

BOOK REVIEW

JUST TRADE

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Trade, Inequality, and Justice: Toward a Liberal Theory of Just Trade.
Frank J. Garcia. Ardsley, New York: Transnational Publishers,
2003. Pp. 240, \$110.00 (hardcover).

It says a lot about the current U.S. perspective on international law that the first 144 pages of a 213-page book entitled *Trade, Inequality, and Justice: Toward a Liberal Theory of Just Trade* are spent convincing the reader that “trade law inescapably involves questions of justice.”¹ This is not a criticism directed against author Frank Garcia; rather, it is a sobering remark on the prevailing realist approach to international law in the American academy, an approach that explains international cooperation as the mere pursuit of self-interest and power and disavows any normative value to international law.² As Garcia states in the book’s preface, “[t]he core argument of the book is that international trade law does not exist outside of the realm of justice—in other words, we must consider the claims of justice when analyzing international trade law.”³

It is difficult to disagree with Garcia’s central claim. More than ever, trade agreements encroach on a broad range of social concerns: European importation of genetically modified food⁴;

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1. FRANK J. GARCIA, *TRADE, INEQUALITY, AND JUSTICE: TOWARD A LIBERAL THEORY OF JUST TRADE* 144 (2003).

2. See, e.g., JACK GOLDSMITH & ERIC POSNER, *THE LIMITS OF INTERNATIONAL LAW* (2005) (explaining compliance with international law as the choice of rational states that maximize their interests in the accumulation of power or other goods).

3. GARCIA, *supra* note 1, at xix.

4. See Request by the United States for Establishment of a WTO Panel Concerning

Latin American “dollar” bananas threatening the livelihood of banana growers in Africa⁵; intellectual property rights to essential drugs in poor countries devastated by AIDS⁶; and the loss of U.S. manufacturing jobs due to competition from India and China. All of these trade issues inescapably involve the type of “questions of justice” to which Garcia refers, pitting developed against developing countries, declining against emerging industries, workers harmed by trade against consumers benefiting from it, and new technologies that may save lives against concerns about the morality and safety of genetic modification. Garcia must be complimented for addressing these issues directly and acknowledging the moral underpinnings of the sometimes dry and technical field of trade law.

I. GARCIA’S “LIBERAL THEORY OF JUST TRADE”

Trade, Inequality, and Justice focuses exclusively on justice in the context of trade relations between developed and developing countries. The book starts from the premise of inherent or natural inequalities between developed and developing countries—focusing on the “smallness” of developing country economies and their unequal share in natural endowments⁷—and argues that those inequalities require special and differential treatment in favor of developing countries.⁸ For Garcia, such special and differential treatment is a form of redistributive justice derived from a moral obligation on rich countries to ensure not only free, but just, trade. Special and differential treatment can, the author asserts, “play a central role in satisfying the moral obligations that wealthier states owe poorer states as a matter of distributive justice.”⁹ Garcia founds this moral obligation of developed countries on the very idea of liberalism, the fundamental requirement of which is, in his words, “that the acceptability of

European Community Measures Affecting the Approval and Marketing of Biotech Products, WT/DS291/23 (Aug. 8, 2003), available at http://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm.

5. See WTO Appellate Body Report on E.C. Regime for the Importation, Sale and Distribution of Bananas, WT/DS27/AB/R, DSR 1997: II, 591 (Sept. 25, 1997).

6. See Frederick M. Abbott, *The Doha Declaration on the TRIPS Agreement and Public Health: Lighting a Dark Corner at the WTO*, 5 J. INT’L ECON. L. 469, 472–74 (2002).

7. GARCIA, *supra* note 1, at 23.

8. *Id.* at 31.

