POLITICAL STUDIES: 2014 VOL 62, 435–451
doi: 10.1111/1467-9248.12036

Does the WTO Violate Human Rights (and Do I Help It)? Beyond the Metaphor of Culpability for Systemic Global Poverty

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I challenge an influential analysis (the 'participation account') that attributes human rights violations to the global economic system, and attributes complicity with those violations to citizens of affluent countries. The participation account is shown to rest on a faulty account of wrongful action. An alternative, and superior, account of wrongful action (the 'agency account') is proposed, and used to analyse the rules of the global economic order. These include the 'foreground rules' of trade agreements and the 'background rules' of state privileges. The agency account identifies wrongful action with unreasonably imposing losses/risks. The systemic bad effects of the economic system and its rules are shown not to be due to agents in the system acting unreasonably in this sense. The metaphor that the economic system 'violates rights' and that we act in complicity with this are thus shown not to stand up to analysis.

Keywords: human rights violations; global economic order; complicity; poverty; WTO

Do the systemic effects of the international trade system constitute human rights violations and, given that we contribute to that system to different degrees, do we share culpability for those violations? A number of political theorists seem to think so.[1] But while it is relatively uncontroversial that the system has deleterious effects for large numbers of people, one needs to defend a certain analysis to show that these effects amount to violations of human rights with which we are complicit. An influential analysis, call it the 'participation account', favours that conclusion. On this account, a person shares moral culpability for systemic human rights violations if (1) he or she positively participates in (contributes to) a social system that (2) foreseeably and (3) avoidably leads to an 'under-fulfilment of human rights': severe losses in well-being for some persons.[2] There is, however, an alternative to that analysis. It says that not just any contribution will do. To be culpable for violation of a person's human rights your actions must constitute an identifiable wrong to that person directly *or* through complicity with the actions of others that wrong him or her. Wronging a person on this view means *unreasonably* imposing losses or risks on him or her (whether directly or negligently). Without an *unreasonable* imposition of this kind by some agent there is no identifiable wrong, and so no violation. Call this the 'agency account'. Poverty caused by the international trade system can, on the participation account, be characterised as mass human rights violations based solely on the observations that the effects of the system are foreseeable, a plausible alternative system is conceivable, and people contribute in various ways to the system. On the agency account, however, one cannot jump to that conclusion. One must first identify unreasonable actions that impose the negative effects and show how people are complicit in those acts.

The agency account, I will argue, is superior to the participation account. This is because the latter does not have a plausible criterion for *wrongful* action, and so cannot differentiate importantly distinct ways in which people can contribute to a system with bad outcomes. The agency account does. I will also show that on the superior, agency account the negative systemic effects of the trade system are not appropriately described as violations. A different kind of moral analysis is needed to address systemic poverty. In the first section, I set out the participation account of violations and introduce a responsibility taxonomy that is helpful for analysing claims about breaches of justice. In the second section, I introduce the wrongful action test: an account of violations must identify plausible candidates for wrongful actions with regard to those it claims suffer violations. I show how the wrongful action criterion implied by the participation account is implausible, failing to explain a number of key examples which the agency account convincingly explains. In the third section, I apply the agency account analysis to the core actions maintaining the international trade system and show how among these there is no plausible candidate for actions that systemically violate rights, and certainly no clear line of complicity on our part. The analysis does not foreclose on other forms of moral analysis for the systemic failures of international trade or arguing for reform, some of which are considered.

What Kind of Responsibility? Culpability, Liability and Complicity

The participation account is an account of responsibility for the carrying out of certain moral wrongs: human rights violations. It should therefore be distinguished from accounts of moral responsibility based on benefiting from historic injustices, such as colonialism, and the need to compensate those injustices. It should also be distinguished from accounts of moral responsibility based on social duties of care, such as the duty of care (*equal concern* or *fairness*) owed by political institutions to members of a political community; duties owed irrespective of whether those institutions have caused or imposed losses (Meckled-Garcia, 2008, p. 258). The view can be analysed using four key dimensions of moral responsibility (elements of a 'responsibility taxonomy'): (1) *cause*: an account of the kinds of causes and effects involved in assigning responsibility (systemically caused serious well-being losses); (2) *culpability*: an account of how people's actions relate them to those causes in such a way that they are morally culpable for the troubling outcomes (contributing to a system that foreseeably and avoidably causes these losses); (3) *liability*: an account of what kind of relationship one must have to the troubling outcomes to be in some way responsible for addressing the causes in some way (being morally culpable for the losses); and (4) *liability content*: the form that addressing these outcomes must take for any liable agent (remedying losses to make up for one's culpability).[3] In what follows I focus on the culpability and liability elements rather than on the content of the relevant losses or the specific form of liability that culpability attracts (Ashford, 2006, p. 231; Caney, 2009, pp. 241ff.).

In the words of Thomas Pogge, people who cannot satisfy their basic needs because they lack security in the means for satisfying them suffer 'under-fulfilment' of their human rights (Pogge, 2011, p. 4). Where a system of institutions imposes these insecurities and the consequent losses in well-being are foreseeable and avoidable (in the sense that one can envisage an alternative system with reduced loss), then these losses amount to human rights

violations; the total under-fulfilment is a 'human rights deficit' (Pogge, 2011, p. 13, p. 16). People in affluent countries contribute to the imposition of a deficit-causing system on poor countries. They vote for, or pay taxes to, governments that perpetuate that system. They are therefore complicit in the violation (they 'share responsibility' for it) (Pogge, 2011, pp. 16ff.). Being thus culpable, they should provide a remedy for those whose rights they help to violate: the global poor (Pogge, 2010, p. 52). The violation is not the mere loss, however, but the imposition of conditions leading to the loss, and our complicity is with that imposition.[4] The fact that we also enjoy benefits from that system only adds insult to injury; it is an additional wrong but not the primary wrong (Pogge, 2005, pp. 71ff.). By analogy, you need to prove theft in order to prove that I wrongly benefit from stolen goods.

