral disagreements among citizens. For example, American constitutional law on the conditions for permissibility of abortions attempts to resolve a moral disagreement that has divided Americans.³⁹ Constitutions set the terms for equality among citizens in a polity. For example, American constitutional

³⁶ Baldwin & Low, *supra* note __, at 2.

³⁷ A recent and influential work in the area is *RULING THE WORLD? CONSTITUTIONALISM, INTERNATIONAL LAW, AND GLOBAL GOVERNANCE* (Jeffrey L. Dunoff & Joel P. Trachtman eds. Cambridge University Press 2009).

³⁸ Dunoff's contribution is particularly elucidating about the lack of constitutional structure in the WTO. Jeffrey Dunoff, *The Politics of International Constitutions: The Curious Case of the World Trade Organization*, in *id.*, at 178.

³⁹ See Georgia Warnke, *Interpretive Differences and the Abortion Debate*, in *GEORGIA WARNKE, LEGITIMATE DIFFERENCES: INTERPRETATION IN THE ABORTION CONTROVERSY AND OTHER PUBLIC DEBATES* 82 (University of California Press 1999).

law on standards for judicial review of legislation discriminating on grounds of race, gender and economic categories are among the areas of constitutional law setting the terms of equality in American society. Constitutions respect and enforce identity claims of various groups in a society, usually through recognition of liberty claims, thereby protecting the ethical independence of each person.⁴⁰ Constitutions provide for peaceful participation of citizens in governance. Finally, they liberalize international markets within countries, and in particular in countries that have adopted a federalist structure of government. The WTO does none of these things save one: liberalize markets. Perhaps even more significantly, the WTO is built on the wrong lexical priority for what might be seen as proper constitutional value system: economic power and economic efficiency trump rights and justice. In a constitutional order, justice has primacy, not efficiency or power. For example, in a domestic constitutional order, basic human rights trump (or *should* trump) internal market liberalization. No one could plausibly claim that efficient trafficking of slaves trumps the right of all persons to be free, an extreme example, but it makes the point. In the world trading system it is the reverse, and human rights concerns are often seen as illicit or inappropriate for international economic law. This is so even though trade rules now go beyond the border, to the regulatory autonomy of a state, the core of domestic constitutional order.⁴¹ This wrong priority of values is a symptom of disorder.

My point here is not to set up the WTO as a straw person. The WTO was created with limited purposes. It was not set up to be a constitutional order. It cannot be asked to do what it was not designed to do.

Rather, the point is to suggest that what is needed in the coming decade and thereafter is reform of global economic institutions generally, including trade institutions, something in the nature of constitutional reform. All of the global economic institutions “taken together,” according to philosopher Charles Beitz, “can be considered as the constitutional structure of the world economy; their activities have important distributive implications.”⁴²

⁴⁰ *Lawrence v. Texas*, 539 U.S. 558 (2003) is an example. The term “ethical independence is from RONALD DWORKIN, *JUSTICE FOR HEDGEHOGS* 368-71 (Harvard University Press 2011). The term reflects the well-accepted distinction between morality, which has to do with duties to others, and ethics, which has to do with living a good life. RONALD DWORKIN, *SOVEREIGN VIRTUE: THE THEORY AND PRACTICE OF EQUALITY* 211, 485 n. 1 (Harvard University Press 2000).

⁴¹ See Joel P. Trachtman, *Developing Countries, The Doha Round, Preferences, and the Right to Regulate*, in *DEVELOPING COUNTRIES IN THE WTO LEGAL SYSTEM* 111, 117 (Chantal Thomas & Joel P. Trachtman eds. Oxford University Press 2009)(on the “right to regulate” of a WTO member).

⁴² CHARLES R. BEITZ, *POLITICAL THEORY AND INTERNATIONAL RELATIONS* 148-49 (Princeton University Press 1979).

They form a basic structure of global society.⁴³ Consider the following three features of the global economic order and ask what values they should be built upon to have legitimacy to most people. First, global economic institutions affect life prospects in dramatic ways.⁴⁴ They affect benefits and burdens people are expected to accept. They substantially affect poverty and inequality. The rules are often designed to make the rich richer and the poor poorer.⁴⁵ Second, multinational enterprises benefit from inequality. Production sharing means that products can be reduced to components that can be made anywhere in the world where labor is cheapest, safety standards are lowest, and environmental standards the most lax. Intra-industry and intra-firm trade comprises a larger percentage of trade flows than ever before.⁴⁶ Third the world is interdependent, in substantial part because of global economic institutions. National borders do not realistically determine the limits of social cooperation.⁴⁷ As Beitz explains, “international interdependence involves a complex and substantial pattern of social interaction which produces benefits and burdens that would not exist if national economies were autarkic.”⁴⁸ In any such scheme of social cooperation, it is difficult to argue that justice should not be required for these institutional arrangements to have legitimacy.

CONCLUSION

There are so many ways I could have approached this essay. I could have focused solely on the internal, on changes in rules in the coming decades, such as on the work on the WTO built-in agenda, or on a synthesis of the rules of regional trade agreements. WTO accession is a significant topic, which I have ignored. My aim was to focus on two basic questions. One of those questions is existential: what is to be of the WTO and world trade institutions generally? This is the discussion of variable geometry. The other question I focused on goes to the core values of the world trading system: what should trade agreements do? Should they take questions of

⁴³ See, e.g., Tan, *supra* note __, at 21. Tan is not the only source for this point.

⁴⁴ Tan, *supra* note __, at 27-29.

⁴⁵ OXFAM, RIGGED RULES AND DOUBLE STANDARDS: TRADE, GLOBALIZATION, AND THE FIGHT AGAINST POVERTY (Oxfam 2002), <http://www.maketradefair.com/en/index.php?file=03042002121618.htm> (last visited March 11, 2011); see also http://www.oxfam.org/en/campaigns/trade/rigged_rules (last visited March 11, 2011).

⁴⁶ OECD data.

⁴⁷ Beitz, *supra* note __, at 149.

⁴⁸ *Id.*

distributive justice into account? These two questions, I think, will, or perhaps should, have some play in the decade to come, and beyond.