9. *Id.* at 40.

outcomes be demonstrable to any and all affected individuals.¹⁰ Since most rich countries are liberal states, they have already made political commitments toward justice and equality by virtue of their liberalism; they must, according to Garcia, simply extend their liberal values to others outside of their borders, *in casu* those in developing countries.¹¹ More specifically, Garcia considers “the role of justice in international economic relations as a function of our *individual* moral commitments, carried out in the international arena through the state as our moral agent,” and locates “the inquiry into justice and international trade law in *our* relationships to persons in other jurisdictions.”¹²

Within liberalism, Garcia selects John Rawls’ “Justice as Fairness” theory¹³ to justify and explain the moral obligation of rich countries to give certain preferences to developing countries.¹⁴ Shielded by an original “veil of ignorance,” no one knows what his or her distribution of *natural* primary goods (including intelligence, social status, and natural endowments) will eventually be; Rawls argues that individuals will choose principles that guarantee them the maximum *social* primary goods possible (including liberty, opportunity, income, and wealth) if they happen to be born with the minimum distribution of *natural* primary goods. As Garcia states:

[W]hen faced with a risk of unknown probability that they will find themselves the most disadvantaged in the natural lottery, those in the original position will maximize the minimum share allocated under the system of primary social goods. The resulting difference principle . . . best expresses this “maximin” strategy, in that *any justifiable inequality must therefore work to the advantage of the least well-endowed.*¹⁵

Although Rawls himself steadfastly refuses to extend his argument to international distributive problems, limiting his analysis to what he defines as closed domestic societies,¹⁶ Garcia

10. *Id.* at 56.

11. *Id.* at 102 (“[W]ithin liberalism one is obligated to justify one’s actions, or the actions of one’s state, by reference to the basic liberal commitment to the moral equality of human beings or their good. The logic of this obligation is equally relevant when we are in economic relations with human beings outside our boundaries.”).

12. *Id.* at 69.

13. See JOHN RAWLS, A THEORY OF JUSTICE (1971) [hereinafter RAWLS, THEORY OF JUSTICE]; JOHN RAWLS, POLITICAL LIBERALISM (1993).

14. GARCIA, *supra* note 1, at 119.

15. *Id.* at 123 (emphasis added).

16. JOHN RAWLS, THE LAW OF PEOPLES 86 (1999). As Rawls stated elsewhere, “I shall be satisfied if it is possible to formulate a reasonable conception of justice for the basis

translates this “difference principle” to the world of trade: “International social and economic inequalities are just only if they result in compensating benefits for all states, *and in particular for the least advantaged states.*”¹⁷

II. THE “LIBERAL THEORY OF JUST TRADE” APPLIED TO SPECIAL AND DIFFERENTIAL TREATMENT FOR DEVELOPING COUNTRIES

In a major leap from idealized theories of justice to one specific aspect of trade diplomacy, Garcia identifies special and differential treatment granted by developed to developing countries as a form of inequality. He then examines whether this inequality meets his international “difference principle”; in other words, does it result in compensating benefits for all, and in particular for the least advantaged states?¹⁸ After an excellent analysis of preferential trade schemes and their often perverse effect, Garcia concludes that such schemes—and in particular that adopted by the United States—are *not* justified under the “difference principle” because (1) they are unilateral and conditional in nature, as developed countries are not obliged to have a preference scheme and, if they have one, can condition it on a “grab bag” of political and other requirements¹⁹; and (2) they exclude many goods of the greatest interest to developing countries, including textiles and sugar.²⁰ As a result, Garcia argues, current preferential schemes benefit the least advantaged less than they benefit the United States itself, and therefore fail to meet the requirement of just trade under the “difference principle.”²¹

Rather than turning away from preferential schemes and seeking alternatives to achieve “just trade,” however, Garcia insists on the potential of special and differential treatment and, in conclusion, proposes two remedies: (1) make trade preferences granted by developed to developing countries binding, unconditional, and inclusive of all goods²²; and (2) permit developing countries to continue to protect their markets from

structure of society conceived for the time being as a closed system isolated from other societies.” RAWLS, *THEORY OF JUSTICE*, *supra* note 13, at 8.

17. GARCIA, *supra* note 1, at 134 (emphasis added).

18. *Id.* at 147–48.

19. *Id.* at 164.

20. *Id.* at 159–60.

21. *Id.* at 164.