On the participation account, then, the mere fact that people suffer well-being losses is not automatically a human rights violation, because violation implies agency. People must, individually or collectively, be implicated in the loss of well-being through their choices and actions (Pogge, 2011, p. 9). In systemic cases this has an institutional component and an individual component. Well-being losses are produced by an order of rules and practices that is not voluntary: the rules of international trade, for example, or the international system of privileges that allows corrupt states to impoverish their citizens. If the effects of this order are foreseeable and avoidable, then any competent agent contributing to upholding that order, and so in imposing it, shares in the violation (Pogge, 2011, p. 2, p. 16). The term under-fulfilment is in that sense misleading. It seems to imply that someone is liable, irrespective of how losses come about.[5] However, liability for remedy on this view requires culpability, which requires agency.

I should emphasise that for personal culpability, on this view, only the effects of the system as a whole need be foreseeable and avoidable. It must be foreseeable that this kind of system will have negative effects and that an alternative, plausible system would not, or would have fewer. For the individual, however, what must be foreseeable and avoidable is only that his or her actions contribute to a system with those effects (Pogge, 2005, p. 77). There is no need to establish individual direct causal responsibility for any particular person's poverty, say, for a person to be culpable and so bear liabilities for that poverty.

It is useful to compare this to Iris Marion Young's 'social connection' view, which assigns collective responsibility for negative systemic effects. Responsibility for such 'structural injustice' is not, however, translated into individual culpability for wrongful action, so one's liability according to Young is not to remedy one's part in a wrong (Young, 2006, p. 115). Rather, the mere fact that our actions causally contribute to a system that has these effects makes us responsible for changing that system. Her view shares one criterion of *liability* with the participation account: participation in the system. Significantly, however, that need not constitute *culpability* for human rights violations (Young, 2006, p. 115). I will not discuss the merits of Young's view here but will note one advantage the participation account has over it; that is, the participation account at least offers an explanation as to why participation in a system is a necessary condition for liability: it constitutes complicity with a wrong. Without some such justification for liability, the condition that my *participation* in a system is necessary for apportioning me responsibility to alleviate its effects seems to be a spare wheel. If I do not need to do anything wrong to bear responsibility for addressing

systemically caused well-being losses, it is unclear why liability should depend on any particular type of interaction with the system.

Participation theories and Young eschew the condition that injustice must imply direct causal responsibility for harm by an agent. Collective institutions, rules and norms mediate each individual's relationship to injustice. This saves these theorists from having to trace difficult (and for the most part, absent) lines of proximate causation between an individual participant's actions and any particular negative effect of the system. Participation accounts and Young are at one in only needing the system to cause well-being losses in order to apportion liability to participating individuals to address those losses. They differ on the grounds of that liability. For Young culpability is neither individually present nor relevant for liability with regard to systemic harms, while for Pogge culpability is the basis for liability (Pogge, 2011, p. 9).

There are standard cases where it is plausible to say that people have a liability to address some collective outcome without being culpable for it (although this is not the route Young takes). In a fair scheme of social justice, persons can have duties to contribute a fair share: pay taxes and make efforts that are not required because of their culpability for any other person's condition. Their liability is rather based in the fairness of the scheme, and their membership of it. They may have other liabilities that are indeed based on culpability but, plausibly, social contribution is not. Where institutions commit abuses the participation account needs to show that the individual's actions somehow connect him or her with the abuses in question, so that he or she can be said not only to be liable for contributions to improving the scheme, but culpable, and so liable for remedying those he or she wrongs.

Four Types of Complicity

There are four useful senses in which one can understand culpable contribution to a wrong. One can see it as an action that is part of a violating action ('*participation* complicity'), as where Jo holds a victim down so that Jay can shoot him. They both participate in the murder. There is another sense of complicity in which Jo facilitates but does not perform the wrong in question, as where she supplies the gun to those who will perform the wrongful act ('*facilitation* complicity'). There is also the sense of complicity where she stands idly by, by agreement or otherwise, allowing a violation to take place that she could reasonably prevent ('*negligence* complicity'). Finally there is the sense of complicity where Jo helps Jay avoid her liability for the wrong perpetrated ('complicity *with impunity*'). I take it that culpable involvement in a wrong must imply one of these forms of complicity. Below I focus on the first three only.

In these terms, participation accounts must hold that systemic poverty is due to agents participating in, facilitating or negligently permitting a collective institutional wrong. Culpability for the effects of many agents' free actions requires complicity. Consider appeals to the slavery analogy in participation accounts (Ashford, 2006, p. 230; Pogge, 2005, p. 57, p. 76). Participants in slave systems, not only the slaveholders, but all who contribute to the system, are culpable. By voting for governments perpetuating slavery law and obeying slave laws, they are culpable by complicity in the imposition of foreseeable harms. By analogy individual participants in economic systems that impose foreseeable and avoidable well-being losses would seem to be culpable too.

Consequential Harm vs. Wrongful Harm

But there is an important disanalogy between slavery and trade. Participation plus foreseeability and avoidability of harm appear to explain culpability in the slave system. But there is a wrong in the example that is additional to the wrongs of collective and individual complicity: the basic wrong of enslaving people. Slavery-friendly governments and anyone assisting them wrong people because acts of slavery wrong people, the first type of wrong deriving from the second. Slave laws are wrong *because* acts of slavery are wrong. To go over to the trade system the analogy would need an equivalent basic wrong to slavery with which others, governments especially, can be complicit. Assuming, for now, that the equivalent basic wrong in the global trade case is not individuals directly imposing poverty on other individuals, this leaves the option of defining participants' basic wrong (the equivalent of slavery) as participating in a system of causes that has foreseeable and avoidable harmful effects. As I will show, this definition of wronging is fundamentally faulty. When a more plausible account of wronging others (as *unreasonable* imposition of loss) is set out, our participation in the trade system will be seen not to count as wrongful imposition.

The problem with the participation account is the term 'imposition' in the claim: the global economic system imposes harms. If the government of a political order (in that sense of 'system') decided to impose or allow conditions of starvation for a group of its citizens, for no mitigating reason, it is plausible to say that this government commits a wrong. It fails in its duty of care towards those over whom it exercises political power. Facilitating that government, say by voting for it, would imply complicity. But systems with governing authorities are not the focus of the participation account's analysis, given the absence of an equivalent governing authority in global trade. A plausible analysis will need some general notion of non-governing agents' (states' and individuals') duties of care, and when their actions violate that duty even in the absence of a governing central authority.

The duty of care implied by the participation account is to avoid contributing to any network of actions and rules that has the foreseeable and avoidable result of causing under-fulfilment of basic needs for others. One commits a wrong on the participation account by *positively (causally) contributing to any network of actions and causes that has foreseeable and avoidable negative effects on others' well-being*. But this is a questionable notion of wronging. Some ways of contributing to patterns of causes that will foreseeably and avoidably lead to serious losses in well-being are fully legitimate.

Consider cases where our actions causally contribute to a loss, but do so justifiably. Adding to the actions of the exam system by failing a particular person in an exam may be of huge detriment to his or her life, even leading to health difficulties. Yet teachers' responsibility is to mark fairly. Self-defence can seriously harm an assailant, foreseeably and avoidably, yet it is legitimate to use it or assist others in using it proportionately. Issuing punishments to war criminals, as a member of a penal system, curtails basic needs related to freedom of action. There are also 'intervening agency' cases, such as where you organise a demonstration for freedom of expression in circumstances where, foreseeably, it will be violently attacked by the police. Political wisdom aside, the resulting but avoidable wrongs are not your wrongs.[6] Foreseeably, other agents intervene to turn your legitimate actions into the causes of a wrong.

Consider also a case where you work on the printing presses that produce legal tender. In this case, you contribute to the system in which the effects of supply and demand operate. It is foreseeable that in that system some people will go out of business or become unemployed and suffer well-being losses, some of them serious. Perhaps the money system should be abolished, or its effects mitigated, and certainly these results would then not occur. But it is not plausible that your wronging those that suffer is what makes you liable for contributing towards this kind of change. The nature of the outcomes depends on a number of other factors, not least the actions and inactions of others. And your choices are not lined up with those in the sense of dictating what happens after you have acted. It would be entirely different if what was under consideration was your knowing vote for a government that can, but refuses to, address the effects and costs of the market fairly.

Contrast this with a case where two factories pollute a river, harming the health of those using the water. Even if no-one can tell whose effluent caused the harm and even if it takes at least two polluters for harm to occur, each act of pollution is in itself a wrongful action because for each act one can ascertain a clear and serious degree of risk increase (compare Pogge, 2005, p. 77). Each polluter acts in a way that can be expected seriously to increase health risks, given the real risk of others polluting, and that choice is not an acceptable way to pursue one's economic aims. In the banknote printing example, because of intervening agency, the print worker's actions do not impose a recognisable amount of risk to others' livelihood. The effect results from a network of choices within which people are pursuing legitimate ends such as work and choosing what to consume and what not to consume.

This indicates that to be culpable it is not sufficient that one contributes in just any way to a network of actions or *a pattern* of causes that has foreseeable and avoidable effects on well-being. What is missing is a criterion for illegitimately contributing to those causes. A plausible criterion will explain the above cases and counter-examples. I should underline that I have not ruled out the view that one can have liability to address the effects in these examples on a different basis, such as a fair scheme of shared institutions in a political community. The point of the participation account, however, is to base liability in culpability, with participation a sufficient ground for culpability. Yet it is precisely its account of wrongful action that is most weak.

Pogge does give *some* additional criteria for wrongful contribution to the system. The alternatives must be reasonable and plausible. But his notions of plausible or reasonable are very wide. They only exclude large costs, or very 'massive harms' resulting from an alternative course of action or institutional order.[7] They do not consider burdens to individual persons in terms of being able to pursue a distinct life plan (except where the burden would push someone below basic need satisfaction) (compare Caney, 2009, p. 240), or how intangible or unascertainable their contribution to increased systemic risk might be given intervening agency. For those reasons, these added conditions will not explain all the cases introduced above. The intervening agency cases, for example, will still count as wrongful actions without some additional criterion.

The difference is more plausibly explained in terms of a more fine-grained notion of reasonableness. Some contributions to networks of action recognisably fail to respect people's capacity and ability to lead distinct lives with separate commitments and choices. They subordinate people's capacity to pursue distinct lives, and develop distinct commit-

ments, to extraneous aims: aims not emanating from their own exercise of that capacity.[8] Violent police repression of a peaceful protest subordinates to state aims protesters' capacity to pursue distinct lives and commitments through exploring distinct opinions, as well as the same capacity in their potential audience. The corresponding burdens associated with alternative courses of action (governments facing opposition) cannot justify failure to respect people's distinctness. Imprisoning an offender, or exercising potentially harmful force in self-defence, on the other hand, can be used to safeguard and acknowledge such distinctness. When they occur, these actions do not subordinate the offender's capacity to pursue a distinct life to the aims of others. Nor is subordination present in fair exam marking.

The agency account incorporates this reasonableness condition explicitly. On that account an action that wrongs another is defined as follows:

> R: For an agent to wrong a person with regard to his or her well-being an identifiable action/omission by that agent must *unreasonably* impose, or unreasonably permit, losses/risks to that person, where 'unreasonably' means: the action recognisably subordinates a person's capacity to pursue a distinct life or develop distinct commitments, to the aims of others.