22. *Id.* at 168.

import competition (“non-reciprocity in market protection”)²³ or at least give developing countries meaningful implementation periods coupled with the right to technical assistance to help them achieve compliance with trade agreements.²⁴

Interestingly, in a recent challenge by India to the European Community (E.C.) system of tariff preferences for developing countries, a World Trade Organization (WTO) panel largely agreed with at least one aspect of Garcia’s proposals, namely to make tariff preferences unconditional. The WTO panel ruled that any conditions on tariff preferences granted by developed to developing countries are inconsistent with current WTO law, with the exception of preferential treatment to least-developed countries and *a priori* import limitations for products originating in particularly competitive developing countries.²⁵ On appeal, however, the Appellate Body considerably softened this ruling, finding that when developed countries grant tariff preferences to developing countries, they must make identical tariff preferences available to all similarly-situated developing country beneficiaries; in this way, developing countries in different situations can be distinguished and tariff preferences can be conditioned on certain requirements.²⁶ Any such distinctions, however, must “respond positively” to the “development, financial [or] trade needs” of developing countries.²⁷ Questions remain, though, as to precisely what those needs are, who defines them, and what it means to “respond positively” to them.²⁸

III. CRITICAL ANALYSIS

Garcia’s *Trade, Inequality, and Justice* offers a convincing account of why justice matters in the world of trade. As suggested by the above short list of examples of trade questions,²⁹ the problem of justice in trade is far broader and more complex than the bipolar

23. *Id.* at 181–82.

24. *Id.* at 189–90.

25. WTO Panel Report on E.C. Conditions for the Granting of Tariff Preferences to Developing Countries, WT/DS246/R, para. 7.116 (Dec. 1, 2003).

26. WTO Appellate Body Report on E.C. Conditions for the Granting of Tariff Preferences to Developing Countries, WT/DS246/AB/R, para. 16 (Apr. 7, 2004).

27. *Id.* at para. 133.

28. For further discussion of the case as it would apply to U.S. preference systems, see Amy M. Mason, *The Degeneralization of the Generalized System of Preferences (GSP): Questioning the Legitimacy of the U.S. GSP*, DUKE L.J. (forthcoming 2005).

29. See *supra* text accompanying notes 4–6.

relationship between developed and developing countries; even within that relationship, it transcends the limited issue of special and differential treatment. Trade also raises questions of justice and redistribution in several circumstances: (1) between the winners and losers of trade *within* countries—for example, U.S. exporters benefiting from trade while U.S. factory workers are laid off because of trade, Brazilians active in the export of cotton,³⁰ and those unable to afford AIDS medicine because of intellectual property protections³¹; and (2) *among* different countries in the large and heterogeneous group that Garcia refers to as “the developing world”—for example, Pakistan’s receipt of more generous tariff preferences than India on the European textile market because of Pakistan’s alleged unique drug trafficking problem, as discussed in the *E.C.-Tariff Preferences* case,³² or the competition between Brazil and even poorer Caribbean nations to sell sugar in the E.C.³³ Indeed, it cannot be taken for granted that all developing countries are “least advantaged” and therefore deserve special treatment; at the WTO, a country is deemed “developing” not based on an economic scale but rather through self-selection. Thus, as long as Singapore, Korea, or China claim the status of developing country, they will have this designation unless specific agreement provides otherwise. More important, even within the limited sphere of the relation between developed and developing countries, Garcia’s account of justice and the remedies he provides raises three serious challenges. This Review addresses them in turn.

A. *Are Economic Inequalities Between Developed and Developing Countries Really Due to “Natural” Factors?*

The basic premise that underlies Garcia’s entire theory—that social and economic inequalities between developed and developing countries are a result of inherent differences in their natural endowments (under Rawls’ theory, an unfair distribution of natural primary goods)—is open to question. Indeed, according to Garcia, the injustice that triggers developed countries’ moral duty of redistribution is the *ex ante* disadvantage in the allocation

30. See Request by Brazil for the Establishment of a WTO Panel Concerning U.S. Subsidies on Upland Cotton, WT/DS267/7 (Feb. 7, 2003).

31. See Abbott, *supra* note 6.

32. See *supra* notes 25 and 26.

33. See Request by Brazil for the Establishment of a WTO Panel Concerning E.C. Export Subsidies on Sugar, WT/DS266/21 (July 11, 2003).

of natural endowments; developing countries may have “small economies” or an unfair share of factor endowments and, as a result, cannot stand up to the competition of rich countries.