The unreasonableness test asks whether a threat to the condition of a person's capacity to pursue a distinct life is being used *as a means* to achieve other goals.[9] Repressing peaceful protests threatens that condition in this way; organising them, in the face of danger, with consenting adults does not. Any causal contribution to a network of causes that, as a system, has certain harmful results is not itself a wrong unless it is in this sense unreasonable.

Note that the test allows for negligent wronging too, where we unreasonably expose others to increased dangers even if that is not our primary intention. A reckless driver in a hurry, for example, may not set out to harm anyone. Yet he or she unreasonably creates increased risks: he or she subordinates others' capacity to pursue distinct lives to his or her fast-motoring aims.[10] The risks created by a fast-moving ambulance, given that they are proportionate, on the other hand, do not negligently subordinate people's capacity to pursue distinct lives to others' aims. Undermining a person's ability to secure his or her livelihood, on this test, is indeed a wrong, as is negligently acting in a way that endangers that ability. So polluting a poor farmer's land to get rid of him or her is an example of the first, and doing so to avoid waste-disposal costs is an example of the second.

It is important to note how this notion of reasonableness engages with how we should address others' needs. On its own, the duty not to act in a way that subordinates others' capacity to pursue distinct lives does not imply a personal duty to secure need satisfaction for others to any particular level. A demand of that kind would potentially crowd out our capacity to pursue distinct lives and commitments, save for those actions necessary to secure our own basic needs. Our personal choices in career, relationships, life projects and so forth would only be legitimate on the condition that they contributed to securing basic needs for others. Deviation from that demand would count as wronging those whose basic needs we could secure. As a maxim it would effectively put our lives entirely at the service of others' well-being, thereby undermining our capacity to pursue genuinely distinctive lives. It would therefore be unreasonable. There are, nevertheless, other bases for liability to address other people's condition. As mentioned above, there are duties to do one's part in a fair

social scheme. There are also rescue duties, such as where one can rescue another person at no unreasonable cost. Failing to do so can be said to violate a human duty of assistance. In neither case is the liability a remedy for a wrong committed.

Returning to the example of the worker in the banknote factory, preventing unemployment would require altering and coordinating many people's actions. Assuming that the worker is not coordinating his or her actions with others to impose unemployment, he or she cannot therefore be culpable for unemployment. He or she is not in a position to direct what he or she does so as to create or reduce risk of unemployment to any degree. His or her actions cannot, then, be said to impose or permit unreasonable risks according to R.

Complicity Revisited

The agency account also provides a ready analysis of collective wrongs in the form of the different forms of complicity (participation, facilitation and negligence). In each case there needs to be a wrongful action/omission with which one is complicit. But complicity too cannot simply mean contributing in any way to the foreseeable and avoidable perpetration of a wrong. Persons involved in mass kitchen-knife production know that there is a high statistical probability that some of their knives will be used to commit crimes, and that is foreseeable and avoidable. They can avoid their role in the result too as they could stop producing altogether. But they neither participate in those wrongs, nor negligently permit them to happen. For a person to participate in a wrong, such as a group kidnap, he or she needs to act with the recognisable aim of contributing to the action that is the wrong.[11] There must be concert: agents must be aiming to act together, even if they do not explicitly aim to cause the loss.

To be negligently complicit, a person must allow a wrong to happen where he or she could reasonably thwart it. Gun-makers act with negligent disregard by allowing a wrongful use of their guns where they could prevent it, and fail to do so for no legitimate reason. Merely producing guns that get wrongfully used is not sufficient for negligence here. Selling guns to known criminals, or without good reason failing to report that such criminals have a gun, is an example of negligent complicity. Note that neither participation complicity nor negligence complicity depends on whether the agent's contribution is effective or not. So the Nazi informant is complicit with the Third Reich's crimes even if the information he or she supplies is ineffective. This can be summed up as follows:

> C: To be complicit in a wrongful action, in the sense of R, an agent must act with regard to an action that objectively wrongs a person with the recognisable *aim* of (a) *participating*: being part of that action, or (b) *facilitating*: assisting others in carrying out that action, or (c) *negligent omission*: allowing that action to happen where he or she could thwart it at no unreasonable cost.

On this test, the passive Nazi party member and the citizen voting for slave laws are complicit. Their actions recognisably aim to facilitate actions that can be independently identified as wrongs. A person making and selling shoes in the context of a slave society (with no vote on slavery itself) is, on the other hand, not complicit in acts of slavery. His or her shoes, and taxes, contribute to the society. Yet no particular shoe sale can recognisably aim at participating in or facilitating enslavement, as opposed to just making him or her a

living. Nor could refusal to sell a pair of shoes recognisably aim to thwart slavery to any ascertainable degree. A well-chosen action can protest against slavery, and thereby encourage others to thwart it, but it is not in itself a recognisable blockage on slavery itself. The same goes for producing banknotes and its relationship to levels of unemployment: no refusal to make a banknote can recognisably aim to thwart any level of unemployment or its effects.

By incorporating the notion of reasonableness, the agency account is better placed than the participation account to explain permissible vs. impermissible contributions to a system that has negative effects. It is thus better placed to explain when we are complicit with human rights violations, assuming that a violation must imply a wrong. This is not, of course, a definitive proof of the validity of conditions R and C, but a *prima facie* case for the agency account: it shows that the participation account is not the only game in town when it comes to the analysis of violations. What does this analysis tell us about international trade?

Does Anyone Systematically 'Impose' Global Poverty?

Market agents can and do engage in what we can call 'standard wrongs': violence, racketeering, negligent selling of dangerous goods, imposing inhuman work conditions, selling the products of slavery and so forth. However, the charge of the participation account is that global poverty is a systemic wrong. Global institutions impose insecurity of basic needs as do we who participate in these institutions. I have argued that the conditions for violation and culpability at the heart of the participation account are problematic. Does the agency account support different conclusions?

There may be some impersonal notion of foreseeability and avoidability for the system as a whole: one can foresee it will have negative effects, while some conceivable alternative system might have different effects (Pogge, 2005, p. 60). But for the violation charge to stick there must be a connection between these effects and some wrongful actions or omissions. Either (a) there are identifiable actions the system facilitates that constitute wrongs and we are complicit with the system's facilitation of those, or (b) there is some clear agency in a position of governance with policies that unfairly allow or impose poverty, and we are complicit in these wrongful policies. I consider these in turn.

The existence of systemic poverty depends on the causal network of choices that is the market: individual actions of trying to consume, sell, produce and win market shares, in addition to the absence of certain safeguards such as regulative intervention, redistributive measures, public service provision, investment and so forth. At the level of the global system of trade the actors in this network do not coordinate their actions with the recognisable aim of producing the negative effects. They do not, then, participate in a collective wrongful action in the sense of C. Nor are their actions negligent wrongs given that there is no clear sense of any one action imposing any specific degree of risk – no clear sense that any individual market action is *unreasonable* in sense R above. Systemic poverty, such as that caused by price rises, competition or supply and demand, is not the result of distinct choices, imposing specific losses/risks which can be isolated from the contributions of many uncoordinated actions.

Consider a price drop that leads to poor rice farmers going out of business. That effect might in part be due to other farmers, with subsidies for their goods, selling cheap rice on

the international markets. There is a great degree of intervening and contextual agency (currency exchange markets, currency regimes, domestic actions, customers buying cheap), and a mixture of long- and short-term effects. Given that these choices are uncoordinated, it makes no sense to attribute any recognisable degree of risk increase to the individual actions of producers or consumers. Even if there were coordination at some level, such as with a lobby group, the choices that lead to the effects are not coordinated 'all the way down'. One cannot attribute to a market agent, then, the individual capacity to use the market to subordinate others' capacity to pursue a distinct life to his or her own ends (compare Pogge, 2011, p. 14). For the same reason one could not plausibly claim that those actions are negligent, for there is no meaningful sense in which these actions 'allow' the market to have these effects. Nor are the effects plausibly due to these agents aiming at a collective goal that is itself wrongful, or knowingly permitting such a goal when it could be reasonably thwarted, so there is no complicity, in the sense of C.

The same applies to the actions of individual governments in the trade system. Investment in certain industries, subsidies, even technological development can have serious repercussions for the economic plight of people in other economies. But save for very specific malicious acts, these effects do not represent individual governments acting to subordinate any person's capacity to pursue a distinct life to governmental aims. The repercussions depend on many intervening actions and decisions, which are not coordinated. Nor do individual governments' economic actions unreasonably permit risks to befall people. This is because economic risk for participants in the market is not controllable through governments' individual economic decisions. Compare that to a standard wrong like selling poisonous products. There the agents make choices to impose clear and serious risks. Doing that for their economic ends is clearly unreasonable.

Given that independent actions in the system are not good candidates for the mass poverty-imposing wrongs with which we might be complicit, it is natural to turn to the rules of trade. Theorists holding the participation account effectively assert an analogy between domestic government abuse and failures in international governance (Pogge, 2010, p. 29). There are indeed rules, obligations and rights that define elements of international trade. First, there are those 'foreground' rules of economic interaction that arise from inter-state agreements on trade regulation. Second, there are 'background rules': principles of international law defining the rights and privileges of states (and other agents) in the international system, including the extent of states' powers to agree trade terms (Pogge, 2010, pp. 51ff.).

Foreground Rules

Consider the World Trade Organization's (WTO) system of agreements and arbitration fora.[12] Its defining aim is to foster and facilitate free trade through negotiated agreements, thereby avoiding inter-state hostilities over protectionist trade measures (Joseph, 2011, p. 12; Lowenfeld, 2002, p. 28). The principles that define the Organization's mandate reflect this (Hoekman, 2002). At the same time it has been accused of fostering a number of faults: bias towards commercial interests; bias to large economies through allowing subsidies; unfairly complex and expensive arbitration, reducing access to enforcement; allowing rules that lead to environmental damage, attacks on public services and much more. The important claim for the purpose of this article would be that organisations like the WTO violate the human

rights of the global poor because their agreed rules have negative effects on access to food, health and development. The wrong is the imposition of the harmful rules. We can then be said to be complicit with that wrong through our contribution to governments upholding the rules. While the one-sided and negative consequences of globalised trade are undeniable, the agency account of violations asks whether this claim can be pinned down to wrongful actions and choices.[13]

The WTO is a forum. In it the representatives of states negotiate the terms of trade regulation for goods and services crossing their borders. It is these agents that engage in negotiations because in international law they are the agents responsible for, and entitled to control, such cross-border transfers. The transfers and tariffs on them represent gains and losses for domestic economies, for which the same agents are also responsible. The core principles of the WTO forum, such as trade reciprocity and the extension of most favoured nation status, represent a background for negotiating over-the-border benefits (absence of tariffs) and burdens (tariffs) for separate economies (GATT, Art. I). These are burdens and benefits in terms of the impact on growth and development for negotiators' domestic economies. The elements of a negotiation relating to these burdens and benefits, such as disclosure of knowledge, offered tariff concessions, declared bottom lines and so forth, also represent bargaining chips that can be used to influence other states' trade policies. They are therefore weighed in terms of potential advantage and disadvantage given each negotiator's bargaining mandate.[14] At stake then in these negotiations on what counts as permissible interpenetration of each other's markets is the pursuit by each state of its domestic economic imperatives (Patterson and Afilalo, 2008, pp. 87ff.).