But if this is correct, why are small countries like Luxembourg, Singapore, and Switzerland—which can hardly be called rich in natural resources—at the top of the developed country ladder? And why is Congo, with its vast territory and mineral wealth, or India and Nigeria, with their overwhelming labor endowments, at the bottom of the developing country ladder? Would it not be fair, instead, to say that the inequalities between developed and developing countries must be attributed largely to a combination of historical—not natural—factors, including colonization and the head start enjoyed by many developed countries in the industrial revolution (often as a result of policies now prohibited by the WTO), as well as political and economic mismanagement by developing country governments themselves? To the extent that inequalities between rich and poor countries are due to such social factors, however, Garcia’s own “difference principle” does not apply and the moral duty of redistribution that flows from it evaporates. As Garcia acknowledges, “[t]he key normative assumption underlying a Rawlsian account of inequality is that differences in natural endowments, and consequent differences in the allocation of social goods, are unmerited.”³⁴ After all, the very reason Rawls himself refuses to apply the “difference principle” in support of international redistribution is that “the crucial element in how a country fares is its political culture—its members’ political and civic virtues—and not the level of its resources.”³⁵

This is not to say that current trade agreements ensure just trade or that developing countries are undeserving of special treatment. On the contrary, to the extent that developing countries are disadvantaged as a result of past injustices, a strong argument can be made for corrective, but not redistributive, justice. As Garcia puts it, “[c]orrective justice . . . is a restorative form of justice, of putting into balance something that has come out of balance because of an injustice.”³⁶ Redistributive justice, in contrast, “involves the division of social goods which can be divided or allocated . . . socially, by custom, opinion, informal

34. GARCIA, *supra* note 1, at 129.

35. RAWLS, *supra* note 16, at 117.

36. GARCIA, *supra* note 1, at 49.

decisions, and formal allocative mechanisms.”³⁷ Under Rawls’ and Garcia’s theories of justice, however, redistributive justice is only warranted—and consequently liberty can only be sacrificed—to level inequalities in social goods resulting from morally arbitrary distributions of natural endowments,³⁸ and not to correct inequalities arising from social factors like colonization, exploitation, corruption, or mismanagement.³⁹ These social factors necessitate corrective justice on the part of the developed world and good governance, including sounder economic policies, in the developing countries themselves; but they do not call for redistributive justice as defined by Garcia in *Trade, Inequality, and Justice*. At times, however, it is unclear whether Garcia intends his claim for differential treatment and redistribution to apply only to unjust and morally indefensible inequalities (as Rawls would have it), or whether it is, rather, a broad-sweeping appeal for wealth redistribution along egalitarian lines (encroaching on Rawls’ first principle of justice grounded in liberty). Garcia implies, for example, that a moral case could be made for international taxation and generalized redistribution between countries only if such remedies were politically feasible.⁴⁰ Elsewhere, he seems to abandon Rawls’ “balanced difference principle,” which permits only some intrusions into liberty, in favor of a far-reaching presumption that all inequalities require differential treatment.⁴¹

More generally, *Trade, Inequality, and Justice* risks falling into the trap that David Henderson recently referred to as “development pessimism” and the “salvationist consensus.”⁴² Henderson takes issue with the common statement that “[s]ome 80% of people live in developing countries and *have to live off 20% of the planet’s*

37. *Id.* at 48.

38. RAWLS, *THEORY OF JUSTICE*, *supra* note 13, at 15 (referring to “aspects of the social world that seem arbitrary from a moral point of view”).

39. GARCIA, *supra* note 1, at 61 (quoting RAWLS, *THEORY OF JUSTICE*, *supra* note 13, at 15) (“Rawls’ primary concern is . . . to elaborate a theory which ‘nullifies the accidents of natural endowment.’”).

40. *Id.* at 207, 209.

41. GARCIA, *supra* note 1, at 175 (concluding that “treating unequals equally should be considered *prima facie* unjust as a matter of ideal theory”). Garcia ought to explain how he combines this view with his position that trade or other preferences granted by developed to developing countries cannot be linked to any conditions. If developing countries are different in terms of their respect for human rights, the environment, or the way they do (or do not) tackle drug trafficking or political corruption, can they not be seen as “unequals” that must—or at least may sometimes—be treated differently?