As a negotiating forum the organisation itself has no powers beyond facilitating agreements and adjudicating on disputes in agreements. It certainly has no mandated powers to *govern* the *effects* of trade, positive or negative. There are some provisions in the core treaties for states themselves to restrict trade on the basis of imperatives relating to development and other matters that do not explicitly deal with economic rights but could be related to social measures.[15] These are provisions on permissible restrictions on products crossing borders on the basis of preserving public morals (GATT, Art. XX, para. a); safeguarding human life or health (para. b); because they were produced by prison labour (para. e); or could damage exhaustible natural resources (para. g). There are also provisions relating to exceptions for developing economies (GATT, Art. XVIII). Yet these provisions merely empower states to restrict movements of goods and services across their borders on the basis of the conditions. They do not empower WTO institutions to implement any particular policy, nor do they obligate states to trade with others for any particular purpose. They are triggered only through decisions to regulate trade by particular states.

The relevant agents of trade regulation, then, are states entering into and upholding trade agreements, including agreements on the ground rules of trade. So to claim that the foreground rules of trade violate the human rights of the poor, it would have to be shown that states wrong the global poor, in the sense of R, through entering into and upholding these trade agreements. Now it is clear, quite apart from the WTO, that states can and do engage in agreements that make them complicit in human rights violations. Agreeing to sell arms to governments that will use them for repression does that. Where we knowingly vote for governments that carry out such actions, we can be said to be complicit. But it is not

clear in what sense these actions are due to the imposition of a trade system, as opposed to the absence of an additional system of institutions and restrictions. Nor is this kind of action the obvious explanation for systemic global poverty.

I am assuming that the kind of systemic poverty we face across the globe is principally due to economic effects, rather than direct intervention (Pogge, 2011, p. 14). Lack of development, investment, infrastructure, education, demand, domestic redistributive policies, democracy and opportunities, and the resulting inability to compete against better-resourced economies, all contribute to levels of poverty, in addition to the competition itself. In that context, current patterns of trade are not geared to securing global need satisfaction. Some alternative system is conceivable in which, say, beneficial trade can be *commanded*, not just permitted, and continuous adjustments made to rates of trade so as to distribute its benefits where they are needed most. The WTO principles and agreements do not make provision for that kind of institutional command structure or action. Nor could they, for a fundamental reason: they lie on top of a 'states system' where the accepted rule is that the power to direct economic behaviour from agents is the privilege of states, and states only. That means that states reap both the advantages and losses of their trade decisions. If states want to secure their economic growth, say against a crisis, they must pursue an imperative to maximise economic advantage, because there is no global system of condition-less compensation for losses. The ground rules of trade fora can indeed aim at fair dealing. But more substantive measures to change resource allocations through trade would need a different kind of institutional order altogether. This would have to involve states being required to trade even when it goes against their domestic interests, where this favours a separate economy; which is to say, states would have to make positive contributions to the plight of other states, in order to address well-being levels.

This does not fit easily with the claim that global poverty is a human rights violation perpetrated by the imposition of foreground economic rules. As I pointed out above, the mere absence of contributions towards addressing people's well-being is not a wrong. It is only where there is an identifiable omission that is unreasonable, according to R, that one can be culpable for, say, negligent wronging. But outside political societies with special duties of care, and specific rescue cases, there is no clear way of establishing what counts as a reasonable or fair cost to a state; no maxim each state could follow in negotiations that would produce a recognisably fair share of burdens and benefits to all states. The same is true of states' trade behaviour with regard to the condition of individuals within other states' economies. There is no negotiating maxim states can follow that guarantees any particular distribution of benefits and burdens across persons globally and that can at the same time be said to impose a fair burden on those following it.

Take the agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). It is generally accepted that the agreement has the effect of transfers of resources from developing countries, with little intellectual property production and registration, to developed countries, which have the lion's share (Hestermeyer, 2007, p. 147). It is an example of unfair dealing between developed and developing states. However, the further claim is that because enforcement of this regime is causally connected with reduced accessibility to certain essential health products (like generic HIV medicines), then this is a prime example of a human rights breach.[16] Yet it is not obvious that the states behind the treaty framed it in

order to subordinate people's capacity to pursue distinct lives to their aims. Rather, they acted under competitive negotiating conditions to pursue domestic (or sectoral) interests vs. expected negotiating gambits from others. The negotiations were over intellectual property rules for countries wanting to engage in WTO trade, and the terms ultimately decide how much income IP owners can get from their patents. It is not plausible that the treaty or the negotiations aimed at subordination, given the unquantifiable amount of intervening agency between a treaty decision and any individual health outcome.[17] Alternatively, to say that states negotiated negligently, in the sense of R, it would have to be shown that their negotiating stance unreasonably permitted losses. That means negotiating in a way that subordinates people's capacity to pursue distinct lives to other aims. But once again, there is no obvious maxim that states could follow in competitive negotiations that would produce fair outcomes, and from which the wrongdoers deviated. It is unclear what any such maxim would require; what negotiating stance could guarantee a treaty outcome that correctly balances the interests of developers of medicines against those who could make use of those drugs. Negotiating under competitive circumstances does not leave room for maxims more suited to governance institutions, given that it requires coordinating aims and uncompensated suppression of some negotiating mandates (Harrison, 2007, p. 153). Furthermore, the negotiations are only one factor in producing the consequences. Many other, uncoordinated, choices determine the final outcomes. While states engaged in these negotiations fail tests of fair dealing with other states, showing they wrong specific persons is less plausible.

It is worth reflecting that there is also no current institutional basis for a fairness scheme, given these limitations in the states system. So when philosophical critics of the WTO slide from the concept of WTO trade reciprocity to a more substantive conception of reciprocity as social fairness, they show a misunderstanding of what kind of organisation it is, or is capable of being.[18] That is why these critiques often resort to declarations on how the WTO should be, what it should do or what some indefinite 'we' or 'us' should do: 'unjust background conditions require us to implement substantive principles', which 'gives rise to duties to "distribute" or "balance" power ... equally' (Brandi, 2011, p. 191, p. 192, p. 193). But these come with no maxim agents can follow that will both have the required effects and carry fair burdens for doing the distributing and converting the global system to the new scheme, or for apportioning blame for keeping us in the old one. The agency account asks, in those circumstances, for an account of the actions that perpetrate the injustice (in contrast to the flawed idea that circumstances or outcomes are unjust in themselves).

There are positive measures that state representatives in the trade summits might indeed pursue, through long processes of negotiation, to promote fair dealing or institutional reform. These could aim, for example, to place more stringent limits on the extent to which sheer exercise of power is decisive. The institutions of trade fora might even be made more democratic, within the mandate of a negotiating forum (Cabrera, 2010, pp. 211ff.). More radically, a campaign could be launched for the dispute resolution bodies to nullify agreements that will have the palpable effect of undermining a state's ability to define its own laws or undertake internal resource redistribution in favour of vulnerable citizens. But these measures would not address the resource capacities of states, positive trade or the patterns of agreement resulting from states' exercising their agreement-making powers. There is no guarantee, then, that improved fair dealing will address global need satisfaction,

and even less the differential well-being of people in any one state. So this is a different sense of fairness from direct responsibility for global individual well-being levels (compare Brandi, 2011; Joseph, 2011, pp. 265–6; Moellendorf, 2005).

An important lesson here is that it is problematic to allege a human rights violation by the *absence* of institutional change, when there is no unified and specialised agent of change (as there is within a political community). Wrongful omission, such as negligence, as I have stressed, requires recognisable actions that are being omitted by specific agents and that performing those actions would not imply unreasonable costs for those agents. That is why governments with authority to make changes can be blamed for failure to reform harmful rules. It is their responsibility given the duty of care that comes with the authority to distribute the costs and benefits of social cooperation fairly. Pursuing trade agreements for the sake of global development, on the other hand, is costly, as is achieving global institutional change when there is no central government with the authority to legislate it, even if it were ultimately achievable. Failure to engage in these activities is not, then, an unreasonable action that wrongs others. Nor is failure to reform the system to establish a global authority that could regulate trade. There may be imperfect duties to work towards a better system, but the absence of reform could only be a violation where it was shown that specific agents acted negligently in omitting specific actions with reasonable costs. Wholesale fundamental reform of international authority is clearly not a negligent omission of that kind, as I discuss below.

Background Rules

This brings me to the background rules that define the limits of trade institutions. The states system limits the possibility of systematic global redistribution and permits separate governments to pursue economic policies that can be detrimental to their own citizens. States have *de jure* powers to command economic agents (raise taxes and pass property laws) that no other agent has. Because of this, governments have official international privileges that are not related to their internal justice or democratic credentials: privileges to sell domestic resources and borrow in the name of their state. The privileges encourage accountability deficits and corruption. Undemocratic and so unaccountable governments squander natural resources and burden their populations with expensive international debts that bring them no real benefits.

It has been argued that a system allowing these privileges to exist thereby imposes their negative consequences, such as poverty (Pogge, 2010, pp. 51ff.). Our culpability, then, relates more to our complicity with governments perpetuating this system. However, to show complicity with a wrongful imposition there must be recognisable actions imposing the rules, or at least some reasonable opportunities to alter these rules through a political decision. Recall that by C, complicity requires clear wrongful actions (or omissions) with which one can be complicit. Yet these background rules are neither imposed nor permitted: their continuation is not subject to political governance in the standard sense. I do not say that they can never change. But as background international legal principles, they are not subject to change by any currently available decision procedure.

The rights and privileges of governments to enter agreements in the international system are settled by custom to some extent codified in conventions. No legislative assembly, and certainly no international tribunal, has a mandate to change these rules by fiat. This is

because the remits of international assemblies (e.g. the UN General Assembly) and judicial bodies are themselves limited by these background rules. International law recognises states according to objective factors mainly having to do with an ability to enter into agreements.[19] The legitimacy of state actions in entering agreements is not subject to limitation except in some very special cases.[20] So as desirable as it might be to have an international order allowing only democratic states that make good choices, no agency has *de jure* powers to impose that world. Creating it would require consensus building and changing the framework of the international system, with all the hazards this implies. Liberal states could unilaterally refuse to engage with undemocratic governments but whether that foreign policy choice would change the rules, and how quickly, is unclear. Such actions might also have negative short-term effects, and unpredictable long-term consequences. So as desirable as it might be, changing the background rules is not like a legislative decision in the hands of any particular body, nor is there a power to make all relevant adjustments for the consequences. It is possible to demand minimal ecological standards and labour rights safeguards in trade deals, to work for better safeguards against corruption, dangerous products and non-state actors' abuses, and to refuse to do business with abusive governments. And nothing I have said is meant to impugn the desirability or the efficacy of these and other measures, or in specific cases the complicity implied by materially facilitating abusive states. However, seeking reform is a positive measure towards the creation of a new institutional order. That is not in the hands of any one political authority to decide in the way a government decides, say, to raise taxes. Pursuing it has costs and pitfalls, and there are a great many imposing conditionals about what is possible given other states' decisions. Failure to establish it is not then, recognisably an unreasonable imposition, in the sense of R. Nor is there any action being omitted, the omission of which is unreasonable in the sense of R. This is not, then, a plausible ground for claiming mass human rights violations.

As for our part, in the absence of recognisably wrongful actions behind systematic poverty in the global order, there is no obvious wrong for us to be complicit with, in the sense of C. Nor is there evidence that our actions in positively participating (paying our taxes and voting) are directed at participating in, facilitating or negligently permitting any wrongful actions associated with mass poverty. This is not to deny that individually we have other types of obligation, such as imperfect duties to contribute towards addressing poverty, unjust governments or reforming international institutions. But that is very different from claiming that we otherwise share in responsibility for massive human rights violations.