42. DAVID HENDERSON, *THE ROLE OF BUSINESS IN THE MODERN WORLD: PROGRESS, PRESSURES AND PROSPECTS FOR THE MARKET ECONOMY* 83, 87 (2004).

goods.”⁴³ Besides the basic economic error of using gross domestic product (GDP) measured in market exchange rates rather than in purchasing power parity (PPP) exchange rates, which accounts for differences in price levels among countries, he observes that such assertions convey

the impression . . . that the goods and services that people, businesses and governments currently buy are somehow made available by “the planet” and then unequally—and hence inequitably—distributed among countries. In fact, rich countries are rich because their citizens produce more per head, not because they have secured privileged access to “the planet’s goods,” or to its “resources.”⁴⁴

With regard to a remedy implied by such references to the gap between rich and poor countries, Henderson notes that “the argument implies that in the world of today developing countries are fated to stay poor unless they are rescued from this condition by being allocated more of the planet’s bounty.”⁴⁵ “In this way of thinking,” he continues, “the remarkable economic progress made by initially poor countries over the past half-century, and the fact that generally speaking it has owed little or nothing to flows or programmes of assistance from outside, is ignored or mentioned only in passing.”⁴⁶

B. *“Equal” Free Trade May Offer More to Developing Countries than “Special and Differential” Trade*

Even if one accepts that developing countries deserve special treatment (and I do, albeit for different reasons than Garcia), it remains questionable whether developing countries should seek such special treatment in the field of trade policy rather than invest their limited bargaining chips and resources elsewhere—for example, in achieving genuinely equal free trade, seeking assistance in improving education, health services, and infrastructure, and cultivating stable institutions, markets, and the rule of law. Genuinely equal free trade would require, among other things, liberalization in sectors where developing countries are strong (textiles, agriculture) comparable to that in sectors of

43. *Id.* at 83.

44. *Id.*

45. *Id.* He also refers more specifically to “the need for unreciprocated assistance and concessions by the [richer] countries, in the form of aid flows, debt relief, unilateral market opening, preferential trade agreements . . . and exemption of the developing countries from [WTO disciplines].” *Id.* at 86.

46. *Id.* at 85–86.

interest to the developed world (industrials, information technology); and stricter control over anti-dumping, to which rich countries too often resort when their poorer counterparts gain significantly in the game of free trade.⁴⁷ Moreover, even assuming the validity of Garcia's difference principle for international redistribution, it is not clear that it actually justifies special and differential trade, even as remedied in its idealized form in Garcia's conclusion. As Garcia himself admits on several occasions, the very premise that tariff preferences and market protection can result in tangible benefits for "least advantaged states" is doubtful.⁴⁸ The mercantilist assumption that a country's protection of its market from competition will somehow boost economic development is called into question by history's lesson that infant industries generally become less, rather than more, competitive behind protectionist walls.⁴⁹ While preferential access to rich country markets may sound more promising, various studies have shown that over the years this simply has not worked.⁵⁰ In a detailed, empirical study of a quarter century of generalized systems of preferences (GSP), Ozden and Reinhardt, using a dataset of 154 developing countries, conclude that "developing countries may be best served by full integration into the reciprocity-based world trade regime rather than continued GSP-style special preferences."⁵¹ They even show that countries removed from GSP performed better than those continuing to benefit from preferences, thus demonstrating that GSP itself, and not its conditions or the risk of losing benefits, may be at the heart

47. See *infra* text at note 53.

48. GARCIA, *supra* note 1, at 167 ("[T]he domestic pressure to manipulate the grant of preferences is too strong to resist."), 197 ("[T]he internal logic of special and differential treatment is such that it is on a timetable towards elimination. . . . Even the most generous additional implementation period will eventually come to an end.").

49. See, e.g., HENDERSON, *supra* note 42, at 85–86; JAGDISH BHAGWATI, FREE TRADE TODAY 89–90 (2002); Paul Krugman, *Enemies of the WTO: Bogus Arguments against the World Trade Organization*, SLATE (Nov. 24, 1999), at <http://slate.msn.com/?id=56497> ("The raw fact is that every successful example of economic development this past century—every case of a poor nation that worked its way up to a more or less decent, or at least dramatically better, standard of living—has taken place via globalization; that is, by producing for the world market rather than trying for self-sufficiency.").

50. See *supra* note 49; see also ÇAGLAR ÖZDEN & ERIC REINHARDT, THE PERVERSITY OF PREFERENCES: GSP AND DEVELOPING COUNTRY TRADE POLICIES, 1979–2000 (World Bank Group, Working Paper No. 2955, 2003), available at http://econ.worldbank.org/files/23188_wps2955.pdf (last visited March 18, 2005).

51. *Id.* at 1, 22 (arguing "that the preferred scenario is one in which developing countries give up GSP in favor of the reciprocity driven trade regime embodied in GATT/WTO relationships among developed states").

of the problem.⁵²

Rather than seeking special treatment, which results in trade inequalities, developing countries should focus on obtaining *equal* free trade. Indeed, the greatest benefit that developing countries stand to reap from the world trade system will not result from special treatment—*less* free trade—but rather from equal liberalization—*freer* trade—in the export sectors of the most interest to them, particularly agriculture and textiles. Stated differently, the greatest injustice in the current trading system is not that poorer countries are considered on equal footing with richer countries, but rather that they are the ones being discriminated against because trade is less open in those sectors where developing countries are most competitive. Moreover, once trade in these products is liberalized and developing countries can compete, they often face purely protectionist (though WTO-justified) contingency measures, such as safeguards or anti-dumping measures, or see their competitive advantage curtailed by export subsidies and overly strict sanitary requirements in developed countries.⁵³ As Garcia himself acknowledges, and as any U.S. manufacturing worker will confirm, genuinely free trade is destined to benefit the poor countries more than the rich. In Garcia's words, "[b]y allowing the principle of comparative advantage to operate, free trade moves the trading system in the direction of operating to the benefit of the least advantaged, by affording them the opportunity for welfare increases through specialization"⁵⁴; furthermore, "market access for developing countries allows the inequalities that manifest themselves in the form of wealthy consumer markets to work for the benefit of the least advantaged, thereby meeting the central criteria for distributive justice."⁵⁵ Indeed, completely free trade—including, in particular, free movement of workers—would lead to a redistribution of wealth between rich and poor countries that trade preferences or protectionism cannot provide.⁵⁶ What Garcia

52. *Id.* at 3. "[I]f there is a threat of removal from the GSP program when its exports increase significantly, then the recipient has the perverse incentive to implement even more protectionist policies to limit its exports and avoid such outcomes." *Id.* at 1.

53. See OXFAM, RIGGED RULES AND DOUBLE STANDARDS: TRADE, GLOBALIZATION AND THE FIGHT AGAINST POVERTY 5 (2002) ("The problem is not that international trade is inherently opposed to the needs and interests of the poor, but that the rules that govern it are rigged in favour of the rich.").

54. GARCIA, *supra* note 1, at 107.

55. *Id.* at 149.

56. See, e.g., DANI RODRIK, FEASIBLE GLOBALIZATIONS 19–20 (Nat'l Bureau of Econ.

seems to overlook, however, is that the WTO and other trade agreements do not produce free trade but instead create patchy liberalized trade, skewed in favor of developed country exports and reinforced by a series of safety valves that mainly benefit the rich and can be employed as a last resort in the case that developing countries pull too far ahead in the trade race.⁵⁷

What is worse, this skewed trade liberalization was not imposed solely on developing countries but was partly a result of special and differential treatment: because developing countries did not offer any market access concessions, under the principle of non-reciprocity, they did not receive any significant consideration in return.⁵⁸ Furthermore, whatever preferential treatment they did receive was difficult to enforce. The cardinal rule for trade concessions is reciprocity: "If you withdraw my market access, I will restrict your imports." If, however, a country gives little in terms of market access (as has been the case in much of the developing world), they will not enjoy the reciprocal benefits; by not being forced to open their economies, developing countries have lost out on market access abroad and have also failed to lock in domestic economic reforms that could have stabilized and modernized their economies.⁵⁹ In this sense, special and differential treatment may actually have worked against the least advantaged rather than benefiting them as required under Garcia's international "difference principle."⁶⁰

C. *The Alternative of Justice Through Individual Human Rights*

Garcia's principle of justice—focused on state-to-state, developed versus developing countries—and the inevitable problems of practical application between and within countries that accompany it, begs the question of whether justice in trade is better approached from the bottom up, based on universally recognized human rights of individuals. Although Garcia speaks

Research, Working Paper No. 9129, 2002), <http://papers.nber.org/papers/w9129.pdf> (last visited Mar. 18, 2005) ("The biggest bang by far lies in something that was not even on the agenda at Doha: relaxing restrictions on the international movement of workers . . . [L]iberalizing cross-border labor movements can be expected to yield benefits that are roughly 25 times larger than those that would accrue from the traditional agenda focusing on goods and capital flows!").