Conclusion

I hope to have shown the following: first, a plausible view of human rights violations implies that to violate a human right an agent must act unreasonably, not simply be part of the causes of well-being loss, however serious. This account is superior to the participation account to the extent that it accounts for important cases that the participation account gets wrong. Second, I have argued that culpable complicity requires that someone act with the aim of contributing to, or negligently allowing, an identifiable wrongful action. Third, I have shown that contributing to the international trade system in the standard ways that citizens do (paying taxes to or voting for their own governments) is insufficient for the accusation of wrongful action, or of culpability by complicity with human rights violations, to stick.

You and I are not culpable, because we did not participate in a plan to do wrong, or negligently permit others' wrongs that we might reasonably have thwarted. The idea that the system violates rights by 'imposing' itself and its losses is a metaphor that does not bear analysis. Nothing I have said denies that there are other types of real wrong internationally, or that we have responsibilities to address unfair dealing or poverty. However, there is no action (or omission) that makes most of us complicit in mass human rights violations.

(*Accepted*: 6 August 2012)
(*Published online*: 15 May 2013)

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Notes

Thanks are particularly owed to Julio Montero, George Letsas and an anonymous referee for comments on earlier drafts.

1 Ashford, 2006, pp. 224ff.; Pogge 2005; 2011; if we include unfair contributions to well-being losses as wrongs, then Caney, 2006, pp. 259ff.; 2009, p. 240).
2 I have summarised Thomas Pogge's five-part test for culpability in three conditions. Note that 'avoidability' means that an alternative system is *conceivable and plausible* (Pogge, 2005, p. 60) and contribution, which Pogge often characterises as *cooperation* with the system by 'empowering' politicians and negotiators and 'delegating' powers to them (Pogge, 2005, p. 79), as well as being a 'typical ... citizen' (Pogge, 2011, p. 16), presumably means obeying laws and paying taxes (Ashford, 2006, p. 231; Pogge, 2010, p. 29, p. 52).
3 Compare Scanlon's responsibility taxonomy (Scanlon, 1998, pp. 248ff.). Compare also Dworkin, 2011, p. 103; Goodin, 1986. Unlike these accounts I am here suggesting different dimensions of responsibility, rather than types of responsibility.
4 Pogge (2002, p. 130) bases this claim in a negative duty to 'do no harm'.
5 In earlier work Pogge explicitly favours 'under-fulfilment' over violation as a concept (Pogge, 2002). Compare later work (Pogge, 2011).
6 Intervening agency, and its effect on responsibility, is discussed variously (Hart and Honore, 1985, pp. 77ff.; Moore, 1999, pp. 18ff.; Stevens, 2007, p. 152).
7 Pogge (2011, p. 9) stipulates that duties should not cause massive harms, and should satisfy the 'ought implies can' condition (Pogge, 2011, p. 4, p. 5) and avoid large-scale social costs (Pogge, 2007, pp. 14–15).
8 Such actions violate the injunction to respect the separateness of persons (Rawls, 1971, pp. 26–7), or to exclude actions based on reasons that count 'external preferences' (Dworkin, 1996, p. 277).
9 I have used the language of reasonableness, not autonomy, because R is not based on valuing autonomy, as in contemporary human rights theories. Rather the principle identifies an impermissible basis for acting in a way that impinges on others' well-being or even autonomy, when this involves subordination. Some ways are permissible, where the imposition is fair, for example.
10 Negligence is generally taken to involve violation of a duty to exercise due care regarding another's person or property (Raz, 2010, p. 9; Simons, 1999, pp. 53ff.).
11 I am here drawing on current analytical work on complicity (e.g. Kutz, 2004, pp. 66ff.).
12 E.g. the GATT agreement, the *Agreement on Agriculture*, the *Trade-Related Aspects of Intellectual Property Rights* (TRIPS) agreement, the *Agreement on Technical Barriers to Trade*; and the dispute settlement instruments of the WTO: the Dispute Settlement Understanding (DSU), and the Dispute Settlement Body (DSB) panels, the Appellate Body, the WTO Secretariat and arbitrators. These form the background for further and more specific inter-state agreements negotiated and renegotiated at different 'rounds' such as the Uruguay (1986–95) and Doha (2001–) rounds.
13 UN agencies have a tendency to treat human rights standards as levels of well-being (Hunt *et al.*, 2004, s7 and s19; UNDP, 2000, p. 26), as do international lawyers writing on human rights, though the latter tend to define responsibility according to state-binding treaty provisions (Joseph, 2011, pp. 23 ff.; Salomon, 2007, pp. 112ff.).
14 Each government produces a 'negotiating mandate' based on aims for the domestic economy (George, 2010, pp. 14–5). Mandate in hand, each negotiator uses 'the calculations of net economic benefit liberally in ... efforts to influence the policies of other parties, and hardly at all in developing its own' (George, 2010, p. 14).
15 GATT, Arts XX and XXI; similar exception clauses are contained in other WTO Agreements, such as Art. XXIII *Agreement on Government Procurement* (GPA), Marrakech, 15 April 1994. For detailed analysis see Jackson, 1997, p. 229.
16 There is some question as to how far TRIPS might erode states' own ability to uphold well-being levels (Joseph, 2011, p. 267).
17 The treaty clearly matters for economic behaviour, but its effects depend on other factors too (Hestermeyer, 2007, p. 152).
18 Compare the slide from WTO reciprocity to 'fair reciprocity' made by Brandi (2011, pp. 196ff.), who takes the trade system to have misunderstood the word. Compare also Finger and Winters (2002, p. 59): 'Reciprocity in trade in negotiations is a motivation and an objective, not a criterion'.

19 Viz.: possession of territory, a defined population, a government and ability to enter into relations with other states (Montevideo Convention, 1933, Art. 4).

20 *Jus cogens* norms, for example, if violated render any international agreement null and void. They do not, however, address individual well-being *simpliciter*, but rather a sub-set of serious international crimes and violations. Nor can they simply be legislated into existence (Orekhaleshvili, 2008, pp. 104ff.).

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