57. See *supra* note 53 and accompanying text.

58. See generally ROBERT E. HUDEC, DEVELOPING COUNTRIES IN THE GATT LEGAL SYSTEM (1987).

59. *Id.*

60. See *supra* note 17 and accompanying text.

somewhat nostalgically of the failed New International Economic Order (NIEO), for which a developing world largely dominated by dictatorships fought in the 1970s,⁶¹ he rightly departs from the NIEO's approach to trade and inequality, which focused on a so-called "right to development" in the hands of poorer nations.⁶² He nonetheless fails to address the individual human rights approach, which does not impart a legal right to development to developing countries (as did the NIEO), nor a moral duty on the part of developed countries (as Garcia does), but rather interprets and applies trade law in the light of universally-recognized human rights of *individuals*—both political and economic.⁶³ This is, in other words, an approach where justice is not found in a single meta-principle that is difficult to apply and balance in the non-ideal world of trade (like Rawls' difference principle), but where justice is infused into trade law—and must at times trump free trade obligations—by means of human rights that have matured and gained specificity and normative value at the international level in the more than fifty years since the adoption of the United Nations Declaration on Human Rights.⁶⁴ As Ernst-Ulrich Petersmann explains, "[f]rom a human rights perspective, international justice refers, above all, to human rights and democratic procedures that justify the allocation and protection of equal basic rights, and the distribution of scarce resources necessary for personal self-development of individuals as morally and rationally autonomous social human beings."⁶⁵ In this view, "justice" remains a never-ending regulatory task and "cannot be related to any *one* value, be it equality or any other, but only to the

61. GARCIA, *supra* note 1, at 9 ("The NIEO's claims were explicitly framed in terms of justice."). Many would argue, however, that NIEO claims were inspired as much (if not more) by authoritarian elites in developing countries aimed at expanding their personal power base as by lofty ideals of justice benefiting the poor in developing countries. See Thomas M. Franck, *Lessons of the Failure of NIEO*, in INTERNATIONAL LAW AND DEVELOPMENT 82–100 (Canadian Council on International Law, XV Annual Conference Proceedings, 1986).

62. GARCIA, *supra* note 1, at 9–10.

63. See Ernst-Ulrich Petersmann, *Theories of Justice, Human Rights, and the Constitution of International Markets*, 37 LOY. L.A. L. REV. 407, 412 (2003) ("[C]ontrary to the suggestion by John Rawls to base international justice on equal freedoms of peoples, human rights offer a more appropriate constitutional basis for national as well as international justice.").

64. Universal Declaration of Human Rights, G.A. Res. 217A(III), U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948).

65. Petersmann, *supra* note 63, at 410.

complex value system of a man, a community, or mankind.”⁶⁶ Why reinvent the wheel, it could be argued, if the toolbox of human rights (though far from perfect itself) is there for the taking, and is both more precise and more “liberal,” focused directly on individuals rather than states?

In the end, therefore, the first 144 pages of *Trade, Inequality, and Justice* may be the most important for its success in identifying (part of) the problem. Although Garcia’s broad call for redistributive justice between developed and developing countries is questionable within his own theory, and the example of special and differential treatment is not the optimal, nor by far the most important, means of enhancing justice in world trade, the book is one of the first to apply abstract theories of justice to concrete questions of international trade law. It also provides a convincing critique of current preferential trade schemes. For these reasons, *Trade, Inequality, and Justice* deserves the attention of anyone interested in political philosophy, trade, and the plight of developing countries.

66. CARL JOACHIM FRIEDRICH, *THE PHILOSOPHY OF LAW IN HISTORICAL PERSPECTIVE* 199 (2d ed. 1963). Or, as Petersmann puts it, “[t]he universal recognition of human rights requires basing ‘international justice’—contrary to the views of John Rawls—not only on freedom and equality of *peoples*, but also on equal human rights and multi-level constitutionalism.” Petersmann, *supra* note 63, at 458.